Ontario Energy Board

Commission de l’Énergie de l’Ontario

EB-2005-0551

NATURAL GAS ELECTRICITY INTERFACE REVIEW

DECISION WITH REASONS

November 7, 2006

EB-2005-0551

IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to determine whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers) and whether the Board should refrain from regulating the rates for storage of gas.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Cynthia Chaplin
Member

Bill Rupert
Member

DECISION WITH REASONS

November 7, 2006

EXECUTIVE SUMMARY

INTRODUCTION

This proceeding was initiated by the Ontario Energy Board in late 2005 in response to issues first raised in the Board's *Natural Gas Forum Report* and more fully explored in the OEB staff report, *Natural Gas Electricity Interface Review*. The key issues addressed in this proceeding were:

- Rates and services for gas-fired generators
- Storage regulation.

The hearing participants, which included gas-fired generators and consumer groups, reached settlements with Union Gas Limited (Union) and Enbridge Gas Distribution Inc. (Enbridge) on most of the issues related to services for gas-fired generators, and the Board has approved those settlements. The oral hearing and this Decision addressed the issues which were not settled and the issue of storage regulation.

SERVICES FOR GAS-FIRED GENERATORS

The need to examine new services for gas-fired generators arises because of the increasing number of so-called "dispatchable" gas-fired power generation plants that are planned or in operation. These plants operate in response to five-minute dispatch instructions from the Independent Electricity System Operator (IESO), and, as a result, their gas consumption profiles are more volatile and difficult to forecast than the relatively stable profiles of residential, commercial and industrial gas consumers. Flexible and responsive gas services, including high-deliverability gas storage, can ensure the reliable operation of these plants and allow the plant operators to manage the financial risk of the business.

Based on the settlements, the Board has approved a number of new services aimed at the needs of the gas-fired generators, including:

- new distribution rate structures for high-volume gas consumers
- more frequent nomination windows for the distribution, storage and transportation of gas
- the inter-franchise movement of gas
- redirection of gas to different delivery points on short notice
- simpler processes for title transfers of gas in storage
- high-deliverability storage services.

There was no agreement on the price at which high-deliverability storage services should be offered. The generators argued for a regulated framework, while the utilities argued for a competitive framework. The key consideration is to ensure that new innovative services are developed. The Board concludes that the public interest is best met by refraining from regulating these services. This will stimulate the development of these services, by utilities and other providers. The Board will accordingly refrain from regulating the rates for high-deliverability storage services.

The Board has a duty to protect the interests of consumers using these services with respect to price and reliability and quality of service. The crucial factor is the availability of the service itself – namely its reliability and quality. The Board expects Enbridge and Union to fulfill their commitments respecting the offering of these services. Pricing considerations are relevant, but competitive options will provide appropriate price protection. The Board will also be developing a reporting mechanism and complaint process to deal with any issues which arise.

NATURAL GAS STORAGE REGULATION

Union and Enbridge operate large underground gas storage facilities in southwestern Ontario. Those facilities, which are connected to multiple gas transmission pipelines, are part of what is known as the Dawn Hub, one of the more important natural gas market centres in North America.

The issue in this hearing was whether the Board should refrain from regulating the prices charged for storage services. Section 29 (1) of the *Ontario Energy Board Act, 1998* states:

> On an application or in a proceeding, the Board shall make a determination to refrain, in whole or in part, from exercising any power or duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is, or will be, subject to competition sufficient to protect the public interest.

Competition in Storage

The Board has concluded that Ontario storage operators compete in a geographic market that includes Michigan and parts of Illinois, Indiana, New York and Pennsylvania. The Board finds that the market is competitive and that neither Union nor Enbridge have market power.

Price Regulation

The Board will cease regulating the prices charged for the following storage services:

- all storage services offered by Union and Enbridge to customers outside their franchise areas;
- new storage services offered by Union and Enbridge to their in-franchise customers; and,
- all storage services offered by other storage operators, including storage operators affiliated with Union and Enbridge.

Rates for storage services provided to Union’s and Enbridge’s distribution customers will continue to be regulated by the Board on a cost-of-service basis.

Union's existing storage capacity is well in excess of the current needs of its in-franchise customers and has been for many years. The Board has decided that Union will reserve approximately two-thirds of its existing capacity for in-franchise needs. At current rates of growth, that amount limit will satisfy in-franchise needs for several decades. Enbridge currently purchases storage from Union for a portion of its requirements. The Board has decided that Union will continue to provide these services at cost through a transition period ending in 2010.

Sharing the Premium on Ex-Franchise Sales

The sale of storage services by Union and Enbridge at market-based rates to ex-franchise customers has generated revenues well in excess of the cost of providing those services. Until now, the Board has required that most of the profits be used to reduce distribution rates. The Board has concluded that this sharing should continue for short-term storage deals. These are storage transactions that use storage space that is temporarily surplus to in-franchise needs. All of the profits on these transactions, less small incentive payments to the utilities, will be for the benefit of ratepayers.

The Board finds, however, that Union will not be required to share the profits on long-term storage transactions that use storage space not needed to serve in-franchise needs because that capacity now constitutes a "non-utility" asset for which the shareholders appropriately bear the risk. The sharing of these profits will remain unchanged for 2007 and then be phased out over the period to 2011.

Impact on Consumers

The Board's decisions are expected to have virtually no effect on consumers' bills in 2007. The impact after that cannot be precisely quantified because it will depend on future storage prices, the profit on ex-franchise storage sales, and the amount of gas consumed. While a precise forecast is not possible, bills are likely to increase by a small amount – perhaps around 1% for the typical residential consumer.

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Appendices

1. THE PROCEEDING AND THE ISSUES

1.1 BACKGROUND

In the fall of 2003, the Ontario Energy Board began a comprehensive sector review – the Natural Gas Forum – to examine ways to further improve the efficiency and effectiveness of natural gas regulation in Ontario. The impetus for this review was recognition by the Board of the evolving natural gas market. In particular, the Board recognized that conventional gas supply sources are expected to experience flat to declining production. The anticipated increased reliance on non-conventional supply sources raised questions regarding the need for infrastructure within Ontario to meet changing natural gas flow patterns and about the adequacy of the current regulatory treatment of natural gas. On the demand-side, the anticipated expansion of gas-fired power generation was expected to affect the extent and type of investment required in gas infrastructure in Ontario and to drive the convergence of gas and electricity markets.

The outcome of the review was a Board report, released on March 30, 2005, entitled *Natural Gas Regulation in Ontario: A Renewed Policy Framework*[1] (the Natural Gas Forum Report). In this report the Board set as an "important and immediate priority" the need to ensure that Ontario's natural gas infrastructure could meet the demands created by new gas-fired generators. As a result, the Board initiated the Natural Gas Electricity Interface Review (NGEIR), to examine the regulatory treatment of natural gas infrastructure and services.[2]

NGEIR involved several months of research and meetings with stakeholders, which were led by Board Staff. The Board Staff NGEIR report was released for stakeholder

[1] Board File No. RP-2004-0213
[2] Board File No. EB-2005-0306

comment on November 21, 2005. The report's key recommendations were that the Board should initiate a generic hearing to review whether the Board should:

- require gas utilities to provide firm higher deliverability service from storage and greater nomination entitlements;
- require greater operational flexibility in the provision of distribution services;
- forbear from regulating rates for gas storage services.

After reviewing the stakeholder comments, the Board initiated this generic hearing, known as the Natural Gas Electricity Interface Review Proceeding (the NGEIR Proceeding), to determine whether it should order new rates for the provision of natural gas transmission, distribution and storage services to gas-fired generators (and other eligible customers). The Board indicated that it would also determine in the NGEIR Proceeding whether to refrain, in whole or part, from exercising its power to regulate the rates charged for the storage of gas in Ontario by considering whether, as a question of fact, the storage of gas in Ontario is subject to competition sufficient to protect the public interest.

In addition, the Board determined that the generic hearing would examine Union's Transmission Bidding Open Season process as it relates to the rates and contractual terms for allocating transportation capacity. In particular, the issues concerning the M12 rate premiums identified in the Board's decision regarding the Dawn-Trafalgar Pipeline Transmission Expansion (EB-2005-0201) were included.

1.2 THE PROCEEDING

The NGEIR Proceeding was commenced pursuant to sections 19, 29 and 36 of the *Ontario Energy Board Act, 1998*. On December 29, 2005, the Board issued a Notice of Proceeding on its own motion to determine:

- whether it should order new rates for the provision of natural gas transmission, distribution and storage services to gas-fired generators (and other qualified customers); and
- whether to refrain, in whole or part, from exercising its power to regulate the rates charged for the storage of gas in Ontario by considering whether, as a question of fact, the storage of gas in Ontario is subject to competition sufficient to protect the public interest.

The Notice of Proceeding directed Enbridge Gas Distribution Inc. (Enbridge) and Union Gas Limited (Union) to file evidence on potential rates for gas-fired generators.

Procedural Order No. 2, issued on February 28, 2006, set out the issues to be addressed in the proceeding. These are set out in full in Appendix A, but can be summarized as follows:

I. Rates for gas-fired generators (and other qualified customers), including more frequent nomination windows, firm high deliverability service, unbundled services, inter-franchise movement of gas, redirection of gas to a different delivery point on short notice, and title transfer of gas in storage

II. Storage regulation and whether the Board should refrain, in whole or part, from exercising its power to regulate the rates charged for the storage of gas in Ontario, including:
   - Is the market competitive?
   - Who should receive cost-based pricing?
   - Who should receive market-based pricing?
   - How should the amount of storage be allocated between the classes of customers?
   - Who should receive the premium?

III. Transportation capacity bidding process and allocation

IV. Enbridge rates for large volume customers (Rate 300 Series)

The Board also moved four issues from Union's 2007 rates proceeding (EB-2005-0520) to the NGEIR Proceeding. These issues, as set out in Procedural Order No. 3, were related to storage pricing and storage and transmission deferral accounts.

Further details of the process can be found in Appendix A. Lists of witnesses and participants are in Appendix B.

1.3 SETTLEMENT PROPOSALS

A settlement conference was held for Issues I (rates for gas-fired generators and other qualified customers), III (transportation capacity bidding process and allocation) and IV (Enbridge's Rate 300 series rates). The Board indicated that it would not receive a settlement proposal on Issue II (storage regulation), so a settlement conference was not held in relation to this issue.

Two separate Settlement Proposals were filed with the Board on June 13, 2006. Enbridge submitted a Settlement Proposal for Issues I and IV (the Enbridge Proposal) and Union submitted a Settlement Proposal for Issues I and III (the Union Proposal). A presentation of the Settlement Proposals was made to the Board on June 19, 2006. Details relating to the settlement process and the Board's treatment of the Settlement Proposals, including decisions on issues related to the Settlements and the Settlement Proposals themselves are provided at Appendix C and Appendix D for Enbridge and Appendix E and Appendix F for Union. The matters under Issues I, III and IV that were not resolved by way of settlement are discussed in Chapter 8.

1.4 MHP CANADA DECISION ON CORE POINTS

Market Hub Partners Canada (MHP Canada) is an affiliate of Union which proposes to develop third party storage in Ontario. As part of its evidence and submission to the Board in the context of the NGEIR Proceeding, MHP Canada made a request for an expedited decision on certain "core points", specifically that:

- MHP Canada cannot exercise market power;
- MHP Canada, similar to independent storage developers, will be granted authority to charge market-based rates for its services; and
- MHP Canada will be allowed flexibility to contract for services without requiring approval of individual contracts, provided that MHP Canada operates within a base set of service terms and conditions approved by the Board.

On September 7, 2006, the Board issued its oral decision on MHP Canada's request for an expedited decision on the core points. In its decision, the Board authorized MHP Canada to charge market-based rates and relieved MHP Canada of the requirement to have storage contracts approved by the Board. The transcript of the decision can be found in Appendix G.

1.5 ORGANIZATION OF THIS DECISION

This decision focuses principally on the second issue listed in the Board's Procedural Order No.2, that is, whether there is sufficient competition in natural gas storage for the Board to refrain in whole, or in part, from regulating rates.

Chapter 2 is a an overview of gas storage in Ontario today – the existing storage facilities, the use of storage by Union's and Enbridge's "in-franchise" customers, the "ex-franchise" market for storage, and the prices charged for storage services. This chapter does not contain any Board decisions. It provides background and context for the Board's decisions on the competition question and the implementation issues covered in later chapters.

Chapter 3 deals with the issue of competition in storage and whether Union and Enbridge have market power. The chapter addresses the framework for assessing market power, the definition of the product market, the scope of the geographical market, and quantification of market shares and concentration.

Section 29 of the *Ontario Energy Board Act, 1998* (the *OEB Act*) requires the Board to consider whether there is "competition sufficient to protect the public interest" before making a decision to refrain from regulation. **Chapter 4** sets out the Board's views on public interest issues relevant to gas storage.

Chapter 5 deals with the decision to refrain, or forbear, from regulating storage rates and approving storage contracts. It sets out the Board's basis for deciding to refrain in part from regulating rates, as well as the Board's decision that in-franchise customers will continue to receive regulated storage services at cost-based rates.

Having decided to retain regulated cost-based storage rates for in-franchise customers, it is necessary to determine how much of Union's existing storage space should be reserved for those customers. **Chapter 6** covers that issue together with the Board's decisions on how much cost-based space Union and Enbridge should allocate to individual unbundled and semi-unbundled in-franchise customers.

Chapter 7 sets out the Board's decisions on whether, and to what extent, Union's and Enbridge's in-franchise customers should continue to share in the margins over cost that the utilities earn on sales of storage services at market rates.

Issues I, III, and IV from Procedural Order No.2 were largely settled by the parties. **Chapter 8** covers the Board's decisions on a small number of Enbridge rate issues that were not settled.

Chapter 9 is a summary of the implementation and transition issues arising from the Board's decisions in Chapters 5, 6, 7 and 8.

2. ONTARIO GAS STORAGE - BACKGROUND

This chapter describes the development and current state of natural gas storage in Ontario, the pricing and allocation of storage, and the rate treatment for revenues earned from storage services sold at market-based rates.

2.1 ONTARIO GAS STORAGE FACILITIES

The existing and proposed underground natural gas storage facilities that were the subject of this hearing are all located in Southwestern Ontario, mostly in Lambton County. The storage pools now in operation are all depleted gas fields. With working gas capacity of over 240 Bcf, these Ontario facilities are among the largest gas storage pools in Canada.

The storage facilities are an integral part of what is commonly referred to as the Dawn Hub, which is widely recognized as one of the more important market centres in North America for the trading, transfer and storage of natural gas. In its Natural Gas Forum Report, the Board stated: "The large amount of nearby storage, combined with a convergence of pipelines linking the U.S. and Ontario gas markets, have made Dawn the most liquid trading location in Ontario."[3] The Federal Energy Regulatory Commission (the FERC), in its assessment of energy markets in the United States in 2004, made similar comments about the significance of Dawn:

> The Dawn Hub is an increasingly important link that integrates gas produced from multiple basins for delivery to customers in the Midwest and Northeast. … Dawn has many of the attributes that customers seek as they structure gas transactions at the Chicago Hub: access to diverse sources of gas

[3] *Natural Gas Regulation in Ontario: A Renewed Policy Framework*, Report on the Ontario Energy Board Natural Gas Forum, March 30, 2005 at page 84.

> production; interconnection to multiple pipelines; proximity to market area storage; choice of seasonal and daily park and loan services; liquid trade markets; and opportunities to reduce long-haul pipeline capacity ownership by purchasing gas at downstream liquid hubs.[4]

The storage facilities currently in operation in Ontario are owned and operated by two entities, Union, which also owns and operates the gas transmission line between Dawn and Parkway, and Enbridge. The storage operations of these companies are described in the next sections of this chapter, followed by information on new storage operations proposed or under development by other parties.

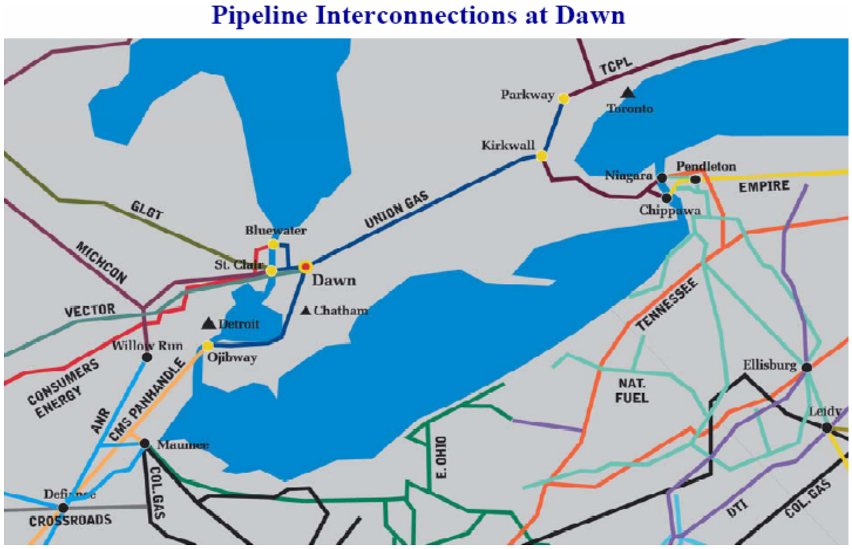
2.1.1 Union

Union is an indirect, wholly-owned subsidiary of Duke Energy Corporation, a U.S. company with large and diverse operations in North America's gas and electricity industries. Union owns and operates an integrated gas distribution, transmission and storage business in Ontario. On June 28, 2006, Duke Energy announced it would pursue a plan to create two separate publicly-traded companies by spinning off its natural gas businesses, including Union Gas, to shareholders.

Union's storage operations include 20 depleted gas fields with working gas capacity of approximately 152 Bcf and peak deliverability of 2.3 Bcf per day. Union's storage pools connect with the Vector, Great Lakes, CMS Panhandle, Michcon, and Bluewater transmission pipelines from Michigan in the west, and (via Union's Dawn-Parkway pipeline) the TransCanada pipeline and Enbridge's gas distribution system in the east. Figure 1 shows these pipeline interconnections.

[4] Federal Energy Regulatory Commission, *2004 State of the Markets Report*, June 2005, page 161.

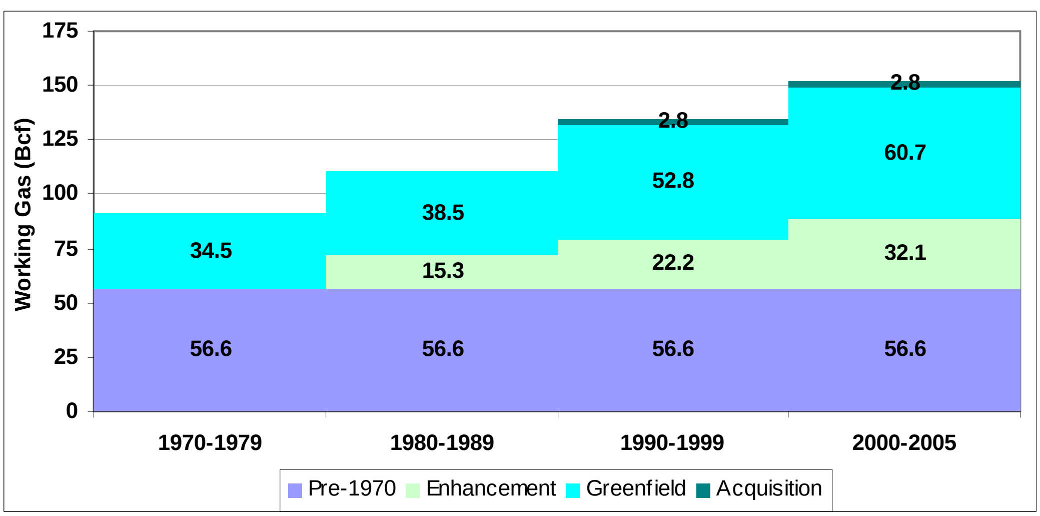
Figure 1: Pipeline Interconnections at Dawn



Source: Union Gas pre-filed evidence, Tab 2, page 10

Union has owned and operated storage facilities at Dawn since the 1940s. Since 1969, it has more than doubled the working gas capacity through enhancements, greenfield development, and acquisitions, as indicated in Figure 2.[5]

Figure 2: Union Working Gas Capacity Development



[5] Derived from information in Union Gas Undertaking K3.1, which was expressed in PJs. Table 1 was prepared using a conversion factor of 1Bcf = 1.055 PJ.

Union stated in the hearing that although there might be some potential to develop new storage capacity at its Dawn facilities, it has no current plans to do so.

For 2006, Union has allocated about 86 Bcf of its storage space to support the seasonal balancing needs of its in-franchise (distribution) customers. Gas for these customers is typically received from various connecting pipelines on a more or less constant basis during a year. Receipts in excess of demand during the spring, summer and early fall periods are stored and then withdrawn during the peak consumption period in the winter. The largest portion of storage space for in-franchise customers (approximately 61 Bcf) is allocated to customers that take bundled service (transmission, distribution, storage) and is managed by Union on an aggregate basis. Larger customers that take service under Rates T1 or T3 have one-year renewable contracts for fixed amounts of storage space. In aggregate, those contracts cover approximately 16 Bcf. Union also reserves 9 Bcf as "contingency" space related to its needs as system operator.[6]

Union earns revenue from selling long-term and short-term storage services to a variety of ex-franchise (non-distribution) customers.

- Long-term contracts – The working gas capacity of Union's pools far exceeds the amount required to support the seasonal balancing needs of Union's distribution customers. Union markets the excess space in multi-year contracts to "ex-franchise" customers, typically Canadian and U.S. gas distributors and marketers. Union's largest ex-franchise storage customer currently is Société en Commandite Gaz Métro (GMi), the largest gas distributor in Québec, which has four contracts covering over 22 Bcf of Union storage space.
- Short-term services – During the course of a year, the storage space required to meet the seasonal balancing requirements of distribution customers is frequently available to be used for short-term storage services for ex-franchise customers. These customers include the Canadian and U.S. marketers and retailers, the

[6] Space Allocation derived from Exhibit J5.02, converted to Bcf using a factor of 1Bcf=1.055 PJ.

trading units of financial institutions, U.S. power generators, and some industrial gas users.

2.1.2 Enbridge

Enbridge is a wholly-owned subsidiary of Enbridge Inc., a Calgary-based energy company. Enbridge is the largest gas distributor in Ontario ranked by customers and revenue.

Enbridge's Tecumseh storage facilities, which have been in operation since the 1960s, have a working gas capacity of 98 Bcf and peak deliverability of 1.8 Bcf per day.[7] The Tecumseh storage pools are connected to Union's gas transmission pipeline at Dawn. To reach Enbridge's distribution franchise areas in central and eastern Ontario, gas stored at Tecumseh flows over the Union pipeline and then through the TCPL transmission system.

Enbridge is at the early stages of assessing the potential for expanding the deliverability of some of its Tecumseh pools.

Tecumseh storage is not sufficient to cover the seasonal load balancing requirements of Enbridge's in-franchise customers. To meet those requirements, Enbridge has supplemented its Tecumseh space with three multi-year contracts with Union for a total of 19.9 Bcf of storage at Dawn.

Unlike Union, Enbridge does not have the ability to sell long-term storage services from its storage pools because the storage requirements of its in-franchise customers exceed the capacity of Tecumseh. But, similar to Union, Enbridge can utilize its storage assets to offer various short-term storage services to ex-franchise customers. The principal customers for these services are Canadian and U.S. marketers, retailers, and financial institutions.

[7] Union Gas has long-term contracts covering 6.7 Bcf of Tecumseh storage facilities, which reduce the space available to Enbridge to around 92 Bcf.

2.1.3 New Ontario Storage Proposed or Under Development

Tribute Resources Inc. and Tipperary Gas Corp. (Tribute)

Tribute, an independent storage company, received Board approval in 2005 to develop and operate a 3.2 Bcf gas storage pool located near Bayfield, Huron County (the Tipperary Storage Pool).[8] When operational, it will be connected to Union's transmission system.

The Tipperary Storage Pool has not yet been developed. The company is seeking additional approvals from the Board, including approval to drill a new horizontal and two lateral storage wells. Tribute plans to commence operation of this storage pool in June 2007. Tribute has received Board approval to charge market rates to its customers in accordance with Union's C1 range rate.

Market Hub Partners Canada L.P.

MHP Canada is a partnership that is wholly-owned by subsidiaries of Duke Energy and, as a result, is an affiliate of Union. MHP Canada plans to offer Dawn-based services to wholesale customers. It is currently developing its St. Clair Pool (1.1 Bcf) and, through a partnership, it intends to develop a further 5.3 Bcf at the Sarnia Airport Pool. Both projects are located in Lambton County and will be connected to Union's transmission system. MHP Canada has indicated it will seek development opportunities to increase its working gas capacity to 10 Bcf by 2010.

In a September 7, 2006 oral decision as part of this proceeding, the Board authorized MHP Canada to charge market-based rates for its storage services (in accordance with Union's C1 range rate) and allowed MHP Canada to enter into storage contracts without requiring Board approval of individual contracts.[9] MHP Canada expects its St. Clair Storage pool to be operational in June 2007.

[8] *RP-2003-0253 Decision with Reasons to Follow*, June 17, 2005
[9] The Board's decision on MHP Canada's core points is reproduced in Appendix G.

Enbridge Inc.

Enbridge Energy Distribution Inc. ("Enbridge Energy"), an unregulated subsidiary of Enbridge Inc, has carried out exploration and evaluation activities over the past several years to assess new storage potential in Ontario. The results indicate that undeveloped pinnacle reef storage in Ontario is smaller in size, of inferior quality, and located farther away from Dawn than the currently developed pools. Enbridge Inc. has concluded that the costs and risks associated with new storage development in Ontario are significantly higher than in the past.

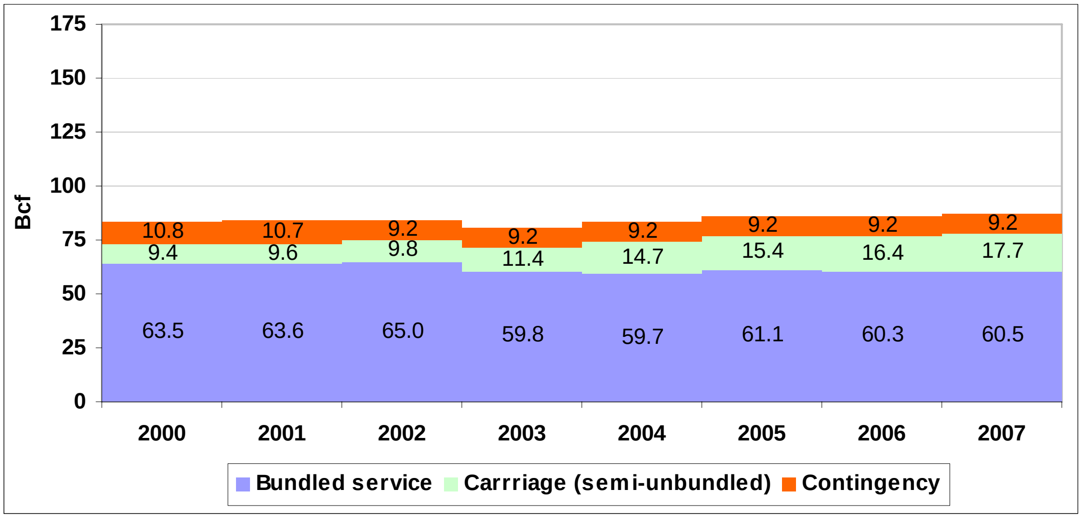
2.2 PRICING AND ALLOCATION OF ONTARIO STORAGE

The prices currently charged by Union and Enbridge for storage services depend on whether the buyer of the services is considered to be an "in-franchise" or an "ex-franchise" customer. As a generalization, in-franchise customers pay cost-based rates for the storage services they use and ex-franchise customers pay market-based prices. Prices for both groups of customers are regulated by the Board. However, the prices for ex-franchise customers are subject to Board approved maximum rates (so-called range rates) that are high enough that they have not yet constrained the pricing of services to ex-franchise customers.

Figure 3 shows Union's analysis of the actual and estimated space requirements for in-franchise customers.[10]

[10] Derived from Union Exhibit J5.02. Figure 3 was prepared using a conversion factor of 1 Bcf = 1.055 PJ.

Figure 3: Actual and Forecast Space Requirements Union In-franchise Customers (Bcf)



None of the participants in the hearing advocated that the Board refrain from regulating prices of storage services for in-franchise gas customers that require the traditional seasonal load balancing service. However, Union and Enbridge did propose changes to the allocation or pricing of storage services for in-franchise customers.

2.2.1 Definition of "In-Franchise Customer"

Although the term "in-franchise customer" was used repeatedly at the hearing and in most parties' evidence, there was no formal agreement on what the term means. In its evidence, Union provided the following definitions:

> In-franchise – Customers inside Union's franchise area. The in-franchise market consists predominantly of residential customers and has historically been considered to be the retail market.
>
> Ex-franchise – The ex-franchise market consists of storage services sold to those customers located outside Union's franchise area, including Ontario LDCs, marketers/brokers and end use consumers located outside of Ontario, primarily in eastern Canada and the Northeast United States. This market is considered to be the wholesale market, since the majority of these customers are not end use customers but intermediaries. [11]

[11] Union Gas prefiled evidence Exhibit A, Tab 1, footnotes 1 and 2.

Union's definition of in-franchise customer is a largely, but not completely, accurate description of the customers that currently receive cost-based storage from both Union and Enbridge. For example, there are the following exceptions:

- Three embedded gas distributors – the City of Kitchener's gas distribution utility (Kitchener), Natural Resource Gas Ltd. (NRG) and Six Nations Natural Gas Company Limited (Six Nations) – pay cost-based rates to Union for storage services. These distributors are physically connected to Union's distribution system but serve gas consumers outside Union's franchise area.
- Gazifère Inc., the gas distributor in the Outaouais region of Québec and a subsidiary of Enbridge Inc., is charged cost-based rates for storage services provided by Enbridge. Gazifère's system is connected to Enbridge's distribution system in Eastern Ontario but serves gas consumers outside Enbridge's franchise area.
- Greenfield Energy Centre Limited Partnership (GEC), owner of a gas-fired generation plant under construction in Union's franchise area in the Sarnia region, has received permission from the Board to construct a gas pipeline that will not connect to Union's system. If GEC were to purchase storage services from Union in the future, it would presumably be considered an ex-franchise customer, and would not be eligible for cost-based in-franchise rates.

Given these exceptions, it is probably more accurate to state that cost-based storage services are currently provided to the "distribution customers" of Union and Enbridge. When the term "in-franchise customers" is used in this decision, it is intended to refer to distribution customers of the utilities.

2.2.2 Allocation of Storage to In-Franchise "Bundled" Customers

Most of Union's and Enbridge's distribution customers receive a bundled service (distribution, transmission, and storage). The utilities are responsible for determining how much storage is required in total for this customer group and for managing the aggregate allocation.

Even though individual bundled customers do not purchase or manage storage, the allocation of storage space is important to them for two reasons.

- It determines how much they are charged for storage. Union and Enbridge apply their cost-based storage rates to the storage allocations to determine the monthly charge to bundled customers. (Union's bills show storage charges as a separate line item. Enbridge includes its storage charges for bundled customers in distribution charges.).
- The allocation determines the amount of cost-based storage that commercial and industrial customers will be entitled to if they choose to take unbundled or semi-unbundled services from their utility. It also fixes the amount of storage that a natural gas retailer will receive at cost-based rates should the retailer choose to manage storage requirements for its customers rather than rely on the utility service.

Union currently uses the "aggregate excess" methodology to allocate storage to bundled customers in its Southern operations area. The aggregate excess is the difference between (a) the amount of gas a customer is expected to use in the 151-day winter period and (b) the amount that would be consumed in that period based on the customer's average daily consumption over the entire year.

Union totals the amounts calculated under the aggregate excess method and then reduces that total by 2.4%. This reduction is meant to reflect that less storage is needed to manage the balancing requirements of a large portfolio of customers with diverse consumption patterns.

The total amount of storage space allocated to Union's bundled customers has not been capped. As new bundled customers are added, the aggregate excess amount has grown.

Enbridge also uses a similar method to allocate storage to its bundled customers.

2.2.3 Allocation of Storage to In-Franchise "Unbundled" and "Semi-Unbundled" Customers

Union's and Enbridge's in-franchise customers can choose an unbundled delivery service under which they separately contract for storage service. Only one Enbridge customer has opted for that service to date, although the Board is reviewing redesigned unbundled Enbridge rates as part of this proceeding so there may be further migration. None of Union's customers have chosen unbundled service.

Union refers to its T1 and T3 services as "semi-unbundled" services. The commercial and industrial customers taking T1 service and Kitchener which takes service under the T3 rate have entered into renewable one-year contracts for storage space at cost-based rates. Three T1 customers are gas-fired generators that have multi-year storage contracts. If these T1 and T3 customers require storage space greater than their contracted amounts, they are required to purchase the extra space at market-based rates.

The allocation of space to most of these customers was determined in 2001 as part of RP-1999-0017, which dealt with Union's unbundling proposals.[12] Union proposed that the aggregate excess method be used to allocate cost-based storage to customers taking unbundled service, and that the same approach be used for the storage allocation to T-service customers. As part of a settlement agreement, Union agreed to

[12] *RP-1999-0017 Decision with Reasons*, July 21, 2001

grandfather the storage allocations to T-service customers.[13] This grandfathering has resulted in over 40 T1 customers having different (generally higher) storage space under contract than would be the case if the aggregate excess method were used. The three gas-fired generators taking T1 service also have storage space under contract that is well above the amount determined under the aggregate excess method.

2.2.4 Storage Prices for In-Franchise and Ex-Franchise Customers

As noted earlier, Enbridge has contracted with Union for additional space to supplement its Tecumseh storage. Thus, the current storage costs underpinning Enbridge's bundled customers are a blend of cost-based rates for Tecumseh and market-based prices under the Union contract. The Union contract has prices that are substantially higher than Union's cost of storage. Enbridge started to pay these higher prices on April 1, 2006 but has not yet received Board approval to include the full contract prices in its rates.

Cost-based rates

The current cost-based rates for in-franchise storage users are approximately $.30 per GJ for Union and $0.40 per GJ for Enbridge. These rates are derived from the net book value of the storage facilities (including base pressure gas at historical cost), variable operating and maintenance expenses, financing costs and a return on equity at the Board's approved rate. In Union's case, the rates reflect an allocation of the cost of its storage facilities between in-franchise and ex-franchise users.

Market-based rates

Union began selling short-term storage services (less than 2 years) at market-based rates to ex-franchise customers in 1989. In 1997, the Board approved long-term storage contracts (one five-year and three ten-year contracts) that Union had entered into at market-based rates pursuant to an open season process. Based on the Board's RP-

[13] Page 25 of the Settlement Agreement in RP-1999-0017 stated: "In order to facilitate the transition to the new allocation methodology [aggregate excess], Union agrees to grandfather existing T-service customers currently operating within there current deliverability level, whether those customers remain as t-service or select the new unbundled service."

1999-0017 Decision, Union began to transition all long-term ex-franchise customers to market-based rates.

Enbridge's Transactional Services function was established in 1997 to enable Enbridge to sell storage and transportation capacity that it considers surplus to what is needed to serve its in-franchise customers. All of Enbridge's Transactional Services are considered to be short-term (less than 2 years).

Sales of short-term and long-term storage services to ex-franchise customers are subject to maximum rates approved by the Board (so-called range rates). The actual prices realized by Union and Enbridge for sales of storage services to ex-franchise customers are determined by negotiation. Union's C1 rate schedule, which sets a maximum price of $3.00 per GJ, sets out the following factors that can affect the price of an individual transaction:

- The amount of storage service sought by the customer,
- Type of service (firm or interruptible; peak or off-peak),
- Utilization of facilities,
- Competition, and
- Term.

Market prices for storage used for seasonal load balancing tend to reflect seasonal differences in natural gas prices. Storage prices change constantly as the seasonal spread in gas prices changes. Over the past few years, the difference between the forward gas prices for the five-month winter withdrawal season (November through March), and the prices in injection periods has increased significantly. That has put upward pressure on market prices for storage.

Market prices for storage in recent years have been many times higher than the cost-based rates charged by Union and Enbridge. For example, the prices realized by Union in the January and February 2006 open seasons for winter 2006/2007 storage are presented below in Table 1.

Table 1: Union Storage Prices
Open Seasons for Winter 2006/2007

	Volume	High Price	Low Price	Weighted Average
US$/MMBtu	7,800,000	US$2.90	US$1.55	US$2.09
CDN$/GJ	8,229,437	$3.43	$1.84	$2.48

2.3 RATE TREATMENT OF MARGINS ON STORAGE SERVICES

The market-based prices that are realized on sales of storage services to ex-franchise customers generally have been higher (sometimes, much higher) than the cost-based rates charged to in-franchise customers. In setting distribution rates for Union and Enbridge, the Board has directed that most of this premium over cost be credited against distribution rates.

This section reviews the amount of the margins realized by Union and Enbridge and the manner in which the margins are currently shared by distribution customers and the utilities.

2.3.1 Gross Margins

Figure 4 shows the actual margins on Union's ex-franchise storage sales for 1997-2005, estimates for 2006 and 2007.[14] The estimate for 2007 is included in the settlement

[14] Union information extracted from Exhibit K2.3, and the settlement agreement for Union's 2007 distribution rates.

agreement approved by the Board in its decision on Union's 2007 distribution rates.[15] The amounts are net of an allocation of some of Union's costs of its storage assets. Figure 5 shows the actual margins on Enbridge's Transactional Storage Services for 1997-2005 and the estimate for 2006.[16] The amounts for Enbridge do not reflect any costs of its Tecumseh storage operations because all such costs are currently included in Enbridge's distribution rates.

Figure 4: Union Ex-Franchise Storage Margins

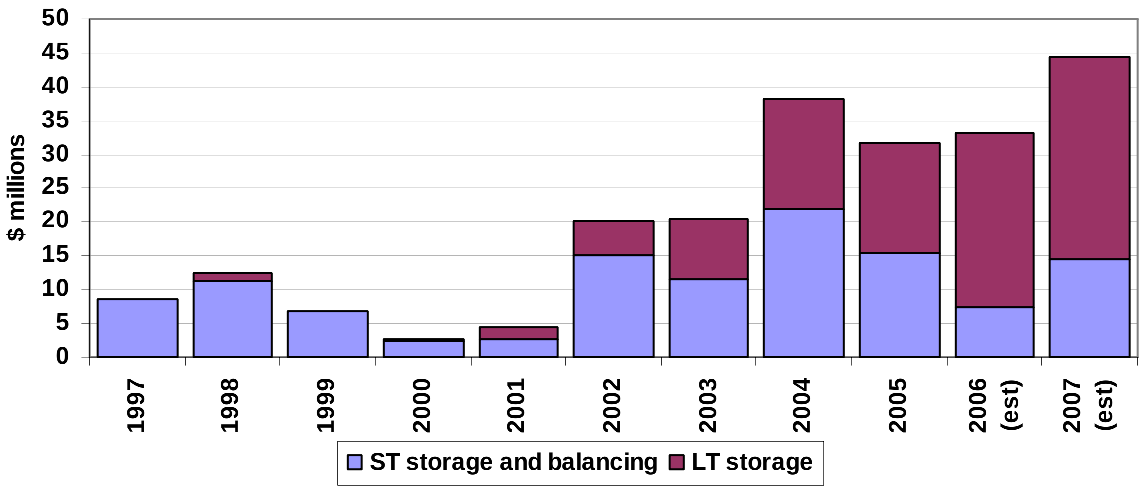
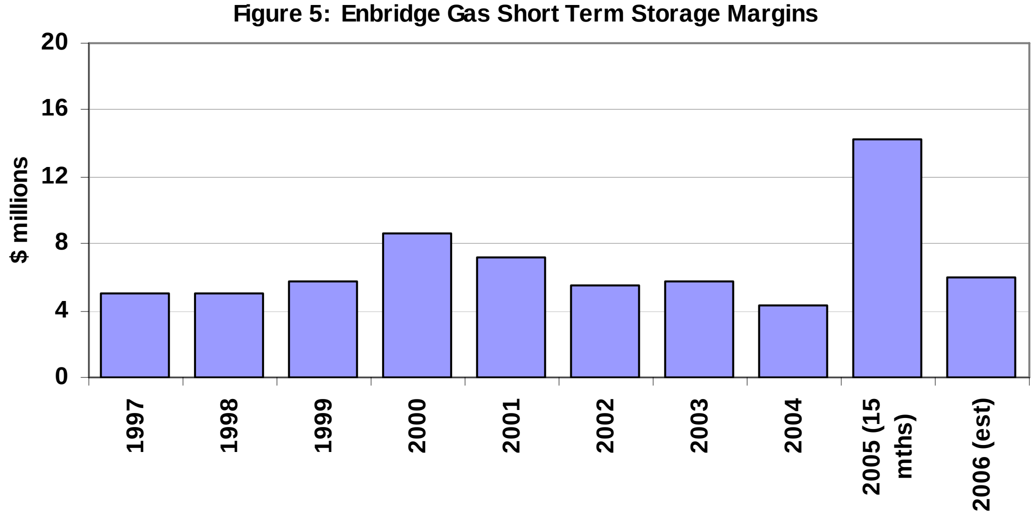


Figure 5: Enbridge Gas Short Term Storage Margins



[15] RP-2005-0520 dated June 29, 2006
[16] Enbridge information extracted from Exhibit K6.1 and, for the 2006 estimate, Transcript Day 7, page 20.

The growth in Union's margins on long-term storage business (long-term means contracts with terms of two years or longer) in recent years appears to have been caused primarily by two factors. First, starting in 2001, long-term contracts with ex-franchise customers that previously were at cost-based rates have been renegotiated at higher market-based rates as they come up for renewal. Second, the market value of storage for seasonal balancing – which is largely a function of the difference between forward gas prices for the injection and withdrawal seasons – has been increasing.

2.3.2 Sharing Mechanisms

The bulk of storage margins for Union and Enbridge have not accrued to those utilities. Instead, the Board has required that most of the margins be credited against distribution rates. The manner in which those margins are shared between in-franchise ratepayers and the utilities has varied to some extent in the past. The current approaches to sharing the margins are described below.

Union

Union forecasts the amount of short- and long-term storage margins for the rate year in question as part of the rates case. Of the Board approved forecast amount, 90% is included as a credit against distribution rates for the year. To the extent that actual margins vary from the forecast built into rates, Union books the difference in deferral accounts (account 179-70 for short-term transactions and account 179-72 for long-term transactions). When cleared, these deferral account balances are shared 75:25 in favour of distribution ratepayers.

Enbridge

In its decision on Enbridge's 2006 distribution rates, the Board determined that a forecast margin of $10.7 million for 2006 Transactional Services (storage and transmission) was appropriate.[17] The first $8 million of that amount, less $800,000 to cover Enbridge's incremental costs of providing Transactional Services, is for the

[17] *EB2005-0001/EB-2005-0437 Decision with Reasons*, February 9, 2006

account of ratepayers and is included as a reduction in 2006 distribution rates. To the extent that Enbridge is able to realize more than $10.7 million in margin in 2006, the excess will be booked to a deferral account and ultimately shared 75:25 in favour of distribution ratepayers.

3. THE ASSESSMENT OF STORAGE COMPETITION

This chapter outlines the statutory test under section 29 of the *OEB Act*, establishes the analytical framework to be used in assessing competition in the storage market, and applies the framework.

3.1 THE LEGAL TEST

This proceeding is brought pursuant to Section 29 (1) of the *OEB Act* which reads:

> On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

Section 29 was introduced in 1998 as part of the *Energy Competition Act*[18] and followed a similar provision that was introduced in the Federal telecommunications statute five years earlier.[19]

The concept of forbearance and light-handed regulation first surfaced in the late 1970s and early 1980s. In 1979, the Economic Council of Canada issued its interim report entitled *Responsible Regulation*[20] and a final report two years later, entitled *Reforming Regulation*[21] with specific recommendations. The McDonald Commission in 1985 concluded that it would be appropriate to adopt "selective deregulation" in Canada.[22]

[18] S.O. 1998, c.15
[19] Telecommunications Act S.C. 1993 c.38
[20] Economic Council of Canada , *Responsible Regulation – An Interim Report of the Economic Council of Canada (Ottawa, Supply and Services, 1979)*
[21] Economic Council of Canada , *Reforming Regulation* (Ottawa, Supply and Services, 1982)
[22] Royal Commission on the economic and development prospects for Canada, Volume 2, at 254 (1985)

Regulators in Canada and the United States offered two related grounds for forbearance. The first was that markets were being redefined by new technology and, therefore, competition rather than regulation could produce better outcomes in terms of the quantity and prices of goods and services, all of which would maximize social welfare. Much of the early work was done in the telecommunications industry. Not surprisingly, the absence of market power was held by both the U.S. Federal Communications Commission and the Canadian Radio-television and Telecommunications Commission (CRTC) to be sufficient grounds for the exercise of regulatory forbearance.[23]

The *Telecommunications Act*[24], which came into effect October 25, 1993, created the first statutory provision relating to forbearance in this country. Section 34 reads:

> Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29, and 31 in relation to the service or class of services.

The CRTC between 1994 to 2007, pursuant to that section 34 decided to forbear from regulating telecommunications terminal equipment, cellular telephone and paging service, satellite services, data and private line services, internet services and ultimately long distance services.[25]

It is important to remember that the public policy rationale for forbearance is not limited to the belief that competition provided adequate safeguards in workably competitive markets. The second ground for forbearance is based on concerns related to regulatory costs. Those costs are not limited to the financial burden on utilities and ultimately

[23] Further Notice of Proposed Rulemaking, 84 F.C.C. 2d 445, at 472-74, 478 (1981). See, Enhanced services, Telecom Decision CRTC 84-18, at 6-17, 118 CAN GAZETTE PT I, 6117, at 6123-25 (12-July, 1984).
[24] Telecommunications Act S.C. 1993 c.38
[25] Exhibit E, Tab 2, Schedule 1, Attachment 2

consumers. As the Federal Communications Commission noted, the costs include reducing the firm's ability to react rapidly to the changing market conditions, dampening incentives to innovate and wasting resources through the regulation of firms that have no market power.[26]

There are degrees of competition in any market. They range from a monopoly, where there is a sole seller, to perfect competition, where there are many sellers and no one seller can influence price and quantity in the market. It is not necessary to find that there is perfect competition in a market to meet the statutory test of "competition sufficient to protect the public interest"; what economists refer to as a "workably competitive" market may well be sufficient.

It is also important to remember that competition is a dynamic concept. Accordingly, in section 29 the test is whether a class of products "is or will be" subject to sufficient competition. In this respect parties often rely on qualitative evidence to estimate the direction in which the market is moving.

3.2 ONUS

One of the issues raised was who has the onus in the NGEIR Proceeding. Generally, the onus is on the applicant. Most intervenors argued that the onus was on Union and Enbridge. The utilities and their affiliates disagreed. MHP, for example, countered that the onus was on any party seeking to change the status quo. In its view, Union has been selling storage at market-based rates for many years and that represents the status quo.

Some have argued that the ex-franchise prices are not competitive and that the framework should be revisited. Union itself is proposing to freeze the allocation of cost-based storage to in-franchise customers, and to acquire incremental volumes at market-

[26] Further Notice of proposed Rulemaking,84 FCC 2nd 445 at 472-74,478, (1981)

based prices. As pointed out by the Consumers Council of Canada (Consumers Council), that is certainly not the status quo.

In any event, there is no applicant in this proceeding, and the matter has been brought about on the Board's own motion. The Board therefore finds that it is not appropriate to assign onus to any particular party.

3.3 THE ANALYTICAL FRAMEWORK AND THE ASSESSMENT OF MARKET POWER

The Board must determine the appropriate analytical framework for assessing whether the market is competitive. In this section and in the balance of this chapter, we address the issues associated with the appropriate analytical framework and its application. Through this analysis, the Board can determine whether Union or Enbridge have market power and whether there is a workably competitive market for storage. The evidence and submissions identified three frameworks in which to consider the market power question: the Canadian Competition Bureau's Merger Enforcement Guidelines (MEGs), the CRTC approach to forbearance, and the U.S. Federal Energy Regulatory Commission (FERC) approach to addressing requests for market-based rate authority. The approaches followed by these three authorities are summarized below.

FERC

The FERC has applied a straightforward structural approach, derived from the U.S. Merger Enforcement Guidelines, to considering the market power implications of applications for new storage at market-based rates. Prior to FERC Order 678 (which has modified the FERC approach and which is described below), the product market was taken to be physical storage. The geographic market is based on an assessment of the extent of competition provided by neighbouring storage facilities. Once these markets have been identified, a Herfindahl-Hirschmann Index (HHI)[27] calculation is performed to assess the potential for market power. The potential for entry is also assessed. An HHI threshold of 1800 is generally used as a screen: if the concentration in the market is below this value, the market is deemed to be competitive and a new storage supplier will be allowed to charge market-based rates. In several cases, even prior to Order 678, the FERC has allowed storage applications where the HHI was significantly above 1800, particularly if the new entrant had a small market share, because even if some incumbent firms possess market power, licensing a new entrant at market-based rates is unlikely to add to that market power and may well diminish it.

In 2005, the FERC initiated a Notice of Proposed Rulemaking culminating in Order 678, which relaxed this framework somewhat. Order 678 makes two significant changes to the framework for approving new storage applications. First, the product market has been broadened to potentially include pipeline capacity, local production and LNG peaking gas facilities. Second, even where the applicant cannot show that it does not have market power, it may be permitted to charge market-based rates, if such an outcome is determined to be in the public interest.

CRTC

The CRTC, relying on section 34 of the *Telecommunications Act*, is willing to forbear from regulation when "a service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users". The CRTC test thus resembles closely the language in section 29 of the *OEB Act*. Through application of these criteria, the CRTC has forborne from regulating the supply of long distance services, telephone equipment, customer inside wiring, business and residential local telephone services, high-speed Internet services, wireless telephone services and data services.

[27] The HHI is a measure of the competitive structure of an industry. It is equal to the sum of the squares of the market shares of all the companies in the industry (multiplied by 10,000). Thus an industry with ten equally sized firms would have an HHI of 1,000. An industry with five equally sized firms would have an HHI of 2,000.

Because of the original status of these industries as natural monopolies, the CRTC approach emphasizes the need to ensure that a dominant incumbent firm is not able to exercise substantial market power. Indeed, much of the CRTC's concern over forbearance has been a concern over prices that might be too low, rather than too high – in other words a concern about predatory behaviour exercised by the incumbent firms. In its 2006 decision[28] which establishes a framework for forbearance over competition in local telephone service, the CRTC required that the dominant firm's market share must have fallen below 75% before forbearance would proceed.

The CRTC follows a set of steps that mirror the methodology found in the Competition Bureau's Merger Enforcement Guidelines.

Competition Bureau's Merger Enforcement Guidelines

In their approaches to identifying market power both the FERC and CRTC follow a methodology derived from their respective national Merger Enforcement Guidelines or MEGs.[29] Although the methodology is intended for use in identifying the market power implications of mergers, it can be helpful when assessing whether the forbearance of regulation is likely to lead existing firms to exercise market power.

The MEGs approach is to identify the relevant market in terms both of products that are significant substitutes and the geographic area from which supplies of these products engage in competitive rivalry. Once this has been done, the degree of concentration in this market can be quantified by calculation of market shares to assess the degree of market power that is likely to be possessed by suppliers. In addition, an assessment is made of the conditions of entry because market power is unlikely to be possible in even a highly concentrated industry if price increases would encourage the swift entry of new and competitive suppliers.

[28] Telecommunications Decision CRTC 2006-15

[29] The Canadian and U.S. MEGs, while distinct, follow exactly the same methodology for the purposes of identifying market power.

Whereas the FERC focuses on the HHI, the Competition Bureau looks at market share to assess the potential for unilateral exercise of market power and generally will not challenge a merger if this indicator is below 35%. For assessing coordinated exercise of market power, the Bureau looks at the four-firm concentration ratio (the post-merger combined market share of the four largest firms) and generally will not challenge a merger when this indicator is below 65%.

Board Findings

The question before us in this proceeding is unlike that addressed by the Competition Bureau in a merger application or by the FERC in an individual application for market-based rates. The Board has entered into this broad-based inquiry to determine whether it will refrain from regulating storage rates in Ontario. However, the Board finds that there is much to be gained from considering the approaches of others in determining questions of market power – both the analytical tests used and the actual application in specific cases.

Enbridge argued that the Board can use the CRTC's approach to forbearance as a model for an appropriate analytical framework. Enbridge further argued that FERC's Order 678 amounts to a recognition by FERC that its assessment of market power should be less restrictive in order to encourage the development of storage and in order that customers get the benefits of reduced price volatility and greater assurance that peak demands will be met. Enbridge reasoned that the Board should not take guidance from FERC decisions which took a narrow approach to the assessment of market power because the FERC itself has moved away from this approach.

The Board notes that while the experts and intervenors differed as to how the test should be applied, there was little disagreement as to the key components of the analysis, namely those followed in the MEGs:

- Identification of the product market;

- Identification of the geographic market;
- Calculation of market share and market concentration measures;
- An assessment of the conditions for entry for new suppliers, together with any dynamic efficiency considerations (such as the climate for innovation and the likelihood of attracting new investment).

The Board finds that this approach is the appropriate means by which to determine whether Union or Enbridge have market power and whether the storage market is competitive. This approach encompasses the key components of the approaches used by the FERC and the Competition Bureau. Having determined the appropriate analytical framework, we turn now to the application of the framework to Ontario.

We will address each of the four components; we will also address the price impact issue raised by Mr. Stauft, an expert witness sponsored by a number of consumer intervenors. His analysis asserted that a comparison of the market price and the regulated price can be used to assess market power.

3.4 IDENTIFICATION OF THE PRODUCT MARKET

The product market identifies a set of products that are reasonably good substitutes for each other. In other words, where buyers will respond to a price increase by switching, in significant numbers, to a substitute product, the two products should be considered as belonging to the same product market. It should be noted that since storage has several distinct functions, including seasonal balancing and meeting short-term demand peaks, it is arguable that more than one product market may be identified for the different functions of storage.

Concentric Energy Advisors (CEA) provided expert evidence on behalf of MHP Canada. CEA suggested that the relevant product market would include physical storage, local production from the regions in the relevant geographic market, pipeline capacity in the relevant geographic market contracted by marketers either directly or as agents for industrial customers, and utility peakshaving facilities. CEA's rationale for including marketer-contracted pipeline capacity is that this capacity could be reasonably expected to be active in the secondary market for transportation services, and thus provide readily available deliverability in direct competition to storage services. Local production and peakshaving would also provide deliverability in competition with storage.

Union offered expert evidence prepared by Energy and Environmental Analysis Inc and Professor Schwindt of Simon Fraser University (EEA/Schwindt report). The EEA/Schwindt report identified several products that can substitute for at least some storage uses. However, in the report, the boundaries of the geographic market were derived based on physical storage only, an approach the authors considered to be very conservative.

Mr. Stauft, the expert witness for a group of consumer intervenors[30], held that the relevant product market should be limited to storage only. While in Mr. Stauft's view LNG and uncontracted pipeline capacity could be substitutes for storage, in Ontario neither of these potential substitutes exist. Mr. Stauft did not agree that contracted pipeline capacity – even if held by active participants in the secondary market for pipeline services – could be correctly considered to be a close substitute for physical storage.

The Board Hearing Team[31] presented an expert witness, Ms. McConihe, and her evidence paralleled the evidence provided by Mr. Stauft, and she concluded that the relevant product market was storage only.

[30] Mr. Stauft's evidence was sponsored by IGUA, AMPCO, Consumers Council, Schools, Kitchener, and CME.

[31] In this proceeding there were two Board Staff teams. The Board Support Team took the traditional role of completing the public record and providing assistance to the Panel. The Board Hearing Team acted as a public interest intervenor, presented evidence, and made submissions.

Enbridge argued that the evidence shows that there are real substitutes for storage, including commodity sales, swaps, exchanges, displacement, delivery/redelivery and financial instruments.

The Association of Power Producers of Ontario (APPrO) argued that the product it is most interested in – high deliverability storage – is not currently available in Ontario. APPrO argued that competition cannot exist for a product that is not yet introduced and pointed out that when it is introduced it will be available only from Ontario utilities as ex-Ontario suppliers will be constrained by the nomination windows specified by the North American Energy Standards Board (NAESB).

Board Findings

The Board finds that the evidence supports the conclusion that there are non-storage products and services which provide reasonable substitutes for storage. These substitutes include commodity sales, swaps, exchanges, displacement, and delivery/redelivery services. The difficulty comes in trying to incorporate these into the quantitative analysis. The Board was not presented with data on these products which are comparable to the data available on physical storage. It should also be noted that these services (swaps, exchanges, displacement, etc.) do not increase the total availability of the underlying storage or commodity, but enhance the functioning of the market by increasing liquidity. Pipeline capacity contracted to marketers may well provide a proxy for the quantity of these services available; however, the Board finds that the evidence is not substantial enough to include this category in the analysis.

For these reasons, while the product market is broader than just physical storage, for purposes of the quantitative analysis we include physical storage only. The Board notes that this approach has the benefit of providing a conservative assessment of the level of competition. The real level of competition is undoubtedly higher than that shown by a quantitative analysis based only on physical storage.

With respect to APPrO's position, the Board is not convinced that high deliverability storage service is a different product. High deliverability storage may be a new service, but it is a particular way of using physical storage, which still depends upon the physical parameters of working capacity and deliverability. The Board provides a more detailed consideration of the pricing of high deliverability storage service later in this decision.

3.5 IDENTIFICATION OF THE GEOGRAPHIC MARKET

The geographic market is the area from which suppliers compete effectively for the business of a given group of customers. In the case of gas storage, this amounts to examining whether the market is restricted to Ontario or whether it should be more broadly drawn.

The utilities, their affiliates and Nexen argued for a larger geographic market, one which includes storage in Michigan and parts of Illinois, Indiana, New York and Pennsylvania. The consumer intervenors argued for a geographic market limited to Ontario. The issue centred on whether transportation constraints close off access to storage outside Ontario and included discussion of the secondary market.

Both Ms. McConihe and Mr. Stauft concluded that the storage market was limited to Ontario because there is limited firm uncontracted pipeline capacity joining Ontario to other markets and that, therefore, storage in other areas (such as Michigan) is not a substitute and not part of the same market.

EEA/Schwindt presented a seasonal price analysis and a price correlation analysis in support of a geographic market that includes Ontario, Michigan, northern Illinois, northern Indiana, and the Natural Fuel Gas territory in western New York and Pennsylvania. Energy Probe supported this analysis.

For the price correlation analysis, EEA/Schwindt presented correlation coefficients of daily gas commodity prices at nine North American trading hubs with the daily commodity price at Dawn. Results were presented for several different time periods, and the full sample covers the period 1999 through August 2005. With two exceptions, the correlation coefficients are above 0.99.

For the seasonal price analysis, EEA/Schwindt examined differentials in the marginal value of storage approximated by the differential between the peak (winter) and off-peak (summer) prices. If storage providers at a particular market hub are exercising market power this differential should be greater than at other pricing hubs, but if there are no transportation constraints, then geographic arbitrage will make it impossible to exercise market power in this way. The EEA/Schwindt evidence on these seasonal differentials revealed little or no systematic variation between different pricing locations and in their view supported a conclusion of a broader geographic market.

The consumer intervenors acknowledged that the commodity market is highly integrated but argued that does not lead to the conclusion that the storage market is integrated. The Vulnerable Energy Consumers Coalition (VECC) and Canadian Manufacturers and Exporters (CME) argued that the price correlation analysis has never been accepted by the FERC. Union responded that the FERC rejected the use of the price correlation analysis as a means of demonstrating a lack of market power but that in this case it is being used as a means of defining the scope of the market.

Enbridge pointed out that it is clear that Dawn is physically connected to storage in Michigan and elsewhere through extensive pipeline interconnections. In the utilities' view, the secondary market provides adequate access to substitute storage facilities. They pointed to the evidence of GMi and BP Canada (BP) as being actual market participants who consider, and at times use, these alternative means.

The Board Hearing Team argued a similar position. In its view, the evidence – in particular that of GMi and BP – supports the conclusion that there are adequate substitutes for Ontario storage in the primary and secondary market. The Board

Hearing Team pointed to the MEGs standard and its reference to buyer behaviour and cited the evidence that marketers and utilities do purchase alternative services in Michigan and New York – and that these alternatives are not necessarily more expensive.

Board Findings

Ms. McConihe's conclusion that the market is restricted to Ontario was based on a survey of available firm primary pipeline capacity. This survey concluded that most of the pipeline capacity was under contract. Union and others argued that this is not surprising since pipelines are generally not built or expanded unless there are firm contracts to support the development. They argued that Ms. McConihe failed to understand the secondary market. As Mr. Reed on behalf MHP Canada stated, the existence of pipeline capacity is what is important in terms of integrating markets – not the availability of unsubscribed firm capacity.

There is no significant amount of uncontracted firm capacity to access other storage areas. However, there is strong evidence that the market does view Michigan and other areas as viable alternatives to storage provided by Union.

Ms. McConihe acknowledged the existence and likely significance of the secondary market, but expressed concern that it could not be quantified. While there may not be sufficient transaction level data about total secondary market activity, we certainly have evidence which supports the conclusion that the secondary market is relatively deep and liquid and that the market extends beyond just Ontario. Enbridge referred to this anecdotal evidence as "real-world examples of competitive alternatives". That evidence includes:

- GMi's evidence regarding its assessment of alternatives and the growth of the secondary market;

- the purchases of storage in Michigan and New York by Ontario utilities and marketers;
- the depth and liquidity of the Dawn Hub (as evidenced by the fact that traded volumes far surpass physical volumes);
- BP's evidence regarding its use of storage in Ontario, Michigan and the upper Midwest to offer services in Ontario and its evidence that at least one Union storage customer had switched to BP as a supplier for part of its storage needs;
- BP's evidence regarding its provision of services including swaps, exchanges, park and loans, delivery and re-delivery;
- Enbridge's RFP results included at least response from outside Ontario
- the evidence as to the significant holdings of storage and pipeline capacity by marketers generally;
- open seasons for new capacity on pipelines and for storage.

The Board concludes that the geographic market extends beyond Ontario, even though there is a lack of uncontracted firm pipeline capacity. The Board is satisfied that there are reasonable alternative means for storage customers in Ontario to access a broad market area. This can be done through the secondary markets or through participating in open seasons for new firm capacity. The Board is also satisfied that there is access to suitable substitutes for Ontario storage available in the broader market because there is direct evidence that the alternatives are considered and are being used.

The Board finds that the price correlation analysis, while not in and of itself determinative of this issue, supports this conclusion. The very high level of these correlations, combined with the other evidence about the advanced state of inter-hub trading and the absence of occurrences of "basis blow-outs"[32] at individual hubs, supports the conclusion that the market is highly integrated. The Board also finds that

[32] "Basis blowout" was described by Mr. Henning as "a description of the market conditions whereby the value, market value, of the pipeline services exceeds the maximum regulated costs". (Tr. 4, p. 27)

the seasonal price analysis supports the conclusion that storage facilities outside Ontario are part of the same market.

For these reasons, the Board agrees with EEA/Schwindt and concludes that the geographic market includes Ontario, Michigan, northern Illinois, northern Indiana, and the National Fuel Gas territory in western New York and Pennsylvania.

3.6 CALCULATION OF MARKET CONCENTRATION AND MARKET SHARE

The identification of geographic market and product market boundaries allows the calculation of measures of market concentration, both corresponding to individual firms (market share) and measures of concentration for the market as a whole, such as the HHI index. The former gives an indication of the potential for a single firm to exercise market power, whereas the latter is an overall indicator of how competitive the market is likely to be.

Board Findings

Before any calculations are made, an appropriate volumetric measure must first be selected to quantify the capacity of a storage facility. Subject to the availability of data, any of the following measures can be used: working gas capacity, injection capacity, deliverability, or capacity available to third parties. The last of these measures, capacity available to third parties, captures storage that is directly available to the competitive marketplace. However, there is clear evidence of market-based transactions taking place from what is otherwise considered dedicated storage capacity. Therefore, the Board concludes that it is reasonable to use the measures of working gas capacity and maximum daily deliverability. Market share data using these measures were provided by EEA/Schwindt.

The Board has found that the geographic market includes Ontario, Michigan, northern Illinois, northern Indiana, and National Fuel Gas in western New York and

Pennsylvania. The Board accepts the market share data provided by EEA/Schwindt which is summarized in Table 2.

Table 2: Market Shares and Market Concentration

	Working Gas Capacity	Max. Daily Deliverability
Union market share	13.1%	9.1%
Enbridge market share	7.9%	7.1%
4 Firm Concentration	61.7%	56.9%
HHI	1,270	1,220

The Board finds that these results support the conclusion that neither Union nor Enbridge have market power in the storage market. The Board finds that the storage market is workably competitive.

3.7 THE PRICE IMPACT ISSUE

Mr. Stauft testified that the regulated cost-based price for storage was a reasonable proxy for the competitive price of storage and that this approach was used by FERC. In his view, because the price for storage in the ex-franchise market is substantially higher than the cost-based rate, Union is exercising market power.

Board Findings

Most of the consumer intervenors, including the Industrial Gas Users Association (IGUA), the Association of Major Power Consumers of Ontario (AMPCO), Schools Energy Coalition (Schools), VECC, and the Consumers Council, supported Mr. Stauft's position. They took the position that the assessment of market power rests on a comparison of the price prevailing in the market with the current regulated price and that, as a result, Union exercises market power. Union, Enbridge and their affiliates disagreed with the price analysis. Union argued that the price of cost-based storage was not a proxy for the competitive price of storage. In its view, market values for storage reflect seasonal commodity price differentials, which are unrelated to the cost of providing storage service.

The Board finds that the current cost-based regulated price is not a reasonable proxy for the competitive price. There is strong evidence that new storage is substantially more expensive due to higher costs for base pressure gas, reduced economies of scale, and smaller more remote pools. Enbridge Inc.'s oral testimony lays out these cost factors quite clearly, and the Low Income Energy Network (LIEN) has rightly observed that inflation is exerting upward pressure on these costs. Union pointed out that the FERC generally sets regulated storage rates on the basis of incremental costs.

Given the high cost of new storage and the high value for storage in terms of the commodity market, the Board does not agree that the market price being above historical cost-based rates is evidence of market power. In a competitive market, the costs of new capacity influence prices, and in the case of storage these costs are substantially higher than the historical cost-based rates.

The Board notes that the differential between current cost-based rates and the market value of storage, while not evidence of market power, would be a concern on distributional grounds if the Board were considering re-pricing cost-based storage to market-based levels. However, no party proposed such re-pricing. All parties, in one way or another, acknowledged that the in-franchise distribution customers do not have effective access to alternative storage providers, because they purchase a storage service which is bundled with distribution and transmission, and that therefore, these retail customers should remain subject to cost-based regulation. This distinction between in-franchise and ex-franchise customers is discussed further in Chapter 5.

3.8 BARRIERS TO ENTRY

Market power analysis typically includes an assessment of the conditions for entry for new suppliers, together with any dynamic efficiency considerations (such as the climate for innovation and the likelihood of attracting new investment). This analysis is particularly important in a market that is concentrated, or where the incumbent has a high market share, because if there is ease of entry then that market share can be quickly eroded if there is an attempt to raise prices. We do not have that concern here. The Board has found that neither Union nor Enbridge have market power in the storage market.

We did hear evidence regarding the high costs and high risks associated with developing new storage assets. In the view of most intervenors, there will be incentives for new investment if the Board refrains from regulating rates for third-party storage developments. This issue is discussed further in Chapter 4 and Chapter 5.

4. COMPETITION AND THE PUBLIC INTEREST

Although the Board has determined that the storage market in Ontario is subject to workable competition, the Board must also determine whether the level of competition is or will be “sufficient to protect the public interest”. This is a key element of section 29. There has been considerable debate in this proceeding regarding the meaning of "public interest" in section 29. The public interest is multi-faceted and dynamic, but it is important to clearly identify how the Board will assess whether the public interest will be protected by competition if the Board refrains from regulating storage rates.

Board Findings

The public interest can incorporate many aspects including customers, investors, utilities, the market, and the environment. Union and Enbridge argued for a narrow definition of the public interest. In their view, competition itself protects the public interest, and once the Board has satisfied itself that the market is competitive, the public interest is protected by definition. The Board finds this to be an inappropriate narrowing of the concept. Competition is better characterized as a continuum, not a simple “yes” or “no”. The Board would not be fulfilling its responsibilities if it limited the review in the way suggested without considering the full range of impacts and the potential need for transition mechanisms and other means by which to ensure forbearance proceeds smoothly.

Some of the intervenors took the position that the public interest review should be focussed on the financial impacts. For example, Schools argued that the Board should look at the benefits and costs of forbearance, and in its view, the costs include a possible transfer of between $50 million and $174 million from ratepayers to shareholders (arising from the proposed end to the margin-sharing mechanisms and the potential re-pricing of cost-based storage to market prices). The Board agrees that the financial impacts are a relevant consideration, but does not agree that an assessment of the public interest should be limited to an assessment of the immediate rate impacts. The scope of appropriate considerations is broader and includes factors related to market signals, incentives and efficiency. These are discussed further below.

Some parties, including the Board Hearing Team and APPrO, argued that the Board's legislative objectives provide the best set of public interest considerations to apply in this case. Others took a similar approach, although expressed somewhat differently. For example:

- VECC submitted that the test is whether the market created by forbearance "will operate in a fashion that ensures that market discipline will be at least as effective as regulation in effecting fair and reasonable conditions in the customer relationship."
- Energy Probe argued that the Board should be guided by three public interest considerations: encouraging economically efficient pricing of gas storage services; protecting consumers of monopoly transmission and distribution services; and promoting the development of cost-effective storage opportunities in Ontario.

The Board finds that these broader approaches set out above represent a balanced and comprehensive approach to assessing the public interest. It is appropriate to consider the Board's legislative objectives in this case, because they are a clear expression of the factors the Board is to take into account. The Board's objectives which are most directly relevant in this case are as follows:

- to facilitate competition in the sale of gas to users;
- to protect the interests of consumers with respect to prices and the reliability and quality of gas service.

- to facilitate rational development and safe operation of gas storage

The Board notes that these may well be conflicting objectives. Put differently, there are public interest trade-offs. This is particularly relevant in light of another argument raised by the parties. Enbridge and MHP Canada argued that the forbearance contemplated in section 29, as a matter of statutory interpretation, is mandatory because of the use of the word "shall" in the statute. They argued that once the Board makes a factual finding that there is sufficient competition to protect the public interest, the *OEB Act* requires that the Board then refrain from setting prices through a cost of service regime.

The Board does not agree with Enbridge and MHP Canada's conclusion. Section 29 says that the Board shall make a determination to refrain "in whole or part" which the Board believes allows considerable flexibility in this regard. In addition, the Board concludes that it is required by the statute to address the public interest trade-offs, for example, between price impacts and the development of storage and the Ontario market generally.

We will now review each objective and discuss some of the public interest factors which the Board considers relevant to the assessment of whether the level of storage competition is sufficient to protect the public interest if the Board refrains from rate regulation and contract approval.

4.1 TO FACILITATE COMPETITION IN THE SALE OF GAS TO USERS

The Board has worked over time to ensure that Ontario consumers reap the benefits of commodity competition. The Board must continue to pursue this objective and can do so by facilitating the evolution of a robust market in Ontario. The development of the Dawn Hub has brought substantial benefits to consumers in Ontario and to other market participants.

The Board concludes that it is in the public interest to maintain and enhance the depth and liquidity of the market at the Dawn Hub as a means of facilitating competition. One way to do this is to encourage the development of innovative services and to ensure access to those services. Choice is the bedrock of competition. The evolution of the transactional services market is an example where innovative and flexible services have evolved within a market-based pricing structure.

Enbridge argued that forbearance will foster innovation by facilitating the provision of storage services in the competitive market. The Board agrees that regulating storage rates does place constraints on the development of flexible and innovative services; forbearance, within a framework of non-discriminatory access, can remove these constraints.

In the current industry structure, the gas utilities both acquire storage for their own customers and operate storage for their own needs and for other customers. The utilities also operate integrated storage and transportation systems. The Board considers later in this decision whether forbearance requires that there be greater separation between these operations or whether other procedures should be developed to ensure non-discriminatory access to storage and transportation.

4.2 TO PROTECT THE INTERESTS OF CONSUMERS WITH RESPECT TO PRICES AND THE RELIABILITY AND QUALITY OF GAS SERVICE

The interests of consumers were a primary focus for many intervenors. The submissions addressed issues related to the direct and indirect impacts of forbearance and competition. Interestingly, no ex-franchise customer opposed paying market-based rates; nor was there any evidence of a price impact on this market segment in the event of forbearance. This is consistent with the Board's finding that these customers have alternatives and that competition will provide adequate protection for these customers.

With respect to in-franchise customers, two rate impacts were discussed: the direct impact on storage rates and the indirect impact on the sharing of the storage premium. With respect to the direct impact, the utilities proposed to freeze the allocation of in-franchise storage and to acquire incremental storage at market-based prices. This would have the effect of increasing in-franchise storage rates (under current market conditions), albeit only marginally given the relatively slow growth of in-franchise storage demand. The utilities were of the view that this afforded in-franchise customers a significant level of protection. The other direct storage rate impact arises from the proposal that Enbridge be treated as an ex-franchise customer in respect of its contracts with Union. This would have the effect of raising Enbridge's storage rates.

However, attention of the parties was primarily focussed on the indirect impact arising from the premium which exists between the price of market-based storage and the underlying costs. Currently, that premium is shared between utility ratepayers and utility shareholders. Under the utilities' proposals for forbearance, the premium would be retained by the shareholders. This would result in significant transfer of funds in the case of Union (2007 estimate is $44.5 million); less so in the case of Enbridge (2007 estimate is $5 million to $6 million). The intervenors in general rejected these proposals and, as a result, opposed forbearance.

IGUA/AMPCO argued that there should be no forbearance if there will be any adverse impact on ratepayers. Similarly, they argued that the level of return under forbearance should be no greater than the regulated return; otherwise the level of competition is not sufficient, because the regulated return is a proxy for a competitive result. The Consumers Council argued that there should be no forbearance if a material increase in price is not offset by the prospect of decreasing prices.

Union argued that on IGUA/AMPCO's and the Consumers Council approach, the Board would never forbear, no matter how competitive the market. It argued that the financial impact is not a factor as to whether forbearance is warranted. Union argued that the

Board should consider that new storage development would attract additional volumes to Ontario, increasing market liquidity and enhancing security of supply for Ontario consumers.

The Board agrees that the distribution of the premium is a significant consideration. In many ways, it has been the underlying focus of the NGEIR Proceeding. However, the impact of removing the premium from rates is the result of removing a sharing of economic rents; it is not the result of competition bringing about a price increase. So while it is an important consideration which the Board must address (see Chapter 7), it is not a sufficient reason, in and of itself, to continue regulating storage prices.

Apart from the premium issue, the direct expected storage rate impacts under a forbearance scenario are modest for Union's in-franchise customers, under the utility proposal of fixing the in-franchise storage allocation. The impact for Enbridge customers is more pronounced given its lower level of storage assets. The Board must consider whether the allocation to Union's in-franchise customers should be fixed and whether Enbridge (and possibly other ex-franchise customers) should be entitled to cost-based storage from Union.

A key consideration with respect to this issue is the question of which consumers the Board is responsible for protecting. Some parties, such as Kitchener, have argued that our duty is to end-use consumers in Ontario – either to them directly or to them indirectly through their local distributor. These parties advocate cost-based storage pricing for Ontario end-users and market-based pricing for those outside Ontario.

While the Board concurs that a key objective (and therefore a key public interest consideration) is the protection of consumers in Ontario, the Board concludes that this approach of separate treatment depending upon location is problematic. This is discussed further later in Chapter 5.

The Board concludes that long-term consumer protection in terms of price, reliability and quality of service is best achieved through thriving competition for the competitive elements of the storage market and effective regulation of the non-competitive elements of the market. The Board is of the view that refraining from rate regulation and contract approval in the ex-franchise market has the potential to foster more competition in the storage market, to the benefit of all customers, provided there are clear rules and non-discriminatory access by all market participants. In a competitive market, customers have choices, resources are distributed efficiently, and there are incentives to innovate and respond to customer needs.

4.3 TO FACILITATE RATIONAL DEVELOPMENT AND SAFE OPERATION OF GAS STORAGE

Discussion in this area focussed on the impact of forbearance on the development of new storage in Ontario, through the utilities directly, through their affiliates, or through independent storage developers. The estimates of new storage potential ranged from 50 Bcf to around 120 Bcf.

The Board has as an explicit objective to facilitate the rational development of gas storage. The Board therefore must look for means by which to achieve this objective. A number of authorities have identified the need to develop additional storage. For example, FERC has acknowledged that additional storage development will mitigate commodity price volatility and improve winter peak availability. The utilities and their affiliates took the position that this should be a key consideration for the Board and argued that new storage development will not take place in Ontario under the current regulatory regime. In their view, forbearance from setting rates and approving contracts would encourage storage development and the development of storage services. Nexen agreed with the utilities that forbearance will allow needed new services to develop.

Energy Probe also agreed and argued that there has been limited recent storage development despite the appearance of significant opportunities and that this can be contrasted with the level of development elsewhere. In Energy Probe's view, Ontario storage development has been artificially constrained due to unfavourable regulatory conditions. Energy Probe argued that forbearance will drive enhancements to meet the needs of gas-fired generators and that the public interest will benefit from having storage developers manage the risks and rewards of development.

Others, primarily consumer groups, took the view that new storage, to the extent that it is needed, can be stimulated by allowing market-based rates for new storage developers only. The position of these groups, including the London Property Management Association (LPMA), the Wholesale Gas Service Purchasers Group (WGSPG), VECC, and Consumers Council, can be summarized as follows:

- The existing facilities are more than sufficient to meet Ontario's needs.
- The utilities could further develop existing facilities under the current regulatory framework if additional capacity is needed. There is evidence that they have done so in the past.
- Forbearing from setting storage rates and transferring the rents to the shareholders will not provide an incentive to non-utility developers, and continued regulation of the utilities will not provide a disincentive to third-party storage development. The way to stimulate new storage development by third parties is by forbearing or regulating at market rates, which is consistent with FERC Order 678.
- There is no evidence that forbearing from regulating the utilities will cause them to increase capacity. The Enbridge evidence is that even with forbearance it might not invest in storage enhancements.

The evidence suggests that there is no need for significant new storage within Ontario to serve the traditional requirements of Ontario consumers. However, there is a demonstrated desire for more specialized services to meet the load characteristics of power generators. The Board also agrees that further development of storage in Ontario would be of benefit to Ontario consumers in terms of reduced price volatility, enhanced security of supply and an overall enhanced competitive market at Dawn. There is also evidence that new services, once they are generally available, can enhance the service offerings of other parties, such as marketers, thereby increasing the liquidity of the market.

The Board concludes that it is appropriate to facilitate the development of storage to offer these services without undue risk for ratepayers. The issue is how this objective is best achieved. At a minimum, for third-party storage development, whether independent or affiliated, the Board agrees that it should refrain from setting storage rates and approving storage contracts. There was no significant opposition to this approach.

The more contentious issue concerns the utilities and whether forbearance on price setting is necessary to stimulate their investment in storage. The utilities claimed they would only develop storage under a forbearance scenario but would not commit to doing so. On the other hand, the evidence shows the utilities have been willing to invest in the past under regulation, and indeed, the Board has the authority to order the utilities to provide storage services. The Board concludes that while there is no guarantee that the utilities will develop storage under forbearance, it is apparent they will not develop it under a regulatory framework unless ordered to do so. The Board does not believe that the best way to stimulate development of storage assets and services is to order utilities to develop these resources. The Board’s preferred approach is to use market mechanisms where possible, and under forbearance, the Board concludes, the utilities will have an incentive to develop assets and services.

A related question is whether it continues to be appropriate for storage to be developed as part of the regulated utility business or whether it should in the future be developed separately. The Board accepts the evidence of Enbridge Inc. that storage development is more akin to exploration and development and is riskier than other distribution activities. Some parties disagreed that enhancements to existing storage facilities were as risky as new storage development. However, the Board is convinced by the evidence that storage investments are generally riskier than other regulated activities, such as distribution or transmission expansions, given the difficulty, for example, in accurately predicting the achievable operating parameters related to storage projects. This evidence was not significantly challenged. The Board therefore agrees with Energy Probe's view, namely that the risks associated with new storage development are best borne by storage developers. This approach is consistent with a rational development of storage in the Board's view. Under forbearance, the utility shareholders would be expected to bear the risk of any storage development for the competitive market.

5. FORBEARANCE

The Board has determined that the storage market is workably competitive. We have also considered some of the key elements of the public interest. The issue we address in this chapter is whether the Board should refrain from setting storage prices and approving storage contracts. The Board has the discretion under section 29 to refrain from regulating "in whole or part". The Board interprets this to mean that it has substantial flexibility to establish a framework which recognizes the circumstances of various segments of the market.

At its simplest, the issue is who is entitled to cost-based rates and who will pay market-based rates. The Board will consider this issue in the context of the public interest factors described in Chapter 4. First, the Board will address the issue of third-party storage, and then the Board will address utility storage. The chapter concludes with a consideration of reporting requirements.

5.1 THIRD-PARTY STORAGE

Third-party storage is not yet available in Ontario. Currently, Union and Enbridge own and operate all of the storage facilities. The Board has heard an application by Tribute, and approvals required to develop the Tipperary Storage Pool have been issued. However, the development of the project has been delayed and some of the Board approvals granted in 2005 have expired; Tribute is in the process of seeking renewals. Until renewals are granted, the Tipperary Storage Pool cannot be developed and made operational. The current development schedule proposes that operation of the pool will begin by June 2007.

MHP Canada has recently filed a series of applications in relation to its proposed St. Clair storage facility and has indicated that it intends to pursue its Sarnia Airport Pool project at some time in the future. The Board also heard testimony from Enbridge Inc. regarding its work in this area.

In its Natural Gas Forum Report, the Board indicated that it did not intend to regulate the rates of new independent storage operators. In our earlier partial decision on MHP Canada's core points, the Board determined that MHP Canada would be authorized to charge market-based rates within the Board approved range.[33] The issue before the Board now is whether it should refrain from setting the rates of all third-party storage (both independent and affiliated) and refrain from approving storage contracts entered into by these companies.

MHP Canada and Enbridge Inc. argued that the Board should refrain from regulating the rates of third-party storage. MHP argued that cost-based rates do not compensate for the risk of developing storage. It also took the position that the *Affiliate Relationships Code for Gas Utilities* (ARC) is sufficient to govern the relationship between Union and MHP Canada, but it sought confirmation on two points:

- that under a market-based rate framework the Board would not require disclosure of MHP Canada's costs and revenues where the services to Union arise from a fair and open competitive bidding process, and
- that section 2.3.10 of the ARC (which relates to services provided in a market which is not competitive) would not apply because the Board has found the market to be competitive.

Tribute was also of the view that the ARC requirements are sufficient to protect the competitive interests of affiliate and unaffiliated market players without placing undue additional conditions on utilities and their affiliates.

[33] The Board's decision regarding MHP Canada's core points appears at Appendix G.

There was no substantial opposition to the proposal that the Board should refrain from setting the rates and approving the contracts of new storage operators. Most intervenors recognized that doing so would stimulate storage investment in Ontario. For example, LPMA/WGSPG argued that without market-based pricing, little or no additional capacity or deliverability would likely be developed in Ontario and it therefore supported full market-based rates for third-party developers or utility affiliates (provided there is compliance with ARC). IGUA/AMPCO also agreed that market-based pricing for new storage developers would stimulate development of new storage although they argued that the Board should not refrain from regulating these rates.

Board Findings

The Board will refrain from setting the rates and approving the contracts related to third-party storage, both utility-affiliated storage and independent storage. These storage developers will be operating in the competitive storage market, and the Board agrees that they should have the ability to offset the substantial risks of these developments with the flexibility to price storage in a way which captures the market value of those storage services.

The ability to charge market prices in the absence of price regulation will provide a positive investment incentive and, to the extent new third-party storage is developed, this will enhance competition in storage – as well as competition in the market generally. This is in the public interest. If the new storage is used by Ontario consumers they may well face higher prices for this storage than they would for cost-based utility storage. However, these storage providers will have no captive customers, and Ontario consumers will not bear the risks associated with these new developments. The Board also finds this to be in the public interest. In conclusion, the Board finds that these storage operators will be subject to competition sufficient to protect the public interest.

MHP Canada requested that the Board confirm MHP Canada's interpretation of two aspect of the ARC. The ARC provides that if an open and fair tender is held, the prices in that tender will establish the market price for the service. Under those circumstances, the ARC would not require that a contracting party disclose its cost and revenue data.

5.2 UTILITY STORAGE

The Board must address a number of issues with respect to storage services offered by Union and Enbridge:

- Which storage services should the Board continue to regulate at cost-based rates?
- Should the Board set cost-based rates for the storage services Union provides to other Ontario LDCs?
- Should the rates for new storage services, such as high deliverability storage, be regulated at cost-based rates?
- Having determined which services will continue to be regulated at cost-based rates, should the Board refrain from regulating the prices of other services?
- Should the Board require separation of the competitive storage operations from other parts of the business, or is a cost allocation study sufficient to distinguish between regulated and unregulated storage?

The Board will address these issues in the following sections, 5.2.1 through 5.2.5.

5.2.1 Regulated Storage Services

In the current framework, the demarcation between cost-based and market-based rates is commonly expressed in terms of "in-franchise" and "ex-franchise": "in-franchise" customers pay cost-based rates and "ex-franchise" customers pay market-based rates. However, as pointed out in Chapter 2, this nomenclature is not entirely accurate. Kitchener, for example, is not in Union's franchise territory but does receive cost-based storage; similarly Gazifère is outside Enbridge's franchise territory (and outside the

Province) but also receives cost-based storage. Until recently, Enbridge's contract with Union was at cost-based rates, and Enbridge's rates continue to include Union storage costs at cost-based rates even though the contracts entered into as of April 1, 2006 are at market-based rates. However, the term “in-franchise” is commonly used to refer to all customers that take bundled, unbundled or semi-unbundled distribution, storage and contract carriage transportation services, and the term “ex-franchise” is commonly used to refer to customers that take cross-franchise storage and transportation services.

Virtually all parties agreed that the Board should continue to regulate storage rates for “in-franchise” customers and that these customers should pay cost-based storage rates. One exception was MHP Canada, which argued that conditions exist for the Board to forbear in relation to the market as a whole. While MHP advocated full forbearance, it recognized that the elimination of the bifurcated market may require a transition. MHP Canada proposed that the Board adopt a policy direction to move to full forbearance in the storage services market.

Board Findings

In terms of a section 29 analysis, the goal would be to continue to regulate (and set cost-based rates) for those customers who do not have competitive storage alternatives and to refrain from regulating (allow market-based prices) for those who do have competitive alternatives. The Board concludes that it should continue to regulate and set cost-based rates for existing storage services provided to in-franchise customers up to their allocated amounts. This approach was supported by all the intervenors, except by MHP Canada, as noted above.

The parties recognized that bundled customers, in particular, do not acquire storage services separately from distribution services, do not control their use of storage, and do not have effective access to alternatives in either the primary or secondary markets. Competition has not extended to the retail end of the market, and therefore is not sufficient to protect the public interest. However, the Board finds that customers taking unbundled or semi-unbundled service should have equivalent access to regulated cost-based storage for their reasonable needs. The Board finds that it would not further the development of the competitive market, or facilitate the development of unbundled and semi-unbundled services, if these unbundled and semi-unbundled services were to include current storage services at unregulated rates. The Board also agrees with the parties that noted that re-pricing existing storage will not provide an incentive for investment in new storage and therefore cannot be said to provide that public interest benefit.

However, customers taking unbundled and semi-unbundled services do have greater control over their acquisition and use of storage than do bundled customers. It is also the Board's expectation that these customers will have access to and use services from the secondary market. Therefore, the Board concludes it is particularly important to ensure that the allocation of cost-based regulated storage to these customers is appropriate. This issue is addressed in Chapter 6.

MHP Canada has suggested that the Board adopt full forbearance in storage pricing as a policy direction. Similarly, Union has characterized its allocation proposal and Enbridge has characterized its "exemption" approach for in-franchise customers as being "transitions" to full competition. The Board has found that the current level of competition is not sufficient to refrain from regulating all storage prices; nor do we see evidence that it would be appropriate to refrain from regulating all storage prices in the future. The current structure (for example, the full integration of Union's storage and transportation businesses and the full integration of Union as a provider of storage services and as a user of storage services) is not conducive to full forbearance from storage rate setting. In addition, there would be significant direct and indirect rate impacts associated with full forbearance from rate setting, and there is little evidence of significant attendant public interest benefits. The current situation is that these customers are not subject to competition sufficient to protect the public interest; nor is there a reasonable prospect that they will be at some future time.

Although there was general support for the continued regulation of storage rates for the bundled, unbundled and semi-unbundled customers, three aspects of its application were disputed:

- The amount of storage which should be allocated to these customers, both in aggregate and individually;
- Whether Ontario utilities should receive access to cost-based storage from Union;
- Whether the rates for new storage services from utilities should be regulated.

The first issue, the allocation of storage to customers both individually and in total, is addressed in Chapter 6. We address the other two issues next.

5.2.2 Union's Storage Services for Other Utilities

Union currently provides storage service to a number of other utilities. It provides storage at cost-based rates to Kitchener, NRG and Six Nations. These customers, while not in Union's franchise territory, take "in-franchise" services. As such, the Board's finding regarding the continuation of regulated cost-based rates applies to these utilities as well.

Union also provides storage services to Kingston, Enbridge and GMi. These are cross-franchise storage and transportation services, and while they were originally provided at cost-based rates, Union received authority to charge market-based rates (within the C1 range) to these customers in the Board's RP-1999-0017 Decision. Due to differences in the terms of the contracts, Kingston and GMi have been paying market-based rates for some time, but Enbridge has only recently entered into a series of market-based contracts with Union.

Enbridge is one of Union's largest storage customers. Enbridge and Union entered into a long-term market-based contract for the period April 1, 2004 through March 31, 2014. Enbridge proposed to have its 2005 rates reflect the new storage costs. In the RP-

2003-0203 decision, the Board did not approve the flow through of market-based storage costs into Enbridge's rates on the basis that the claimed long-term benefits were speculative and that a reversion to cost-based rates until March 31, 2006 (which under the contract would be triggered by the Board's rejection of Enbridge's original proposal) would result in substantial cost savings. The Board did not question the Board's RP-1999-0017 decision to allow existing contracts to be renewed at market-based rates.

Upon the expiry of that cost-based arrangement on March 31, 2006, Union and Enbridge entered into three contracts with market-based prices with the following expiry dates and volumes:

2008	9.4 Bcf
2009	5.6 Bcf
2010	4.9 Bcf

Although these contracts began April 1, 2006, the costs associated with these services are not reflected in Enbridge's current distribution rates. At the time of Enbridge's 2006 rates case, it had not negotiated any agreement with Union, and therefore its rates proposal was based on the assumption that storage costs for Union services would continue at the same level.

Enbridge currently provides cost-based storage services to Gazifère, its affiliated Quebec distributor, under a bundled distribution service. Enbridge proposed to charge Gazifère market-based rates on the basis that it is an ex-franchise customer.

A number of parties argued that Union should provide regulated cost-based storage to all Ontario utilities. (No party argued that GMi should receive storage services at cost-based rates.) The Board Hearing Team grounded its argument on the basis of price discrimination; other parties relied on the notion that storage is a Provincial asset (as articulated in the 1962 Langford Report[34]) as the basis for their argument.

The Board Hearing Team noted that the decision allowing Union to renew its cost-based storage contracts at market-based rates has resulted in the situation where customers in Union's franchise area pay cost-based rates, while customers in the Kingston area pay market-based rates. The Board Hearing Team noted that the Board in its Natural Gas Forum Report raised the issue of whether this pricing structure was inappropriately discriminatory.

In order to remedy this, the Board Hearing Team recommended that customers be split into two groups: "core" and "non-core". Under this proposal, the core customer category would include all Ontario end-use customers that take bundled and unbundled regulated services from the gas utilities. Core customers would receive regulated cost-based storage services from the total inventory of Union and Enbridge's storage assets. Retailers would also have access to cost-based storage. Non-core customers would include customers who have opted out of regulated rate protection and assume the total risk of their portfolio management, including storage. Non-core customers would also include marketers (excluding retailers serving the core market) and out-of-province utilities. These customers would pay market prices for storage.

The Board Hearing Team argued that this separation would ensure a consistent treatment of customers across all gas utility franchises in Ontario. Under this approach the current contracts between Union and Enbridge, and between Union and Kingston, would be revised to reflect cost-based rates. The Consumers Council suggested a similar approach. It argued that the definition ex-franchise should be refined and that it is more reasonable to distinguish between services which are provided using the integrated storage systems that have been developed by the utilities for the purpose of

[34] *Report of Committee on Oil and Gas Resources, Part II Underground Storage of Natural Gas*, June 1962 (commonly referred to as the "Langford Report")

providing a “core” or “utility related” delivery service, and discretionary services that are available because the utility storage infrastructure is not needed from time to time to perform the utility function.

Other parties took the view that storage is a Provincial asset and noted that the Langford Report recommended that distribution companies should have first call on Ontario gas storage. Those parties argued that Union’s storage should be provided at cost-based rates to consumers throughout Ontario, and specifically at cost-based rates to Enbridge and Kingston.

Board Findings

The Board finds that the core/non-core approach may be appropriate in some situations. It could serve, for example, as a means of determining which segment of the in-franchise customers should continue to have its storage rates regulated. However, the Board concludes, for reasons outlined below, that it is not necessary for Union to continue to provide cost-based storage to Enbridge, or to revert to cost-based storage for Kingston, in order to ensure that there is no undue price discrimination in the Province.

The Board agrees that effective competitive storage options do not exist for the in-franchise customers of Union and Enbridge. The Board has already determined that these customers will continue to receive regulated cost-based storage rates. However, Enbridge and Kingston, which are buying storage services on behalf of their customers because they do not have sufficient storage resources of their own, do have access to alternatives. This is as true for Enbridge as it is for GMi. Therefore, the question is whether Enbridge (for its storage needs beyond the capacity of Tecumseh) and Kingston (for all of its storage needs) should be entitled to cost-based storage rates from Union.

The Board Hearing Team cited the principle that customer rates for storage should not vary on the basis of where they are located in Ontario but should be based on the customer load profile and the costs to provide service. The Board notes that distribution rates for similar customers do vary across the Province, and even within Union's territory, to reflect the different underlying costs of serving customers. Union has developed sufficient storage to serve the needs of its distribution customers, while Enbridge has not. As Enbridge's storage requirements have increased, it has had to decide whether to contract for its requirements or develop additional assets itself. It is not surprising that Enbridge has continued to acquire services from Union, when it had access to cost-based rates, given that the costs of developing new storage have undoubtedly grown. This does not mean that if Union charges market-based rates the result is price discrimination. The Board Hearing Team appeared to recognize this when it stated that price differentiation should also be driven by the specific costs of a utility.

Other parties advocating regulated cost-based storage for all Ontario utility customers drew upon the Langford Report for support for their position, arguing that Ontario has historically recognized gas storage as a Provincial asset for the benefit of all Ontarians. The Board disagrees with this application of Langford's conclusions for two primary reasons. First, the Langford Report was prepared within a very different market context. The North American natural gas market was in its infancy. In the intervening period there has been extensive infrastructure development from wellhead to burner tip, market integration across North America, and the deregulation of the commodity. Utilities are no longer the only suppliers of gas to customers. We must determine the appropriate regulatory tools for Ontario storage within the current market context – one which is very different from the time of the Langford Report.

The Langford Report is relevant, however, in that it articulates the historic perspective on storage and its appropriate development, without being prescriptive on financial matters. The Langford Report, for example, does not express any explicit view in respect of pricing, and this relates to the Board's second reason for disagreeing with those relying on the Langford Report as a reason for requiring Union to provide storage at cost-based rates to all Ontario customers. Advocates of cost-based pricing assume an automatic link between the concept of a Provincial asset and cost-based prices, but the Board finds that this approach is flawed. The public interest in Ontario is best served if Ontario storage assets are used efficiently. The Langford Report in fact recognizes this, when it states at page 56: "The role of the Provincial Government with respect to storage should be that of controlling and regulating it <u>*only so far as is necessary to ensure efficient and economical development of the industry*</u>" (emphasis added). It is in the Ontario public interest for storage and storage services to be further developed, and it is in the public interest for those customers who have access to alternatives to pay prices set in the competitive market.

There are also two other drawbacks to continuing to regulate cost-based rates for Union's service to Kingston and Enbridge. First, an "Ontario-utilities first" policy would send a negative market signal about what is otherwise a deep liquid trading point within the integrated North American market. Second, this approach could tip the playing field in favour of utilities over marketers, who may well serve Ontario customers but which under the various proposals would pay market-based rates. Neither of these market signals is consistent with the Board's objective of ensuring the continued strength and development of the Dawn Hub.

The issue is whether Enbridge and Kingston, as purchasers of storage for bundled customers, should receive regulated cost-based storage services from Union. The Board concludes that they should not, because the storage services they acquire are subject to competition sufficient to protect the public interest, but that in the case of Enbridge, a transition framework is required. The Board must also consider the application of its conclusions to the case of Gazifère. We will now address each of these utilities in turn.

Kingston

Kingston, which is connected to the TCPL system, not the Union system, has been operating at market-based rates for its cross-franchise service for some time and took no active part in the NGEIR Proceeding. The Board therefore concludes that Kingston is not opposed to paying market-based rates. The Board notes that because it does not set rates for Kingston's customers, the Board has no authority or control over how Kingston charges its own customers for storage. The Board is satisfied that Kingston has effective access to competitive alternatives and therefore does not require the protection of regulation for its acquisition of storage from Union. Because Kingston already receives market-based storage services, no transition framework is necessary.

Enbridge

The Board finds that a transition framework is warranted in the case of Enbridge. Enbridge does have access to storage alternatives and does operate within the competitive storage market. However, the quantity of storage it acquires from Union is a substantial portion of its total requirement, and, given the uncertainty around storage price regulation at the time Enbridge entered into its current contracts, it may have had limited effective access to alternatives at that time.

Given the current substantial difference between cost-based and market-based storage prices, if the prices of the new contracts were included in Enbridge's rates, there would be an increase in Enbridge's total storage costs (although the majority of Enbridge's storage costs would still be based on the costs of Tecumseh). The Board must be concerned about the impact on consumers from refraining from rate regulation and balance that consideration with the objectives of facilitating storage development and the competitive market. With respect to storage development, in section 5.2.1 we concluded that re-pricing existing storage does not provide an incentive to develop new storage; the Board is similarly satisfied that retaining cost-based rates for existing storage for a transition period will not create an adverse impact on new storage development.

With respect to protecting consumers, the Board finds that it is in the public interest to provide Enbridge and its customers with a transition to market-based pricing for its storage needs (in excess of its Tecumseh capacity), rather than requiring it to access the competitive market for its full requirement all at one time. This will have the effect of phasing-in the rate impact on Enbridge's customers, and facilitating the development of competitive alternatives – to the benefit of Enbridge's customers and competitive storage providers. The Board finds that this transition should begin in 2008 and be completed in 2010. This timing will allow Enbridge to tender for services during 2007. Enbridge's rates in 2007 will continue to reflect cost-based storage rates for the services it acquires from Union.

The way to achieve this transition is for Union and Enbridge to amend the current contracts (which under section 4.04 would expire as of March 31, 2007 as a result of the Board's NGEIR decision) to maintain the current volumes and expiration dates but to replace the market-based rates with cost-based rates. The result of this approach would be that in 2008 Enbridge would need to acquire 9.4 Bcf (less than 10% of its storage requirement) from the competitive market. Smaller incremental amounts would be sourced from the competitive market in 2009 and 2010. The Board concludes that the phased approach, and the relatively small amounts of competitively sourced storage added each year, will result in a small net impact on Enbridge customer rates. In this way, the interests of consumers will be sufficiently protected.

The Board's decision to refrain from regulating the prices of Union's ex-franchise storage services will be conditional on the amendment of the Union/Enbridge contracts as described above in order that these services will be subject to competition sufficient to protect the public interest.

Gazifère

The Board must also consider the application of its findings to Gazifère. Gazifère is a small Quebec distributor, serving 30,000 customers, which is connected to the Enbridge system and is an affiliate of Enbridge. Enbridge proposed to charge market based rates to Gazifère on the basis that it is an ex-franchise customer. Others argued that all customers outside Ontario should pay market-based rates.

As outlined earlier in this section, the Board has found that a decision to refrain from regulating storage rates should not be based on an in-Ontario, ex-Ontario approach, but rather on the competitive position of the customer. The appropriate consideration is whether Gazifère has access to alternatives. The evidence is that it does not; it is connected to the Enbridge system and takes a bundled distribution service. In all respects, Gazifère is similarly situated to the distributors attached to Union's system (namely, Kitchener, NRG, and Six Nations) which each take bundled or semi-unbundled service. The Board finds that it is appropriate for Gazifère to receive regulated cost-based service, just as Kitchener, NRG and Six Nations do, because the service they receive is not subject to competition sufficient to protect the public interest.

5.2.3 New Storage Services, including High Deliverability Storage

This issue concerns a set of new storage services and, in particular, high deliverability storage services. The services include Enbridge's proposed Rate 316 and services related to the Tecumseh storage enhancement project and Union's proposed high deliverability storage services and three ex-franchise services: F24-S, Upstream Pipeline Balancing Service (UPBS) and Downstream Pipeline Balancing Service (DPBS). These services are of particular interest to dispatchable gas-fired power generators, and indeed were developed in response to generator requests, because they provide the means by which these customers can conduct intra-day balancing.

The storage requirements for dispatchable gas-fired power generators are very different from existing customers. Whereas existing customers use storage for seasonal or daily balancing, dispatchable generators want to use storage for intra-day balancing. And whereas existing customers can meet their needs with the standard deliverability service (daily delivery of 1.2% of storage space allocation), dispatchable generators want daily deliverability as high as 10% of their storage space allocation.

Many of the issues which existed between Union and Enbridge and their generator customers were resolved in the Settlement Proposals which were filed and accepted by the Board. These settlements, which can be found at Appendices D and F, set out the parameters for multiple nomination windows, the inter-franchise movement of gas, the redirection of gas, title transfers for gas in storage, and the allocation methodology for 1.2% deliverability storage. What remained unresolved was the pricing for the new high deliverability storage services.

The utilities proposed to offer these services at market-based rates and proposed that the Board refrain from regulating the rates for these services. The power generators took the position that storage services provided to them should be regulated at incremental cost-based rates.

APPrO argued that the utilities have an obligation to provide these services and, because allocations of 1.2% standard deliverability space have been agreed, power generators have no options (other than through the utilities) for acquiring the necessary deliverability services to make use of these storage allocations. In APPrO's view, storage in other geographic areas is not an option because all other transmission systems are limited to the four NAESB nomination windows. APPrO submitted that the utilities may have options as to how to meet the requirements – in particular storage enhancements and/or additional transportation capacity. Sithe Global Power Goreway ULC, Sithe Global Power Southdown ULC, TransCanada Energy Ltd., Portlands Energy Centre (collectively, the GTA Generators) agreed with APPrO's position.

The consumer representatives also generally agreed that services for power generators should be considered part of the in-franchise market and regulated accordingly.

Union argued that it would not develop assets to provide these services unless the rates are deregulated. If the rates remain regulated, then Union would plan to acquire the services in the market. Enbridge explained that if the Board refrains from regulating the prices for new storage developments, it will plan to offer capacity related to the Tecumseh storage enhancement project through an open season. This project might or might not proceed depending upon the economics at the time. Regardless of whether the Board refrains from regulating in this area, Enbridge will acquire services to underpin its unbundled high deliverability storage service (Rate 316) through an open tender, and it proposed to pass through those market-based costs to customers taking the service.

Enbridge maintained that the evidence supported a conclusion that the generators themselves acknowledge that they expect to have access to competitive alternatives. Union pointed out that the generators could acquire additional space in order to achieve a higher deliverability and if the additional space is not required, it could be resold in the market.

The marketers expressed some concern with the possibility that these services would be provided at cost exclusively to generators. Nexen argued that there should be no discrimination in favour of power generators and that on the Union system the playing field should be level between marketers and other ex-franchise customers such as Enbridge and generators outside Union's franchise area. BP cautioned that the Board should not confer a competitive advantage to some players to the detriment of others as a result of forbearance or through the development of new services and identified its objective as being a level playing field with equal treatment or access.

The issue of automatic renewal rights was also raised. Enbridge indicated that it is not considering automatic renewal rights for storage contracts under its Rate 316 proposal, since that service will be acquired by Enbridge through a tender. APPrO maintained that Rate 316 is a companion service to Rate 125 and that if a customer renews its Rate 125 service, that customer should have the right to renew its Rate 316 service as well.

Board Findings

There was no disagreement that these services are needed and should be developed. The generators have convincingly expressed the importance of these types of service to the effective functioning of their operations – both physically and financially. The issue for the Board, within a section 29 context, is how best to achieve this objective. APPrO and the GTA Generators (supported by the consumer intervenors) advocated a regulated framework; the utilities argued for a competitive framework.

These services are not currently offered, indeed they need to be developed, and investments must be made in order to offer them. Union has been conducting open seasons for its new offerings and is committed to providing these services if the Board refrains from regulating them. The Board concludes that these services are substantially different from the bundled, unbundled and semi-unbundled distribution services offered by Enbridge and Union. There is demand for these services from marketers (for example, BP and Nexen) and likely others. In addition, when the capacity generators hold is excess to their needs, they expect to be able to offer this excess into the competitive market. It follows that they expect to be able to acquire these services through the competitive market as well as sell them.

The Board could order the utilities to provide these services on a regulated basis. However, the Board concludes that this would not be the best approach to ensuring the development of these services. The key consideration is to ensure that new innovative services are developed and offered into the market. The Board concludes that the best way to ensure this public interest is met is to refrain from regulating these services. This will stimulate the development of these services, by the utilities and by other providers. The Board finds that competition in these services will be sufficient to protect the public interest.

The Board does have a duty to protect the interests of consumers using these services with respect to price and reliability and quality of service. In this context we find that the crucial factor is the availability of the service itself – namely its reliability and quality. The Board notes that Enbridge committed to offer Rate 316, whether or not the Tecumseh enhancement project goes ahead, and to price it on a cost pass-through basis. The Board expects Enbridge to fulfill this commitment. Union has proceeded with its open season, and the Board expects Union to offer these services on an open season basis, without withholding capacity. These commitments will ensure a level of consumer protection.

Pricing considerations are relevant, but the Board finds that the development of competitive options will provide appropriate price protection for these consumers. The Board will also be developing a reporting mechanism and complaint process, discussed at the end of this chapter, and we expect that parties will bring any issues of market failure to the Board's attention.

The Board will refrain from regulating the rates for new storage services, including Enbridge's high deliverability service from the Tecumseh storage enhancement project and Rate 316, and Union's high deliverability storage, F24-S, UPBS and DPBS services.

Although this issue was discussed in the context of high deliverability services, the Board finds that its conclusions have general application, namely that any new storage which is developed by the utilities will be included as part of the competitive market. The utilities will bear the risk of these investments, not ratepayers. Similarly, the Board will not regulate the rates, nor approve the contracts, arising from these investments. If the utilities provide storage to their regulated business through these investments, the ratemaking implications of that approach will be considered in the context of a rates proceeding.

5.2.4 Forbearance in the Ex-Franchise Market

Most parties argued that ex-franchise customers should pay market-based rates. Some parties took the position that the Board could refrain from regulating the prices in this market (if the Board determined the market was competitive), and others were of the view that the Board should continue to approve market-based range rates.

For example, the Consumers Council argued that the Board should not refrain from regulating storage but that it is appropriate for the utilities to charge market rates for Transactional Services and long-term storage services to maximize revenue from the assets for the benefit of ratepayers.

Board Findings

The evidence shows that other than for in-franchise customers, the storage market is competitive. With the exception of Enbridge, the customers in this competitive part of the market (commonly referred to as ex-franchise) have been acquiring storage at market-based rates for some time. The Board sees no benefit from continuing to regulate the prices of these services; on the contrary, competition in this area is sufficient to protect the public interest. The Board will therefore refrain from regulating rates or approving contracts for Union's short- or long-term ex-franchise storage services and will refrain from regulated the rates or approving the contracts for Enbridge's Transactional Storage Services.

5.2.5 Separation of Unregulated Storage Costs and Revenues

Both Union and Enbridge proposed to separate the unregulated costs and revenues from the regulated costs and revenues using a cost allocation study. The issue is whether a cost allocation approach is sufficient, or if a greater degree of separation is required. Further, if a cost allocation approach is sufficient, there is an issue as to whether Union's current cost allocation study is adequate.

During the oral hearing, Union's witnesses indicated that Union would be preparing a new cost allocation study as the basis for revising the allocation of the costs of its storage assets between in-franchise (regulated) and ex-franchise (unregulated). In its final argument, however, Union submitted that the cost allocation necessary to split the costs of its storage assets between in-franchise and ex-franchise has already been completed in its 2007 rates case. According to Union, that allocation would result in the total storage rate base being split as follows ($ million):

Included in regulated rate base	$380.703	(79%)
Allocated to ex-franchise activities	$102.916	(21%)
Total	$483.619	(100%)

Enbridge proposed to separate the costs and revenues associated with its Transactional Storage Services at the next rates proceeding. It was Enbridge's position that no adjustment to rate base would be required if the Board were to forbear from price regulation.

Some parties argued that a greater degree of separation was required; others argued that Union's cost allocation study was inadequate.

Energy Probe argued that accounting separation is not sufficient because the historic cost allocation work could not have anticipated the dramatic change of storage forbearance. It took the position that the Board should encourage full structural separation at least, and that ratepayers should be held harmless for any associated costs.

The Board Hearing Team also recommended that Union's transmission and storage operations should be functionally separated, and that both Union and Enbridge's regulated and non-regulated storage should be functionally separated. The Board Hearing Team was of the view that this separation is necessary to ensure the development of the competitive storage market and to encourage new entrants. However, if no separation were required, the Board Hearing Team suggested that there should be a generic cost allocation review to examine the cost allocation thoroughly and to ensure no cross-subsidization.

LIEN argued that it would be difficult to separate costs for Union's integrated storage business. In LIEN's view, the current cost allocation study may be adequate to set rates, but it is not sufficient to separate price-regulated storage from non-price-regulated storage. LIEN proposed that an alternative would be to transfer assets which are surplus to distribution needs to a separate entity at fair market value which, in LIEN's view, would put Union on an equal footing with other storage providers.

Similarly, LPMA/WPSPG argued that Union's current cost allocation is not necessarily appropriate; there may be fundamental methodology issues to be addressed and there are storage-related costs that are included in distribution costs that should be considered for allocation to Union.

Board Findings

The Board finds that functional separation is not necessary. The evidence before the Board is that it would be costly and difficult to establish a functional separation of utility and non-utility storage, and there was no evidence to suggest that there would be significant benefits from such a separation. To the extent there may be concerns regarding the integrated operations, these will be addressed through the reporting requirements set out in section 5.4.

We also conclude that Union's current cost allocation study is adequate for the purposes of separating the regulated and unregulated costs and revenues for ratemaking purposes. The Board agrees with the Board Hearing Team that it is important to ensure that there is no cross-subsidization between regulated and unregulated storage. However, the Board is content that with its findings on the treatment of the premium on short-term storage services (Chapter 7) Union will have little incentive to use the cost allocation for purposes of cross-subsidy.

The issue of Enbridge's cost allocation is addressed in Chapter 7.

5.3 CONCLUSIONS ON FORBEARANCE

In the previous sections, the Board has found that it will refrain, in part, from regulating storage rates under section 36 (as that section relates to storage) of the *OEB Act* and refrain from approving certain storage contracts under section 39(2) of the *OEB Act*. Specifically:

- The Board will refrain from regulating the storage rates or approving the contracts of new storage providers.
- The Board will continue to regulate storage rates for bundled, unbundled and semi-unbundled customers of Union and Enbridge (up to the allocated amount).
- The Board will refrain from regulating the storage rates or approving the contracts of cross-franchise, or ex-franchise, storage customers of Union and Enbridge.
- The Board will refrain from regulating the rates or approving the contracts for new storage services offered by Union and Enbridge.

5.4 REPORTING

A number of parties made recommendations regarding ongoing reporting by utilities and other storage operators. The utilities and their affiliates generally agreed to provide the type of reporting required by FERC for interstate pipelines (FERC Regulations, §284.13) although to some extent they challenged whether it was necessary. FERC Regulation §284.13 contains requirements for regular reporting on customer and system information.

Kitchener suggested that the Board develop a Storage and Transportation Access Rule or "STAR" to ensure non-discriminatory access to storage and transportation services, following on from the Gas Distribution Access Rule.

The Board Hearing Team identified four principles in this area:

- Create a level playing field for market participants,
- Adopt rules and practices to govern affiliate behaviour that protect the public interest,
- Support open and non-discriminatory access to transmission, and
- Establish a transparent storage/transmission market so market participants can make informed decisions.

The Board Hearing Team supported the development of a STAR. It also proposed that the ARC be amended to control the interaction between the utilities and their storage affiliates and that reporting requirements be put in place for all storage providers in order to enhance transparency in the market.

Board Findings

The Board agrees with the Board Hearing Team's principles and shares the concerns related to forbearance raised by a number of parties. Specifically, in refraining from regulating storage rates or approving storage contracts, the Board must:

- Ensure consumer protection within the competitive market for storage in Ontario.
- Ensure access to Union's transportation system on a non-discriminatory basis to new and existing storage operators.

The Board concludes that it is necessary to develop appropriate operating and reporting procedures to ensure these objectives are addressed. The Board finds that Kitchener's proposal for the development of a STAR (Storage and Transportation Access Rule) has merit.

The Board will initiate a process to develop rules of conduct and reporting related to storage. The Board will ensure that the process addresses the following:

- Requirements to ensure that Union cannot discriminate in favour of its own storage operations or those of its affiliates and cannot discriminate to the detriment of third-party storage providers;
- Reporting requirements for all storage providers, although the requirements may vary as between utility and non-utility storage providers, and which may include: terms and conditions, system operating data, and customer information;
- A complaint mechanism for customers (or other market participants).

6. ALLOCATION OF STORAGE AVAILABLE AT COST-BASED RATES

Having decided that Union and Enbridge should retain regulated, cost-based rates for storage used by in-franchise customers, the question becomes how much of the existing storage space should be reserved for those customers. There are two issues arising from this allocation matter.

First, should the amount of storage available to Union's in-franchise customers at cost-based rates be fixed at an amount less than the total working gas capacity of Union's storage pools, currently 152 Bcf? Union proposed to fix the amount of existing storage allocated to in-franchise customers at the amount Union estimates those customers will use in 2007.

Second, what method should Union and Enbridge use to allocate the amount of storage available at cost-based rates to individual unbundled and semi-unbundled customers? The evidence shows that, for various reasons, many of Union's T-service (semi-unbundled) customers have been allocated amounts of storage that are inconsistent with amounts determined under Union's standard "aggregate excess" method. In addition, Kitchener argued that as a gas distributor embedded in Union's distribution system, it requires more storage space at cost-based rates than the amount calculated under the aggregate excess method.

6.1 UNION'S TOTAL COST-BASED STORAGE ALLOCATION

Union proposed to freeze, on January 1, 2007, the amount of its storage capacity available to in-franchise customers at cost-based rates. The frozen amount would be 92.1 PJ (approximately 87 Bcf), Union's estimate of in-franchise requirements for 2007.

Incremental in-franchise storage requirements due to load growth would be met by Union purchasing the required additional amounts in the market and passing through the contract costs to its in-franchise customers.

Union noted that the in-franchise storage requirement has been very stable over the past seven years, increasing from 88.2 PJ in 2000 to 90.6 PJ in 2006, an annual growth rate of just 0.45%.

In its evidence, Union explained the rationale for its proposal as follows:

> Under the current regulatory framework, any future increase to in-franchise storage requirements would be provided through a reallocation of the portfolio of storage capacity owned and managed by Union.
>
> This current practice is not appropriate as it does not reflect the fact that the storage market is competitive, nor does it encourage or support the development of new storage capacity. Specifically, Union would not be incented to assume the risk and commit the capital and resources to develop new storage capacity with economics premised on competitive market pricing, when there is a risk of this storage being reallocated in the future to meet in-franchise requirements at a cost of service rate.[35]

In argument, Union summarized the reasons for its proposal as follows:

- "Claw-back" of assets etc. allocated to ex-franchise sales would undermine development of new storage capacity premised on market pricing.
- "Claw-back" would also make cost allocation issues more complex.
- Meeting incremental demand with services sourced from competitive markets is consistent with a transition to competition and a step toward sending better "price signals" to in-franchise customers.
- This proposal will not result in "rate shock" of any kind.[36]

Kitchener, LPMA/WGSPG, Consumers Council, VECC, and IGUA/AMPCO argued that there should be no freeze on the amount of Union's storage available at cost-based

[35] Union Pre-filed evidence, Exhibit C, Tab 1, page 15.
[36] Exhibit Y2.1, outline of Union reply argument, page 4.

rates to in-franchise customers. GMi and the Board Hearing Team supported Union's proposal.

Board Findings

Under the existing regulatory framework, Union's in-franchise customers have had first call, at cost-based rates, on Union's storage capacity. Said differently, Union has sold storage services to ex-franchise customers only when it can demonstrate that the storage being sold is surplus to in-franchise needs.

From an operational perspective, it is not necessary (nor would it appear to be feasible) for Union to physically split its storage facilities between "in-franchise" and "ex-franchise" uses. And until now, Union has been able to offer storage services in the ex-franchise market without capping or freezing the amount of capacity that is available for in-franchise uses.

Giving in-franchise customers a priority call at cost-based rates on all of Union's storage may be supportable if one takes the view that every Bcf of Union's storage capacity is a "utility asset" and is required to provide "utility services." But that view needs to be re-examined in light of the evidence presented at this hearing about the development and use of Union storage in recent years, and the Board's determination that the storage market is competitive.

Amount of Union's "surplus" capacity

There is no doubt that Union's existing storage capacity far exceeds the current requirements of its in-franchise customers. Some 40% of the current capacity has been sold in the ex-franchise market. And the requirements of in-franchise customers have grown slowly (less than 0.5% per year over the past six years according to Union's evidence). The excess is so large that it would take several decades for all of the current capacity of 152 Bcf to be required for in-franchise customer needs if those needs grow at 1% per annum, and more than 100 years at the current rate of growth.

In past decisions on storage, the Board has required Union to file forecasts of storage capacity and in-franchise needs to demonstrate that space being sold to ex-franchise customers is surplus to in-franchise needs. For example, in the EBRO 494-03 decision, the Board approved four long-term ex-franchise storage contracts based on Union's 10-year forecast of capacity and in-franchise needs. The Board considered, but did not require, Union to insert a clause into the contracts that would allow Union the right of recall because the Board "found…that the Company's forecast of its in-franchise storage needs is reasonable."[37]

Union's storage development

During the hearing, a common argument from many parties on several different issues (particularly on the issue of sharing the premium on ex-franchise sales) was that in-franchise customers have "paid for" or "substantiated" the storage assets of the utilities. If true, is this a basis for continuing to grant in-franchise customers a perpetual call on all of Union's storage capacity at cost-based rates?

This argument breaks down on two fronts. First, Union's rate base excludes capital costs of storage that underpins long-term ex-franchise sales. Second, the sheer magnitude of the current surplus makes it unlikely that Union's expansion of its storage facilities in the recent past has been driven primarily, or perhaps even to any significant extent, by the anticipated needs of in-franchise customters. For example, since 1999 Union has added almost 18 Bcf of capacity through greenfield developments and enhancements to existing pools, capacity that was not necessary to cover in-franchise needs. This additional capacity has been directed to, and taken up by, the "ex-franchise" market, not distribution customers of Union.

Ex-franchise customers have contracted for Union's long-term surplus space and have paid market-based rates, rates that have been much higher than cost-based rates. Rather than bearing the costs of surplus Union storage space that is offered long-term

[37] EBRO 494-03 Decision with Reasons, September 26, 1997, paragraph 2.2.29.

to the ex-franchise market, Union's in-franchise customers have in fact benefited through receiving most of the premium on long-term sales.

Union's rationale

Union claims that development of new storage capacity would be undermined unless the amount of storage allocated to in-franchise customers is capped. This claim appears to have little merit. First, no party to this proceeding has opposed market rates for new storage capacity by third parties. Second, a freeze on space for in-franchise customers would have a neutral effect on the development of the competitive market. This was illustrated by LPMA/WGSPG, which put forward the following scenario in its argument: Assume the incremental storage requirement for the in-franchise customers is, say, 2 Bcf in a particular year. Under Union's proposal, Union would purchase that 2 Bcf from third-party providers. Under the existing framework, that 2 Bcf would be supplied by Union, leaving it with 2 Bcf less for ex-franchise sales. That 2 Bcf shortfall could be provided by third-party providers. The net impact on third-party providers is 2 Bcf of additional storage in either case.

Union also claims that meeting incremental in-franchise demand at market prices is consistent with a "transition to competition" and would send "better price signals to in-franchise consumers." No one in this proceeding, however, has advocated that any in-franchise customers, except for some of the largest gas customers, should be obligated to take a service that might require them to participate directly in the competitive storage market.

GMi, currently Union's largest ex-franchise customer, and Nexen expressed concerns about "claw-back" that the Board finds more compelling than Union's argument. GMi opposed any storage allocation rules that could result in "clawing back storage capacity held by ex-franchise customers for the benefit of in-franchise consumers." It said it would view any such measure as unfair discrimination. Nexen submitted that "claw-back" of storage services from ex-franchise customers would be "discriminatory and detrimental to not only GMi but to the very existence of the secondary market that Ontario currently supports and benefits from."

Conclusion

The Board finds that there should be a cap on the amount of Union's existing storage space that is reserved for in-franchise customers at cost-based rates. In the Board's view, Union's existing storage assets are, in substance, a combination of "utility assets" required to serve Union's in-franchise distribution customers and "non-utility assets" that are not required for regulated utility operations and that are sold in the competitive storage market. This distinction is supported by the significant excess of total capacity over in-franchise needs for the foreseeable future and by the fact that development in recent years has been driven by the ex-franchise market, not in-franchise needs. The Board does not accept IGUA/AMPCO's submissions that the entire amount of Union's storage is a "utility asset" and that ex-franchise customers (such as gas marketers and utilities in the U.S. Northeast) are buying "utility services" when they purchase storage from Union. The Board has determined that the ex-franchise market is competitive and that it will refrain from rate regulation or contract approval; these will no longer be "utility" services.

The Board concludes that its determination that the storage market is competitive requires it to clearly delineate the portion of Union's storage business that will be exempt from rate regulation. Retaining a perpetual call on all of Union's current capacity for future in-franchise needs is not consistent with forbearance. As evidenced by the arguments from GMi and Nexen, two major participants in the ex-franchise market, retaining such a call is likely to create uncertainty in the ex-franchise market that is not conducive to the continued growth and development of Dawn as a major market centre.

The Board concludes that it would be inappropriate, however, to freeze the in-franchise allocation at the level proposed by Union. Union's proposal implies that a distributor with an obligation to serve would be prepared to own, or to have under contract, only the amount of storage needed to serve in-franchise customers for just the next year. In the Board's view, it is appropriate to allow for some additional growth in in-franchise needs when determining the "utility asset" portion of Union's current capacity.

The Board acknowledges that there is no single, completely objective way to decide how much should be reserved for future in-franchise needs. The Board has determined that Union should be required to reserve 100 PJ (approximately 95 Bcf) of space at cost-based rates for in-franchise customers. This compares with Union's estimate of 2007 in-franchise needs of 92 PJ (87 Bcf). At an annual growth rate of 0.5% each year, which Union claims is the growth rate since 2000, in-franchise needs would not reach 100 PJ until 2024. The limit would be reached in 2016 if the annual growth is 1%; at a very annual high growth rate of 2% per annum, the 100 PJ limit would be reached in 2012.

The 100 PJ (95 Bcf) amount is the capacity that Union must ensure is available to in-franchise customers if they need it. Union should continue to charge in-franchise customers based on the amount of space required in any year. If Union's in-franchise customers require less than 95 Bcf in any year, as measured by Union's standard allocation methodology, the cost-based rates should be based on that amount, not on the full 95 Bcf reserved for their future use. Union will have the flexibility to market the difference between the total amount needed and the 95 Bcf reserve amount.

6.2 ALLOCATION OF COST-BASED STORAGE: METHODOLOGY AND APPLICATION

Union and Enbridge have developed methods of allocating cost-based storage space to their in-franchise customers – both bundled customers as a group, and individual unbundled and semi-unbundled (T1 and T3) customers. The amount allocated currently has two implications for customers:

- It is the basis for determining how much a customer will be charged at cost-based rates.
- For unbundled or semi-unbundled customers, the amount is the maximum amount of cost-based storage to which they are entitled. Any storage they demand above the allocated amount must be procured at market-based rates.

In Union's case, the allocation methodology will take on greater significance in the future because it will also be used to determine when in-franchise needs exceed the 100 PJ of Union storage reserved for in-franchise customers.

The issues addressed in this section are:

- Should Union and Enbridge continue to use their current methods to determine the amount of cost-based storage allocated in total to customers taking bundled service?
- What method should be used to allocate cost-based storage to unbundled and semi-unbundled customers? Should a single method be used consistently by both Union and Enbridge or should the Board permit variations or exceptions?

6.2.1 Aggregate Excess Method – Bundled Service

Union has used the "aggregate excess method" since 2000. This method, which was approved by the Board in RP-1999-0017, calculates a standard amount of storage space to meet seasonal load balancing needs. It involves a comparison of forecast gas consumption in the winter (the five months November through March) with gas consumption for an entire year. Total winter consumption is forecast assuming normal weather conditions. The formula can be expressed:

Aggregate excess = Total winter consumption – [(151/365)* (Total annual consumption)]

To simplify the computation of overall storage needs for bundled customers, Union has developed standard aggregate excess volumes for residential customers in each of its operations areas. The calculation of the space required to serve bundled commercial and industrial M2 customers is also simplified by applying a standard percentage to those customers' forecast annual consumption.

Union reduces the total aggregate excess amount for bundled customers by 2.4% to recognize that not all of the bundled customers have the load profiles assumed by the aggregate excess method. Some bundled customers consume more gas in the summer than the winter, which reduces the amount of storage space Union needs to manage seasonal load balancing for its portfolio of bundled customers.

Kitchener raised concerns with respect to the aggregate access method, particularly in respect of its own storage allocation, and VECC echoed Kitchener's concerns. This issue is dealt with separately later in this chapter. No other party objected to Union continuing to use its "aggregate excess method" to determine total storage requirements for bundled customers.

Enbridge indicated it uses the same methodology as Union except that it uses 121 days for "rate-making purposes." At the Technical Conference, Enbridge indicated that it is "open to using the actual withdrawal cycle period, which is 151 days."

Board Findings

The Board accepts the continued use of the aggregate excess method by Union to determine the total storage space it requires to manage the seasonal load balancing needs of bundled customers.

Based on the evidence in this proceeding, it not clear that there is a single "official" aggregate excess method policy document in which Union outlines the calculation, the source of the inputs, how the method is to be applied in each of its operations areas, and how Union validates the appropriateness of its 2.4% reduction factor. Given the Board's decision to "freeze" total in-franchise cost-based storage, it will be increasingly important that all stakeholders have a common understanding of exactly how the method works in all circumstances. The Board directs Union to file such a policy document within 90 days of this decision. The policy should also cover the issues addressed in the next section of this decision, namely the application of the allocation method to individual customers.

Enbridge appears to use a generally similar method although there was no detailed evidence filed on Enbridge's calculation at this hearing. The Board therefore also directs Enbridge to file an aggregate excess policy document with the Board within 90 days of this decision. Enbridge should also address the application of the allocation method to individual customers.

In order to ensure consistency where it is warranted, the Board will consider whether to pursue these matters on a generic basis.

6.2.2 Storage Allocation – Unbundled and Semi-unbundled Customers

There was considerable debate in this proceeding about using the aggregate excess method for allocating cost-based storage to individual unbundled and semi-unbundled (Union T1 and T3) customers. We first address the issue generally. We then address the specific issues which arise for gas-fired generators and Kitchener. While this issue has immediate application for Union, because it has customers taking semi-unbundled service, it will also be relevant for Enbridge because the Board is approving new unbundled rates as part of this proceeding, and Enbridge expects that there will be migration to these new rates.

Union has not consistently applied a single method to allocate cost-based storage to in-franchise customers taking semi-unbundled and unbundled service. The official position seems to be that Union uses the aggregate excess method. It became clear during the hearing, however, that many T1 and T3 customers have been allocated amounts of storage that are considerably different than amounts derived from an aggregate excess calculation.

Union produced a document showing that 44 T1 customers, over half of Union's T1 customers, and one T3 customer (Kitchener) have been permitted to contract for volumes of cost-based storage that differ from the amounts that would be allocated under the aggregate excess method. Nine of the 44 T1 customers listed have contracts for quantities less than the aggregate excess amount. The other 35 T1 customers and Kitchener have more (and in many cases, significantly more) cost-based storage space under contract than would be permitted if the aggregate excess method were followed. For example, one T1 customer has a storage contract for 1,434,120 GJ but its aggregate excess amount is only 139,902 GJ. Another has a contract for 1,100,000 GJ but an aggregate excess amount of zero.

Union indicated there are three reasons for the differences:

- The cost-based storage allocations of 21 customers that were on T1 service before June 7, 2000 were "grandfathered" by the settlement agreement approved by the Board in RP-1999-0017. The contract quantities were not required to be adjusted to the customer's aggregate excess amount.
- The amount of the cost-based storage under contract generally does not get changed at the time of the annual contract renewal even when the customer's updated consumption profile results in a higher or lower aggregate excess amount. The reason for this is that the only "trigger" for a revision to a storage quantity at the annual renewal date is a five percent increase or decrease in Contract Demand (maximum daily gas demand as agreed between the customer and Union). A change in consumption profile, by itself, has no effect on the amount of storage under contract. Union pointed out that using the

change in Contract Demand as the trigger to amend storage contract quantities was agreed to in the RP-1999-0017 settlement agreement.

- At least three of the T1 customers that have contract quantities above aggregate excess amounts are gas-fired generators that have multi-year storage contracts with firm space and deliverability amounts.

Union proposed no changes to the way in which storage is currently allocated to in-franchise customers at cost-based rates.

IGUA/AMPCO submitted that the guiding principle should be to allocate to customers a sufficient amount to meet "reasonable load balancing requirements." For large volume customers, they argued that the allocation methodology should be as flexible as it has been in the past and that the grandfathering under the RP-1999-0017 settlement agreement should be preserved on the grounds of estoppel. IGUA/AMPCO said no changes in allocations should be made without customer consent.

The Board Hearing Team supported using the aggregate excess method for allocating cost-based storage to individual unbundled and semi-unbundled customers. The Board Hearing Team advocated adjusting the contract quantities of all existing T-1 contracts to the aggregate excess amount at the next contract renewal date. It also proposed, however, that a T1 customer that requires more storage than calculated by the aggregate excess method should make a case to its utility. Under that approach, any departure from aggregate excess would have to be submitted to the Board for approval.

Board Findings

The Board concludes it is essential that there be clear, standardized, and consistently applied rules for allocating cost-based storage to unbundled and semi-unbundled in-franchise customers. These types of rules clearly are not in effect today. The current allocations to a large proportion of Union's T1 and T3 customers bear no resemblance to aggregate excess volumes due to: the "grandfathering" process endorsed in RP-

1999-0017; the lack of an effective mechanism to adjust contract volumes for changed customer circumstances; and, some “non-grandfathered” T1 storage contracts with volumes that may have been at odds with the aggregate excess method even at the time the contracts were first negotiated.

The Board supports the continued use of the aggregate excess method as the default method for allocating cost-based space. That method is clearly designed for customers with the traditional seasonal load balancing need and fits well with the storage needs of many unbundled or semi-unbundled customers. But it appears that the storage requirements of at least some of the larger industrial and commercial customers may have little or nothing to do with seasonal load balancing. Allocating cost-based storage using a method that is based on assumptions that are materially at odds with a customer’s circumstances, in the Board’s view, would be unfair and unsupportable. Therefore, the Board concludes it is necessary to consider whether one or more additional allocation methodologies should be developed for cases where the aggregate excess method is clearly inappropriate.

Board does not, however, support a unique allocation approach for each customer. In the Board’s view, the objective of allocation of cost-based storage space is to assign an amount that is reasonably in line with what a customer is likely to require. The objective is not to allocate precisely the amount a particular customer claims it might need. That would require in-depth knowledge of each customer’s expected consumption, its gas supply portfolio, and the non-storage options (such as spot gas purchases) the customer might use to manage its needs. That would be impractical for the utilities to implement, both administratively and because it would never be possible to determine that one, and only one, allocation of storage is the “right” amount for any particular customer. Unbundled or semi-unbundled in-franchise customers that desire more storage than allocated to them by the utilities under the standard method(s) have the ability, as they do today, to purchase additional storage services at market-based rates or alternative services in the market.

The Board is not ordering any change in the contract quantities of T1 customers at this time for the following reasons:

- First, although it appears likely that one (or more) additional allocation methods may be necessary, the Board does not have enough information to reach a firm conclusion. Further evidence is required.
- Second, the Board is conscious that many of the existing contracts with volumes above the aggregate excess amounts have been in effect for several years. The Board does not accept the estoppel argument advance by IGUA/AMPCO, but even if one or more appropriate additional allocation methodologies were already developed, any changes to contracts should be done in a controlled and deliberate manner.

The Board does want to have better allocation rules developed in the near future. To further that objective, the Board orders Union (a) to review the use of storage by existing T1 customers to determine the extent to which their storage needs are not driven by traditional seasonal load balancing, (b) to develop one or more storage allocation methods that would result in better estimates of certain customers' needs than the aggregate excess method, and (c) submit within 90 days a proposed storage allocation policy for Board review that details the aggregate excess method and the proposed new method(s), including the circumstances in which each allocation model would be applicable.

Enbridge currently has only one customer taking unbundled service but it is likely that more customers will opt for unbundled service in the future. The Board therefore directs Enbridge to file, within 90 days, the methodology or methodologies it proposes to use to allocate cost-based storage to unbundled customers.

In order to ensure consistency where it is warranted, the Board will consider whether to pursue these matters on a generic basis.

6.2.3 Storage Allocation – Gas-Fired Generators

All parties in this proceeding recognized that the operators of dispatchable gas-fired power plants have very different needs for gas storage than the typical gas user that has seasonal load balancing needs. Several aspects of enhanced services for gas-fired generators were settled by the parties before the oral hearing started. Rate issues related to high deliverability storage services were not settled; however, there was a settlement on how much 1.2% deliverability storage should be made available at cost-based rates.

The Enbridge and Union Settlement Proposals take different approaches to the allocation of standard storage space to gas-fired generators. The portions of the Settlement Proposals that describe the agreed allocations are set out below.

> **Enbridge Settlement Proposal**
> Currently, the Company's customers only receive an allocation of cost-based storage at standard deliverability that meets 57% of the gap between system peak demand and the amount of gas delivered through pipeline supplies. The remainder of this gap is met through other balancing means such as peaking supplies and curtailment. In order to achieve consistency, the Company will limit the storage allocation available to gas fired generators to the same level, such that the allocation of storage at standard deliverability to gas fired generators will be scaled to 57% of the amount of storage at standard deliverability required to meet the gap between demand and pipeline supply. (Page 23)
>
> The allocation for gas fired generators for cost-based storage at 1.2% deliverability is as follows:
>
> (g) A gas fired generator is assumed to provide gas supply equal to 17 times the maximum hourly demand of the facility. In the event that the plant is not dispatched, up to 17 hours of supply may need to be injected into storage, assuming that storage is the only means of balancing available.
>
> (h) Assuming that high deliverability storage at 10% is available to meet the gas fired generator's needs, this would result in a space demand of 17 times the maximum hourly demand, divided by 10%.

(i) The space demand is then multiplied by .57 to determine the amount of cost-based standard storage at 1.2% deliverability available to the gas fired generator. (Page 24)

Union Settlement Proposal

The parties agree that new T1 and U7 customers with non-obligated supply shall be entitled to contract for T1 and U7 storage service with firm storage deliverability up to 24 times the customer's peak hourly consumption and storage space up to 24 times the customer's peak hourly consumption multiplied by 4 days. Should a customer elect to contract for firm storage deliverability that is less than the maximum entitlement, the maximum storage space that a customer is entitled to at cost shall be ten times the firm storage deliverability contracted for. In no event, shall the storage space exceed the maximum storage space entitlement previously described. Storage space with 1.2 % deliverability will be available at cost-based rates. Storage deliverability above the base firm deliverability of 1.2% up to the customer's firm CD shall be made available by Union to in-franchise customers in a manner to be determined by the Board as part of Issue No.2 [to Procedural Order No.2] (Pages 14 and 15)

Board Findings

The Board approved the Settlement Proposals with the cost-based storage allocations described above. The Union and Enbridge approaches to this issue are obviously somewhat different. The Board considered whether to carry out a detailed comparison of the proposed allocation methods to determine if greater consistency between the Enbridge and Union methodologies could be achieved. The Board has decided that step is not necessary. The developers of all the proposed Ontario dispatchable gas-fired facilities participated in the settlement process and were parties to the Settlement Proposals (directly or through their trade association). The Board also recognizes that the allocation of 1.2% deliverability space at cost-based rates is tied to some extent to the individual proposals of each utility for high deliverability storage.

The Union approach to allocation of cost-based space is available only to <u>new</u> T1 and U7 customers with non-obligated supply. During the hearing, the Board became aware that three operating gas-fired generators in Union's territory have multi-year T1 contracts for amounts of cost-based storage significantly greater than the amounts calculated by the aggregate excess method. The evidence in this hearing indicated that those contracts were not among the pre-June 7, 2000 contracts that were “grandfathered” by RP-1999-0017. The Board does not know the basis on which the storage allocations for these three customers were determined. We also do not know the extent to which the contracted storage amounts exceed the amounts that would be available were the generators to be subject to the new allocation rules contained in the Union Settlement Proposal.

The Board concludes that in the future, allocations of cost-based storage should be made using clear, standardized rules that are consistently applied. If there are to be non-standard allocations, it is important that the Board understand the circumstances and be satisfied that any such exceptions are justified. As indicated in section 6.2.2, the Board has ordered Union to analyze the use of storage by existing T1 customers to determine if one or more allocation methodologies should be developed to deal with cases where the aggregate excess method is clearly inappropriate. As part of that work, the Board directs Union to file with the Board, on a confidential basis if necessary, the terms and conditions of these three contracts, the basis for the storage allocations, and the terms and conditions of any other multi-year T1 storage contracts.

6.2.4 City of Kitchener

Kitchener intervened in these proceedings to question the appropriateness of the aggregate excess methodology as it applies to embedded utilities in general and Kitchener in particular.

Kitchener owns and operates a gas distribution utility connected to Union’s system. The rates Kitchener charges its approximately 60,000 customers are not subject to regulation by the Board.

Until 1999, Kitchener was a Rate M9 system gas customer. In 1999, it switched from Rate M9 to Rate T3 and negotiated a cost-based storage allocation of 89.3 million m^3

(3.37 million GJ). That initial T3 storage contract expired in 2005. Since then, Kitchener has received two Board-approved one-year extensions at the same contract volume.

The current contract expires March 31, 2007 and Kitchener is seeking a long-term storage contract with Union effective April 1, 2007. It is concerned that its allocation of cost-based storage in a new contract will be restricted to the amount calculated under the aggregate excess method. Kitchener's current aggregate excess amount is 3.01 million GJ, 10.6% lower than the amount of cost-based storage in its current contract

In this proceeding, Kitchener claimed that the aggregate excess method does not provide sufficient cost-based storage space for a gas distributor like Kitchener. It argued for an allocation of cost-based storage space that:

- Provides Kitchener with full deliverability from storage on March 1, recognizing the contractual requirement of Kitchener to maintain a minimum storage balance of 20% for maximum firm deliverability, and
- Provides Kitchener with a reserve on March 31 to enable it to manage temperature risk for the first two weeks of April.[38]

In the alternative, Kitchener argued that if the Board continues to approve the grandfathering of storage volumes in certain T1 contracts, it should extend the grandfathering to the amount of storage space in Kitchener's current T3 contract.

Kitchener made a number of arguments about why it believes the aggregate excess method is the wrong way to calculate its allocation of cost-based storage space. Kitchener's main objection seems to be that the aggregate excess method assumes "normal" weather. Kitchener says the allocation of cost-based space for an embedded distributor must provide for the possibility of a colder than normal winter and provide

[38] In its pre-filed evidence and during the oral hearing, Kitchener also put forward the idea that it should receive a proportionate share of Union's system integrity space. In its final argument, however, Kitchener withdrew that proposal.

protection for a cold snap after March 31.[39] Kitchener also asserted that the aggregate excess method understates the amount of storage required by Union itself to serve its bundled customers and that Union rectifies that problem by purchasing winter gas. Kitchener charged that such a strategy results in significant additional costs for Union's system gas customers.

Union supported the continued use of the aggregate excess method and argued against Kitchener's proposals. Union stated that Kitchener is confusing the issue of managing gas supply inventory during the winter months to meet a design day with the issue of allocation of physical storage space based on a seasonal requirement for storage.

Union pointed out that Kitchener acknowledges there has been only one occasion in the past five years when Kitchener's storage allocation was insufficient. On that occasion, Kitchener avoided any overrun charges by purchasing incremental gas. Union also observed that Kitchener has the option to contract to have Union provide the March 1 deliverability inventory if it so chooses. If it chose this option, Kitchener would no longer have to maintain 20% inventory on March 1.

Board Findings

In section 6.2.2, the Board expressed its view that the objective of the allocation of cost-based storage to unbundled and semi-unbundled customers is to assign an amount that is reasonably in line with what a customer is likely to require; the objective is not to allocate precisely the amount that a particular customer claims it might need. The Board also acknowledged that the seasonal balancing assumption that underlies the aggregate excess method might be materially at odds with the way that some

[39] Kitchener also made submissions on some problems with the way cost-based storage has been allocated to Union's T1 customers, including the deviations from aggregate excess that were grandfathered by the Board. Some of Kitchener's general concerns about the aggregate excess methods are addressed in section 6.2.2 of this decision.

customers use storage. The Board has directed Union to develop one (or possibly more) allocation methods that can be used to allocate storage to those customers.

The issue is whether Kitchener has made a compelling case that its use of storage is so different from the assumed use underlying the aggregate excess method that Union should be required to develop an allocation method just for Kitchener. The Board finds Kitchener has not successfully made that argument.

Kitchener acknowledges that it requires storage for seasonal load balancing, which is consistent with the assumptions of the aggregate excess method. Kitchener's circumstances are vastly different from those of dispatchable gas-fired generators, for example, a class of customer that everyone acknowledges does not use storage for seasonal load balancing.

The Board does not agree that the allocation of cost-based storage should be determined assuming colder than normal weather or that it should be designed to provide protection against a cold snap in April. To do so would result in in-franchise customers as a group being allocated more cost-based storage than they are expected to use in most winters. As noted in section 6.2.2, the Board concludes that the objective of the allocation of cost-based storage space is to assign an amount that is reasonably in line with what a customer is likely to require. In the Board's view, that supports continuing the assumption of normal weather.

The Board does not see the relevance of Union's gas supply plan to an allocation formula used to assign cost-based space to unbundled or semi-unbundled customers. Kitchener argued that Union "makes no attempt to produce a least cost [gas] supply plan which optimizes the level of cost based storage for in-franchise customers." The argument seems to be that if Kitchener's "least cost supply plan" advice were followed, Union would allocate more cost-based space to its bundled in-franchise customers, which would then cause Union to realize that all in-franchise customers should also get more cost-based storage. In the Board's view, the method of allocating cost-based storage should not be linked to any specific gas supply plan. The aggregate excess method is based on the simple – and for most customers, realistic – assumption that natural gas is delivered from the supply regions in equal amounts each day of the year. The cost-based storage allocation is then derived from a particular customer's usual winter consumption.

The Board is not going to order that the amount of storage under contract to T1 customers be revised until the Board receives and considers information from Union on its development of one or more additional allocation methodologies, as described in section 6.2.2. That is unlikely to be completed by April 1, 2007, the date Kitchener's current contract expires. The Board will direct Union to renew Kitchener's storage contract for an additional year at current volumes to ensure that Kitchener receives equitable treatment with the other T1 customers which may have their storage allocations adjusted. This extension should not be interpreted as an indication that the Board intends to revisit the storage allocation method for Kitchener.

7. TREATMENT OF THE PREMIUM ON MARKET-BASED STORAGE TRANSACTIONS

Union and Enbridge ratepayers have received a significant portion of the premium over cost-based rates that results from the sale of storage services to ex-franchise customers at market-based rates. Chapter 2 provided information on the magnitude of the margins in recent years and the basis on which these margins are shared between the utilities and ratepayers. Union's ratepayers have received 90% of the forecast margins related to both long-term ex-franchise sales (contract terms of two years or more) and short-term transactions (contract terms of less than two years). Ratepayers also receive 75% of any margins that are greater than forecast amounts. Enbridge ratepayers have received approximately 75% of Enbridge's Transactional Services margins.

Union proposed to end the sharing of long-term and short-term margins with ratepayers. Specifically, Union proposed that the Board adjust distribution rates effective January 1, 2007, to exclude all storage costs and revenues associated with ex-franchise sales from 2007 rates and to eliminate five existing storage and transportation deferral accounts that currently capture market-based margins in excess of amounts incorporated into rates. Union has forecast 2007 margins at $29.9 million (long-term) and $14.6 million (short-term).

Enbridge also proposed to end margin sharing with ratepayers. It is seeking approval to exclude revenues and expenses associated with Transactional Storage Services from its distribution rates commencing in 2007. All Transactional Storage Service revenues, forecast to be $5 to $6 million in 2007, would accrue to Enbridge. The costs to be excluded from distribution rates in 2007 would be some portion of the approximately

$800,000 of O&M costs of Enbridge's Transactional Services business. Enbridge proposed to continue to include the entire net book value of its storage facilities in rate base.

The Board Hearing Team and Energy Probe supported the Union and Enbridge proposals. LPMA/WPSPG, Consumers Council, LIEN, VECC, IGUA/AMPCO, and Schools generally objected to any change in how margins are shared.

7.1 MARGINS ON SHORT-TERM STORAGE TRANSACTIONS

During the hearing, most parties presented views on the rationale for requiring the utilities to credit most of their storage margins to ratepayers. Several parties opposing the Union and Enbridge proposal to cease margin sharing referred to earlier Board decisions that they believed supported margin sharing.

The Board first dealt with margin sharing in the context of Union's short-term storage services, which Union started to sell at market-based rates in 1989. In 1996, the Board considered essentially the same issue when Enbridge proposed to start marketing its Transactional Services more aggressively and retain some of the margin. The Board has expressed a consistent view that Union's short-term storage transactions and Enbridge's Transactional Services involve sales at market-based rates of services derived from <u>utility assets</u> that are temporarily surplus.

In its decision in EBRO 492, dated September 10, 1996, the Board stated:

> The Company [Enbridge] stated that the objective of offering transactional services is to make additional use in off-peak periods of the Company's physical and contractual storage and transportation assets <u>acquired in the first place to serve the in-franchise customers</u>. [Paragraph 3.3.2, emphasis added]
>
> The Board does not agree that an incentive to provide these services should be necessary, and notes that the Company has offered both peak and off-peak services, along with assignments and exchanges in prior years without

> the need for an incentive. However, the Board acknowledges that the Company does incur some risk associated with its participation in these activities, and finds that a 10 percent incentive will be adequate to address these modest risks. [Paragraph 3.3.30]

In 1997, the Board for the first time approved Union entering long-term storage contracts at market-based rates with ex-franchise customers. In its decision in EBRO 494-03 dated September 26, 1997, the Board described the basis for allowing Union's short-term transactions as follows:

> Short-term storage for ex-franchise customers has been marketed on the basis that it is <u>space required to provide in-franchise service</u>. Due to weather and other variables part of the space is temporarily surplus to in-franchise needs. Customers already pay the costs of this storage in rates. Any revenue from short-term sales of storage services that is beyond the direct marginal cost to provide the service is a benefit to in-franchise consumers. [Paragraph 2.3.19, emphasis added]

Board Findings

The Board concludes that its decision to refrain in part from regulating rates for storage services does not invalidate the basis for sharing margins with ratepayers on short-term deals. Union's short-term storage transactions and Enbridge's Transactional Services storage sales are sales of services derived from utility assets that are temporarily surplus to in-franchise needs. The Board concurs with VECC's final argument on this point:

> In Union's case, the assets underpinning the short-term storage and balancing services sold in the ex-franchise market are presently included in rate base. In the case of Enbridge, all of the assets underpinning their transactional services sold in the ex-franchise market are included in rate base. As stated earlier, VECC views it as highly inappropriate for the utilities to seek the entire margin associated with these assets given that they have been "substantiated" by captive ratepayers who have paid in rates for the full opportunity cost of the associated capital investment (including a fair return on equity) along with overhead costs and direct operational costs associated with providing the services. In VECC's view, the utilities should be required to provide a rationale for receiving any of the associated margins given their earlier mentioned obligation to optimize the use of utility assets. [Page 16]

Requiring the utilities to share these margins with ratepayers is not in any way inconsistent with a finding that the storage market is competitive. The basis for sharing these margins is the nature of the assets that underpin the transactions, not the prices at which the transactions occur.

The Board finds that the entire margin on storage transactions that are underpinned by “utility asset” storage space, less an appropriate incentive payment to the utilities, should accrue to ratepayers. Ratepayers bear the cost of that space through the regulated storage rates and should benefit from transactions that utilize temporarily surplus space. The Board finds that shareholders will retain all of the margin on short-term transactions arising from the “non-utility” storage space.

Short-term margins derived from “utility assets”

The decision to require Union to notionally divide its existing storage into two pieces – a “utility asset” (maximum of 100 PJ) and a “non-utility asset” (the balance of Union’s capacity) is set out in Chapter 6. Union’s storage facilities will not be physically split into two pieces and Union is likely to continue operating its storage assets in much the same way as it does today. Union presumably will determine its ability to execute short-term deals based on the amount of temporarily surplus space in the entire storage facility. As long as the utility and non-utility storage is operated as an integrated asset, it will not be possible to determine that any particular short-term transaction physically utilizes space from either the “utility asset” or the “non-utility asset.”

Given the impossibility of physically linking a short-term transaction to a specific slice of storage space, the Board considered other methods of determining the amount of storage margins that should accrue to Union’s ratepayers. The Board has decided that the calculation should be based on how the costs of the storage facilities are split between the utility and non-utility businesses. Specifically, Union’s revenues in any year from short-term storage transactions, less any incremental costs incurred by Union to earn those revenues, should be shared by Union and ratepayers in proportion to Union's allocation of rate base between utility and non-utility assets.

As indicated in Chapter 5, the allocation is currently 79/21 utility/non-utility. Union's existing policy on what constitutes a short-term storage transaction will continue to apply. As and when Union requires more capacity for in-franchise needs (up to the 100 PJ cap) or adds storage capacity or enhances deliverability of its storage facilities, the cost allocation will presumably change. Once a revised cost allocation has been approved in a Union rates case, the basis on which margins on short-term storage transactions are shared will also change.

All of Enbridge's current storage assets (storage facilities and contracts) are required to serve its in-franchise customers. Thus, all of Enbridge's storage-related transactional services revenues today are derived from "utility assets." If and when Enbridge increases the capacity of its Tecumseh storage facilities, it will be necessary for the company to adopt a method of allocating storage-related Transactional Services revenues between utility and non-utility assets.

Incentive payments to utilities for short-term transactions

The Board has considered whether to continue allocating a portion of the margins from short-term transactions to the utilities as an incentive to optimize the use of the "utility assets" of each company.

The Board has decided that Enbridge should continue to share in margins on Transactional Services storage deals. Eliminating any sharing would leave Enbridge with no financial incentive to market temporarily surplus storage space. An incentive mechanism aligns Enbridge's interest with the interest of ratepayers. The size of the incentive is a matter of judgement and that issue has been debated in several past rates cases. The Board finds that the current 25% incentive is excessive given that ratepayers bear all of the costs of the existing storage assets. The Board believes a

10% incentive is sufficient. In the future, 10% of the storage component of Enbridge's Transactional Services revenue, less any incremental costs incurred by Enbridge to earn those revenues, will be for the account of Enbridge. The remainder will be for the benefit of ratepayers. As a result, Enbridge will not be required to separate its revenues and costs for Transactional Storage Services.

With respect to Union, an argument might be made that an incentive is not necessary. Union will receive margins from short-term storage deals that are deemed to arise from the "non-utility" portion of its storage facilities. Thus, Union will already be motivated to maximize the revenues on all short-term transactions. The Board has decided, however, that it would be appropriate for Union and Enbridge to be treated consistently and to each receive 10% of the net revenues deemed to arise from the "utility asset" portion of storage.

The Board is currently undertaking a process to determine a multi-year incentive ratemaking framework for Union and Enbridge. That process will address how best to implement the Board's findings on the sharing of short-term storage transaction margins within an incentive ratemaking framework. Enbridge's 2007 rates case is in progress; the Board's finding with respect to short-term margin sharing will be implemented through that proceeding.

7.2 MARGINS ON UNION'S LONG-TERM TRANSACTIONS

Margins on both Union's short-term storage transactions and its long-term deals historically have been shared with ratepayers in essentially the same way. Although the Board has devoted considerable time to long-term contracting issues in past Union cases, it has not determined that margins on the two types of transactions should be shared on fundamentally different bases. In its decision on Union's 2000 rates (RP-1999-0017), the Board described the rationale for sharing the margins on all of Union's storage sales:

> The Board recognizes that the assets necessary to provide both transactional services and long-term storage services have been paid for by Union's customers. Providing that the Company has a financial incentive to maximize revenues for these services should increase the benefits to both the customer and the shareholder. Consequently the Board authorizes a sharing of net revenues for transactional services and market premium for a long-term storage services in the ratio of 75:25 between ratepayer and shareholder as an incentive to maximize the revenue associated with both these services. [Paragraph 2.505]

Union's rationale for the sharing of storage margins has changed over time. In 1996, when it was unsuccessful in obtaining Board approval for long-term storage sales at market-based rates, Union had submitted that all of the margins would be credited to ratepayers "since in-franchise customers had paid for the development of the storage." In Union's 2000 rates case (RP-1999-0017), the Board noted that "Union's position was that ratepayers have paid for the services from the assets, not for the assets themselves." This is the position that Union advanced in this proceeding.

IGUA/APMCO claimed Union is estopped from changing its position on margin sharing. The argument is that the Board was persuaded to allow market-based rates on the condition that the bulk of the proceeds would go to the ratepayer. Accordingly, IGUA/AMPCO argued that it is now improper for Union to change its mind and to argue that these proceeds now need to go to the shareholder in order to promote the development of new storage.

Board Findings

The Board has determined that storage space in excess of the amount made available at cost-based rates (which is to be capped at 100 PJ – see Chapter 6) can be considered a "non-utility" asset. This is the space that will support Union's long-term storage sales. The Board finds that profits from new long-term transactions should accrue entirely to Union, not to ratepayers.

In comparing this decision with the past Board decisions on the sharing of margins on long-term storage sales, it is important to remember the context in which the Board made its earlier decisions. Until this proceeding, the Board had never reviewed the state of competition in storage and had not considered whether to refrain, in whole or in part, from regulating storage prices. Thus, there was little basis for the Board to treat the margins on short-term and long-term sales differently. Further, the Board's decision in RP-1999-0017 to allow all then existing cost-based contracts with ex-franchise customers to be renewed at market rates has resulted in a substantial growth in long-term margins, margins that have been largely for the benefit of ratepayers. It is certainly not possible today to assert that ratepayers have "paid for" the space that underpins Union's long-term storage contracts.

The Board does not accept IGUA/AMPCO's estoppel argument. Estoppel as a principle of contract law is sometimes called "detrimental reliance". IGUA/AMPCO's theory seems to be that when the Board made its decision on the sharing of long-term margins it relied upon an undertaking by Union to continue the sharing. Perhaps that might have been part of the Board's rationale at the time but the Board itself has now questioned the continuing need for the practice and whether the rationale developed at that time continues to exist.

This after all, is the purpose of section 29. Section 29 requires the Board to re-examine the need for regulation or the degree of regulation where market structures have changed. This Board in the Natural Gas Forum Report recognized that market conditions in energy markets have in fact changed. When such changes occur, regulators, particularly those such as the Board and the CRTC with statutory forbearance mandates in their governing legislation, must re-examine the regulatory construct in light of the current market conditions. That is what this proceeding seeks to accomplish. The concept of estoppel has no meaning in such a framework.

7.3 TRANSITION RELATED TO LONG-TERM MARGINS

IGUA/AMPCO and LPMA/WGSPG argued that in the event the Board decides to eliminate the sharing of any margins with ratepayers there should be some mitigation. As a precedent, LPMA/WGSPG referred to the 2003 decision by the Board on the phase-out of the Delivery Commitment Credit (DCC). There the Board recommended a five-year period based on a cost increase of 11.3 cents per GJ on a specific class of customers. LPMA/WGSPG argued that the phase-in period in the current case should be eight years, because the cost impact is a greater impact of 17.5 cents per GJ across all customer classes.

Board Findings

The Board recognizes that, particularly in recent years, Union's ratepayers have had a significant benefit due to sharing the bulk of the margins on long-term deals. The Board would prefer to have a smooth transition away from the status quo rather than an abrupt change in rates.

The Board finds, however, that there is no basis for retaining a requirement that Union share the margins on new long-term storage transactions, that is, long-term deals executed after the Board's forbearance decision. To continue sharing those margins with ratepayers would conflict with the Board's decisions (a) to recognize that part of Union's storage capacity constitutes a non-utility asset, and (b) to forbear from regulating the prices of ex-franchise transactions. Union should reap the benefits and bear the risks of those new transactions.

The margins that will be recorded in future years in respect of existing long-term deals are different. Those margins flow from long-term contracts that were negotiated and priced prior to the Board's forbearance decision and prior to the Board's decision that there is a non-utility part of Union's storage facilities. When those contracts were signed, Union had no reason to expect that it would receive anything more than 10% of the margin. The Board has concluded that ratepayers should continue to receive some of the margin on those existing contracts.

The Board considered whether to require Union to record the margins on existing long-term contracts separately from the margins on new long-term contracts. Under this approach, ratepayers would be credited with 90% of the margins on existing contracts for the remaining terms of those contracts. This approach conceptually has appeal but could give rise to ongoing implementation questions. For example, the Board might have to consider how contract re-negotiations or defaults by customers are to be treated. This level of complexity and potential ongoing review is unwarranted.

The Board has concluded that it should adopt a simpler phase-out mechanism that is a rough sort of “proxy” for the conceptual approach described above. The phase-out of the sharing of margins on Union’s long-term storage transactions will take place over four years. The share accruing to Union will increase over that period to recognize that contracts will mature and a larger part of Union’s total long-term margins will be generated by new transactions. For 2007, forecast margins (on long-term and short-term transactions) now included in the determination of Union’s rates will remain unchanged. After 2007, Union’s share of long-term margins will be as follows: 2008 – 25%, 2009 – 50%, 2010 – 75%, 2011 and thereafter – 100%.

The Board is currently undertaking a process to determine a multi-year incentive ratemaking framework for Union and Enbridge. That process will address how best to implement the Board’s findings on the transition for long-term storage transaction margins within an incentive ratemaking framework.

7.4 ATCO DECISION

During the oral hearing and in final argument, several parties referred to the recent Supreme Court of Canada decision on the proceeds of an asset sale by ATCO Gas and Pipelines Ltd. Some parties claimed the case supported a cessation of margin sharing by the utilities, while other parties questioned whether the facts of that case were relevant to the Ontario storage market.

ATCO, a public utility in Alberta, applied to the Alberta Energy and Utilities Board (AEUB) as required by the Alberta *Gas Utilities Act*[40], for the approval of the sale of buildings and land located in the City of Calgary. The utility argued that the property was no longer useful and the sale caused no harm to ratepayers. The AEUB agreed that the customers would not be harmed and approved the sale.

In a second decision, the AEUB determined that it would allocate the net profits from the proceeds of the sale between the utility and ratepayers. The AEUB held that it had jurisdiction to order this allocation because it had authority to attach conditions to the order approving the sale to protect the public interest.

The Alberta Court of Appeal set aside the AEUB's decision[41] referring the matter back to the AEUB to allocate the entire proceeds from the sale to ATCO. The City of Calgary, representing the customers' interest, appealed to the Supreme Court of Canada, which upheld the Court of Appeal finding that the AEUB did not have the requisite jurisdiction. On February 9, 2006 the Supreme Court of Canada released its decision in the ATCO case.[42]

Board Findings

The Supreme Court of Canada found as follows:

> The customers pay an amount for the regulated service that equals the cost of the service and the necessary resources…The payment does not incorporate acquiring ownership or control of the utility's assets.[43]

[40] R.S.A. 2000, c. G-5, s.26
[41] ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2004] 24 Alta. L.R. (4th) 205 (C.A.)
[42] ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] S.C.J. No. 4, 2006 SSC 4.
[43] Ibid, par. 68

There are differences between the ATCO case and the present case. The ATCO case involved the sale of a capital asset (land), while this case involves providing a service (storage).

The Alberta case related to section 26 of the *Gas Utilities Act* in Alberta, which required ATCO to apply to the AEUB for approval to sell any asset. The sharing of the premium from the sale of storage services to ex-franchise customers at market-based rates has been decided in the context of rates cases.

The findings of fact in this case indicate that there are certain storage assets in rate base that are used to provide storage service to in-franchise ratepayers. This decision also finds that those services should be provided at cost-based rates as they have been in the past.

The utility also uses these assets to generate profits from sales to ex-franchise customers. The bulk of the revenues have historically flowed to ratepayers and a small share has gone to the utility. That share represents a “fee” that provides an incentive to the utility to generate these sales and profits from what at certain times of the year is excess capacity. This does not give rise to any claim by the utility under the ATCO principles. The ratepayers are receiving service relating to assets in rate base. No sale of assets is involved. The utility is being compensated for certain services.

At the same time, this decision finds that there are certain storage assets that are not part of the utility rate base and finds that the return from those assets, in terms of profit on sales to ex-franchise customers, should accrue entirely to the utility and its shareholders. Again, no claim arises under the ATCO principles. There is no appropriation to the benefit of the ratepayer of any utility assets or for that matter any proceeds from that asset. Accordingly, the Board finds that ATCO decision has no application to this decision.

7.5 STORAGE AND TRANSPORTATION SERVICE DEFERRAL ACCOUNTS

The deferral accounts at issue in this proceeding are the following:

- Short-Term Storage and Other Balancing Services Account (179-70)
- Long-Term Peak Storage Services Account (179-72)
- Transportation Exchange Services Account (179-69)
- Other S&T Services Account (179-73)
- Other Direct Purchase Services Account (174-74)

On March 15, 2006, the Board notified Union and the intervenors that Union's proposal to eliminate the five deferral accounts, made as part of the rate application EB-2005-0520, had been moved to this proceeding. The relevant evidence from EB-2005-0520 was re-filed in this proceeding.

Union explained that of the five accounts in question, the storage accounts (179-70 and 179-72) are directly related to the storage forbearance issue, while the remaining three transmission accounts (179-69, 179-73 and 174-74) are not directly related to the storage forbearance issue.

Union proposed to eliminate the Short-Term Storage and Other Balancing Services Account (179-70) and Long-Term Peak Storage Services Account (179-72) on the basis that these accounts would no longer be necessary if the Board decides to forbear from regulating ex-franchise storage service sales.

Union also proposed to eliminate the other three transmission-related deferral accounts (179-69, 179-73 and 179-74). Union advanced two reasons for this proposal. First, Union stated that the forecast of S&T revenue should not be treated any differently than the forecast of any other source of revenue. Second, Union submitted that its proposal is consistent with the Board's policy direction, as outlined in its Natural Gas Forum Report, that in an incentive regulation framework there should be no earnings sharing and transactional services revenues should not receive special treatment. Union also expressed concern that there may not be another opportunity or forum to deal with this issue prior to the beginning of the proposed incentive regulation framework.

Most intervenors took the position that the storage related accounts (179-70 and 179-72) should continue if the Board determines that it will not refrain from regulating the prices of ex-franchise storage sales services. However, intervenors also acknowledged that if the Board were to forbear from regulating the prices of ex-franchise storage services, then these accounts would no longer be needed and under those specific circumstances should be eliminated. For example, the Board Hearing Team argued that under forbearance, gas utilities' shareholders will be bearing the risk associated with storage transactions in the ex-franchise market and any premium or shortfalls should accrue to the shareholder.

With respect to the transmission-related deferral accounts (179-69, 179-73 and 179-74), most intervenors were of the view that these accounts should not be eliminated because transmission will remain a regulated service. LPMA/WGSPG supported the objective of reducing the number of variance and deferral accounts but took the position that a comprehensive review of all such accounts should be undertaken as part of the incentive regulation mechanism that is still to be determined. Many intervenors adopted the LPMA/WGSPG position.

The Board Hearing Team supported Union's proposal. It argued that because transactional transportation services are part of the gas utility's monopoly service, these revenues should be treated no differently than any other regulated revenue.

Board Findings

With respect to the storage related accounts (179-70 and 179-72), most intervenors were of the view that the resolution of this issue depends on whether the Board refrains from regulating ex-franchise storage. The Board has determined that it will refrain from regulating rates in this area. However, we have also concluded that there should continue to be a sharing of the premium arising from short-term storage transactions, for both Union and Enbridge, and that there should be a phase-out of the sharing of the premium arising from Union's long-term storage transactions. Accordingly, the Board concludes that the accounts should be maintained for now. As outlined in sections 7.1 and 7.3, we have determined that the gas incentive ratemaking process is the best place in which to determine the precise implementation of these findings.

With respect to the transmission-related accounts, there was general acknowledgement that the issue related to the structure of the incentive regulation framework and not the issue of storage regulation. Union was concerned that this proceeding would be the only opportunity to deal with its proposal before the introduction of incentive regulation. The Board does not agree. On September 11, 2006, the Board issued a letter indicating its intent to establish a consultation process to use in relation to the development of the gas incentive regulation framework. This process is specifically designed to address issues about the framework prior to the commencement of incentive regulation for natural gas utilities. The Board finds that the proposed elimination of these three transmission-related accounts should be considered as part of a comprehensive review that includes all deferral accounts under an incentive regulation mechanism.

The Board therefore concludes that all of the accounts will be maintained and will be reviewed as part of the process for setting the incentive regulation mechanism for natural gas utilities.

8. OUTSTANDING ENBRIDGE RATES ISSUES (RATES 125 AND 300)

The unresolved issues arising from the Enbridge Settlement Proposal relate specifically to the allocation of implementation costs and migration revenue deficiencies attributable to changes in Rates 125 and 300, and the Rate 125 eligibility criteria.

Early in the proceedings, there were two threshold issues. The first issue was whether the allocation of implementation costs and migration revenue deficiencies should be addressed in this proceeding or Enbridge's next rates proceeding. The Board determined that the issue should be addressed in this proceeding, and that decision was rendered orally on June 27, 2006. The second issue was whether residential customers should be allocated any of the implementation costs or migration revenue deficiencies. The Board rendered its decision orally on July 14, 2006, in which it stated that both the implementation costs and the migration related revenue deficiencies should be recovered from large volume customers as they are the main beneficiaries of these services. (The transcript of the Board's oral decisions on these issues is included at Appendix C.)

The remaining issues before the Board are the following:

- Smoothing of Migration-Related Impacts:
- Rate 125 Eligibility Criteria

8.1 SMOOTHING OF RATE MIGRATION IMPACTS

Enbridge stated that the offering of new services, such as Rate 125 and Rate 300, typically leads to the migration of customers from the existing rates to the new rates, if there is an economic advantage or a reduction in rates, for these customers. This migration typically leads to an increase in the existing rate because the customers who are less costly to serve are often the ones which migrate. Enbridge's initial estimate of the impact of migration related deficiencies was based on the assumption that customers with the largest benefit would migrate away from Rate 115. This would result in a 60% increase in the Rate 115 distribution charges, or a 14% bill impact excluding commodity charges and a 2% bill impact including commodity charges. Enbridge subsequently proposed an approach that aims to mimic the Settlement Proposal, which restricts the initial migration to Rate 300 to 20 customers. The impact of this proposal would be an increase in Rate 115 distribution charge of 38%, which results in a bill impact of 7% excluding commodity charges or 1% including commodity charges.

In order to further limit the impact on Rate 115 customers, Enbridge presented the Board with a rate smoothing proposal that limits the distribution rate impact on Rate 115 customers to 15%. This proposal reflects the migration of the largest customer (TransAlta) and some additional load from Rate 115. As a result of this smoothing, the distribution rate impact on Rates 100, 110 and 115 would be 3%, 2% and 15% respectively. The corresponding bill impacts, excluding commodity costs, are 1%, 0.5% and 2.7%.

IGUA supported Enbridge's rate smoothing proposal. Enbridge stated that it does not have a preference for whether smoothing is used or not, but noted that it is important for the Board to indicate if smoothing should be used, to enable customers to make a well informed decision about whether they want to move to unbundled rates.

Board Findings

The evidence indicates that the migration of customers from an existing rate to a new rate will have rate consequences for the remaining customers in the rate class from which the customer migrates. The Board agrees that from a cost allocation perspective it is appropriate that the remaining customers in the rate class pay the higher average cost resulting from the migration of customers which are less costly serve. However, from a pricing perspective, the Board is mindful of the rate impacts on the remaining customers. The Board concludes that a smoothing of the distribution-related impacts, as proposed by Enbridge, is appropriate. While the precise details of the resulting rates will be determined in the fiscal 2007 rates case, the Board concludes it is appropriate to signal now to all parties that this smoothing will be incorporated.

The Board therefore approves Enbridge's rate smoothing proposal which would limit the distribution rate increase to 15% for Rate 115 and spread the remainder of the migration related deficiencies over Rate 100 and Rate 110 resulting in distribution rate increases for these rates of 3% and 2% respectively.

8.2 RATE 125 ELIGIBILITY CRITERIA

There is agreement amongst all parties that the dedicated service (or "contract demand billing") portion of Rate 125 is to be limited to new customers only, and this is reflected in the Settlement Proposal. This aspect of the service is designed to make utility service competitive against the bypass option for new customers. The parties disagreed on whether the non-dedicated provision of service under Rate 125 is to be limited to new customers.

Enbridge maintained that when the Board first approved Rate 125 there was no distinction between new and existing customers and it was always known that there was a large customer which was eligible to migrate to Rate 125. This customer was subsequently identified in this hearing as TransAlta.

IGUA's position, supported by AMPCO and CME, is that the re-design of Rate 125 should not be treated as an existing rate with a bypass clause. IGUA argued that since there are no existing customers taking service under Rate 125 the Board should treat this as a new rate. APPrO argued that throughout the re-design of Rate 125, the Board has been aware of the likelihood of TransAlta migrating to Rate 125 and the resultant impacts of that migration.

Board Findings

The Board notes that from the time Rate 125 was first developed, TransAlta has been eligible to migrate to this rate. The primary change in the rate in this proceeding was the introduction of a bypass competitive component. TransAlta is not eligible for this aspect of the rate; nor has it sought access to this aspect. The Board concludes that it would be unfair to now deny TransAlta access to Rate 125 service unless there were compelling reasons to do so.

IGUA seeks to limit access to Rate 125 to new customers only. It appears to the Board that this position is driven mostly by a concern for the rate impact on remaining customers resulting from TransAlta's migration. The Board notes that this potential impact has always existed, and we believe that this concern is adequately mitigated by Enbridge's proposed smoothing mechanism which the Board has approved.

Accordingly, the only aspect of Rate 125 that will be restricted to new customers is the billing contract demand feature.

9. CUSTOMER IMPACTS AND IMPLEMENTATION OF BOARD DECISIONS

9.1 CUSTOMER IMPACTS

The Board's decisions in this proceeding will affect the future gas bills of all distribution customers of Union and Enbridge in some fashion over the next few years.

9.1.1 Enbridge

Union storage contracts

Amending the existing storage contracts with Union to include cost-based pricing will have no effect on customers' bills. Enbridge has not yet started to pass through the current higher contract prices to customers so the Board's decision preserves the status quo. When those contracts mature over the period 2008 to 2010, Enbridge will likely procure the needed storage, which is about 18% of what Enbridge currently requires to serve its customers, at market prices. Those prices will depend on market conditions at the time and cannot be predicted. It is likely, however, they will be higher than the cost-based rates Enbridge charges for storage services from its own storage facilities.

Reducing Enbridge's share of the storage-related margins from its Transactional Services business

This reduction, from 25% to 10%, will reduce consumers' bills in the future compared to the status quo. The impact will depend on the amount of margins Enbridge is able to earn, which will depend on future market prices. Based on the level of margins earned by Enbridge in recent years, the impact of this change on a customer's bill is likely to be modest.

9.1.2 Union

Enbridge storage contracts

Amending these contracts to include cost-based pricing will reduce the amount of long-term storage margins Union will earn over the period until the contracts mature (2008 to 2010) and will therefore reduce the share of the margin flowing to ratepayers.

Changing the sharing of short-term storage revenues

The Board has decided that Union should be credited with the portion of short-term storage margins that are deemed to use the "non-utility" space at Union's storage facilities. Union's share of the margin will also include an incentive related to the utility portion of Union's storage assets. Based on the current level of short-term storage margins, this change will result in a small reduction in the margins that are for the benefit of ratepayers.

Phase-out of sharing long-term storage margins

This is the most significant change for Union ratepayers, who currently are credited with 90% of Union's long-term margins. Starting in 2008, the ratepayer share of these margins will decline each year and reach zero by 2011.

9.1.3 Overall Impact

The Board's decisions on the sharing of premiums on storage transactions will have virtually no effect on consumers' bills in 2007. The impact after that cannot be precisely quantified because it will depend on future market prices of storage and the level of margins earned by the utilities on ex-franchise storage sales. The impact on any individual consumer will also depend on the amount of gas they consume in the future.

The total annual gas bill for a typical residential consumer in Enbridge's territory (Rate 1) and in Union's Southwestern Ontario operations area (Rate M2) is in the range of $1,000 to $1,500 depending on the price of natural gas during the year. Assuming (a) that Union and Enbridge are able to earn the same amount on ex-franchise storage sales in the period 2008 through 2010 that they are forecast to earn in 2007, and (b) that gas prices and other delivery charges remain the same, the Board's decisions in this proceeding are likely to increase rates by a small amount – perhaps around 1% on the typical residential consumer's bill by 2011.

9.2 COMPLETION OF THE PROCEEDINGS AND COST AWARDS

As part of this proceeding, new unbundled rates have been approved for Enbridge and they are to be implemented as soon as possible. The Board therefore directs Enbridge to file a draft Rate Order within 15 days of this decision. The draft Rate Order should reflect the findings in this decision.

The Board also directs Union to file a Draft Rate Order reflecting the findings in this decision within 90 days. This should be done in conjunction with Union's filing of amended contracts with Enbridge.

The Board will issue a cost awards decision separately.

9.3 IMPLEMENTATION

The following table summarizes the Board's decisions in this proceeding and outlines next steps. Each item is cross-referenced to the relevant section of this decision.

	Implementation Issue	Regulatory Process	Timing
1.	Continued cost-based rate regulation for most in-franchise storage service (section 5.2.1)	No additional process required	
2.	Amendments to Enbridge's storage contracts with Union (19.9 Bcf) to incorporate cost-based rates (section 5.2.2)	Union to file amended contracts for Board approval	Within 90 days of this decision
3.	Refrain from rate regulation for Union and Enbridge ex-franchise storage services (section 5.2.4) and new storage services (section 5.2.3)	Union and Enbridge to file Draft Rate Orders	Enbridge to file within 15 days. Union to file within 90 days.
4.	Refrain from rate regulation and contract approval for third-party storage operators (section 5.1)	The Board will rescind MHP Canada's and Tribute's Rate Orders	
5.	Refrain from requiring Board approval of storage contracts (section 5.1, 5.2.4)	The Board to rescind Blanket Storage Orders	
6.	Union and Enbridge policies on aggregate excess method and its application (section 6.2.1)	Union and Enbridge to file policies; Board will consider possible generic process.	Within 90 days of this decision
7.	Development of storage allocation methodology (or methodologies) for use in cases where aggregate excess method is inappropriate (section 6.2.2)	Union and Enbridge to file proposals; Union to file long-term T1 contracts; Board will consider possible generic process.	Within 90 days of this decision

	Implementation Issue	Regulatory Process	Timing
8.	Extension to City of Kitcheners' contract with Union (section 6.2.4)	Union to amend contract and file with the Board	Within 90 days of this decision
9.	Share of margin on short-term storage transactions for Union to be based on non-utility assets (21%) and incentive related to utility assets (7.9%, that is 10% of 79%) (section 7.1)	Implementation to be determined through gas incentive ratemaking process	Beginning 2008 Rates
10.	Share of margin on short-term storage transactions for Enbridge to based on incentive (10%) (section 7.1)	Implementation through 2007 rates, with follow on implementation through the gas incentive ratemaking process	2007 rates
11.	Phase-out of ratepayer share of margins on Union's long-term storage transactions (section 7.3)	Implementation to be determined through gas incentive ratemaking process	2008 through 2011
12.	Smoothing of rate impacts from migration to Enbridge Rate 125 and Rate 300 (Chapter 8)	Implementation through Enbridge's 2007 rates proceeding	2007 rates
13.	Implementation of Enbridge unbundled rates (section 5.2.3 and Chapter 8)	Enbridge to submit draft Rate Order	Within 15 days of this decision
14.	Development of rules of conduct and reporting related to storage (section 5.4)	Board to initiate process.	

DATED at Toronto November 7, 2006

ORIGINAL SIGNED BY

Gordon Kaiser
Presiding Member and Vice Chair

ORIGINAL SIGNED BY

Cynthia Chaplin
Member

ORIGINAL SIGNED BY

Bill Rupert
Member

APPENDIX A

NATURAL GAS ELECTRICTY INTERFACE REVIEW

DECISION WITH REASONS

BOARD FILE NO. EB-2005-0551

DETAILS OF PROCEEDING

NOVEMBER 7, 2006

APPENDIX A

Details of the Proceeding

The Issues

The Board, in Procedural Order No. 2, set out the following issues for the NGEIR Proceeding:

I. Rates for gas-fired generators (and other qualified customers):

Should the Board order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers)? If the Board does order new rates, should that order contain the following requirements:

1. More frequent nomination windows for distribution, storage and transportation that correspond with the nominations of upstream pipelines that connect to the Ontario gas system.
2. Firm high deliverability service from storage with customer options for 1.2%, 5% and 10% deliverability.
3. Gas storage and distribution offered as discrete services.
4. Inter-franchise movement of gas (i.e., the ability to access services across Ontario, whether to a customer's own account or as a sale to a third-party).
5. Redirection of gas to a different delivery point on short notice (i.e., the ability to redirect or acquire gas on short notice to a different delivery point).
6. The ability to transfer the title of gas in storage (i.e., the title transfer in gas storage is treated as an administrative matter instead of a physical withdrawal or injection of gas).

II. Storage regulation:

Should the Board refrain, in whole or part, from exercising its power to regulate the rates charged for the storage of gas in Ontario? In making this determination, the Board will have regard to a number of considerations, including:

1. Do gas utilities (and/or their affiliates) either collectively or individually have market power in the provision of storage services for all or some categories of customers in Ontario?
2. If gas utilities (and/or their affiliates) do have market power in storage, is it appropriate for them to charge “market rates” for transactional and long-term storage services?
3. If gas utilities (and/or their affiliates) do not have market power, is it in the public interest that all or some customers continue to pay storage rates at cost as opposed to market rates? How should the extra revenue from storage services at market rates be allocated?
4. If the Board determines, based on considerations of market power and the public interest more generally, that some customers should pay for storage services at cost and others should pay for storage services at market prices, how should the line be drawn between the two types of customers and, specifically, should there be a constraining allocation of physical storage facilities to some types of customers based on measures such as aggregate excess or whether customers are considered “in-franchise” or “ex-franchise”? How should the extra revenue from storage services at market rates be allocated?

III. Transportation capacity bidding process and allocation:

Should the Board allow a gas transmitter to charge a premium above costs for gas transmission services and, if so, how should that premium be allocated?

IV. Enbridge rates for large volume customers (Rate 300 Series):

Should the Board consider any other terms and conditions in addition to those outlined in Appendix B [to Procedural Order No. 2 – “Mandatory Evidence to be filed by Enbridge with respect to Rate 300 Series Rates”]?

What should be the maximum waiting period for customers to make the transition to the new Rate 300 series rates?

The Board also moved four issues from Union’s 2007 rates proceeding (EB-2005-0520) to the NGEIR Proceeding. These issues, as set out in Procedural Order No. 3, were:

1. Matters relating to market pricing of storage services;
2. Union’s proposal to eliminate storage and transmission deferral accounts;
3. Union’s proposal to change the blanket storage order; and
4. Power services – M12 service upgrades for power producers.

Technical Conferences

On April 5 and 6, 2006, the Board held a technical conference on the mandatory evidence filed by Enbridge and Union with respect to potential rates for gas-fired generators and other qualified customers (Issue I of this proceeding). At the April 6, 2006 technical conference, Enbridge presented revisions to Rate 125 – Extra Large Firm Transportation Service and proposed a new High Deliverability Storage Service (Rate 316). The proposed rates were presented on a conceptual basis only, and Enbridge took the position that the setting of rates associated with Rate 125 and Rate 316 should only be done in the context of Enbridge’s 2007 rate hearing. The Board did not agree and directed Enbridge to file supplemental evidence to complete the mandatory evidence on the potential rates for gas-fired generators and other qualified customers (Issue I) and added a one-day technical conference on April 27, 2006 on Issues I and IV.

A further technical conference was held on May 16-19, 2006 to provide participants with the opportunity to present their evidence relating to Issues II, III and IV and to allow other participants to obtain further clarification of the evidence.

Settlement Conference

A settlement conference was held for Issues I (rates for gas-fired generators and other qualified customers), III (transportation capacity bidding process and allocation) and IV (Enbridge's Rate 300 series rates). The Board indicated that it would not receive a settlement proposal on Issue II (storage regulation), so a settlement conference was not held in relation to this issue.

Two separate Settlement Proposals were filed with the Board on June 13, 2006. Enbridge submitted a Settlement Proposal for Issues I and IV (the "Enbridge Proposal") and Union submitted a Settlement Proposal for Issues I and III (the "Union Proposal"). A presentation of the Settlement Proposals was made to the Board on June 19, 2006. On July 14, 2006, the Board approved the Enbridge Proposal.[1] On June 27, 2006,[2] the Board approved the Union Proposal.

Proceeding

The oral hearing commenced on June 19, 2006 and concluded on July 20, 2006. Arguments were delivered orally and in writing during August and final reply arguments were heard on September 7, 2006.

[1] Tr. 11, page 130, lines 6-7
[2] Tr. 4, pages 152-153

APPENDIX B

NATURAL GAS ELECTRICTY INTERFACE REVIEW

DECISION WITH REASONS

BOARD FILE NO. EB-2005-0551

PARTICIPANTS AND WITNESSES

NOVEMBER 7, 2006

APPENDIX B

Participants and Witnesses

List of Participants

Board Hearing Team	Donna Campbell Pascale Duguay Laurie Klein
Board Support Team	Kristi Sebalj David Brown Zora Crnojacki Ronald Man Rudra Mukherji
Union Gas Limited	Glenn Leslie Michael Packer Connie Burns
Enbridge Gas Distribution	Fred Cass David Stevens
Aegent Energy Advisors	Valerie Young
Association of Major Power Consumers of Ontario	Mark Rodger Adam White
Association of Power Producers of Ontario	Patrick Moran Richard King David Butters
BP Canada	David Brett Cheryl Worthy
Canadian Association of Petroleum Producers	Nick Schultz
Canadian Manufacturers & Exporters	Brian Dingwall
City of Kitchener	Alick Ryder James Gruenbauer
Competition Bureau	Mark Ronayne

Consumers Council of Canada	Robert Warren Julie Girvan
Coral Energy Canada Inc.	Paul Kerr
Direct Energy Marketing Inc.	Dave Matthews
Enbridge Inc.	Robert J. Howe Bob Craig
Energy Probe Research Foundation	David S. MacIntosh Thomas Adams
EPCOR Utilities Inc.	Elisabeth (Lisa) De Marco Leigh-Anne Palter
Greenfield Energy Centre LP	Patrick Moran John Rosenkranz
Hydro One Networks Inc.	Glen MacDonald
IESO	John M. Rattray George Katsuras
Inco Limited	John LeMay John Butler
Industrial Gas Users Association	Peter Thompson Peter Fournier
London Property Management Association	Randy Aiken
Low Income Energy Network	Malcolm Jackson
Natural Gas Consultant	Jason Stacey
Nexen Marketing Inc.	Debbie White Shannon Young
Market Hub Partners Canada	Laurie Smith Karen Illsey Toby Bishop Jim Redford

Ontario Energy Savings L.P.	Nola L. Ruzycki
Ontario Power Authority	Miriam Heinz Gia DeJulio
Ontario Power Generation Inc.	Barry Green Greg Olsen
Portlands Energy Centre	David Brown Nicolle Butcher John Wolnik
Pristine Power Inc.	Michael Peterson Kevin Gilchrist
School Energy Coalition	John DeVellis Jay Shepherd Brian Cain
Sithe Global Power Goreway ULC Sithe Global Power Southdown ULC	David Brown Duane E. Cramer
Société en Commandite Gaz Métro	Louis-André Leclerc Louis-Charles Ratelle Frederic Morel
TransAlta Cogeneration L.P. and TransAlta Energy Corp.	Sandy O'Connor
TransCanada Energy Ltd.	David Brown Margaret Duzy Jennifer Nichols John Wolnik
TransCanada PipeLines Limited	Bernard Pelletier Patrick Keys Murray Ross
Tribute Resources Inc.	Peter Budd Robert Lockhart
Vulnerable Energy Consumers Coalition	Michael Janigan Roger Higgin James Wightman

Wholesale Gas Service Purchasers Group	William Blake Nick Petruzzella Randy Aiken

Expert Witnesses

The Board Hearing Team presented the following expert witness:

Bruce McConihe	LECG, LLC

Union Gas Limited presented the following expert witnesses:

Bruce Henning	Energy and Environmental Analysis
Michael Sloan	Energy and Environmental Analysis
Richard Schwindt	Simon Fraser University

Enbridge Gas Distribution presented the following expert witnesses:

David McKeon	View Communications Inc.
Richard Smead	Navigant Consulting Ltd.

Market Hub Partners Canada L.P. presented the following expert witness:

John Reed	Concentric Energy Advisors

The Industrial Gas Users Association, Association of Major Power Consumers of Ontario, Consumers Council of Canada, Vulnerable Energy Consumers Coalition, School Energy Coalition, City of Kitchener, Canadian Manufacturers & Exporters, Inc. jointly sponsored the following expert witness:

Mark Stauft	Consultant

The Association of Power Producers of Ontario presented the following expert witnesses:

Robert Cary	Rob Cary & Associates
Michael Nolan	Ontario Power Generation
John Rosenkranz	Consultant
John Wolnik	Elenchus Research Associates

Witnesses by Party

Enbridge Gas Distribution	Jody Sarnovsky Malini Giridhar David Charleson James Grant Anton Kacicnik
Union Gas Limited	Mark Isherwood Mark Kitchen Chris Shorts Steven Poredos Steven Baker Mike Sloan Drew Quigley Mike Broeders
Market Hub Partners Canada	Jim Redford
Board Hearing Team	Ajit Ratra
Société en Commandite Gaz Métro	Jean-Pierre Bélisle Sophie Brochu Frédéric Morel
Association of Power Producers of Ontario	Duane Cramer Brian Kelly
Enbridge Inc.	Robert Craig
City of Kitchener	Dwayne Quinn James Gruenbauer
BP Canada	Cheryl Worthy Stephen Acker
Industrial Gas Users Association Association of Major Power Consumers of Ontario	Peter Fournier Adam White Darren MacDonald John Butler

APPENDIX C

NATURAL GAS ELECTRICTY INTERFACE REVIEW

DECISION WITH REASONS

BOARD FILE NO. EB-2005-0551

DECISION ON ENBRIDGE SETTLEMENT PROPOSAL

NOVEMBER 7, 2006

APPENDIX C
Decision on Enbridge Settlement Proposal

A “threshold issue” was identified in the Enbridge Settlement Proposal. This threshold issue was described by various consumer related intervenors as pertaining to the allocation of the revenue deficiencies and implementation costs associated with Rates 125 and 300 as proposed by Enbridge. Specifically, Consumers Council took the position that any revenue deficiencies and costs associated with these rates should be allocated principally or solely to the large customers who, in Consumer Council’s view, were the drivers behind the changes and the beneficiaries of the changes. Consumer Council also took the position that the question of the allocation of revenue deficiencies and costs associated with the new rates should be addressed within the NGEIR Proceeding. Consumer Council took no position, however, on the substance of the changes to Rates 125 and 300 and agreed that the settlement could proceed as set out in the Settlement Proposal.

IGUA/AMPCO took the position that some portion of the revenue deficiencies and costs should be borne by residential customers, but that the question of the allocation of these should be addressed in the fiscal 2007 Enbridge rates case.

The Board heard oral submissions on the procedural question of where this issue should be addressed: the current proceeding or the 2007 Enbridge rates case. The Board decided that it would hear the issue of the allocation of revenue deficiencies and costs associated with the new Rates 125 and 300 within the NGEIR Proceeding. The relevant excerpt of the NGEIR Proceeding transcript, which contains the Board’s decision on this issue, is provided below for reference.

Decision on Preliminary Threshold Issue
Excerpt from the oral hearing transcript EB-2005-0551,
Volume 4, June 27, 2006, pages 153 line 12 to page 154 line 26.

> The second matter relates to the Enbridge settlement agreement, which we propose to reserve on at this time. The outstanding issue has to do with the

costs of unbundling. This was raised initially by Mr. Warren and Mr. Thompson on June 20th. Mr. Warren's submissions are at page 17 of that transcript to page 22. Mr. Thompson's are at page 23 to 36.

Essentially, Mr. Warren, on behalf of the Consumers Council, argues that the matter should be decided in this case. Mr. Thompson on behalf of IGUA takes the view that the matter should be decided in the 2007 Enbridge rate case. This relates to how certain costs and revenue deficiencies should be allocated between customer classes resulting from the proposed changes to rate 125, 300 and 115 categories.

Mr. Warren essentially argues that it would be very hard for us to make a decision on the settlement agreement without resolving this issue within the context of this case. The Board agrees with that proposition.

Mr. Thompson's argument was somewhat different. He was concerned that the initial data and information, which had been provided with respect to these rates late in the day, was altered in a significant fashion. He indicated in his submissions that the company was initially forecasting an impact on rate 100 of about 6.7 percent, rate 110 of 4.5 and rate 115 of zero. But through subsequent interrogatories, it turned out that the impact on rate 115 was about 60 percent. Accordingly, he felt that there hadn't been adequate notice to that class of customers.

He also believed that if the matter were deferred, the Board would have the advantage of further and better information.
This Panel has concluded we can hear the matter within this case. As indicated, there will be sufficient information. We will, however, direct Enbridge to file a notice to these customers. A draft notice has been prepared and that can be worked out in detail with Board counsel. Also, we are setting a date to hear this evidence. Correct me, is that July 14th?

MS. SEBALJ: Yes, it is. It's July 14th. It will be the first thing on the agenda.

MR. KAISER: All right. That completes the Board's ruling with respect to those two matters.

Upon delivering this preliminary decision on the “Threshold Issue”, The Board directed Enbridge to serve notice to Enbridge’s existing Rate 100, 110 and 115 customers given the potential magnitude of the impact on these customers.

On July 14, 2006, Enbridge put forward a witness panel to address the cost and revenue deficiency allocation issue. That witness panel was cross-examined by a number of parties and oral submissions were made by several parties. The Board issued its decision orally and found that the evidence had established that the drivers for the Rates 125 and 300 service were the large volume customers and that the large volume customers are also the main beneficiaries of these services. The Board found that it would be inappropriate for the residential customers to bear any portion of the revenue deficiencies or costs associated with the implementation of the new Rates 125 and 300; rather all costs are to be borne by the large volume customers.

Although Enbridge had put forward a proposal with respect to smoothing that would mitigate the cost consequences or rate impacts on Rate 115 of the implementation of the new Rates 125 and 300, the Board found that it did not need to render a decision on that aspect of the issue at that time. Having decided the threshold issue, the Board at the same time approved the Enbridge Settlement Proposal. [1]

The relevant excerpt of the NGEIR Proceeding transcript, which contains the Board's decision on the substantive "Threshold Issue" of who would bear the revenue deficiencies or costs associated with the implementation of Enbridge's new proposed rates, is also provided below for reference.

Under the Settlement Proposal, IGUA and CME reserved their right to argue that the non-dedicated service portion of Rate 125 ought to be limited to new loads only, such that existing customers would not be able to switch to this rate. This issue was addressed by the parties by way of argument and as such, was not part of the Board approved Enbridge Settlement Proposal. The Board's findings on this issue can be found in Chapter 8.

Decision on Threshold Issue
Excerpt from the oral hearing transcript EB-2005-0551,
Volume 4, June 27, 2006, pages 152 line 1 to page 153 line 11.

> MR. KAISER: At the outset of this proceeding, a motion was brought jointly by the Consumers' Council and IGUA, raising a threshold issue that the parties wish

[1] Tr. 11, page 130, lines 6-7

to have decided before the Board dealt with the approval or non-approval of the settlement agreement with respect to Enbridge in this matter.

And that was set out at page 8 of 34 of the settlement agreement, which was filed on June 13th. And that's Exhibit S, tab 1, schedule 1, which stated:

> A threshold issue which the Board is asked to consider at the outset of the oral hearing is whether the changes to Rates 125 and 300 should be made only after the issue pertaining to the allocation of implementation costs and migration revenue deficiencies has been decided; or whether changes to Rates 125 and 300 can be made now, on an entirely without-prejudicial basis to all parties, including the establishment of the appropriate deferral accounts with the consideration and determination of all matters relevant to the recovery of the costs and revenue deficiencies in the Enbridge Gas Distribution 2007 rate case.

And as you're aware, we decided that this matter should not be deferred to the 2007 rate case, and we agreed to decide that threshold issue, which we're now prepared to deal with.

The issue in the simplest terms is whether these costs, as described, the implementation costs and the migration costs, should be borne entirely by the large volume customers or whether some portion of them should be borne by the residential customers. AMPCO, IGUA, and CME take the position that some portion should be borne by the residential customers.

Enbridge, supported by the Consumers' Council and APPrO, take the position that the costs should be borne entirely be to the large volume customers. Board Counsel takes no position on the matter.

With respect to the implementation costs, these are set out most recently in the letter of July 13th, which was filed with the Board today and was addressed in argument today. And those relate to the costs of a manual system, it being the wish of the parties that they wish to take up service earlier rather than later, and therefore, in order to accommodate that, it will be necessary to develop a manual system prior to ultimately implementing an automatic system.

And those costs, as I say, are laid out, including start-up one-time costs ranging from $600,000 to $875,000, and then ongoing operating costs, annual costs, ranging from $300,000 to $825,000.

With respect to the latter, we're now told that a significant portion of that relates to the cost of nomination windows, and those costs will be born specifically by those parties that take advantage of that service.

As a general proposition, the Board is of the view that the record has established that the drivers for this service, that is, the demanders of this service, are the large volume customers. Mr. Warren has taken us through a litany of cases and arguments in previous proceedings where various parties were demanding of the utility to produce these unbundled services which are at issue in this proceeding, and complaining about the delay with respect to their lack of development.

And it is equally clear that those customers are the main beneficiaries of these services.

Accordingly the Board is of the view that it would be inappropriate for the residential customers to bear any portion of these costs.

Reference was made to a Union case which dealt with unbundled service. That is the decision of the Board of July 31st, 2002, which dealt with unbundling services and rates for small-volume customers. The Board would note that that did relate to small-volume customers. Those services had a particularly broad-based demand which is not the situation in this case. These are much narrower services, clearly designed to benefit the large volume customers, which was not the case with respect to the decision of July 31st, 2002.

That, then, brings us to the second aspect of the cost, which is the cost consequences of the movement of certain customers from Rate 115 to Rate 125 and Rate 300. We have a forecast of the number of customers who might move, and, in fact, the billing system is being designed to handle a maximum of 20. The proposal put forward by Enbridge is that ten of those would be the ten largest customers and the other ten would be chosen by lottery.

That yields certain cost consequences which are set out in the proposal that Enbridge has filed, which is that, assuming no smoothing, the distribution impacts on the Rate 100, 110, and 115 customers would be 2 percent, 1 percent, and 38 percent respectively. Those figures are somewhat modified from earlier figures presented in this proceeding.

There has been a proposal put forward by Enbridge with respect to smoothing that would cap, if you will, the cost consequences or rate increase impacts on Rate 115 and spread it over the other groups. That's dealt with in the Enbridge proposal.

The Board is of the view that we do not at this point need to consider whether the smoothing process is appropriate or not. We are of the view, however, that the cost consequences of these rates are relatively low, and I use the word "relatively" advisedly. The Enbridge proposal says the corresponding bill impacts, excluding commodity costs, on Rates 100, 110, and 115 would be .6 percent, .2 percent, and 7 percent respectively. That's without the smoothing. And with smoothing it becomes 1 percent, .5 percent, and 2.7 percent respectively. As stated, we are not making a decision with respect to the smoothing at this point. It's our understanding that there will be further

submissions made in this proceeding with respect to that aspect.
In any event, our position with respect to this category of the costs is the same as with the first, that is to say that none of the costs should be appropriately borne by the small residential customers. Instead, they should all be borne by the large volume customers. Those are the parties that requested this service. And those are the parties that will benefit from this service.

Subject to any questions, that completes the Board's ruling.

Ms. Chaplin corrects me. I think I used the term "large industrial." Substitute "large volume customers" because there are, obviously, customer categories within there that are not industrials, namely, the power generators and others.

APPENDIX D

NATURAL GAS ELECTRICTY INTERFACE REVIEW

DECISION WITH REASONS

BOARD FILE NO. EB-2005-0551

ENBRIDGE SETTLEMENT PROPOSAL

NOVEMBER 7, 2006

SETTLEMENT PROPOSAL
FOR ISSUES RELATED TO
ENBRIDGE GAS DISTRIBUTION INC.
IN THE NGEIR PROCEEDING

ISSUES I and IV

June 13, 2006

TABLE OF CONTENTS

INTRODUCTION AND CONTEXT

This Settlement Proposal is filed with the Ontario Energy Board (the “Board") in connection with the Board’s proceeding, commenced on its own motion, regarding natural gas electricity interface and storage regulation issues. This Settlement Proposal addresses issues in the proceeding that relate to Enbridge Gas Distribution Inc. A separate Settlement Proposal is being filed in relation to Union Gas Limited.

A Settlement Conference for this proceeding was conducted May 29, 30 and 31 and June 1, 2, 5, 6, 12 and 13, 2006 in accordance with the *Ontario Energy Board Rules of Practice and Procedure* (the “Rules”) and the Board's *Settlement Conference Guidelines* ("Settlement Guidelines"). This Settlement Proposal arises from the Settlement Conference.

Enbridge Gas Distribution Inc. (“Enbridge Gas Distribution” or the “Company”), Union Gas Limited (“Union”) and the following intervenors (collectively, the "parties"), as well as Ontario Energy Board hearing staff (“Board Staff”), participated in the Settlement Conference:

Aegent Energy Advisors Inc. (“Aegent”);
Association of Major Power Consumers in Ontario (“AMPCO”);
Association of Power Producers of Ontario (“APPrO”);
Canadian Manufacturers & Exporters ("CME");
City of Kitchener (“Kitchener”);
Consumers Council of Canada ("CCC");
Direct Energy Marketing Inc. (“Direct Energy”);
Energy Probe Research Foundation (“Energy Probe”);
Greenfield Energy Centre LP ("GEC");
Independent Electricity System Operator (“IESO”);
Industrial Gas Users Association ("IGUA");
Jason F. Stacey;
London Property Management Association (“LMPA”);
Low Income Energy Network (“LIEN”);
Ontario Power Authority (“OPA”);
Ontario Power Generation Inc. (“OPG”);
Portlands Energy Centre (“PEC”);
Sithe Global Power Goreway ULC (“Sithe”)
School Energy Coalition ("Schools");
Transalta Energy Corp. (“TransAlta”);
TransCanada Energy Ltd. (“TCE”);
TransCanada PipeLines Limited ("TCPL"); and,
Vulnerable Energy Consumers Coalition ("VECC").
Wholesale Gas Service Purchasers Group (“WPSPG”);

The Settlement Proposal deals with aspects of Issues I and IV listed at Appendix C to the Board's Procedural Order #2, dated February 28, 2006 (the "Issues List"). The Board has indicated that it does not expect any settlement proposal related to Issue II (storage regulation), and Issue III (transportation capacity) relates solely to Union. Accordingly, neither of those issues is addressed in this document.

In the Issues List, the Board set out the following in respect of Issue I:

<u>I. Rates for gas-fired generators (and other qualified customers):</u>

> Should the Board order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers)? If the Board does order new rates, should that order contain the following requirements:
>
> 1. More frequent nomination windows for distribution, storage and transportation that correspond with the nominations of upstream pipelines that connect to the Ontario gas system.
> 2. Firm high deliverability service from storage with customer options for 1.2%, 5% and 10% deliverability.
> 3. Gas storage and distribution offered as discrete services.
> 4. Inter-franchise movement of gas (i.e., the ability to access services across Ontario, whether to a customer's own account or as a sale to a third party).
> 5. Redirection of gas to a different delivery point on short notice (i.e., the ability to redirect or acquire gas on short notice to a different delivery point).
> 6. The ability to transfer the title of gas in storage (i.e., the title transfer in gas storage is treated as an administrative matter instead of a physical withdrawal or injection of gas).

This Settlement Proposal addresses items 1, 2, 3, 4, 5 and 6 from the above list. Items 1 and 3 are addressed in a section titled "Rate 125 – extra large volume firm distribution service", which sets out the proposed agreement that has been reached between parties in respect of the Company's proposed delivery service. Items 4, 5 and 6 are addressed in separate sections related to each of these proposed services. A separate section, related to allocation of base level deliverability storage (1.2%) for gas fired generators and similar customers, is also attached at section 1.5. A final section, related to the Company's Rate 316 proposal is also attached. There is no settlement related to firm high deliverability storage at 5% or 10% deliverability.

In the Issues List, the Board set out the following in respect of Issue IV:

<u>IV. Enbridge rates for large volume customers (Rate 300 Series):</u>

Should the Board consider any other terms and conditions in addition to those outlined in Appendix B, namely:

1. combined multi-facility delivery, storage and load balancing options;

2. flexibility in delivery point, minimum annual volumes, daily delivery obligations, provision of fuel, and choice between bundled and unbundled services;

3. term differentiated rates.

What should be the maximum waiting period for customers to make the transition to the new Rate 300 series rates?

This Settlement Proposal addresses these matters in a section titled "Rate 300 Series", which relates to Enbridge Gas Distribution's proposed unbundled delivery and load balancing (Rate 300) and storage (Rate 315) offerings.

At the outset of this Settlement Proposal, a threshold issue about the allocation of costs and revenue deficiencies associated with the Company's proposals for the redesigned Rates 125 and 300 is set out. This threshold issue bears on the position that certain parties, CCC, VECC, SEC, LIEN, LMPA, WGSPG and Energy Probe, take on many of the otherwise settled issues in this Settlement Proposal.

Each matter described in this Settlement Proposal falls within one of the following three categories:

1. an issue for which there is complete settlement, because Enbridge Gas Distribution and all of the other parties who discussed the issue either agree with the settlement or take no position,

2. an issue for which there is partial settlement, agreed to by Enbridge Gas Distribution and a majority of parties but one or more parties do not agree with the settlement,

3. an issue for which there is no settlement.

The description of each issue assumes that all parties participated in the negotiation of the issue, unless specifically noted otherwise. Board Staff takes no position on any issue and, as a result, is not a party to the Settlement Proposal.

It is acknowledged and agreed that none of the completely settled provisions of this Settlement Proposal is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2005-0551, accept the completely settled provisions of the Settlement Proposal in their entirety, there is no Settlement Proposal (unless the parties agree that any portion of the Settlement Proposal that the Board does accept may continue as a valid Settlement Proposal).

It is further acknowledged and agreed that parties will not withdraw from this Settlement Proposal under any circumstances except as provided under Rule 32.05 of the Rules.

For greater certainty, the parties further acknowledge and agree that these conditions apply to settled issues in respect of which they are shown as taking no position.

It is also acknowledged and agreed that this Settlement Proposal is without prejudice to parties re-examining these issues in any other proceeding, except where a party's rights to re-examine an issue have been specifically limited in 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 Settlement Proposal.

The Settlement Proposal describes the agreements reached on the completely settled and partially settled issues; identifies the parties who agree and who disagree with each settlement, or alternatively who take no position on the settled issue; and provides a direct link between each settlement and the supporting evidence in the record to date. In accordance with paragraph 7 of Procedural Order No. 2, this Settlement Proposal also contains a discussion of the evidence supporting each aspect of the proposed settlement.

Best efforts have been made to identify all of the evidence that relates to each issue. The supporting evidence for each issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit A, Tab 8, Schedule 1 is referred to as A-8-1. A concise description of the content of each exhibit is also provided. Additionally, references are included to the transcripts from the Technical Conferences held in this proceeding. Those Technical Conferences have afforded parties more than three full days of time to ask questions and have the Company clarify and explain its position and evidence. The identification and listing of the evidence that relates to each issue is provided to assist the Board. The identification and listing of the evidence that relates to each issue is not intended to limit any party who wishes to assert that other evidence is relevant to a particular issue.

THRESHOLD ISSUE

1. Enbridge Gas Distribution proposes to redesign Rates 125 and 300. The Company's proposals have been made at the request of the Board and certain parties. All parties agree that the Company should be entitled to recover all revenue deficiencies and reasonably incurred costs caused by the redesigned Rates 125 and 300.

2. Enbridge Gas Distribution proposes that the costs and revenue deficiencies attributable to the changes in Rates 125 and 300 should be recovered from large volume customers. The Company will continue to adhere to the principle that costs must be allocated fairly between customer classes, based on cost causality.

3. The costs and revenue deficiencies are in the following categories:

(i) The migration revenue deficiency associated with Rate 125;

(ii) The costs of the manual implementation of Rates 125 and 300;

(iii) The costs of implementing an automated solution for Rates 125 and 300;

(iv) The migration revenue deficiency for Rate 300.

4. CCC, VECC, SEC, LIEN, LMPA, WGSPG and Energy Probe believe that the implementation costs and revenue deficiencies should not be allocated to residential or general service customers because the costs were not incurred on their behalf and because they do not benefit from the proposed changes.

5. CCC, VECC, SEC, LIEN, LMPA, WGSPG and Energy Probe believe that the changes to Rates 125 and 300 must not be made, and costs or revenue deficiencies incurred must not be recorded, until the Board has determined how the costs and revenue deficiencies should be allocated to ratepayers. They believe that determination must be made in this proceeding.

6. IGUA, AMPCO and CME believe that a portion of the costs and revenue deficiencies, which they believe were incurred to make Enbridge Gas Distribution's system more robust against bypass, and some costs incurred to redesign the Company's rates, should be allocated to all customer classes.

7. IGUA, AMPCO and CME believe that the Board's determination of the extent to which customer classes, other than large volume customer classes, should be allocated any portion of the costs and revenue deficiencies should take place in Enbridge Gas Distribution's 2007 rates case when the forecasts of such costs and revenue deficiencies

and their impacts on customer classes will be more current and more appropriately scrutinized.

8. The threshold issue which the Board is asked to consider at the outset of the oral hearing is whether changes to Rates 125 and 300 should be made only after the issue pertaining to the allocation of implementation costs and migration revenue deficiencies has been decided, or whether changes to Rates 125 and 300 can be made now on an entirely without prejudice basis to all parties, including the establishment of the appropriate deferral accounts, with the consideration and determination of all matters relevant to the recovery of the costs and revenue deficiencies to be made in Enbridge Gas Distribution's 2007 rates case.

9. In the event that the Board indicates that it will decide allocation issues in this proceeding, then, on the Rates 125 and 300 issues, CCC, VECC, SEC, LIEN, LMPA, WGSPG and Energy Probe will pursue cross-examination of Company witnesses only on issues of costs and benefits related to the proposed Rates 125, 300 and 315.

1. RATES FOR GAS FIRED GENERATORS

Parties have considered Enbridge Gas Distribution's proposal for Rate 125, which is the distribution and limited balancing service to be offered to gas fired generators, and to other large volume customers. This redesigned rate offering was prepared by the Company in response to the perceived needs of gas fired generators, and is also intended to respond to the service attributes identified as being important by the Board in the Notice of Proceeding in this matter.

Parties have considered the Company's proposals for additional services that could be offered to customers, as set out at items 4, 5 and 6 of Issue I in this proceeding. These are addressed in separate subsections of this document.

Parties have also agreed upon a storage allocation methodology for base level deliverability storage for gas fired generators. This agreement is set out in subsection 1.5 below.

Finally, Rate 316, which is not a settled issue, is addressed below in subsection 1.6.

1.1 RATE 125 – EXTRA LARGE VOLUME FIRM DISTRIBUTION SERVICE

PARTIAL SETTLEMENT

Leading up to, and as part of this proceeding, Enbridge Gas Distribution has worked with gas fired generators and other customer groups to evaluate, understand and respond to the unique service needs anticipated by gas fired generators. As noted by the Board in its Notice of Proceeding (December 29, 2005), and as noted by APPrO in its prefiled evidence, gas fired generators require services that are flexible, responsive and cost-effective. (APPrO prefiled evidence, pp1-2) At the same time, Enbridge Gas Distribution has indicated that its aim in developing such services is to ensure existing customers are not unduly burdened or impacted by the introduction of new services for gas fired generators. (April 6, 2006, Tr. 193)

Through this proceeding, Enbridge Gas Distribution has developed proposed or modified rates for distribution service to power generators: Rate 125 - Extra Large Firm Transportation Service. As outlined in the Company's evidence, these service offerings are the outcome of extensive discussions with power generation customers, and are consistent with generally accepted rate principles, operational constraints, the Board's Procedural Orders in this proceeding, and the assumptions regarding services availability from upstream providers. (Enbridge Gas Distribution evidence: C-1-1, p. 1)

The Company has filed extensive written evidence about the proposed Rate 125, and has answered questions from all interested parties about this proposed Rate over the course of two days of Technical Conference (April 6 and 27, 2006). The Company's specific proposals for Rate 125, along with a discussion of the pricing for aspects of the proposed Rate, are set out in its prefiled evidence at C-1-1 (Overview), C-2-1 (Rate 125), C-2-3 (Rate 125 – Draft Rate Schedule) and C-2-4 (Rate 125 – Derivation of Charges). Certain of the undertaking responses filed by the Company also relate to the proposed Rate 125.

The Company has included in its evidence (C-2-3, p. 3) and Technical Conference testimony (April 16, 2006, Tr. 212-215), discussion about the termination rights that exist in the Rate 125 Rate Schedule to protect the reliability and safety of the gas system. This could include shut off of gas supply to the plant or flow control protections. (April 16, 2006, Tr. 212)

Evidence about the distribution and balancing service needs of gas fired generators, prepared by APPrO (APPrO evidence: pp. 1-44; 47-52; and 60-61), and about the new FT-SN and SNB transportation and balancing services proposed by TCPL for gas fired generators and others (TCPL Evidence, Section 2.2 and Appendix IB), has also been filed in this proceeding and addressed through Technical Conference on May 16 and 17, 2006.

Based upon the evidence in this proceeding, and discussions at the Settlement Conference, most parties have agreed to a resolution of most of the issues related to the Company's proposed Rate 125, as set out below.

Depending upon the determination of the Threshold Issue set out above, certain parties (CCC, VECC, LIEN, SEC, LMPA, WGSPG and Energy Probe) do not support the settlement of issues related to the Company's proposed Rate 125. Specifically, if the Board determines, in response to the Threshold Issue, that any portion of the implementation costs and revenue deficiencies are to be allocated to residential or general service customers, then those parties (CCC, VECC, LIEN, SEC, LMPA, WGSPG and Energy Probe) do not agree to any of the proposed changes to Rate 125.

Except as noted in the following paragraphs, which describe the consensus position of all other participating parties on matters discussed at the Settlement Conference, all other parties accept the Company's proposals for its redesigned Rate 125 and agree that the Company will develop for consideration and approval by all parties a Rate Schedule for Rate 125 which incorporates the Company's proposals, as modified by the items set out in the following subparagraphs.

It is the Company's expectation and belief that the Rate 125 proposals accepted in this proceeding will not have any adverse impact on the quality of or access to the utility's existing services. Based upon the current information available to the Company, and the

Company's best estimates, the only rate impacts of the Rate 125 proposals on other customers of the Company are described below at subparagraphs (n) to (r). The rates set out for Rate 125 are set on the basis of the Company's F2006 cost of service costs and, to the extent that relevant costs change in the Company's F2007 rate case, then the rates set out below and in the Company's draft Rate Schedule may also change.

a) At locations where Enbridge Gas Distribution interconnects with Union, Enbridge Gas Distribution will accept nomination changes at the thirteen nomination windows agreed upon between Union and APPrO, with changes becoming effective two hours later. At locations where Enbridge Gas Distribution interconnects with TCPL, and where TCPL has contracted with a shipper for FT-SN service, the Company will also accept and accommodate flow rate nominations at up to 96 nomination windows each day (as proposed by TCPL as part of its planned FT-SN service in TCPL's application to the National Energy Board ("NEB")), assuming that these nomination windows are approved by the NEB. All parties acknowledge and agree that Enbridge Gas Distribution's ability to implement these additional nomination windows is contingent on the customer's use of the nomination windows being offered by and available from upstream transporters (Union, TCPL etc.). To the extent that no hourly balancing requirements are imposed on the Company by upstream transporters, Enbridge Gas Distribution will not impose any hourly balancing requirements itself. The service will be available when additional nomination windows are made available by upstream transporters, but will not be made available until the earlier of the date that the Company's F2007 rates are approved and implemented or the first day of the month following the date that is 12 months after the Board issues its decision or issues approval of this Settlement Agreement, whichever occurs first, in this proceeding in respect of the distribution services described in this Section 1.1.

b) In order to allow customers to take advantage of the redesigned Rate 125, the Company will permit migrating customers to terminate their bundled rate contracts early, subject to the customers having to true up any imbalances in their existing contracts on termination.

c) Enbridge Gas Distribution's proposed redesigned Rate 125 distribution service, like the current Rate 125, will be available on a firm, all-day basis on the earlier of the date that the Company's F2007 rates are approved and implemented or the first day of the month following the date that is 12 months after the Board issues its decision or issues approval of this Settlement Agreement, whichever occurs first, in this proceeding in respect of the distribution services described in this Section 1.1.

d) In-franchise generators that subscribe for Rate 125 service will provide the utility with a day ahead non-binding hourly gas consumption forecast and will use reasonable efforts to communicate changes from that forecast to assist the Company in managing its system.

e) Enbridge Gas Distribution will permit the pooling of Rate 125 contracts for legally related customers who meet the *Business Corporations Act* (Ontario) (“OBCA”) definition of “affiliates” to allow for the management of those contracts by a single manager. The single manager will be jointly liable with the individual customers for all of their obligations under the contracts, while the individual customers will remain severally liable for all of their obligations under their own contracts. Customers will not be permitted to change rate classes as a result of contract pooling.

f) Enbridge Gas Distribution will implement, at the same time as its new F2007 rates become effective, an informational posting on daily basis containing information about capacity constraints within the Company’s distribution system.

g) The Company will change its cumulative imbalance fee charge from that set out in the draft Rate 125 Rate Schedule (1.895 cents/m^3) to a lower amount (1.004 cents/m^3). This fee is directed to ensuring that Enbridge Gas Distribution recovers its costs associated with the load balancing service component of Rate 125. The reduction in the fee is attributable to an increase in the annual load balancing volumes assumed in the derivation of the fee for incremental storage deliverability. (Exhibit C, Tab 2, Schedule 4, Appendix A, Line 7.0)

h) The Company will amend the description of “Operational Flow Order” found in the draft Rate 125 Rate Schedule (C-2-3, p. 5), so that the second sentence reads “Enbridge Gas Distribution, acting reasonably, may call for an OFO in the following circumstances:”.

i) Enbridge Gas Distribution, in consultation with interested stakeholders, will review its Rate 125 Rate Schedule with a view to clarifying the meaning and application of the notion of “Billing Contract Demand”. The updated Rate 125 Rate Schedule will be filed with the Board at the time of the presentation of the Settlement Proposal.

j) Enbridge Gas Distribution intends to make its appropriate distribution services available to any of its customers who subscribe for whatever form of TCPL’s FT-SN and SNB service is approved by the NEB. In other words, the Company intends to permit customers taking those TCPL services to also take the Company’s appropriate distribution service. The Company notes, however, that its rate schedules may have to be amended to ensure that system integrity and customer service are maintained. For example, as discussed in its Reply Evidence (F-1-1, pp. 3-6), the Company does not believe that it can offer Rate 125 load balancing service to direct connect FT-SN customers, given the way that the FT-SN service is currently proposed.

k) Enbridge Gas Distribution, Union and APPrO agree to convene an Industry Task Force, along with any other interested parties, and will invite all service providers interconnecting with Enbridge Gas Distribution and/or Union. The purpose of the Industry Task Force is to investigate and develop, where feasible, appropriate arrangements for services that would enable Enbridge Gas Distribution and Union to accept nomination changes each hour throughout the day (on a firm/reserved capacity basis) with changes becoming effective two hours later. The Industry Task Force will hold two meetings by September 30, 2006. Enbridge Gas Distribution, Union and APPrO agree to work co-operatively and diligently to investigate and develop, where feasible, appropriate arrangements.

l) Parties recognize that some operating experience with the new Rate 125 and the other rates and services being developed through this proceeding (Rates 300, 315 and 316) is needed before it can be determined whether further modifications to the services and associated rates schedules should be proposed. Parties agree that, once sufficient operating experience has been gained, and in any event no later than March 31, 2009, interested customer groups and Enbridge Gas Distribution will convene to evaluate and discuss the experience and success of the services offered as a result of this proceeding. At that time, any party may propose further modifications to the rate schedules.

m) The Company will incur administrative and staffing costs (estimated at between $250,000 and $750,000 per year, depending upon the number of customers) associated with offering the additional nomination windows described above in subparagraph (a). The Company intends to recover these costs from the parties using the additional nomination windows.

n) As set out at B-3-3, and C-2-4, page 1, the Company's proposed automated solution to support the offering and operation of unbundled rates and services will be used for all unbundled rates (Rates 125, 300, 315 and 316). The Company proposes to recover the costs of this automated solution from all large volume customers in the form of an increased customer charge. The question of when, and how, issues pertaining to the allocation of implementation costs and migration revenue deficiencies should be determined is the subject of the Threshold Issue set out above.

o) If Rate 125 is not confined to new loads only, parties agree that in Enbridge Gas Distribution's F2007 rate case, the Company will present a forecast of migration to the new Rate 125, with the impact of that migration on the Company's distribution revenue and the rates of other applicable customer classes to be determined by the Board in that proceeding.

p) Parties agree that they will support the Company's request in its F2007 rate case for an Unbundled Rates Customer Migration Variance Account, which will capture the revenue consequences of actual customer migration being different from the revenue consequences of the forecast migration for the new unbundled rates (Rates 125, 300, 315 and 316). The pivot point for the variance account will be the revenue impact of the forecast of migration to new rates, such that if the actual revenue impact is smaller than forecast, there will be a refund to customers in applicable rate classes, and if the actual impact is larger than forecast, additional amounts will have to be collected from customers in applicable rate classes. Parties agree that they will support the clearing of this variance account in this manner at the appropriate time. The question of when, and how, the issues pertaining to the allocation of implementation costs and migration revenue deficiencies should be determined is the subject of the Threshold Issue set out above.

q) Under Enbridge Gas Distribution's proposal, Rate 125 applies to existing and new firm loads greater than of 600,000 m^3 per day. The forecast migration of one existing customer (who has qualified for the rate but has not chosen to migrate to Rate 125 over the past several years) would result in a distribution revenue shortfall to the Company of approximately $1 million. The forecast migration of up to an additional 20 customers to Rate 300 would result in a distribution revenue shortfall to the Company in the range of $400,000 - $700,000. If these migration revenue deficiencies are allocated to each of the large volume rate bundled rate classes under which the migrating customers were previously served, then the estimated distribution rate impacts on these rate classes are as follows:

(i) From the migration of the one customer to Rate 125

Rate 100 – 0%
Rate 110 – 0%
Rate 115 – 12%

(ii) From the migration of the 20 customers to Rate 300

Rate 100 – 3%
Rate 110 – 0%
Rate 115 – 48%

In order to keep all options open for mitigating the potentially adverse rate impacts for Rate 115, IGUA, AMPCO and CME reserve their right to request that the Board limit the availability of Rate 125 to new loads only.

r) All parties accept the proposed threshold for Rate 125 of 600,000 m^3 per day. IGUA, AMPCO and CME's acceptance is on condition that they can request the Board to limit the availability of Rate 125 service to new loads only.

Participating Parties: All parties participated in the negotiation and settlement of this issue, except IESO, Direct Energy, Jason Stacey, OPA, Aegent and Kitchener.

Approval: All participating parties accept and agree with the proposed settlement of this issue, except for: (i) CCC, VECC, LIEN, SEC, LMPA, WGSPG and Energy Probe, who do not accept the foregoing if any portion of the implementation costs and revenue deficiencies is to be allocated to residential or general service customers; and (ii) IGUA, AMPCO and CME, whose acceptance is on condition that they can request the Board to limit the availability of Rate 125 service to new loads only. =

Evidence: The evidence in relation to this issue includes the following:

Enbridge Gas Distribution Evidence

A-1-1 Overview and Background
B-1-1 Current Experience
B-2-1 Operational Characteristics and Needs of Power Generation Customers
B-3-1 Operational Characteristics and Issues: Load Balancing
B-3-3 Operational Characteristics, Issues and Proposed Solutions: Rate Implementation
B-4-1 Rate Design Principles and Approaches
C-1-1 Overview of Rate 125
C-2-1 Rate 125
C-2-2 Proposed Tariff for Rate 125
C-2-3 Rate 125 – Draft Rate Schedule
C-2-3 Rate 125 – Derivation of Charges
F-1-1 Reply Evidence – Load Balancing
F-2-1 Response to APPrO evidence (Rates 125 and 316)

APPrO Evidence

Prefiled Evidence of APPrO pp. 1-44; 47-52; and 60-61

TCPL Evidence

Section 2.2 Proposed New Services for Gas Fired Generators
Appendix 1B TransCanada's Application to the NEB for Approval of FT-SN and SNB

Technical Conference Evidence

April 6, 2006	Tr. 38-43, 46-48, 61-76, 91-98, 116-138, 142-153, 155-173, 199-203, 209-215, 218-224 and 240-244 (Enbridge Gas Distribution)
April 27, 2006	Tr. 19-41, 64-85, 93-95, 109-143 and 182-186 (Enbridge Gas Distribution)
May 16, 2006	Tr. 75-125; 161-175 (TCPL) Tr. 191-195; 209-210 and 226-235 (APPrO)
May 17, 2006	Tr. 28-38, 56-65, 86-96 (APPrO) Tr. 99-116 (IGUA)

Undertakings

Enbridge Gas Distribution Undertaking #s 1, 2, 6 -9, 11, 15-18, 24, 26-28, 30, 33-38, 44 and 45

1.2 INTERFRANCHISE MOVEMENT OF GAS

COMPLETE SETTLEMENT

Item 4 in the Board's Issues List relating to rates for gas fired generators and other qualified customers asked whether new rates for these customers should include inter-franchise movement of gas. Inter-franchise movement of gas is the ability for direct purchase customers to transfer gas that they have delivered to one utility to another utility in a seamless manner. (Enbridge Gas Distribution evidence: C-4-1, p. 1)

In response, the Company filed evidence proposing that an Enhanced Title Transfer ("ETT") service be introduced to the suite of balancing services made available by Enbridge Gas Distribution. The availability of this service would be dependent on a comparable service offering being made available by the utility whose franchise area the customer wants to transfer the gas into. (Enbridge Gas Distribution evidence: C-4-1, p. 1). The Company's evidence set out how the ETT service would function (C-4-1, pp. 1-6), how it would be costed (C-4-2, pp. 1-2) and included a draft Rate Rider (C-4-3). The Company also filed Reply Evidence explaining difficulties in having ETT transactions carried out at any locations except Dawn. (Enbridge Gas Distribution evidence: F-1-2, pp. 1-2)

It is the Company's expectation and belief that the ETT proposals accepted in this proceeding will not have any adverse impact on the quality of or access to the utility's existing services and will not have any rate impacts on existing customers.

Based upon this evidence, and discussions at the Settlement Conference, parties have agreed to a resolution of this issue, as set out below.

a) All parties accept and agree with Enbridge Gas Distribution's proposal for an Enhanced Title Transfer service to be introduced to the Company's suite of balancing services, as set out at C-4-1, pp. 1 to 6 and C-4-3. This service will not be made available until after the Company's F2007 rates are approved and implemented, but it will be available from and after that time, assuming that other utilities offer a compatible service.

Participating Parties: All parties participated in the negotiation and settlement of this issue, except IESO, TCPL, Direct Energy, Jason Stacey, OPA, Aegent and Kitchener.

Approval: All participating parties accept and agree with the proposed settlement of this issue.

Evidence: The evidence in relation to this issue includes the following:

Enbridge Gas Distribution Evidence

A-1-1 Overview and Background
C-4-1 Additional Service Offerings
C-4-2 Additional Service Offerings – Derivation of Charges
C-4-3 Additional Service Offerings – Draft Rate Riders
F-1-2 Reply Evidence – Title Transfers

APPrO Evidence

Prefiled Evidence of APPrO p. 47

Technical Conference Evidence

April 6, 2006 Tr. 48-49 and 102-103 (Enbridge Gas Distribution)
May 17, 2006 Tr. 66 (APPrO)

1.3 REDIRECTION OF GAS

COMPLETE SETTLEMENT

Item 5 in the Board's Issues List relating to rates for gas fired generators and other qualified customers asked whether new rates for these customers should include redirection of gas to a different delivery point on short notice.

In response, the Company filed evidence explaining that "[t]here are currently upstream transportation services and market services that a direct purchase customer can use to effect a redirection of gas. These services are the same services that would be available to a utility. As such, Enbridge Gas Distribution does not see there being any benefit for the utility to establish a service that purely relies on services that participants in the marketplace can already avail themselves to. Any involvement by the utility would only add incremental administration costs to these services." (Enbridge Gas Distribution evidence: C-4-1, p. 6)

It is the Company's expectation and belief that its position on this issue, as accepted in this proceeding, will not have any adverse impact on the quality of or access to the utility's existing services and will not have any rate impacts on existing customers.

Based upon this evidence, and discussions at the Settlement Conference, parties have agreed to a resolution of this issue, as set out below.

a) All parties accept and agree with Enbridge Gas Distribution's evidence at as set out at C-4-1, pp. 6 to 7 which states, in effect, that redirection of gas is a matter for upstream transportation services and the Company is therefore unable to offer any useful or cost-effective redirection of gas service.

Participating Parties: All parties participated in the negotiation and settlement of this issue, except IESO, TCPL, Direct Energy, Jason Stacey, OPA, Aegent and Kitchener.

Approval: All participating parties accept and agree with the proposed settlement of this issue.

Evidence: The evidence in relation to this issue includes the following:

Enbridge Gas Distribution Evidence

A-1-1 Overview and Background
C-4-1 Additional Service Offerings
C-4-2 Additional Service Offerings – Derivation of Charges
C-4-3 Additional Service Offerings – Draft Rate Riders

Technical Conference Evidence

April 6, 2006 Tr. 49 (Enbridge Gas Distribution)

1.4 TITLE TRANSFER OF GAS IN STORAGE

COMPLETE SETTLEMENT

Item 6 in the Board's Issues List relating to rates for gas fired generators and other qualified customers asked whether new rates for these customers should include the ability to transfer the title of gas in storage (i.e., the title transfer in gas storage is treated as an administrative matter instead of a physical withdrawal or injection of gas).

In response, the Company filed evidence filed evidence explaining the different considerations that apply for the title transfer of stored gas depending upon whether the contracts have identical or different contract service parameters. (Enbridge Gas Distribution evidence, C-4-1, pp. 7-11; Enbridge Gas Distribution Undertaking #3). The Company initially proposed a service where only an administrative fee would be charged for the title transfer of gas where the contract service parameters (which include withdrawal and injection amounts, ratchet provisions, firm vs. interruptible) are the same for both transacting parties.

It is the Company's expectation and belief that its title transfer of gas in storage proposal accepted in this proceeding will not have any adverse impact on the quality of or access to the utility's existing services and will not have any rate impacts on existing customers.

Based upon this evidence, and discussions at the Settlement Conference, parties have agreed to a resolution of this issue, as set out below.

a) All parties accept and agree with Enbridge Gas Distribution's proposal, as set out at C-4-1, pp. 7 to 11, C-4-2 and F-1-2, which, among other things, allows transacting customers with the same deliverability rights and contractual parameters to transfer title to gas volumes below ground, subject only to an administration fee and without injection or withdrawal charges. The contract parameters that must be the same include:

   - % Withdrawals
   - % Injections
   - Customer inventory within the same deliverability ratchets
   - Quality of service (firm versus interruptible)

   In addition, the Company will permit underground title transfers between in-franchise customers, at the Company's sole discretion based on operational conditions, subject to an administrative fee, without the application of withdrawal and injections charges when the transfer of gas in storage is from a customer with higher withdrawal entitlements to a customer with lower withdrawal entitlements.

Approval of all transactions would be limited to the lesser of the seller's withdrawal limit and the buyer's injection limit.

Participating Parties: All parties participated in the negotiation and settlement of this issue, except IESO, TCPL, Direct Energy, Jason Stacey, OPA and Kitchener.

Approval: All participating parties accept and agree with the proposed settlement of this issue.

Evidence: The evidence in relation to this issue includes the following:

Enbridge Gas Distribution Evidence

A-1-1 Overview and Background
C-4-1 Additional Service Offerings
C-4-2 Additional Service Offerings – Derivation of Charges
C-4-3 Additional Service Offerings – Draft Rate Riders

APPrO Evidence

Prefiled Evidence of APPrO pp. 47 and 63

Technical Conference Evidence

April 6, 2006 Tr. 49, 103-104 and 138-140 (Enbridge Gas Distribution)

Undertakings

Enbridge Gas Distribution Undertaking # 3

1.5 STORAGE ALLOCATION METHODOLOGY FOR GAS FIRED GENERATORS (BASE LEVEL DELIVERABILITY)

COMPLETE SETTLEMENT

There is an agreement to settle this issue on the following basis:

Currently, Enbridge Gas Distribution's storage operations are directed at meeting winter demand. The existing Board approved methodology used by the Company for allocating cost based standard storage at 1.2% deliverability is called "excess over average". Under this methodology, storage space is allocated to customers based on the difference between the customer's average winter demand as compared to the customer's average annual demand.

Parties recognize that the current excess over average methodology would not be sufficient or appropriate to meet the profile and needs of gas fired generators. Gas fired generators, like other Enbridge Gas Distribution customers, are entitled to an allocation of cost based standard storage at 1.2% deliverability. A separate storage allocation methodology for cost based standard storage at 1.2% deliverability, subject to the same ratchets as the Company's other ratcheted storage contracts, is appropriate for gas fired generators.

Parties agree that it is appropriate to implement a storage allocation methodology for cost based standard storage at 1.2% ratcheted deliverability for gas fired generators that recognizes the very different characteristics of those customers but which, at the same time, is consistent with the level of storage allocated to existing customers. Currently, the Company's customers only receive an allocation of cost based storage at standard deliverability that meets 57% of the gap between system peak demand and the amount of gas delivered through pipeline supplies. The remainder of this gap is met through other balancing means such as peaking supplies and curtailment. In order to achieve consistency, the Company will limit the storage allocation available to gas fired generators to the same level, such that the allocation of storage at standard deliverability to gas fired generators will be scaled to 57% of the amount of storage at standard deliverability required to meet the gap between demand and pipeline supply.

The allocation methodology for gas fired generators' entitlement to cost based standard storage at 1.2% deliverability is also premised on the following:

a) The storage space requirement to meet gas fired generators' intra day balancing needs is based on the assumption that high deliverability storage is available to those customers in the market.

b) This agreement does not address the pricing or allocation of high deliverability storage, nor does it address whether or when the Company might offer that service using its own assets. In the event that the Company does not offer this service using its own assets, and customers request high deliverability storage from the Company, then the Company will use reasonable efforts to procure this service from third parties for its customers.

c) The storage allocated is offered at rolled-in cost based rates. This means that if the Company has to acquire additional storage capacity to meet the allocations requested by gas fired generators, then the cost of the acquired storage will be aggregated with the cost of the Company's existing storage and a new rolled in rate for all storage will be determined. The Company's best estimate of the impact of acquiring the standard storage at 1.2% deliverability that would be required under the new methodology for gas fired generators, assuming a total of 2000MW of generation capacity, is that the rolled-in cost based rates for storage would increase by approximately 1%.

d) The storage being allocated is subject to system ratchets, which are the standard ratchets applicable to the Company's storage contracts.

e) The storage allocated could be used for service under either Rate 315 or Rate 316 (at standard 1.2% deliverability).

f) Notwithstanding this specific allocation methodology for gas fired generators, a gas fired generator may still request that their base level storage entitlement be determined using the existing excess over average methodology.

The allocation for gas fired generators for cost based standard storage at 1.2% deliverability is as follows:

g) A gas fired generator is assumed to provide gas supply equal to 17 times the maximum hourly demand of the facility. In the event that the plant is not dispatched, up to 17 hours of supply may need to be injected into storage, assuming that storage is the only means of balancing available.

h) Assuming that high deliverability storage at 10% is available to meet the gas fired generator's needs, this would result in a space demand of 17 times the maximum hourly demand, divided by 10%.

i) The space demand that is determined is then multiplied by .57 to determine the amount of cost based standard storage at 1.2% deliverability available to the gas fired generator.

It is the Company's expectation and belief that the storage allocation proposal for gas fired generators accepted in this proceeding will not have any adverse impact on the quality of or access to the utility's existing services. Based upon the current information available to the Company, and the Company's best estimates, the only rate impacts of this proposal on other customers of the Company is described above at subparagraph (c).

Participating Parties: All parties participated in the negotiation and settlement of this issue, except IESO, TCPL, Direct Energy, Jason Stacey, OPA, Aegent and Kitchener.

Approval: All participating parties accept and agree with the proposed settlement of this issue.

Evidence: The evidence in relation to this issue includes the following:

APPrO Evidence

PowerPoint Presentation at May 16, 2006 Technical Conference

Technical Conference Evidence

April 6, 2006 Tr. 107-111 and 178-181 (Enbridge Gas Distribution)

April 27, 2006 Tr. 62-64 (Enbridge Gas Distribution)

May 16, 2006 Tr. 198-201 (APPrO)

1.6 RATE 316

NO SETTLEMENT

The Company has filed extensive written evidence about its proposed Rate 316, and has answered questions from all interested parties about this proposed Rate over the course of two days of Technical Conference (April 6 and 27, 2006). The Company's specific proposals for Rate 316, along with a discussion of the pricing for aspects of the proposed Rate, are set out in its prefiled evidence at C-1-1 (Overview), C-3-1 (Rate 316), C-3-3 (Rate 316 – Draft Rate Schedule) and C-3-4 (Rate 316 – Derivation of Charges). Certain of the undertaking responses filed by the Company also relate to the proposed Rate 316.

Evidence about the storage needs of gas fired generators, prepared by APPrO (APPrO evidence: pp. 31-32 and 62; and PowerPoint Presentation at May 16 Technical Conference), has also been filed in this proceeding and addressed through Technical Conference on May 16 and 17, 2006.

While it appears that parties are supportive of many of the technical aspects of the proposed Rate 316, there is disagreement as to whether and how the service would be offered, and what pricing would apply.

In the event that the Company does offer Rate 316 storage service, it is prepared to offer the service using the same nomination windows as agreed to for Rate 125 (described at subsection 1.1(a) of this Settlement Proposal).

Evidence: The evidence in relation to this issue includes the following:

Enbridge Gas Distribution Evidence

A-1-1 Overview and Background
B-1-1 Current Experience
B-2-1 Operational Characteristics and Needs of Power Generation Customers
B-3-2 Operational Characteristics, Issues and Proposed Solutions: Storage
B-4-1 Rate Design Principles and Approaches
C-1-1 Overview
C-3-1 Rate 316
C-3-2 Proposed Tariff for Rate 316
C-3-3 Rate 316 – Draft Rate Schedule
C-3-4 Rate 316 – Derivation of Charges
F-2-1 Response to APPrO evidence (Rates 125 and 316)

APPrO Evidence

Prefiled Evidence of APPrO pp. 31-32 and 62

Technical Conference Evidence

April 6, 2006

April 27, 2006

May 16, 2006 Tr. 198-201 (APPrO)

Undertakings

Enbridge Gas Distribution Undertaking #s 10, 12, 19-23, 25-28, 39, 40 and 44

4. RATES 300 AND 315

PARTIAL SETTLEMENT

Since at least 2005, largely in response to interest expressed by some of its large volume customers, the Company has been working, in conjunction with stakeholders, on the redesign of its unbundled rates for those customers to make the rates more attractive. In the Company's F2006 rate case (EB-2005-0001), it explained the work that it had been doing, and the factors that were preventing the Company from presenting a proposal for redesigned rates in that case. In the decision in the F2006 rate case, the Board determined that the Company should prepare and present redesigned rates for conventional large volume customers as part of the NGEIR proceeding. (Enbridge Gas Distribution evidence, D-1-1, pp. 1-4)

The Company's proposal for redesigned rates for conventional large volume customers in this proceeding includes unbundled transportation and balancing services (Rate 300), as well as delivered storage service (Rate 315). As outlined in the Company's evidence, these service offerings are the outcome of extensive discussions with stakeholders and are responsive to the Board's Procedural Orders in this proceeding. (Enbridge Gas Distribution evidence: D-1-1, pp. 4-5)

The Company has filed written evidence about its proposed Rates 300 and 315, and answered questions from all interested parties about these proposed offerings at the April 27, 2006 Technical Conference. The Company's evidence about the activity and cost required to implement automated system changes to process unbundled customer transactions is set out at B-3-3. (Operational Characteristics, Issues and Proposed Solutions: Rate Implementation) The Company's specific proposals for Rate 300, along with a discussion of the pricing for aspects of the proposed Rate, are set out in its prefiled evidence at D-2-2 (Rate 300) and D-2-3 (Rate 300 – Draft Rate Schedule). The Company's proposal for Rate 315 is set out at D-3-1 (Rate 315) and D-3-2 (Rate 315 – Draft Rate Schedule). The Company's evidence and proposals addressing the issues inherent in approving and implementing new unbundled rates in the context of this proceeding, which is not a full rates case, is set out at C-1-1 (Proposed Tariffs for Power Generation Customers: Overview).

Based upon this evidence, and discussions at the Settlement Conference, most parties have agreed to a resolution of most of the issues related to the Company's proposed Rates 300 and 315, as set out below.

Depending upon the determination of the Threshold Issue set out above, certain parties (CCC, VECC, LIEN, SEC, LMPA, WGSPG and Energy Probe) do not support the settlement of issues related to the Company's proposed Rates 300 and 315. Specifically, if the Board determines, in response to the Threshold Issue, that any portion of the implementation costs and revenue deficiencies are to be allocated to residential or general service customers, then those parties (CCC, VECC, LIEN, SEC, LMPA, WGSPG and Energy Probe) do not agree to any of the proposed changes to Rates 300 and 315.

Except as noted in the following paragraphs, which describe the consensus position of all other participating parties on matters discussed at the Settlement Conference, all other parties accept the Company's proposals for its redesigned Rate 300 and Rate 315 and agree that the Company will develop for consideration and approval by all parties Rate Schedules for Rates 300 and 315 which incorporate the Company's proposals, as modified by the items set out in the following subparagraphs.

It is the Company's expectation and belief that the Rate 300 and 315 proposals accepted in this proceeding will not have any adverse impact on the quality of or access to the utility's existing services. Based upon the current information available to the Company, and the Company's best estimates, the only rate impacts of the Rate 300 and 315 proposals on other customers of the Company are described below at subparagraphs (p) to (v). The rates set out for Rates 300 and 315 are set on the basis of the Company's F2006 cost of service costs and, to the extent that relevant costs change in the Company's F2007 rate case, then the rates set out below and in the Company's draft Rate Schedule may also change.

a) The new Rates 300 and 315 will be made available, on a limited basis at the customer's election on either January 1, 2007 or on April 1, 2007 (in the event that customers find that to be an easier date in terms of transitioning to unbundled storage service).

b) In order to allow customers to take advantage of the new Rates 300 and 315 on January 1 or April 1, 2007, the Company will permit migrating customers to terminate their bundled rate contracts early, subject to the customers having to true up any imbalances in their existing contracts on termination.

c) Initially, the new Rates 300 and 315 will only be available to a maximum of 20 customers. This is because the Company must implement a manual solution to process the activities and transactions involved with these unbundled services until such time as an automated solution is designed and implemented. The manual solution is not feasible for more than 20 customers.

d) As customers sign up for and begin to take service on the new Rates 300 and 315, the Company will evaluate the interest in, the technical, reporting and regulatory need for and the optimum timing for the implementation of an automated solution that will allow larger numbers of customers to take service under these rates (but that will cost in the range of $4 million). Once a decision has been taken to proceed with an automated solution, it will take a minimum of 43 weeks, and perhaps longer (depending on CIS and GDAR implementation and other currently unknown technical issues) to implement.

e) The Company undertakes to report to customers every three months as to the level of take-up of the new unbundled Rates 300 and 315. As part of this process, within 6 months after the first customers take service under these Rates, the Company will provide customers with its view as to whether and when an automated solution should be developed and put in place.

f) By September 22, 2006, the Company, in consultation with customer representatives, will prepare written materials to support a presentation to customers detailing the nature and operational impact of unbundled services and describing how a customer would take advantage of these services, along with the positives and negatives as well as the changes inherent in unbundled services in comparison to bundled services. Included in these materials will be an explanation of how the "true-up" process will work for customers who terminate their bundled contracts early. The aim of the materials is to provide background for a presentation that will help customers to understand and evaluate the effects of deciding whether to become unbundled customers. The Company will make this presentation to interested customers on or before October 2, 2006. As part of this process, the Company will provide information to customers to allow them to better understand and evaluate the financial impact of making a decision to receive unbundled services.

g) Customers will indicate, on or after October 15, 2006, whether they would like to take the service. If more than 20 customers indicate on October 15, 2006 that they wish to subscribe to the service, then the Company will provide the service to the 10 interested customers who will benefit the most from the service, from a distribution rates perspective, and will use a lottery system to determine the remaining 10 interested customers who will be entitled to subscribe for the service. If fewer than 20 customers indicate on October 15, 2006 that they would like to subscribe for the service, then the Company will continue to accept customers who would like to subscribe for the service, on a first come, first served basis up to a maximum of 20 customers.

h) Parties agree that the levels of penalty provisions in the Company's proposed new Rates 300 and 315 are reasonable. To the extent that these penalty provisions are different from penalty provisions in bundled rates, there are valid reasons for this, relating to the increased risk to system operations from unbundled customers acting inappropriately as compared to bundled customers. These increased risks arise from, among other things, the fact that the Company has less system diversity in relation to unbundled customers on which the Company can rely to counterbalance the activities of those customers who take service beyond the parameters set out in the applicable rate or contract.

i) The Company will amend the description of "Operational Flow Order" found in the draft Rate 300 Rate Schedule (D-2-2, p. 5), so that the second sentence reads "Enbridge Gas Distribution, acting reasonably, may call for an OFO in the following circumstances:".

j) The Company agrees to amend the wording in the Rate Schedule for Rate 315 to clarify that it is a firm service, and it is only in rare situations, such as major maintenance or construction projects, that the Company would limit injection and withdrawal rights based on system operating requirements (D-3-2, p. 2). The Company will also add a provision stating that "The Company will provide customers with one week's notice of its intent to limit injection or withdrawal rights and at the same time, shall provide its best estimate of the duration and extent of the limitations."

k) The Company confirms that it will treat bundled and unbundled customers equally in situations where there are operating conditions that impose storage constraints on its system. In such cases, the storage constraints will be applied pro rata against bundled and unbundled customers.

l) The Company agrees that in situations where injection and withdrawal rights are reduced because of system operating conditions, it will proportionately reduce the amount that affected Rate 315 customers will pay for injection and withdrawal. The Company will accomplish this in a manner similar to that employed by Union (demand charge relief) in its C1 Rate Schedule (Union evidence, Appendix L, Schedule A, p. 9, para. 8(b)). Specifically, Union's tariff provides:

>). Demand Charge Relief for Storage Services: If on any day Union fails to deliver the quantity of gas nominated (up to the Withdrawal Demand) by reason of an event of force majeure on Union's system, then for that day Union shall credit to Shipper's bill an amount equal to the applicable Daily Demand Rate as defined in this paragraph, multiplied by the difference between the quantity of gas actually delivered to Shipper during such day and the quantity of gas which Shipper in good faith nominated on such day. The term "Daily Demand Rate" shall mean the monthly demand charge or equivalent (as stipulated in Article VIII of the Contract) divided by the number of days in the month for which such rate is being calculated.

All parties agree that this aspect of the agreement, and the associated rate impact, can be revisited in future years if the Company determines that it impairs full revenue recovery.

m) The Company agrees that for Rate 315, in circumstances where a customer nominates from storage and system conditions permit, the Company is prepared to permit a customer to nominate either to Dawn or to the customer's delivery area for purposes other than consumption at the customer's own meter.

n) For Rate 300 customers, at locations where Enbridge Gas Distribution interconnects with Union, Enbridge Gas Distribution will accept nomination changes at the thirteen nomination windows agreed upon between Union and APPrO, with changes becoming effective two hours later. At locations where Enbridge Gas Distribution interconnects with TCPL, and where TCPL has contracted with a shipper for FT-SN service, the Company will also accept and accommodate flow rate nominations at up to 96 nomination windows each day, assuming that these nomination windows are approved by the NEB. All parties acknowledge and agree that Enbridge Gas Distribution's ability to implement these additional nomination windows is contingent on the customer's use of the nomination windows being offered by and available from Union and TCPL.

o) All parties accept and agree that nominations under Rate 315 will only be accepted at the standard North American Energy Standards Board ("NAESB") nomination windows.

p) The Company agrees that Rate 315 will be made available to customers taking service on Rate 125. The storage allocation methodology for such service is as described above at section 1.5.

q) The Company will incur administrative and staffing costs (estimated at between $250,000 and $750,000 per year, depending upon the number of customers) associated with offering the additional nomination windows described above in subparagraph (a). The Company intends to recover these costs from the parties using the additional nomination windows.

r) Parties agree that a 2006 Unbundled Rate Implementation Cost Deferral Account should be established to collect the Company's costs associated with preparing to offer unbundled rates as of January 1, 2007. This Deferral Account will collect costs such as those related to the development of spreadsheets and procedures necessary to process transactions by unbundled customers, as well as staff hiring and training costs for the personnel who will actually run the manual solution. The Deferral Account will also include costs related to customer education (as described above) and limited EnTRAC changes required for even a manual solution, along with necessary implementation costs.

s) Parties agree to support recovery by the Company in future rate proceedings of all reasonably incurred costs that are placed in the 2006 Unbundled Rate Implementation Cost Deferral Account. When the recovery of costs in this Deferral Account is addressed by the Board, the Company will seek to have these costs recovered from large volume customers. The question of when, and how, the issues pertaining to the allocation of implementation costs and migration revenue deficiencies should be determined is the subject of the Threshold Issue set out above.

t) If proceeding with an automated solution is required, parties agree that they will support the Company's request in future proceedings for the continuation of the Unbundled Rate Implementation Cost Deferral Account and the recovery by the Company of all reasonably incurred costs involved with this undertaking. The Company's current proposal to recover these costs is set out at C-1-1, page 9, and would involve an increased customer charge for large volume customers, estimated to be in the range of $50 per month. The question of when, and how, the issues pertaining to the allocation of implementation costs and migration revenue deficiencies should be determined is the subject of the Threshold Issue set out above.

u) Parties agree that in Enbridge Gas Distribution's F2007 rate case, the Company will present a forecast of migration to the new Rates 300 and 315, and the impact of that migration on the Company's distribution revenue. Until such time as the F2007 rate case is decided and implemented, the rates for Rate 300 and 315 will be set on the basis of the Company's F2006 cost of service costs. New rates will be set for Rates 300 and 315 in the Company's F2007 rate. The forecast of migration in 2007 will likely also impact on other rates. The Parties agree that they will support the Company's request in its F2007 rate case for an Unbundled Rates Customer Migration Variance Account, which will capture the revenue consequences of actual customer migration being different from revenue consequences of the forecast migration for the new unbundled rates (Rates 125, 300, 315 and 316). The pivot point for the variance account will be the revenue impact of the forecast of migration to new rates, such that if the actual revenue impact is smaller than forecast, there will be a refund to customers in applicable rate classes who have paid too much, and if the actual impact is larger than forecast, additional amounts will have to be collected from customers in applicable rate classes. Parties agree that they will support the clearing of this variance account in this manner at the appropriate time. The question of when, and how, the issues pertaining to the allocation of implementation costs and migration revenue deficiencies should be determined is the subject of the Threshold Issue set out above.

v) Parties agree that, regardless of the regulatory model in place, the Company may adjust the levels of its Rates 300 and 315, as well as the rate classes from which Rate 300 and 315 customers have migrated and any other applicable rate classes, in future years to reflect the impact of the actual levels of customer migration.

Participating Parties: All parties participated in the negotiation and settlement of this issue, except IESO, TCPL, Direct Energy, OPA, Sithe, PEC and Kitchener.

Approval: All participating parties accept and agree with the proposed settlement of this issue, except for CCC, VECC, LIEN, SEC, LMPA, WGSPG and Energy Probe, who do not accept the foregoing if any portion of the implementation costs and revenue deficiencies is to be allocated to residential or general service customers.

Evidence: The evidence in relation to this issue includes the following:

Enbridge Gas Distribution Evidence

A-1-1 Overview and Background
C-1-1 Overview
D-1-1 Overview – Proposed Tariffs for Rate 300 Customers
D-2-1 Rate 300 – Overview, Description and Derivation of Charges
D-2-2 Rate 300 – Draft Rate Schedule
D-3-1 Rate 315 – Overview, Description and Derivation of Charges
D-3-2 Rate 315 – Draft Rate Schedule

APPrO Evidence

Prefiled Evidence of APPrO pp. 1-44; 47-52; and 60-61

Technical Conference Evidence

April 6, 2006 Tr. 46-47, 64-72, 150-153 and 210-212 (Enbridge Gas Distribution)

April 27, 2006 Tr. 14-19, 55-62, 95-99, 154-163 and 173-180 (Enbridge Gas Distribution)

Undertakings

Enbridge Gas Distribution Undertaking #s 1, 2, 13, 14, 23, 27, 29-32 and 41-44

APPENDIX E

NATURAL GAS ELECTRICTY INTERFACE REVIEW

DECISION WITH REASONS

BOARD FILE NO. EB-2005-0551

DECISION ON UNION SETTLEMENT PROPOSAL

NOVEMBER 7, 2006

APPENDIX E
Decision on Union Settlement Proposal

The Union Settlement Proposal described a nearly comprehensive settlement of Issue 1 (rates for gas-fired generators and other qualified customers), Issue III (transportation capacity bidding process and allocation) and one of the issues transferred from Union's fiscal 2006 rates case (power service – M12 service upgrades for power services).

There was one outstanding issue identified in the Union Settlement Proposal relating to priority access to Union's proposed F24-T service. The partial settlement provided for priority to parties who bid on transportation as part of Union's 2007 open season for the related Trafalgar expansion project. This in effect granted priority access to certain power generators. TCPL and Energy Probe opposed this method for priority access. All parties agreed that this issue was severable and that the Board could consider the Union Settlement Proposal separately from this discrete F24-T issue.

The Board heard testimony and submissions on this issue and rendered its decision on June 27, 2006. The Board ruled that Union's proposed allocation of F24-T capacity was not appropriate. The Board found that the ex-franchise Ontario power generator customers should receive priority access to F24-T service and provided its reasons for that determination. The Board at the same time approved the Union Settlement Proposal subject to this ruling with respect to Union's proposed allocation of F24-T capacity.

Union Settlement Proposal Decision
Excerpt from the oral hearing transcript EB-2005-0551,
Volume 11, June 27, 2006, pages 125 line 7 to page 129 line 21.

> MR. KAISER: The first matter relates to the Union settlement agreement, which is approved, subject to the following comments with respect to the F24-T matter. In that regard, the Board approves the rates, but has the following concerns with respect to the allocation that was proposed.

You will recall that Union felt there may be a requirement to ration the initial F24-T service - I think it was estimated at 500,000 gigaJoules a day - and proposed that that be allocated to those that had participated in the 2007 open season expansion.

The Board has concluded this is not the proper manner in which to allocate this capacity for a number of reasons. First, the Dawn-Trafalgar costs are rolled in; Secondly, the facilities are in place to serve all M12 customers; and, finally, the information on the open season with respect to this matter contained no indication of this additional service or that there would be a link between participation in the open season and eligibility for this new capacity.
Instead, the Board has concluded that the exfranchise Ontario Power Generator customers should receive priority. Again, there are three reasons we offer for that.

The first was, of course, that the service was designed primarily with their requirements in mind. The second is that the service is being offered on a pilot basis, and in those circumstances this Board doesn't believe that there is any unjust discrimination, or to use the words of one of the intervenors, the discrimination would be just and warranted.

A draft order has been prepared in this regard, which we would ask you, Mr. Leslie, and other interested parties to review. I don't need to read it at this point. You can review it at your leisure. It gives effect to, in greater detail, the principles that I have stated and exactly which customers will qualify, and further details. The Board can be spoken to if there are any concerns with respect to that, or you can settle it with Commission counsel.

APPENDIX F

NATURAL GAS ELECTRICTY INTERFACE REVIEW

DECISION WITH REASONS

BOARD FILE NO. EB-2005-0551

UNION SETTLEMENT PROPOSAL

NOVEMBER 7, 2006

EB-2005-0551

UNION GAS LIMITED

SETTLEMENT AGREEMENT

June 13, 2006

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EB-2005-0551

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is for the consideration of the Ontario Energy Board ("the Board") in its determination, under Docket No. EB-2005-0551, whether it should order Union Gas Limited ("Union") and Enbridge Gas Distribution Inc. ("Enbridge") to provide new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other eligible customers) and whether the Board should refrain from regulating the rates for storage of gas.

By its Notice of Proceeding dated December 29, 2005, the Board, on its own motion, commenced a proceeding pursuant to sections 19, 36 and 29 respectively of the *Ontario Energy Board Act, 1998* to determine (i) whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other eligible customers); and (ii) whether to refrain, in whole or part, from exercising its power to regulate the rates charged for the storage of gas in Ontario by considering whether, as a question of fact, the storage of gas in Ontario is subject to competition sufficient to protect the public interest.

By Procedural Order No. 1 dated January 24, 2006, the Board identified three issues for consideration in the proceeding: (1) Rates for gas-fired generators (and other qualified customers); (2) Storage regulation; and (3) Transportation capacity bidding process and allocation. The Board indicated that it would receive a settlement agreement on Issues 1 and 3, but that it did not intend to receive a settlement proposal on Issue 2.

In Procedural Order No. 2, the Board noted that it had referred matters concerning Enbridge's 300 series rates to the NGEIR proceeding and added these matters as Issue 4. This issue was added to the matters to be resolved at the Settlement Conference.

In Procedural Order No. 3, the Board moved four issues from Union's 2007 rates proceeding to the NGEIR proceeding. These issues included i) matters relating to market pricing of storage services, ii) Union's proposal to eliminate S&T deferral accounts, iii) Union's proposal to change the blanket storage order, and iv) power services – M12 service upgrades for power services.

The Board scheduled the Settlement Conference to commence May 29, 2006. The Settlement Conference was duly convened with Mr. Chris Haussmann as facilitator. The Settlement Conference was scheduled to proceed until June 2, 2006. Agreement was not reached by June 2, 2006. Settlement discussions continued through to June 13, 2006.

Given that the Board did not intend that parties settle Issue No. 2 (storage regulation) and that Issue No. 4 (Enbridge series 300 rates) is a matter exclusive to Enbridge, this Agreement addresses only matters pertaining to Issue No. 1 (rates for gas-fired generators and other qualified customers) and Issue No. 3 (Transportation capacity bidding process and allocation). The Agreement identifies the matters for which agreement has been reached. The Agreement is supported by the evidence filed in the EB-2005-0551 proceeding.

Each of the issues identified below falls within one of the following three categories:

1. an issue for which there is complete settlement, because Union and all of the other parties who discussed the issue either agree with the settlement or take no position,
2. an issue for which there is partial settlement, agreed to by Union and a majority of parties but one or more parties do not agree with the settlement,
3. an issue for which there is no settlement.

For the purposes of this Agreement, the term "no position" may include both parties who were involved in negotiations on an issue but who ultimately took no position on that issue and parties who were not involved in negotiations on that issue at all.

It is acknowledged and agreed that none of the completely settled provisions of this Agreement is severable. If the Board does not, prior to the commencement of the hearing of the evidence in EB-2005-0551, accept the completely settled provisions of the Agreement in their entirety, there is no Agreement (unless the parties agree that any portion of the Agreement that the Board does accept may continue as a valid Agreement).

Unless otherwise indicated in this Settlement Agreement the terms and conditions for Union's services are as set out in Union's evidence, as amended in these proceedings.

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.

For greater certainty, the parties further acknowledge and agree that these conditions apply to settled issues in respect of which they are shown as taking no position.

It is also acknowledged and agreed that this Agreement is without prejudice to parties re-examining these issues in any other proceeding, except where a party's rights to re-examine an issue have been specifically limited in 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 evidence supporting the agreement on each issue is set out in each section of the Agreement. Abbreviations will be used when identifying exhibit references. For example, Exhibit B1, Tab 4, Page 1 will be referred to as B1/T4 p. 1. There are Appendices to the Agreement which provide further evidentiary support. 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 and the Appendices form part of the record in the proceeding.

The following parties, as well as Ontario Energy Board hearing staff ("Board Staff") participated in the Settlement Conference:

Aegent Energy Advisors Inc. ("Aegent")

Association of Major Power Consumers in Ontario ("AMPCO")

Association of Power Producers of Ontario ("APPrO")

Canadian Manufacturers & Exporters ("CME")

Consumers Council of Canada ("CCC")

Direct Energy Marketing Inc. ("Direct Energy")

Enbridge Gas Distribution Inc. ("EGD")

Energy Probe Research Foundation ("Energy Probe")

Greenfield Energy Centre LP ("Greenfield")

Independent Electricity System Operator ("IESO")

Industrial Gas Users Association ("IGUA")

London Property Management Association ("LPMA")

Low-Income Energy Network ("LIEN")

Ontario Power Authority ("OPA")

Ontario Power Generation Inc. ("OPG")

Portland's Energy Centre ("Portland's")

School Energy Coalition ("SEC")

Sithe Global Power Goreway ULC & Sithe Global Power Southdown ULC ("Sithe")

The Corporation of the City of Kitchener ("CCK")

TransAlta Cogeneration L.P. & TransAlta Energy Corp ("TransAlta")

TransCanada Energy Ltd ("TransCanada Energy")

TransCanada PipeLines Limited ("TCPL")

Union Gas Limited ("Union")

Vulnerable Energy Consumer's Coalition ("VECC")

Wholesale Gas Service Purchasers Group ("WGSPG")

OVERVIEW

Union Gas has worked with existing and prospective natural gas power generators and affected stakeholders on the development of new services or enhancement of existing services to meet the needs of power generators in a rapidly evolving natural gas power generation marketplace in Ontario. When proposing new services or modifications to existing services Union has adhered to the following guiding principles:

i) The introduction of new services or service enhancements should have no negative impact on the service to existing customers (either financial burden or reduction in service quality).

ii) Under all operating conditions, reliability and integrity of the gas system must be maintained.

iii) Customer requests for flexibility will be accommodated where possible.

iv) The principle of postage stamp rate-making will be adhered to.

v) Alignment with upstream and downstream services will be facilitated to the extent possible.

The new services and service enhancements that form the basis of this agreement are reasonably consistent with the above noted principles. These services contribute to economic efficiency and to the reliability of Ontario's power system.

The allocation of costs to rate classes will continue to be consistent with existing fully allocated cost allocation principles.

This agreement results in changes to the T1 and U7 rate schedules. Updated schedules will be circulated for review by all settlement conference participants and filed with the Board before the end of the evidentiary portion of the NGEIR proceeding.

1 RATES FOR GAS-FIRED GENERATORS (AND OTHER QUALIFIED CUSTOMERS)

Should the Board order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other qualified customers)? If the Board does order new rates, should that order contain the following requirements:

1.1 MORE FREQUENT NOMINATION WINDOWS FOR DISTRIBUTION, STORAGE AND TRANSPORTATION THAT CORRESPOND WITH THE NOMINATIONS OF UPSTREAM PIPELINES THAT CONNECT TO THE ONTARIO GAS SYSTEM.

(Partial Settlement with the exception of Union's proposal that F24-S, UPBS and DPBS be priced at market based rates. The parties agree that the issue of market based storage pricing is within the ambit of Issue No. 2 (storage regulation) and accordingly beyond the scope of this settlement. TCPL and Energy Probe oppose Union offering new F24-T service first to 2007 transportation expansion shippers.)

The parties accept Union's proposal to develop four (4) new ex-franchise services (recognizing that it is Union's position that development of F24-S, UPBS and DPBS is contingent on the resolution of the storage pricing issue): F24T, F24S, UPBS and DPBS as described in its evidence subject to the following modifications:

- Three additional nomination windows will be provided. The additional nomination windows have nomination deadlines of 12:00, 18:00, and 07:00 with effective times of 14:00, 20:00, and 09:00 respectively. The complete nomination schedule has been attached as Appendix A. The additional nomination windows will provide more flexibility to customers such as power generators and can be provided without the implementation of hourly balancing agreements with upstream and downstream pipelines. The additional nomination windows apply to the receipt of gas from Enbridge, TCPL and Vector and to the delivery of gas to TCPL at Kirkwall and Parkway, all subject to their ability to confirm nominations.
- Union agrees to make the additional nomination windows available to U7 storage, U7 delivery services, and U7 receipts for new customers with loads greater than 1,200,000 m*3 per day.
- Union agrees to make the additional nomination windows available to T1 receipts for new customers with non obigated deliveries and loads greater than 1,200,000 m*3 per day.
- The U7 and T1 rate schedules will be modified to incorporate charges associated with making additional nomination windows available to those customers who elect to take the service. These charges will be cost-based, and will take into account the common IT capital costs and the costs associated with additional staffing associated with making additional nomination windows available for F24-T. The changes to the U7 and T1 rate schedules will be similar to the changes made to the M12 rate schedule to incorporate F24-T.

- Union agrees that it will evaluate the possibility of extending the additional nomination windows and reservation of capacity found in F24-T to the following transportation services:

  i) C1 between Ojibway and Dawn
  ii) C1 between Bluewater and Dawn
  iii) C1 between St. Clair and Dawn
  iv) C1 between Parkway and Kirkwall
  v) C1 transport within the Dawn yard (e.g. between Union Dawn and Vector Dawn)

  Union agrees to provide APPrO and other settlement conference participants with a summary of its findings no later than December 31, 2006.

- Customers may request that nomination changes become effective sooner and Union will use reasonable efforts to accommodate these requests, it being recognized that at the present time and for the foreseeable future Union does not expect to be able to make nomination changes effective sooner than two hours after the nomination.
- Union will also make reasonable efforts to allow large customers (with loads greater than 1,200,000 m3 per day) to take gas prior to a scheduled nomination. The customer will make a request for such service directly to Union's Gas Control Department, and Union will permit such early start-up provided it has no adverse impact on Union's system. Depending on the customer's location, the customer may need approval of Enbridge and TCPL's Gas Control Departments as well.
- The proposed UPBS will allow customers to deliver supply at even hourly flow rates to consume at accelerated flow rates over 4 to16 hours. The parties recognize that higher consumption flow rates will require higher levels of storage deliverability.

- Power generators that subscribe for U7 or T1 services and ex-franchise power generators that subscribe for F24-T, F24-S, UPBS, and DPBS services will provide the utility with a day ahead non-binding hourly gas consumption forecast and will use reasonable efforts to communicate changes from that forecast to assist Union in managing its system.
- Union, Enbridge and APPrO agree to convene an Industry Task Force and will invite all service providers interconnecting with Union and other parties that have expressed an interest. The purpose of the Industry Task Force is to investigate and develop, where feasible, appropriate arrangements for services that would enable Union to accept nomination changes each hour throughout the day (on a firm/reserved capacity basis) with changes becoming effective two hours later. The Industry Task Force will hold its first two meetings no later than September 30, 2006. Union, Enbridge and APPrO agree to work co-operatively and diligently to investigate and develop, where feasible, appropriate arrangements.
- Parties agree that once sufficient operating experience has been gained and in any event no later than March 31, 2009, interested customer groups and Union will convene to evaluate and discuss the experience and success of the services offered as a result of this proceeding. At that time, any party may propose further modifications to the rate schedules.

The parties accept Union's evidence that:

- To maximize the effectiveness of Union offering additional nomination windows, other pipeline operators, storage operators, marketers and producers will need to be able to manage and offer the same nomination windows and be able to confirm nominations on the same two hour schedule.

- F24-T will only be developed if there is 250,000 GJ/day or greater of customer demand (the level of demand used to determine the cost based F24-T rate). The parties are of the view that 250,000 GJ/day of demand is a realistic threshold. Union will offer the new F24-T service first to 2007 transportation expansion customers. Union will then hold an open season to determine if any other customers are interested in the service.
- The availability of F24-S, UPBS and DPBS is dependent upon Union's ability to develop assets to provide incremental storage deliverability.
- There will only be 500,000 GJ/day of F24-T available initially as a result of the 2006 and 2007 expansions of the Dawn-Trafalgar system. This capacity will not be available until the 2007 expansion of the Dawn-Trafalgar system is in service on November 1, 2007. Additional F24-T may become available as a result of future expansion of the Dawn-Trafalgar system and will be made available through an open season process.
- Union requires 12 months to develop the new IT systems required to implement F24-T, F24-S, UPBS and DPBS following a Board Decision and sufficient customer interest to develop the services. Upon the Board accepting this Settlement Agreement, Union will proceed immediately to contact 2007 expansion customers to ascertain their interest in subscribing to the F24-T service and if remaining capacity is available then hold an open season to determine if other existing M12 shippers are interested in the residual capacity. Union expects the open season process to be completed by 30 days after a Board Decision. Union will require approximately 24 months to build additional storage deliverability to provide new incremental high deliverability F24-S, UPBS and DPBS (recognizing that it is Union's position that development of F24-S, UPBS and DPBS are contingent on the resolution of the storage pricing issue).

- IT capital costs and the costs associated with additional staffing required to implement F24-T, F24-S, UPBS and DPBS will be recovered from the customers who elect the new services.

The settlement of this issue has no identifiable adverse impacts on existing customers.

The following parties agree with the settlement of this issue: APPrO, CCC, CME, IGUA, LMPA, LIEN, SEC, CCK, VECC, WPSPG, Sithe, TransCanada Energy, Portlands

The following parties take no position on this issue: Aegent

Evidence References:

1. Union Evidence - A/T4, D/T1 p.6-11 & p.15-18
2. Union Undertakings - UGL 12, UGL 28, UGL 23A, UGL 23B
3. Intervenor Evidence - APPrO May 1/06, TCPL Issue I (Section 2.2) & Appendix IB May 1/06, IGUA-AMPCO May 1/06
4. Intervenor Undertakings - APPrO 1, APPrO 2, APPrO 3, APPrO 7, TCPL 1, TCPL 2&3

1.2 FIRM HIGH DELIVERABILITY SERVICE FROM STORAGE WITH CUSTOMER OPTIONS FOR 1.2%, 5% AND 10% DELIVERABILITY.

(Complete Settlement with the exception of Union's proposal to price firm deliverability greater than 1.2% at market based rates. The parties agree that the issue of market based storage pricing is within the ambit of Issue No. 2 (storage regulation) and accordingly beyond the scope of this settlement.)

The parties agree that new T1 and U7 customers with non-obligated supply shall be entitled to contract for T1 and U7 storage service with firm storage deliverability up to 24 times the customer's peak hourly consumption and storage space up to 24 times the customer's peak hourly consumption multiplied by 4 days. Should a customer elect to contract for firm storage deliverability that is less than the maximum entitlement, the maximum storage space that a customer is entitled to at cost shall be ten times the firm storage deliverability contracted for. In no event, shall the storage space exceed the maximum storage space entitlement previously described. Storage space with 1.2% firm deliverability will be available at cost based rates. Storage deliverability above base firm deliverability of 1.2% up to the customer's firm CD shall be made available by Union to in-franchise customers in a manner to be determined by the Board as part of Issue No. 2.

To the extent that a power generator does not contract for firm storage deliverability and chooses instead to rely on interruptible storage deliverability, there is no assurance that storage deliverability will be available on peak days.

An example of how these provisions may apply in specific circumstances is attached as Appendix B.

In the event of a conflict between the language of this section and the calculations shown on the attached examples, it is the parties' intention that the calculations shown in the examples shall govern the interpretation of this section.

The settlement of this issue has no identifiable adverse impacts on existing customers because the provision of storage services to these new T1 and U7 customers does not involve the "claw back" of storage space or deliverability from existing customers and the costs associated with new high deliverability storage services will be recovered from the customers involved.

The following parties agree with the settlement of this issue: APPrO, CCC, CME, Energy Probe, IGUA, LMPA, LIEN, SEC, CCK, VECC, WGSPG, Sithe, TransCanada Energy, Portlands

The following parties take no position on this issue: Aegent, TCPL,

Evidence References:

1. Union Evidence - A/T3 p.30, A/T4 p.42, D/T1 p.2-5, D/T2 p.10, 18, 20, Appendix B
2. Union Undertakings - UGL 3, UGL 9, UGL 12, UGL 24, UGL 28
3. Intervenor Evidence - APPrO May 1/06

1.3 GAS STORAGE AND DISTRIBUTION OFFERED AS DISCRETE SERVICES.

(Complete Settlement)

The parties acknowledge that Union's current U7 service allows for storage and distribution services to be contracted for as discrete services, and that Union's T1 service allows for distribution services to be contracted with or without storage services.

New T1 (or U7) Firm Billing Contract Demand Levels

Parties agree that effective January 1, 2007, for new T1 and U7 customers with loads greater than 1,200,000 m*3 per day, that are directly connected to i) the Dawn-Trafalgar transmission system in close proximity to Parkway or ii) a third party pipeline, Union will allow the customer's firm Billing Contract Demand level to be set at a level that recognizes the economics of the facilities used to serve the customer over the contract term (i.e., annual revenues over the term of the contract that would enable Union to recover the invested capital, return on capital and O&M

costs of the dedicated service in accordance with its system expansion policies). Daily deliveries that exceed the firm Billing Contract Demand quantity will be subject to cost related authorized overrun charges as specified in the T1 and U7 rate schedule (where authorized overrun charges are set using the demand charge of the first block of T1 and U7 rate schedule and the applicable commodity charge unitized at 100% load factor). This approach to establishing the firm Billing Contract Demand level of a new T1 and U7 customer's contract is similar to a feature approved by the Board for Enbridge's Rate 125 service.

As a result of this agreement, the parties agree that Union's proposal to redesign the T1 firm transportation service by:

i. Replacing the current two block declining demand charge structure with a four step block demand rate structure, and

ii. Replacing the two block declining commodity charge with a single commodity charge applicable to all firm T1 transportation customers,

is no longer required and is withdrawn as part of this settlement. Union's proposed T1 redesign was a response to the Board's comments and findings in the RP-2005-0022/EB-2005-0411 GEC Decision.

Delivery Obligations

a) <u>West of Dawn:</u> For new T1 or U7 customers and for existing customers with new firm incremental loads greater than 1,200,000 m3 per day, at the customer's option there will be no obligated DCQ requirement, subject to the facilities required to support the incremental load being economic.

b) <u>T1 Customers East of Dawn who have their Firm Billing Contract Demand set at a level that recognizes the economics of the facilities used to serve the customer as described above (New T1 (or U7) Firm Billing Contract Demand Levels):</u> New T1 customers and existing customers with new firm incremetal loads greater than 1,200,000 m3 per day have the following options:

i) The customer could deliver a daily obligated supply at Parkway equal to 100% of their firm CD (i.e. 24 times their peak hour firm delivery entitlement).

ii) The customer could commit to M12 Dawn-Parkway transmission capacity sufficient to meet 100% of their firm CD (i.e. 24 times their peak hour firm delivery entitlement). The customer must assign the right to use the M12 Dawn-Parkway transmission capacity to Union to allow Union to manage the firm redeliveries to the plant on a no-notice basis. For greater clarity, this allows the customer to purchase all their gas supply at Dawn on a non-obligated basis, yet operate with the no-notice benefits of the T-1 service.

iii) Any combination of the above.

c) <u>U7 Customers East of Dawn who have their Firm Billing Contract Demand set at a level that recognizes the economics of the facilities used to serve the customer as described above (New T1 (or U7) Firm Billing Contract Demand Levels):</u> New U7 customers and existing customers with new firm incremetal loads greater than 1,200,000 m3 per day have the following options:

i) The customer could maintain arrangments sufficient to meet their Parkway call-back provision equivalent to 100% of their firm CD.

ii) The customer could elect to deliver their supply at Parkway in the same hourly pattern as their plant is consuming. This option requires modifications to the terms and conditions of the U7 service. This option is conditional on the Industry Task Force identified in Issue 1.1 developing appropriate arrangements that will permit Union to accept hourly nominations and possibly TCPL's proposed FT-SN being approved by the NEB.

iii) Any combination of the above.

d) <u>T1 Customers East of Dawn who have not had their Firm Billing Contract Demand set at a level that recognizes the economics of the facilities used to serve the customer as described above (New T1 (or U7) Firm Billing Contract Demand Levels)</u>: New T1 customers and existing customers with new firm incremetal loads greater than 1,200,000 m3 per day have the following options:

i) The customer could deliver a daily obligated supply at Parkway equal to 80% of their firm CD (the current firm T1 rate class average load factor).

ii) The customer could commit to M12 Dawn-Parkway transmission capacity sufficient to meet 80% of their firm CD (i.e. 24 times their peak hour). The customer must assign the right to use the M12 Dawn-Parkway transmission capacity to Union to allow Union to manage the firm redeliveries to the plant on a no-notice basis. For greater clarity, this allows the customer to purchase all their gas supply at Dawn on a non-obligated basis, yet operate with the no-notice benefits of the T-1 service.

iii) Any combination of the above.

e) <u>U7 Customers East of Dawn who have not had their Firm Billing Contract Demand set at a level that recognizes the economics of the facilities used to serve the customer as described above (in the New T1 (or U7) Firm Billing Contract Demand Levels section)</u>: New U7 customers and existing customers with new firm incremetal loads greater than 1,200,000 m3 per day have the following options:

i) The customer could maintain arrangments sufficient to meet their Parkway call-back provision equivalent to 80% of their firm CD.

ii) The customer could elect to deliver their supply at Parkway in an amount equivalent to at least 80% of their hourly consumption. This option requires modifications to the terms and conditions of the U7 service. This option is conditional on the Industry Task Force identified in Issue 1.1 developing appropriate arrangements that will permit Union to accept hourly nominations and possibly TCPL's proposed FT-SN being approved by the NEB.

iii) Any combination of the above.

All of the foregoing delivery obligation options avoid costs that would otherwise be incurred and that would otherwise be borne by other ratepayers.

Multiple Redelivery Points

Union will permit multiple T1 (or U7) redelivery points not under common ownership provided the deliveries are managed by a common "fuel manager". Each redelivery point will need to individually meet the minimum qualifications for the T1 (or U7) rate schedule. Management by a common fuel manager will have no impact on the calculation of delivery charges applicable to each redelivery point. In addition, a fully binding agency agreement with the fuel manager will be required for each of the redelivery points. The fuel manager will be responsible for providing the necessary required credit to Union to cover the prudential requirements of all of the redelivery points. The fuel manager will be responsible for all of the redelivery points in aggregate. The fuel manager will receive the total monthly T1 invoice. The fuel manager will be jointly liable with each of the redelivery point contracting parties for all of their obligations under the contract while the individual redelivery point contracting parties will remain severally liable for their obligations related to their individual redelivery portion of the bill.

The settlement of this issue has no identifiable adverse impacts on existing customers.

The following parties agree with the settlement of this issue: Aegent, APPrO, CCC, CME, Energy Probe, IGUA, LPMA, LIEN, SEC, VECC, WGSPG, Sithe, TransCanada Energy, Portlands

The following parties take no position on this issue: CCK, TCPL

Evidence References:
1. Union Evidence - A/T3 p.2-12, 31, Supplemental A/T3, A/T4 p.43, D/T1 p.11-15 & p.18-20
2. Union Undertakings - UGL 1, UGL 2, UGL 5, UGL 6, UGL 10, UGL 11, UGL 14, UGL 17, UGL 18, UGL 19, UGL 22, UGL 25, UGL 26, UGL 28, UGL 52D
3. Intervenor Evidence - APPrO May 1/06, APPrO May 26/06, IGUA-AMPCO May 1/06, TCPL Issue I (Section 2.2) & Appendix IB May 1/06
4. Intervenor Undertakings - APPrO 1, IGUA 1

1.4 INTER-FRANCHISE MOVEMENT OF GAS (I.E., THE ABILITY TO ACCESS SERVICES ACROSS ONTARIO, WHETHER TO A CUSTOMER'S OWN ACCOUNT OR AS A SALE TO A THIRD PARTY).

(Complete Settlement)

The parties accept Union's current range of services that permit the redirection or acquisition of gas on short notice subject to Authorization Notice. These services were described in Appendix B to Union's evidence and include in-franchise transfers, ex-franchise transfers, DCQ assignments, suspensions, diversions, incremental supplies, loans, short-term storage and the Discretionary Gas Supply Service (DGSS). Union believes that its services align with Enbridge's proposed Enhanced Title Transfer service if settlement occurs daily.

Provided that customers remain within firm contractual parameters, it is acknowledged that customer's rights to divert or redirect gas should not be constrained or impeded by Union unless there are physical constraints on Union's system.

The settlement of this issue has no identifiable adverse impacts on existing customers.

The following parties agree with the settlement of this issue: APPrO, CCC, CCK, CME, Energy Probe, IGUA, LPMA, LIEN, SEC, VECC, WGSPG, Sithe, TransCanada Energy, Portlands

The following parties take no position on this issue: Aegent, TCPL

Evidence References:

1. Union Evidence - A/T3 p.31
2. Intervenor Evidence - APPrO May 1/06, CCK May 1/06, TCPL Issue I May 1/06

1.5 REDIRECTION OF GAS TO A DIFFERENT DELIVERY POINT ON SHORT NOTICE (I.E. THE ABILITY TO REDIRECT OR ACQUIRE GAS ON SHORT NOTICE TO A DIFFERENT DELIVERY POINT).

(Complete Settlement)

The parties accept Union's current range of services that permit the redirect or acquisition of gas on short notice subject to Authorization Notice. These services were described in Appendix B to Union's evidence and include in-franchise transfers, ex-franchise transfers, DCQ assignments, suspensions, diversions, incremental supplies, loans, short-term storage and the Discretionary Gas Supply Service (DGSS).

Provided that customers remain within firm contractual parameters, it is acknowledged that customer's rights to divert or redirect gas should not be constrained or impeded by Union unless there are physical constraints on Union's system.

The settlement of this issue has no identifiable adverse impacts on existing customers.

The following parties agree with the settlement of this issue: APPrO, CCC, CCK, CME, Energy Probe, IGUA, LPMA, LIEN, SEC, VECC, WGSPG, Sithe, TransCanada Energy, Portlands

The following parties take no position on this issue: Aegent, TCPL,

Evidence References:

1. Union Evidence - A/T3 p.31
2. Intervenor Evidence - APPrO May 1/06
3. Intervenor Undertakings - APPrO 1

1.6 THE ABILITY TO TRANSFER THE TITLE OF GAS IN STORAGE (I.E. THE TITLE TRANSFER IN GAS STORAGE IS TREATED AS AN ADMINISTRATIVE MATTER INSTEAD OF A PHYSICAL WITHDRAWAL OR INJECTION OF GAS).

(Complete Settlement)

The parties agree that underground title transfers shall be permitted between in-franchise customers (T1, T3, U7 and U9) with like and similar storage services subject to an administrative fee, without the application of withdrawal and injections charges. The contract parameters that must be the same include:

- % Withdrawals
- % Injections
- Supplier of deliverability inventory (customer supplied vs. Union supplied)
- Customer inventory within the same deliverability ratchets
- Quality of service (firm versus interruptible)

In addition, Union will permit underground title transfers between in-franchise customers on a interruptible basis (T1, T3, U7 and U9) subject to an administrative fee, without the application of withdrawal and injections charges when the transfer of gas in storage is from a customer with higher withdrawal entitlements to a customer with lower withdrawal entitlements.

Title transfers will be contracted for through Authorization Notices. Approval of all transactions would be limited to the lessor of the seller’s withdrawal limit and the buyer’s injection limit.

The settlement of this issue has no identifiable adverse impacts on existing customers.

The following parties agree with the settlement of this issue: Aegent, APPrO, CCC, CCK, CME, Energy Probe, IGUA, LPMA, LIEN, SEC, VECC, WGSPG, Sithe, TransCanada Energy, Portlands

The following parties take no position on this issue: TCPL,

Evidence References:

1. Union Evidence - A/T3 p.32-37
2. Union Undertakings - UGL 23B
3. Intervenor Evidence - APPrO May 1/06, TCPL Appendix IA May 1/06
4. Intervenor Undertakings - APPrO 1

3 TRANSPORTATION CAPACITY BIDDING PROCESS AND ALLOCATION

3.1 SHOULD THE BOARD ALLOW A GAS TRANSMITTER TO CHARGE A PREMIUM ABOVE COSTS FOR GAS TRANSMISSION SERVICES AND, IF SO, HOW SHOULD THAT PREMIUM BE ALLOCATED?

(Complete Settlement)

On May 15th, 2006 Union submitted for the Board's review and approval a comprehensive Settlement Agreement between Union Gas and various intervenors, as part of the EB-2005-0520 proceeding. This Settlement Agreement included complete settlement of Issue 6.10 "Are the terms and conditions of M12 and C1 services, including the proposed rate schedule changes, appropriate (excluding the consideration of potential new services for power producers)?".

As part of this Agreement, Union agreed to some future actions which were anticipated to result in settlement of NGEIR Issue III. Specifically, Union proposed and the stakeholders accepted the following:

"In the event the Board approves this Settlement Agreement, Union will send a letter to the Board panel presiding over the NGEIR proceeding (supported by TCPL) providing for the following:

1. Union agrees to amend the contracts of the Parties that bid a premium in the 2006 and 2007 open seasons to remove the premium. These customers would then pay the posted M12 toll only. This would reduce Union's revenue forecast for 2007 by $150,000.
2. Union agrees to develop, prior to its next open season, an allocation procedure which defines the criteria by which Union will allocate long term firm transportation capacity for expansion, promptly post it on its web site, and notify shippers of any changes six months in advance.
3. Union will include in its allocation procedure or otherwise, a requirement that Union identify in its open season documents any anticipated capacity constraints, if a constraint is expected, and
4. Union agrees to not use bid premium as a criterion for allocating long term firm transportation capacity in the future."

The following parties agreed with the settlement of this issue in the EB-2005-0520 proceeding: CME, FONOM & the Cities, CCK, CCC, EGD, Energy Probe, IGUA, LPMA, SEC, Sithe, TransAlta, TCPL, WGSPG

The following parties took no position on this issue in the EB-2005-0520 proceeding: Coral, LIEN, OAPPA, OESLP, SEM, VECC

The settlement of this issue has no identifiable adverse impacts on existing customers other than the reduction in the 2007 revenue forecast of $150,000.

The following additional parties in this proceeding agree with the settlement of this issue:

APPrO, Sithe, TransCanada Energy, Portlands

The following additional parties in this proceeding take no position on this issue:

Evidence References:

1. Union Evidence - A/T5 p.1-3, Letter filed with Board re Settlement of Issue III dated May 15, 2006
2. Union Undertakings - UGL 52a, UGL 52d, UGL 52e, UGL 52f, UGL 52g
3. Intervenor Evidence - APPrO May 1/06, TCPL Issue III & Appendix IIIA May 1/06, IGUA AMPCO May 1/06
4. Intervenor Undertakings - APPrO 1, TCPL 4

Nomination Window Schedule

June 10th Gas Day Nom Cycles	Nom #	Nomination deadline	Effective Time	Elapsed Hours	Remaining Hours
Timely Nom*	1	12:45 June 9	10:00 June 10	0	24
Evening Nom*	2	19:00 June 9	10:00 June 10	0	24
STS 1**	3	10:00 June 10	12:00 June 10	2	22
Intraday 1*	4	11:00 June 10	18:00 June 10	8	16
12:00	5	12:00 June 10	14:00 June 10	4	20
14:00	6	14:00 June 10	16:00 June 10	6	18
STS 2**	7	16:00 June 10	18:00 June 10	8	16
18:00	8	18:00 June 10	20:00 June 10	10	14
Intraday 2*	9	18:00 June 10	22:00 June 10	12	12
STS 3**	10	0:00 June 11	02:00 June 11	16	8
STS 4**	11	04:00 June 11	06:00 June 11	20	4
6:00	12	06:00 June 11	08:00 June 11	22	2
7:00	13	07:00 June 11	09:00 June 11	23	1

***NAESB Windows**
****TCPL STS Windows**
*** and**: Future changes to these common industry windows will change Union's schedule of nomination windows.**
All windows are scheduled in Ontario Clock Time.

Storage Deliverability and Space Allocation Example

100 MW Combined-Cycle Generating Plant

Firm Max Hour (GJ)	791
Firm Peak Day (GJ)	18,984
Max Firm Space (GJ)	75,816

Contracted Firm Deliverability			Max Firm Space	%	Cost-Based Deliverability		Deliverability
% Peak Day	Hours of Use	GJ/day	Entitlement	Deliverability	GJ/Day	% of Total	Days
A	B	C	D (C x 4 days)	E (C/D)	F (D x 1.2%)	G (F/C)	H (D/C)
100%	24.0	18,984	75,936	25.0%	911	4.8%	4.0
90%	21.6	17,086	75,936	22.5%	911	5.3%	4.4
80%	19.2	15,187	75,936	20.0%	911	6.0%	5.0
70%	16.8	13,289	75,936	17.5%	911	6.9%	5.7
60%	14.4	11,390	75,936	15.0%	911	8.0%	6.7
50%	12.0	9,492	75,936	12.5%	911	9.6%	8.0
40%	9.6	7,594	75,936	10.0%	911	12.0%	10.0
30%	7.2	5,695	56,952	10.0%	683	12.0%	10.0
20%	4.8	3,797	37,968	10.0%	456	12.0%	10.0
10%	2.4	1,898	18,984	10.0%	228	12.0%	10.0

APPENDIX G

NATURAL GAS ELECTRICTY INTERFACE REVIEW
DECISION WITH REASONS
BOARD FILE NO. EB-2005-0551

DECISION ON MHP CANADA'S CORE POINTS

NOVEMBER 7, 2006

APPENDIX G
Decision on Market Hub Partners Canada's Core Points

As part of its evidence and submission to the Board in the context of the NGEIR Proceeding, Market Hub Partners Canada L.P. ("MHP Canada") made a request for an expedited decision on certain "Core Points".

The "Core Points" are described in MHP Canada's pre-filed evidence as follows:

(i) MHP Canada cannot exercise market power;

(ii) MHP Canada, similar to independent storage developers, will be granted authority to charge market-based rates for its services; and

(iii) MHP Canada will be allowed flexibility to contract for services without requiring approval of individual contracts, provided that MHP Canada operates within a base set of service terms and conditions approved by the Board.

The "Core Points" were addressed by the Board in the NGEIR Proceeding as a result of a reference from the St. Clair Pool Storage Project proceeding (EB-2006-0162 and EB-2006-0165).

On August 11, 2006, the Board issued a Notice of Reactivated Proceeding (Notice) in relation to the St. Clair Pool Storage Project. In the Notice, the Board stated that it did not intend, in the St. Clair Pool Storage Project proceeding, to consider evidence or issue a decision in relation to MHP Canada's request for a market-based rate pursuant to section 36 of the *Ontario Energy Board Act, 1998* (EB-2006-0162), nor to consider the evidence or issue a decision in relation to MHP Canada's request for approval to enter into agreements for storage services pursuant to section 39(2) of the *Ontario Energy Board Act, 1998* (EB-2006-0165). In the Notice, the Board stated that these two issues would be addressed in the NGEIR Proceeding.

On September 7, 2006, the Board issued its oral decision on MHP Canada's Core Points. In its decision, the Board addressed each of the "Core Points". The relevant transcript excerpt from the NGEIR Proceeding, which contains the Board's oral decision on the Core Points, can be found below. The Board also ordered MHP Canada to file with the Board and deliver to all registered intervenors in the St. Clair Pool Storage Project Proceeding (EB-2006-0165) as directed in the Board's oral decision dated September 7, 2006 (EB-2005-0551) copies of its proposed standard terms and conditions for storage contracts.

MHP Core Points Decision
Excerpt from the oral hearing transcript EB-2005-0551, Volume 17, September 7, 2006, page 166 line 5 to page 175 line 26.

> MR. KAISER: Thank you. There's one outstanding matter we'd like to deal with, that with your indulgence, will take a few moments. And that relates to the request by Market Hub Partners for a decision on certain core issues, which we'll deal with at this point.
>
> Market Hub Partners Canada has requested an expedited decision on three issues which relate to the Partnership's proposed St. Clair storage operations. These issues have arisen in this proceeding, the Natural Gas Electricity Interface Review, as a result of a reference from another proceeding.
>
> Market Hub filed an application before the Board some time ago for approval of market-based rates that will govern gas storage contracts to be entered into by the Partnership. That proceeding was adjourned, and then subsequently, on June 30th, the Partnership requested it be reactivated.
>
> The Board issued a notice of reactivated proceedings on August 11th, referring these three core issues to this proceeding. Market Hub, as we know, has participated and intervened in this proceeding, has filed evidence, and argument.
>
> By way of background, Market Hub Partners is a Partnership that is wholly owned by subsidiaries of Duke Energy Corporation. The Partnership was established to develop natural gas storage facilities in Southwestern Ontario near Dawn, where it intends to offer merchant storage service at market-determined prices directed to wholesale customers.
>
> The Partnership is currently developing its St. Clair Pool, which will provide 1.1 Bcf of working gas capacity.
>
> As indicated, Market Hub has reactivated its application to the Board for a

number of regulatory approvals related to that facility, including the determination regarding market-based pricing.

Market Hub also intends to develop, through a partnership, a further 5.3 Bcf of working gas capacity at the Sarnia Airport Pool and has also indicated it will seek development opportunities to increase its working gas capacity to 10 Bcf by 2010.

The request by Market Hub for an expedited decision on these three core points was set out in its July 20th letter to the Board, and it was also addressed in some detail in Market Hub's August 11th written argument.

Specifically, the three questions are as follows.   Market Hub has asked the Board to find that Market Hub:
One, cannot exercise market power; two, be granted authority to charge market-based rates for its services; and three, be allowed flexibility to contract for services without requiring approval of individual contracts, provided that Market Hub operates within a base set of service terms and conditions approved by the Board.
So those are the three issues that are before us today.

It should be pointed out that Market Hub has indicated that the term "authority to charge market-based rates" means the authority to charge rates within the Union Gas C1 rate range, which would be in effect from time to time.

The Partnership had previously asked that a decision on these core points be reached by the end of August in order to commit to necessary contractors, to conduct its open season, and to continue the regulatory approval process.

It's important to note that Market Hub has not asked the Board to make an expedited decision about whether it will or will not forbear from regulating storage prices charged by Market Hub Partners or any other storage operator. This is set out in the August 11th written argument, which I will quote:

> To be clear, Market Hub Partners Canada's request for an expedited decision on the Core Points is intended only to provide Market Hub Partners Canada with the confidence to move the St. Clair project plans forward such that the incremental storage services can be offered to the market commencing in 2007. The request to an expedited decision does not substitute in any way for the forbearance decision ...

And that appears at page 29 of the Market Hub argument.
Before reaching the decision on this, it's useful to set out the position of the parties on this issue.

The final arguments of the parties on August 28th and 29th dealt with a number of issues in this proceeding. Although most of the intervenors did not deal in any detail with the Market Hub request, there were, however, four parties that did make some comments.

First, the Board hearing team took the position that because of MHP's status as an affiliate of Union, a decision on the core points was, in effect, a decision on the merits of Union's position. Accordingly, the Board hearing team concluded that an expedited decision would not be appropriate.

IGUA and AMPCO said that Market Hub Partners cannot exercise market power by itself and concurred with granting Market Hub Partners the authority to charge market-based rates.

With respect to the issue of contract approval, Mr. Thompson, the counsel for IGUA, raised the question as to whether waiving the Board's approval of storage contracts - which was the third point Market Hub asked the Board to address - would be consistent with the Board's treatment of contracts entered into by Tribute Resources, an independent Ontario storage developer that received approval to charge market-based rates. And that decision is the Board's decision of June 17th of this year, the reasons for which were issued on August 25th.

The final argument of the School Energy Coalition did not address Market Hub's core points directly but did state that, in its view, Market Hub, because they're affiliated with Union, would have market power.

And finally, London Property Management Association and the Wholesale Gas Services Purchasers Group argued that prices charged for utility affiliate storage should not be regulated.

I'd like to deal first with this question of market power. And that, as I have said, is one of the core points.

The gas storage capacity that Market Hub proposes to develop in Ontario is relatively small. The St. Clair Pool as proposed would have a capacity of 1.1 Bcf. The Sarnia Airport Pool as proposed, which may be in service in 2008, would have a capacity of 5.3 Bcf.

In the Board's view, even on the narrowest definition of a geographic market as advanced in this case, the total capacity of these two pools would be less than 3 percent of the market capacity. The Board believes it can easily conclude that Market Hub Partners, if considered separate from Union, cannot wield market power today or even when its proposed storage pools become operational.

The Board also notes that, with the exception of Schools, no party has explicitly asserted that Market Hub will have market power.

Market Hub and Union Gas are affiliates and are under common control. The Board in this hearing has heard considerable evidence that affiliate relations can affect market power and the determination of market power.

A number of parties have referred to the FERC regulations in this area, which have been recently reconfirmed by Order No. 678.

The relevant part of those regulations states as follows:

> Capacity (transportation, storage, LNG, or production) owned or controlled by the applicant and affiliates of the applicant in the relevant market shall be clearly and fully identified and may not be considered as alternatives competing with the applicant. Rather, the capacity of an applicant's affiliates is to be included in the market share calculated for the applicant.

That's a reference to the FERC regulation paragraph 284.503(b)(4).

If the Board were to follow FERC policy in this particular case, the Board would be first required to make a determination as to whether Union has market power, an assessment it has not yet made, before it could determine whether Market Hub had market power.

This is the concern that appears to be expressed by the Board hearing team and Schools in arguments that they have filed.

Given the specific circumstances of Market Hub as outlined above, the Board has concluded that it's not necessary to combine Market Hub's proposed storage capacity with Union's capacity to determine whether Market Hub lacks market power.

Market Hub Partners is proposing to develop only a small amount of new storage capacity. It has no existing customer base and, unlike Enbridge and Union, does not have any in-franchise or captive customers.

The Board will require Market Hub to offer its storage service to the market in a non-discriminatory fashion, to adhere to the Affiliate Relationships Code for gas utilities, and, as volunteered by Market Hub, to file confidentially with the Board information on all of its storage transactions.

The Board is of the view that these requirements will minimize any concerns that Market Hub and Union Gas will be acting in concert. Accordingly, the Board finds that Market Hub partners cannot exercise market power.

Turning next to the issue of market-based rates, the Board in its NGF report stated - and this is at page 50 - that it will not fix cost-of-service rates for new storage developed by independent storage operators.

The Board has approved market-based rates for Tribute Resources, a new independent storage developer, and that's the decision I referred to earlier.

Given that the Board has determined that Market Hub cannot exercise market power, the Board finds it is appropriate to grant Market Hub the same treatment it has accorded Tribute.

The Board also notes that many of the parties argued that market-based rate authority would provide an appropriate stimulus for new storage development.

Accordingly, the Board will permit Market Hub Partners to charge market-based rates; that is, rates that are subject to the maximums set out in Union Gas' rate schedule C1.

The third issue relates to contract approvals and the request of Market Hub in that regard.

Section 39(2) of the OEB Act prohibits storage companies from entering into or renewing an agreement for gas storage unless the Board has approved the parties to the agreement, the period of the agreement, and the storage that is subject to the agreement.

Market Hub says that the process and time involved in obtaining these approvals is not consistent with the needs of a competitive market, particularly the short-term storage or transactional market. This is set out at page 27 of the Market Hub argument.

As a new market entrant with no existing customer base, Market Hub is understandably concerned about potential barriers to signing customers. Even if the time and cost of contract approval were minimal, the Board is not aware of any compelling public interest reason to pre-approve the storage contracts of Market Hub Partners.

In the past, the Board has given blanket storage orders that effectively exempt storage operators from seeking the Board's pre-approval of storage contracts that meet certain conditions. The Board considered that approach in this case with respect to Market Hub Partners; however, in light of the Board's determination that Market Hub cannot exercise market power, the Board has decided that it can forbear from requiring pre-approval of MHP's storage contracts.
Again, the Board notes that there was general support for this approach by all parties to this proceeding.

The Board wants to stress, however, that this forbearance is only with respect to Section 39(2) of the OEB Act and only in respect of MHP. The Board has not yet made any determination as to whether to forbear from regulating storage rates or approving storage contracts more generally.

MHP's request to the Board referred to a base set of terms and conditions approved by the Board. The Board will require MHP to file its proposed standard terms and conditions in EB-2006-165, a proceeding that's currently underway with respect to the St. Clair project.

With respect to any contracts between Union and MHP, the Board will be engaged in this matter through its regulation of Union. The Board's Affiliate Relationships Code for Gas Utilities applies to the terms and conditions of those contracts. The Board will also have the ability to carry out a prudence review of such contracts as part of its regulation of Union.

And the Board will be considering, as part of its deliberation on the issues in this case, whether to require pre-approval of storage contracts between regulated distributors and affiliates.

Now, I would add here that, in argument today, Mr. Smith has requested a clarification of the current ARC guidelines. This decision will not deal with that, but it will be dealt with in the main decision.

I trust that's satisfactory, Mr. Smith.

Finally, as to reporting requirements, as the Board considers the issues in this hearing, it will be considering reporting requirements for all storage operators. Several parties have advocated that the Board require storage operators to make public certain contract information and other data. Market Hub should be aware that this decision not to require Board approval of Market Hub contracts is not an indication that the Board has made any decision on the extent of reporting obligations of storage operators generally.

We would ask you, Mr. Smith, to prepare and file a draft Order in accordance with this decision, if possible, within 15 days.

MR. SMITH: Yes, sir.

MR. KAISER: Possibly earlier, and to distribute copies to your friends for comment.

That completes the Board's decision with respect to the Market Hub core issues.