



**EB-2011-0025**

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

**AND IN THE MATTER OF** an Application by Union Gas  
Limited for an Order or Orders approving or fixing just and  
reasonable rates and other charges for the sale, distribution,  
transmission and storage of gas effective January 1, 2012.

**BEFORE:** Karen Taylor  
Presiding Member

Marika Hare  
Member

## **PARTIAL DECISION AND ORDER**

### **INTRODUCTION**

Union Gas Limited (“Union” or the “Applicant”) filed an Application on September 6, 2011 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2012 (the “Application”). The Board assigned file number EB-2011-0025 to the Application and issued a Notice of Application on September 15, 2011.

The Application is for rates for 2012 to be set under the multi-year Incentive Rate Mechanism (“IRM”) as approved by the Board under File No. EB-2007-0606. 2012 will be the final year of the five year plan.

On September 15, 2011 Union filed the evidence and a draft rate order in support of its Application.

The Board issued its Procedural Order No. 1 on October 12, 2011, in which it scheduled a number of events in the proceeding and granted intervenor status to the Association of Power Producers of Ontario, Building Owners and Managers Association of Toronto, Canadian Manufacturers and Exporters, Consumer Council of Canada, Enbridge Gas Distribution Inc., Energy Probe Research Foundation, Federation of Rental-housing providers of Ontario, Industrial Gas Users Association, Jason F. Stacey, Just Energy Ontario L.P., London Property Management Association, Ontario Association of Physical Plant Operators, Pollution Probe Foundation, School Energy Coalition, Shell Energy North America (Canada) Inc., the Corporation of the City of Kitchener, TransAlta Corp., TransCanada Energy Ltd., TransCanada Pipelines Ltd., and the Vulnerable Energy Consumers Coalition.

The Board issued its Procedural Order No.2 on October 20, 2011, in which it set out the Final Issues List, a draft of which had been issued for comment, but no comments were received.

## **THE APPLICATION**

Union indicated that the rates proposed under the IRM for 2012 were determined in accordance with the Board approved EB-2007-0606 Settlement Agreement and Addendum. The topics covered in Union's evidence included the 2012 Inflation and Productivity Factors, Y and Z factor Adjustments, Average Use Adjustments, Annual Adjustments to General Service Monthly Charges, Customer Bill Impacts, Rate Schedule Changes, Deferral Account Requests, Deferral Account Closure Requests and Implementation.

Union's proposals and requested approvals included:

- An inflation factor of 1.72% (calculated as the average of the year over year percentage change in the Gross Domestic Product Implicit Price Index Final Domestic Demand) and a 1.82% productivity factor (in accordance with the EB-2007-0606 Settlement Agreement) used to calculate the proposed rates;

- Z factor adjustment related to the issue of income tax rate changes and a Z factor adjustment related to the issue of Union's Sewer Lateral Cross-Bore Safety Program;
- Y factor adjustment related to its proposed 2012 DSM Budget;
- Average Use of Gas adjustments for 2011 for General Service rates classes M1, M2, Rate 1 and Rate 10;
- An increase of \$1.00 in the monthly fixed charge (from \$20.00 to \$21.00) for the residential classes M1 and Rate 01 on a revenue neutral basis;
- Changes to the wording on Union's customer bills and rate schedules relating to its Late Payment Penalty Policy;
- Three new deferral accounts:
  - DSM Incentive Deferral Account ("DSMIDA") – to record the shareholder incentive amount earned by Union as a result of its DSM Programs;
  - Cross Bore Safety Program Deferral Account – to capture the variance between the amount of costs related to Union's Cross Bore Safety Program included in rates and the amount actually spent in 2012;
  - Transition to US GAAP – Pension Deferral Account – to record the amount recognized in retained earnings associated with transitioning accounting standards and reporting to US GAAP for previously unrecorded pension expenses; and
- The closure of two deferral accounts:
  - Deferred Customer Rebates/Charges (Deferral Account No.179-26)
  - Long-Term Peak Storage Services (Deferral Account No. 179-72).

Union proposed that the new rates be effective January 1, 2012 as described in the Rate Setting Process of the EB-2007-0606 Settlement Agreement at Section 12.1.1.

**SETTLEMENT PROPOSAL**

Following the Settlement Conference held on November 1, 2011, a Partial Settlement Agreement was filed with the Board on November 9, 2011 and is attached as Appendix A to this Decision (the "Settlement Agreement").

The Partial Settlement Agreement indicated that a settlement was reached on most issues with the exception of:

- The treatment and amount proposed for Union's Cross Bore Safety Program;
- The establishment of the US GAAP Pensions Deferral Account;
- The closure of the Long-Term Peak Storage Services Deferral Account; and
- The wording change requested related to Union's Late Payment Penalty Policy (combined the "Unsettled Issues").

The Partial Settlement Agreement allows for 2012 rates to be implemented as of January 1, 2012. The impact of the Board's Decision, in regards to the Unsettled Issues, on rates will be addressed as part of Union's 2012 non-commodity deferral account disposition proceeding.

**BOARD FINDINGS**

The Board has reviewed Union's Partial Settlement Agreement of November 9, 2011 and approves it as filed for rates effective January 1, 2012. The Board notes that the Y factor adjustment related to Union's 2012 DSM Budget is approved on an interim basis and that Union's rates may be adjusted depending on the outcome of Union's 2012-2014 DSM Plan proceeding (EB-2011-0327).

**IMPLEMENTATION AND THE HEARING OF UNSETTLED ISSUES**

Given current timing, the Board expects that the 2012 rates, effective January 1, 2012, will be implemented commencing with the first billing cycle on or after January 1, 2012.

The Board requests that Union file a Draft Rate Order on the basis of the Partial Settlement Agreement. The Board will offer Board staff and intervenors the opportunity to comment on the Draft Rate Order. The process for the filing of the Draft Rate Order and submissions on the Draft Rate Order is set out below.

The Board notes that a number of issues in this proceeding remain unsettled. The Board had originally scheduled an Oral Hearing for November 21, 2011 in Procedural Order No. 1. However, due to scheduling conflicts the Oral Hearing will be rescheduled for January 16, 2012 (and if necessary, will continue on January 17, 2012).

**THIS BOARD ORDERS THAT:**

1. Union shall file with the Board and shall also forward to all intervenors in this proceeding, a Draft Rate Order reflecting the Partial Settlement Agreement within 5 working days of the issuance of this Decision and Order.
2. Upon receipt of the Draft Rate Order, Intervenors and Board staff shall have 5 business days to respond to Union's Draft Rate Order.
3. Union shall respond within 3 business days after the period of comment by Intervenors and Board staff to any comments submitted by intervenors and Board staff.
4. An oral hearing will commence on **January 16, 2012** at 9:30 a.m. in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, Ontario. The Oral Hearing will continue on **January 17, 2012**, if necessary.

All filings to the Board must quote file number **EB-2011-0025**, 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 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.

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, November 14, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**TO BOARD DECISION AND ORDER**

**BOARD FILE NO. EB-2011-0025**

**UNION GAS LIMITED 2012 RATES  
PARTIAL SETTLEMENT AGREEMENT**

**DATED: November 14, 2011**

**EB-2011-0025**

**UNION GAS LIMITED**

**SETTLEMENT AGREEMENT**

**November 2, 2011**



**EB-2011-0025**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is for the consideration of the Ontario Energy Board (“the Board”) in its determination, under Docket No. EB-2011-0025, of Calendar 2012 rates for Union Gas Limited (“Union”). By Procedural Order No. 1 dated October 13, 2011, the Board scheduled a Settlement Conference to commence at 9:30 a.m. on November 1, 2011. The Settlement Conference was duly convened, in accordance with Procedural Order No. 1, and concluded the same day.

The following parties participated in the Settlement Conference:

Association of Power Producers of Ontario (“APPrO”)

BOMA Greater Toronto (“BOMA”)

Canadian Manufacturers & Exporters (“CME”)

Consumers Council of Canada (“CCC”)

City of Kitchener (“Kitchener”)

Energy Probe Research Foundation (“Energy Probe”)

Federation of Rental-housing Providers of Ontario (“FRPO”)

Industrial Gas Users Association (“IGUA”)

London Property Management Association (“LPMA”)

Ontario Association of Physical Plant Administrators (“OAPPA”)

School Energy Coalition (“SEC”)

Vulnerable Energy Consumers Coalition (“VECC”)

TransCanada Energy Ltd. (“TransCanada”)

TransCanada takes no position on all issues with the exception of Issue 5.

Except as expressly noted below, the parties agree to the relief sought by Union in the Application and agree that the claimed relief is supported by Union's prefiled evidence and its responses to interrogatories. References to the prefiled evidence and the interrogatories are provided in relation to each of the agreed items contained in the Agreement. The Agreement is supported by the evidence filed in the EB-2011-0025 proceeding.

It is acknowledged and agreed that none of the provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2011-0025, accept the Agreement in its entirety, there is no Agreement (unless the parties agree that any portion of the Agreement the Board does accept may continue as a valid Agreement).

It is further acknowledged and agreed that parties will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Ontario Energy Board's Rules of Practice and Procedure.

It is also acknowledged and agreed that this Agreement is without prejudice to parties re-examining these issues in any other proceeding provided that re-examination does not have the effect of varying the terms of this Agreement

The parties agree that all positions, information, documents, negotiations and discussion of any kind whatsoever which took place or were exchanged during the Settlement Conference are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of

any ambiguity that subsequently arises with respect to the interpretation of any provision of this Agreement.

The role adopted by Board Staff in Settlement Conferences is set out on page 5 of the Board's Settlement Conference Guidelines. Although Board Staff is not a party to this Agreement, as noted in the Guidelines, "Board Staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding".

The form of the Agreement generally follows the major issues outlined in the prefiled evidence. There were no other issues raised requiring resolution in this proceeding. As described above, the evidence supporting the agreement on each issue is cited in each section of the Agreement. Abbreviations will be used when identifying exhibit references. For example, Exhibit B1, Tab 4, Schedule 1, Page 1 will be referred to as B1/T4/S1/p. 1. The structure and presentation of the settled issues is consistent with settlement agreements which have been accepted by the Board in prior cases. The parties agree that this Agreement forms part of the record in this proceeding.

**1 HAS UNION APPROPRIATELY CALCULATED THE PRICE CAP INDEX AND APPROPRIATELY APPLIED THE PRICE CAP ADJUSTMENT FOR CALCULATING 2012 RATES?**

(Complete Settlement)

The parties accept Union's price cap calculations.

Evidence References:

1. A/p.3; A/WP/S2

**2 IS THE FORECAST OF AVERAGE USE APPROPRIATE?**

(Complete Settlement)

The parties accept Union's average use calculations.

Evidence Reference:

1. A/p.16; A/WP/S10; B1.3; B5.1; B8.7

**3 IS THE TREATMENT AND AMOUNT PROPOSED FOR INCOME TAX RATE CHANGES APPROPRIATE?**

(Complete Settlement)

The parties accept Union's income tax rate calculations.

Evidence References:

1. A/p.3-4; A/WP/S13; A/WP/S15; B8.1

**4 IS THE TREATMENT AND AMOUNT PROPOSED FOR THE CROSS BORE SAFETY PROGRAM APPROPRIATE?**

There is no agreement to settle this issue. Parties do agree that for the purposes of setting 2012 rates on a timely basis, the costs proposed by Union for recovery as a z factor as being associated

with the Cross Bore Safety program will not be included in rates at this time. This exclusion from 2012 rates is without prejudice to the position any party may take with respect to whether or not the costs associated with the Cross Bore Safety program qualify as a z factor under Union's current approved IR framework. If the Board, after hearing the evidence in relation to the Cross Bore Safety program, determines that the costs associated with the Cross Bore Safety program qualify for z factor treatment, the recovery of such costs from customers will be addressed as part of Union's 2012 deferral account balances disposition (See Issue 7, below).

Evidence References:

1. A/p.4-13; A/WP/S13; B1.1; B3.2; B3.3; B4.2; B4.3; B4.6; B8.2; B8.3; B9.8

**5 IS THE TREATMENT AND AMOUNT PROPOSED FOR Y FACTOR INCREMENTAL DSM COSTS APPROPRIATE?**

(Complete Settlement)

The parties accept Union's proposal to include the incremental DSM costs, as filed in EB-2011-0327, in 2012 rates on an interim basis. This treatment is intended to provide for an in-year adjustment of rates if warranted as a result of the EB-2011-0327 proceeding, and to be determined by the Hearing Panel in that proceeding, as opposed to conventional variance account treatment through which variances are disposed of commencing part way through the following year. The final DSM budget and allocation of the budget to rate classes will be determined in the EB-2011-0327 proceeding. The parties agreement to include the DSM budget as proposed in EB-2011-0327 in Union's proposed 2012 rates is without prejudice to positions any party may take in the EB-2011-0327 proceeding.

Evidence References:

1. A/p.15; A/WP/S16; B1.2; B2.1; B2.2; B5.3

**6 IS IT APPROPRIATE TO ESTABLISH THE DSM INCENTIVE DEFERRAL ACCOUNT (“DSMIDA”)?**

(Complete Settlement)

The parties accept the establishment of the DSM Incentive Deferral Account.

Evidence references:

1. A/p.17-18

**7 IS IT APPROPRIATE TO ESTABLISH THE CROSS BORE SAFETY PROGRAM DEFERRAL ACCOUNT?**

Parties agree that if the Board determines that the costs associated with the Cross Bore Safety program qualify for z factor treatment under Union’s current IR mechanism, Union will establish the CBSPDA to track the costs of the Cross Bore Safety program. If established, the CBSPDA will track the costs associated with the Cross Bore Safety program commencing January 1, 2012 until such time as the cross bore costs are built into rates. The CBSDA will be disposed of as part of Union’s future annual disposition of its non-commodity deferral accounts.

Evidence References:

1. A/p.18; B1.1; B3.3

**8 IS IT APPROPRIATE TO ESTABLISH THE TRANSITION TO USGAAP – PENSIONS DEFERRAL ACCOUNT?**

All parties agree that this issue will proceed to hearing before the Board for determination.

Evidence References:

1. A/p.18-19; B1.5; B1.6; B1.7; B1.8; B1.9; B4.8; B4.9; B8.5

**9 IS IT APPROPRIATE TO DISCONTINUE FOR 2012 THE DEFERRAL CUSTOMER REBATES/CHARGES DEFERRAL ACCOUNT?**

(Complete Settlement)

The parties accept the elimination of the Customer Rebates/Charges Deferral Account (179-26).

Evidence References:

1. A/p.20

**10 IS IT APPROPRIATE TO DISCONTINUE FOR 2012 THE LONG-TERM PEAK STORAGE SERVICES DEFERRAL ACCOUNT?**

All parties agree that this issue will proceed to hearing before the Board for determination.

Evidence References:

1. A/p.20

**11 IS IT APPROPRIATE TO MAINTAIN ALL OTHER EXISTING DEFERRAL ACCOUNTS WHICH UNION HAS NOT REQUESTED TO DISCONTINUE?**

(Complete Settlement)

The parties accept Union's proposals to continue all other deferral accounts.

Evidence References:

1. A/App. F

**12 ARE THE PROPOSED CHANGES TO THE WORDING FOR THE LATE PAYMENT PENALTY POLICY IN UNION'S RATE SCHEDULES AND CUSTOMER BILLS APPROPRIATE?**

All parties agree that this issue will proceed to hearing before the Board for determination.

Evidence References:

1. A/p.17; B5.6

**13 HOW SHOULD THE NEW RATES BE IMPLEMENTED?**

(Complete Settlement)

Following Board approval of this Settlement Agreement, Union will file a draft rate order for rates effective January 1, 2012 according to the pre-filed evidence, with the exception of the Cross Bore Safety program Z factor. As noted in relation to Issues 4 and 7, any impact on 2012 rates as result of the Board's determination with respect to the Cross Bore Safety program will be dealt with through the CBSPDA. Rate impacts and implementation arising from the hearing will be decided upon by the Board as part of Union's application for disposition of its 2012 non-commodity deferral accounts.