

December 3, 2014

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Dear Ms. Walli:

Re: Complaint by TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. ("TransAlta")

We are counsel to TransAlta. TransAlta is a licensed natural gas fired electricity generator with plant operations in Sarnia, Ontario.

I. Introduction

TransAlta and Union Gas Limited (**Union**) are parties to a standard form T1/T2 Gas Storage and Distribution Contract dated November 1, 2012, which comprises a contract cover sheet, an attached Schedule A and incorporates by reference Union's General Terms and Conditions¹ (all of which is collectively referred to as the **T1/T2 Contract**).² A copy of the T1/T2³ Contract is attached as **Appendix A**.

The T1/T2 Contract is a mixed storage and distribution contract and therefore falls within the *Storage and Transportation Access Rule (STAR)*⁴ and its related requirements. TransAlta and Union are in disagreement over the interpretation of TransAlta's Daily Contract Quantity (**DCQ**) obligations under the T1/T2 Contract.

TransAlta is writing to the Board to seek a preliminary determination on three issues (the **Preliminary Issues**) relating to the interpretation of the T1/T2 Contract and alternative dispute resolution requirements applicable to all contracts for transportation services (including combined distribution and storage contracts such as the T1/T2 Contract). The Preliminary Issues are:

- (a) First, does the Board have, and will it exercise, jurisdiction to consider and decide the correct interpretation of the DCQ obligations and definitions in the standard form T1/T2 Contract held by TransAlta?
- (b) Should the Board decide the first preliminary issue in the affirmative, does the Board have, and will it exercise jurisdiction over the determination of amounts that may be owing to TransAlta under the T1/T2 Contract?

¹ General Terms and Conditions, Union Gas Limited (Jan 2009) [**General Terms and Conditions**].

² T1/T2 Gas Storage and Distribution Contract dated November 1, 2012 [**Contract**].

³ with confidential provisions that are irrelevant to this proceeding redacted

⁴ *Storage and Transportation Access Rule*, December 2, 2009 [**STAR**].

- (c) Should the Board determine that it does not have jurisdiction to determine the first and/or second Preliminary Issues, will the Board refer the complaint to binding arbitration in accordance with the STAR, which requires alternative dispute resolution provisions for all transportation services contracts?

To be clear, TransAlta is not asking the Board to decide the merits of the DCQ interpretation issue at this stage. TransAlta is only seeking direction on the Preliminary Issues referred to above. The following information is provided for background purposes only to assist the Board in making its determination on the Preliminary Issues.

II. Background

(a) The T1/T2 Contract

Schedule 1 to the T1/T2 Contract provides for an obligated DCQ of 17,904 GJ/day. The DCQ calculation for periods subsequent to the first 12 months is calculated in accordance with the definition of “Daily Contract Quantity” contained in Union’s General Terms and Conditions. The definition reads as follows:

Daily Contract Quantity (“DCQ”) means that portion of the daily parameters as set out in Schedule 1, being a quantity of Gas which Customer must deliver to Union on Firm basis. The DCQ (GJ/day) is equal to 12 months of consumption of end-use locations underlying the direct purchase / 365 days * heat value (GJ/m³). If this Contract has a term greater than 12 months, the DCQ is calculated by dividing the historical consumption of the term of this Contract by the number of Days in this Contract term. The consumption of general service end-use locations is weather normalized.⁵ [emphasis added]

The T1/T2 Contract had a term greater than 12 months:

- (d) s. 3 of the T1/T2 Contract dealing with “Contract Term” states that “[t]his Contract shall be effective from the date hereof” and does not provide a limit on the term of the T1/T2 Contract; and
- (e) the date and “Day of First Delivery” under the T1/T2 Contract was November 1, 2012 and the T1/T2 Contract continued to be in force until October 31, 2014, after which date a new contract came into effect.

Accordingly, the definition requires that DCQ be calculated by dividing the historical consumption for the term of the T1/T2 Contract by the number of the days in the term. This results in TransAlta’s DCQ being 12,912 GJ/day, as determined using the stipulated calculation period between November 1, 2012 and January 31, 2014.⁶ Union takes the position that the DCQ is 17,904 GJ/day, despite indication to the contrary in the definition.

(b) The Matters at Issue

Union rarely sought delivery of the DCQ amount listed in the T1/T2 Contract and proceeded by way of implied waiver, until the winter of 2014. From January 4-9, 2014, and commencing again on January 18, 2014, Union demanded that TransAlta deliver the listed 17,904 GJ/day, refused to allow TransAlta to satisfy that demand with gas that it had in storage, and restricted TransAlta from selling gas to anyone other than in-franchise customers. This demand coincided with the onset of exceptionally high gas prices.

⁵ General Terms and Conditions, p 18.

⁶ TransAlta chose an end-of-month date for an initial calculation of the DCQ. If the measure is made between November 1, 2012 and January 3, 2014, which is the day before Union began to unilaterally require delivery of a DCQ of 17,904 GJ/Day, the DCQ under the T1/T2 Contract will be 11,790 GJ/day.

However, TransAlta communicated that the T1/T2 Contract definition and stipulated calculation of DCQ resulted in a lower maximum obligated amount of 12,912 GJ/day (historical consumption divided by the number of days in the term as per the DCQ definition in the T1/T2 Contract). By letter dated March 7, 2014, TransAlta advised Union of its position and that it was taking steps to reduce its DCQ to 12,912 GJ/day. A copy of TransAlta's March 7 letter is attached as **Appendix B**.

In response, Union demanded that TransAlta increase its delivery to 17,904 GJ/day, and advised TransAlta that if it failed to deliver that DCQ amount, it would bill TransAlta for replacement gas and also impose penalties.

On March 11, 2014, TransAlta wrote to Union and advised that it would deliver the 17,904 GJ/day amount, as demanded, but would do so under protest and without prejudice to its rights under the T1/T2 Contract, before the Board and at common law or equity. TransAlta also proposed binding arbitration to resolve the DCQ issue in accordance with the mandatory terms of service and standard form of contracts for transportation services as required by STAR. A copy of TransAlta's March 11 letter is attached as **Appendix C**. TransAlta is of the understanding that all similarly situated customers were not treated in a uniform manner.

On March 12, 2014, TransAlta wrote to Union to commence a complaint under STAR, on the grounds that requiring TransAlta to deliver the listed maximum DCQ amounted to discriminatory treatment contrary to STAR. A copy of TransAlta's March 12 letter is attached as **Appendix D**.

On March 20, 2014, Union's external counsel responded to TransAlta's letters indicating that Union (i) disagreed with TransAlta's DCQ calculation, (ii) disagreed that the T1/T2 Contract was subject to STAR, and (iii) refused to participate in any arbitration. A copy of the March 20 letter is attached as **Appendix E**.

Union also refused to permit TransAlta to use presently stored gas to meet the 17,904 GJ/day requirement and instead required TransAlta to meet the requirement with new gas delivery. Union continued to require TransAlta deliver 17,904 GJ/day until April 25, 2014.

III. TransAlta's Submissions on the Preliminary Issues

(a) Does the Board have jurisdiction to consider and decide the correct interpretation of the DCQ obligations and definitions in the standard form T1/T2 contract held by TransAlta?

The Board has jurisdiction to consider TransAlta's complaint for four reasons: (i) the Board's jurisprudence establishes jurisdiction over T1/T2 contracts and the standard terms of service and forms of contract for transportation services; (ii) the T1/T2 Contract is intended to implement the Board's approved rates and tariffs; (iii) Union and the T1/T2 Contract are subject to STAR and its conduct with respect to DCQ is contrary to STAR; and (iv) the Board's broad jurisdiction as established by sections 2 and 36 of the *Ontario Energy Board Act, 1998* (the **OEB Act**) includes the power to review gas distribution contracts.

(i) The Board's historical supervisory jurisdiction over T1/T2 contracts supports the Board's continued jurisdiction

The Board has historically taken on supervisory jurisdiction over T1/T2 contracts. This jurisdiction was confirmed by the Board's Natural Gas Electricity Interface Review decision dated November 7, 2006 (EB-2005-0551) (the **NGEIR Decision**) (excerpts cited below attached as **Appendix F**) and Natural Gas Storage Allocation Policies decision dated April 29, 2008 (EB-2007-0724, EB-2007-0725) (the **2008 Decision**) (excerpts cited below attached as **Appendix G**).

In the NGEIR decision, although the Board declined to order a change in contract quantities for T1 customers, it was clear that the Board had the power do so with adequate evidence, and provided such changes were done in a “controlled and deliberate manner”.⁷

In the 2008 Decision, the Board further affirmed its jurisdiction to over T1/T2 contracts and its “overriding obligation” to ensure that “contract terms are just and reasonable”:

If the Board concludes that terms and conditions of Union’s contracts for cost-base storage must evolve to respond to changing circumstances, it will order such changes regardless of the rollover provision in current T1 contracts or the provisions of the June 2000 settlement agreement. The rollover provision might be an important consideration when assessing how customers could be affected by any new allocation rules, and when determining appropriate transition mechanisms. Such considerations, however, do not change the Board’s overriding obligation to ensure rates and contract terms are just and reasonable.⁸

The Board’s jurisdiction over the terms of T1/T2 Contract is consistent with administrative law principles. The Board has specialized, subject-matter expertise in natural gas and is best placed to interpret and administer such contracts. T1/T2 contracts are unique to the natural gas market, and the parties to such contracts are often regulated by the Board. The Board is best positioned to consider the T1/T2 Contract in the context the specific dynamics of the natural gas market and the regulatory environment.

(ii) The T1/T2 Contract falls within the Board’s rate-making and oversight jurisdiction

Second, the Board’s rate-making authority would include the consideration of the T1/T2 Contract. The T1/T2 Contract is incorporated by reference into the current T2 Rate Schedule (attached as **Appendix H**):

- (a) Section 5 of the T2 Rate Schedule provides that “Additional information on Union’s T2 service offering can be found at: ... [Union’s website]”. The Union website page for T2 contracts posts (i) the standard form Contract Cover, and (ii) Union’s General Terms and Conditions.
- (b) The T2 Rate Schedule contemplates the related contract in several sections: B (Applicability); Storage Service – sections 1, 3.2 and 4.1; Transportation Charges – section 1; and Overrun Service – Injection, Withdrawals and Transportation.
- (iii) Union’s conduct and the terms of the T1/T2 Contract are contrary to STAR, over which the Board has jurisdiction**

Union’s conduct with respect to the DCQ has resulted in TransAlta being treated differently than other shippers, customers and consumers, and is thereby discriminatory and in contravention of STAR. Further, Union’s conduct has had the effect of requiring TransAlta to subsidize other users on the Union system.

In the context of its obligations and duties under the T1/T2 Contract, Union is subject to STAR. Union is a “natural gas transmitter” and “integrated utility” as defined by STAR. Under the T1/T2 Contract, Union provides TransAlta with “transportation services” (which includes both storage and distribution services) and TransAlta is a Customer.⁹

Section 1.1.1(i) of STAR states that the rule’s purpose is to ensure non-discriminatory access:

⁷ Natural Gas Electricity Interface Review decision dated November 7, 2006 (EB-2005-0551) [NGEIR Decision], p 90.

⁸ Natural Gas Storage Allocation Policies decision dated April 29, 2008 (EB-2007-0724, EB-2007-0725) [2008 Decision], p 34.

⁹ STAR, s. 1.2, Definitions, “natural gas transmitter” and “integrated utility”.

⁹ STAR, section 1.1.1 (i).

1.1.1. This Rule outlines conduct and reporting requirements for natural gas transmitters, integrated utilities and storage companies. The purpose of this Rule is to:

- i) Establish operating requirements to ensure open and non-discriminatory access to transportation services for shippers and storage companies;¹⁰

In an application filed with the OEB (excerpt attached at **Appendix I**), Union advised that its Rate T2 Service is offered to its largest contract rate customers, with approximately 22 large industrial customers contracting for this service. In its description of Rate T2, it advised that the rate provided significant flexibility, because if a plant is not operating for any reason, there is no obligation to deliver gas to Union. While this publicly filed application sets out how Union interprets its T2 obligations with its customers, this does not conform with how Union treated TransAlta. Union's refusal to waive or modify TransAlta's DCQ requirement amounts to discriminatory treatment against TransAlta and warrants the exercise of the Board's related jurisdiction.

In Union's March 20, 2014 letter referred to above (and attached as **Appendix E**), Union asserted that, pursuant to the OEB's Decision on Tariffs dated August 30, 2010 (EB-2010-0155) (the **Decision on Tariffs**) (attached as **Appendix J**), STAR does not apply to the T1/T2 Contract or any distribution contracts but rather only applies to natural gas transmission contracts. This is not supported by the Decision on Tariffs, which does not preclude the STAR's application to T1/T2 distribution and storage contracts, but rather simply addresses the STAR's application to the current M12, C1 and M16 transmission contracts.

Union's position also directly contradicts the clear and unambiguous language of STAR. STAR applies to: (i) natural gas transmitters and integrated utilities, and Union falls within both definitions with respect to its obligations under the T1/T2 Contract; and (ii) contracts for storage and transportation services (which would include combined distribution storage contracts such as the T1/T2 Contract). Accepting Union's position would effectively "read out" the provisions of the STAR that address natural gas transmitters and integrated utilities.

(iv) Broad jurisdiction under the OEB Act

The OEB Act gives broad jurisdiction to the Board, and includes the review of contracts relating to the transportation and distribution of gas. This jurisdiction is established by the Board's objectives and rate-making authority in accordance with:

- (a) Section 2 of the OEB Act, which states that the Board, in carrying out its responsibilities in relation to gas, shall be guided by several objectives, including the following:
 - (i) "to facilitate competition in the sale of gas"
 - (ii) "to protect the interests of consumers with respect to prices and the reliability and quality of gas service"
 - (iii) "to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas"¹¹

Considering the proper and fair interpretation of a T2 contract falls within the ambit of these broad objectives.

- (b) Section 36 of the OEB Act, which gives the Board broad jurisdiction to govern the transmission, distribution and storage of gas, and specifically provides that the Board "is not bound by the terms of any contract":

¹⁰ STAR, section 1.1.1 (i).

¹¹ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 [OEB Act] s. 2.

36.(1) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.¹²

In other words, charges for the distribution and storage of gas are subject to oversight by the Board, which shall include the review of gas distribution contracts.

(b) Should the Board determine that it does not have jurisdiction to determine the first and/or second Preliminary Issue, will the Board refer the complaint to binding arbitration in accordance with the provisions of STAR, which require alternative dispute resolution provisions for all transportation services contracts, including the T1/T2 Contract?

In the event the Board declines jurisdiction over TransAlta’s complaint, the Board should nevertheless order that the complaint be referred to Alternative Dispute Resolution (ADR), specifically binding arbitration.

As argued above, Union is a “natural gas transmitter” and an “integrated utility” as defined by STAR. STAR requires transmitters to include ADR provisions in their contracts. The relevant provisions of STAR state:

2.3 Shipper – Standard Terms of Service and Standard Forms of Contracts for Transportation Services

...

2.3.2 A transmitter shall ensure that each transportation service has its own standard form of contract and its own terms of service, and that the terms of service, at a minimum, include the standards outlined in section 2.3.4.

...

2.3.4. A transmitter’s tariff shall include the following terms of service:

...

viii) Alternative Dispute Resolution provisions;¹³

[emphasis added]

The T1/T2 Contract does not contain any ADR provisions and is clearly in violation of STAR.

Notwithstanding the absence of ADR provisions, TransAlta proposed that the dispute over the interpretation of the T1/T2 Contract and the DCQ be submitted to binding arbitration. Union refused to submit to arbitration.

The policy promoted by STAR is to encourage regulated entities to engage in alternative dispute resolution and resolve their disputes privately and efficiently. Union’s failure to include ADR provisions in the T1/T2 Contract and engage in arbitration despite being presented with the opportunity warrants intervention by the Board. The Board is well within its jurisdiction to order that the complaint be referred to arbitration.

Section 5 of STAR outlines the process for initiating a complaint under STAR.¹⁴ TransAlta’s March 12, 2014 letter (attached as **Appendix D**) satisfies this requirement. As noted, Union disagreed that it or the T1/T2 Contract were subject to STAR.

¹² OEB Act, s. 36.

¹³ STAR, s. 2.3.

December 3, 2014

 **NORTON ROSE FULBRIGHT**

We look forward to receiving the Board's direction in this matter. Should the Board require further information, or wish to receive further submissions (written or oral), TransAlta would be happy to oblige.

Sincerely,

NORTON ROSE FULBRIGHT CANADA LLP



Lisa (Elisabeth) DeMarco

¹⁴ STAR, s. 5.

Appendix A

Contract ID	SA-6233-10
Contract Name	TRANSALTA-SRCP

T1 CONTRACT

This GAS STORAGE AND DISTRIBUTION CONTRACT ("Contract"), made as of the 1st day of November, 2012

BETWEEN:

UNION GAS LIMITED
hereinafter called "Union"

- and -

TRANSALTA GENERATION PARTNERSHIP
hereinafter called "Customer"

WHEREAS, Customer has requested Union and Union has agreed to provide Customer Services;

AND WHEREAS, Union will deliver Customer owned Gas to Customer's Point(s) of Consumption or Storage under this Contract pursuant to the T1 Rate Schedule;

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

1 INCORPORATIONS

The following are hereby incorporated in and form part of this Contract:

- a) Contract Parameters contained in Schedule 1 – DCQ, Storage and Distribution Services Parameters, and Schedule 1a – Supplemental Services Parameters as amended from time to time; and
- b) The latest posted version of the T1 Contract Terms and Conditions contained in Schedule 2 subject to Section 12.18 of Union's General Terms and Conditions; and
- c) The latest posted version of Union's General Terms and Conditions subject to Section 12.18 of Union's General Terms and Conditions; and
- d) The applicable T1 Rate Schedule as amended from time to time and as approved by the Ontario Energy Board.

For the purposes of this Contract, "Point(s) of Receipt" shall mean those points identified in Schedule 1 where Union may receive Gas from Customer.

2 PRELIMINARY AND CONTINUING CONDITIONS

This Contract and the rights and obligations of the Parties hereunder shall be conditional upon the fulfillment and maintenance in good standing of the following conditions:

- a) Security arrangements acceptable to Union shall be supplied and maintained in accordance with the General Terms and Conditions; and
- b) Union shall have received all required OEB approvals.



The above conditions must be initially satisfied by Customer 25 days prior to the Day of First Delivery.

3 CONTRACT TERM

This Contract shall be effective from the date hereof. However, the Service, obligations, terms and conditions hereunder shall commence on the Day of First Delivery. Subject to the provisions hereof, this Contract shall continue in full force and effect for each Contract Year until notice to terminate is provided by either Union or Customer. Such notice must be delivered at least three (3) months prior to the end of a Contract Year.

4 SERVICES PROVIDED

Union agrees to provide Storage Services and Distribution Services as specified in Schedule 1 and Schedule 1a. To be eligible for these services, the Customer must have forecasted annual natural gas consumption of 5,000,000 m3 or greater at one property or contiguous properties. If the Customer does not maintain this level of consumption during the current contract year or is not expected to maintain this level of consumption then, effective the following contract year, the Customer will be placed on an alternate service.

5 RATES FOR SERVICE

Customer agrees to pay for Services herein pursuant to the terms and conditions of the following:

- a) The R1 Rate Schedule and the T1 Rate Schedule as they may be amended from time to time by the Ontario Energy Board; and
- b) This Contract and the incorporations hereto.

6 NOTICES

Notices shall be delivered pursuant to the Notice provision of the General Terms and Conditions and delivered to the addresses as referenced in Schedule 1.

7 AGENCY

If an agent on behalf of the Customer executes this Contract then, if requested by Union, the agent shall at any time provide a copy of such authorization to Union.

Notwithstanding the provisions of Section 2(a) the agent shall be responsible for providing security arrangements acceptable to Union in accordance with the General Terms and Conditions.

The agent and Customer acknowledge and agree that they are unconditionally and irrevocably jointly and severally liable for all Customer obligations under the Contract.

8 CONTRACT SUCCESSION

This Contract replaces all previous Gas Storage and Distribution Contracts, subject to settlement of any Surviving Obligations.



The undersigned execute this Contract as of the above date. If an Agent on behalf of Customer executes this Contract then, if requested by Union, Agent or Customer shall at any time provide a copy of such authorization to Union.

9 RESTATED CAPSTONE AGREEMENT

Despite Section 12.05 of Union's General Terms and Conditions, it is the intention of the parties hereto that the Firm and Interruptible Contract Demand figures in Section 5 of Schedule 1 of this Contract be as stated in a certain Restated Capstone Agreement between Union, Customer and others dated November 1, 2012 (the "RCA"), during the term of the RCA. It is further intended the daily quantities of Gas attributable to Customer shall be as stated in the "Individual Customer Volume Consumption Report" as issued pursuant to the RCA. In the event of a conflict between the provisions of the RCA and this Contract related to the aforementioned parameters, the RCA shall prevail. For greater clarity the aforementioned parameters shall be as per this Agreement in the event the RCA is no longer in effect.

UNION GAS LIMITED

Authorized Signatory

Please Print Name

TRANSALTA GENERATION PARTNERSHIP
by its managing partner
TRANSALTA CORPORATION

I have the Authority to bind the Corporation, or Adhere C/S, if applicable

Please Print Name



Contract ID	SA-6233-10
Contract Name	TRANSALTA-SRCP

Schedule 1
DCQ, Storage and Distribution Services Parameters
Rate T1

1. DATES

This Schedule 1 is effective the 1st day of November 2012
"Day of First Delivery" means the 1st day of November 2012

2. DAILY CONTRACT QUANTITY (DCQ)*

Upstream Point(s) of Receipt

Location	Obligated DCQ GJ per Day
Western	0

Ontario Point(s) of Receipt

Location	Obligated DCQ GJ per Day
Dawn	17,904

*Obligated DCQ does not include Compressor Fuel.

3. SUPPLY OF COMPRESSOR FUEL

Customer shall supply compressor fuel for Union's distribution and storage services.

4. STORAGE PARAMETERS

Parameters	Amount	Unit of Measure
Firm Cost-based Storage Space	██████	GJ
Firm Injection/Withdrawal Right (Union provides deliverability inventory)	██████	GJ per Day
Firm Injection/Withdrawal Right (Customer provides deliverability inventory)	██████	GJ per Day



Note 1: Interruptible Injection/Withdrawal Right

██████ GJ per day

(Union provides deliverability inventory)

5. DISTRIBUTION PARAMETERS

Point(s) of Consumption

	A	B	C	D
Location				
Union Meter Number				

	Unit of Measure	Point(s) of Consumption			
		A	B	C	D
Daily Contract Demand (CD):					
Firm Contract Demand	m ³ /Day	██████			
Interruptible Contract Demand	m ³ /Day	██████			
Firm Hourly Quantity*	m ³ /hour				
Maximum Hourly Volume	m ³ /hour	See Note 1			
Minimum Gauge Pressure	kPa	██████	██████		
Notice Period for Interruption	hours	4	4		
Maximum Number of Days Interruption	days	██████	██████		

*Firm Hourly Quantity (FHQ) means the maximum quantity of natural gas that may flow during any hourly period when an interruption in Interruptible Service becomes effective within a Gas Day.

Note 1: It is the intention of the parties that the Maximum Hourly Volume for each Point of Consumption shall be as in the following table:

(m ³ /hr)	Firm Maximum Hourly Volume	Interruptible Maximum Hourly Volume	Total Maximum Hourly Volume
Consumption point A	██████	██████	██████
Consumption Point B	██████	██████	██████
Total	██████	██████	██████

If the Firm CD's in the RCA change, the Maximum Hourly Volumes may be re adjusted, subject to a maximum of 117,500 m³/hour for Firm Maximum Hourly Volume.

Rate Parameters

	Unit of Measure	Point(s) of Consumption			
		A	B	C	D
Firm Transportation Demand		As per the Rate TI Rate Schedule			
Firm Transportation Commodity		As per the Rate TI Rate Schedule			
Interruptible Transportation Commodity	cents per m ³	██████			



6. MINIMUM ANNUAL VOLUME

	Unit of Measure	Point(s) of Consumption			
		A	B	C	D
Firm Minimum Annual Volume	m ³ /year	5,000,000			
Interruptible Minimum Annual Volume	m ³ /year	0			

7. CONTACT LIST FOR NOTICES

Customer contact information is found in Unionline. Where multiple contacts have been identified by Customer, Union is obligated to contact the first party only.

Union Gas contact information is found on Union's website.



SCHEDULE "2"
Terms and Conditions
T1 or T2 Contracts

1 UPSTREAM TRANSPORTATION COSTS

Where Union is receiving Gas from Customer at a Point of Receipt upstream of Union's system, Customer shall be responsible to Union for all direct and indirect upstream transportation costs including fuel from the Point of Receipt to Union's system, whether Gas is received by Union or not for any reason including Force Majeure. Where actual quantities and costs are not available by the date when Union performs its billing, Union's reasonable estimate will be used and the appropriate reconciliation will be done in the following month.

2 DELIVERY, RECEIPT, DISTRIBUTION, STORAGE & BALANCING OBLIGATIONS

2.01 Delivery

Customer accepts the obligations to deliver the Obligated DCQ parameters in Schedule 1 to Union on a Firm basis. On days when an Authorization Notice is given, the DCQ parameters are as amended in the Authorization Notice. For all Gas to be received by Union at the Upstream Point of Receipt, Customer shall, in addition to the DCQ, supply on each day sufficient Compressor Fuel as determined by the Transporter.

2.02 Receipt

Union agrees to receive a quantity of Gas at the Points of Receipt identified in Schedule 1, on the terms as contained in Schedule 1, provided Union is not obligated to accept quantities of Gas that exceed any of the following:

- a) the sum of the Obligated DCQ as authorized for that Day;
- b) the amount properly nominated by Customer to Union for receipt by Union;
- c) an amount that would result in Customer exceeding the Firm Storage Space;
- d) an amount that would result in Customer exceeding the Firm Injection Right.

2.03 Distribution to Point(s) of Consumption

Union agrees to distribute a quantity of Gas to each Point of Consumption, not to exceed the sum of Firm Contract Demand and Interruptible Contract Demand, or the Firm Contract Demand only when an interruption is in effect, subject to the Maximum Hourly Volume parameters.

On any Day, any Gas in excess of 103% of the Contract Demand shall be overrun. Unless Union specifically provides written authorization to exceed contract parameters, any excess shall be unauthorized overrun and, in addition to any other remedies Union may pursue, Customer shall incur charges as referenced in the Rate Schedule.

The parties agree that any reference to Transportation Service in the Rate Schedule shall include the Distribution Parameters as set out in this Schedule 1.

On any Day during the Contract Year, Gas usage shall be deemed as follows:

First gas used	Firm Gas up to the Firm Contract Demand then in effect.
Next gas used	Interruptible Gas (if applicable) up to the Interruptible Contract Demand then in effect.
Next gas used	Overrun for quantities in excess of the parameters as specified in this Section.

2.04 Storage Space

Storage space available at cost will be re-determined for each Contract Year at contract renewal. Customer shall have the option of electing the storage space allocation method which best serves their needs. The allocation methods available are:

Aggregate Excess Methodology:

Space = total winter (November 1 to March 31) consumption – [total annual consumption x 151 winter days/365 days]

Under this method, the two (2) most recent twelve (12) month periods of historical consumption and twelve (12) months of forecast consumption are used to calculate three storage space values using the above noted formula: weighted 25%, 25% and 50%, respectively. Union will work with Customer to determine a reasonable forecast of consumption. If Customer does not provide a forecast of consumption for the forecast period then the most recent twelve (12) months of historical consumption will be used as the forecast.

If sufficient historical consumption does not exist or if Customer is forecasting a significant change in operations, the agreed upon forecast may get more weight in the calculation.

Fifteen (15) times Obligated DCQ Methodology:

Under this method, storage space available at cost will be calculated as fifteen (15) times the Obligated DCQ calculated for the Contract Year. Obligated DCQ will be calculated as 1/365th of the forecast consumption for the Contract Year.

Under either methodology, the calculations will be performed and the greater entitlement will be incorporated into the Contract at each contract renewal date.

Customer may contract for less storage space than the amounts determined above.

2.05 Storage Injection/Withdrawal

Union agrees to inject a quantity of Gas to storage, provided Union is not obligated to inject a quantity of Gas if a customer exceeds their storage space.

Union agrees to withdraw a quantity of Gas from storage, provided Union is not obligated to withdraw a quantity of Gas that exceeds the quantity of gas remaining in the Customer's Firm Storage Space.

On any Day injection/withdrawal activity shall be deemed as follows:

First gas injected or withdrawn	Up to 103% of the injection/withdrawal as specified in Schedule 1, Section 4.
Next gas injected or withdrawn	Market Priced injection/withdrawal as specified in Schedule 1a -- Supplemental Services Parameters
Next gas injected or withdrawn	Overrun injection/withdrawal for all other quantities.

Injection/withdrawal overrun will be authorized or unauthorized as indicated on Union's website and Unionline.

The maximum entitlement for storage injection/withdrawal available to Customer at cost is the greater of:

- Obligated DCQ; or
- Firm Contracted Demand less Obligated DCQ

Customer may contract up to the maximum injection/withdrawal entitlement using a combination of Firm injections and withdrawals, interruptible withdrawals or incremental firm injections as specified in Section (C) Storage Service on the applicable Rate Schedule.

Under either methodology, the calculations will be performed and the greater entitlement will be incorporated into the Contract at each contract renewal date.

Customer may contract for less storage injection/withdrawal than the amounts determined above.

2.06 Type of Distribution Service

The type of Distribution Service herein shall be a combination of Firm and Interruptible Service for each Point of Consumption as identified in Schedule 1.

The Interruptible Contract Demand at a Point of Consumption is subject to interruption by Union and, in addition to Force Majeure, is limited to the Maximum Number of Days of Interruption during each Contract Year as identified in Schedule 1. Union shall provide Customer notice of interruption not less than the Notice Period for Interruption for each Point of Consumption, as identified in Schedule 1.

2.07 Transactional Balancing Services

Transactional Balancing Services are defined as those services used by customers to assist in balancing their storage accounts. The following services can be requested through the nomination process, all other services would require an authorization.

Services available and associated locations include:

- a) Diversions – Obligated Points of Receipt
- b) Suspensions - Obligated Ontario Points of Receipt

- c) Incremental Supply – Ontario Points of Receipt
- d) Ex-franchise transfers to a third party - Dawn
- e) In-franchise transfers - Dawn

Further definition of each Transactional Balancing Service and the associated fees are posted on Union's web site.

These services are nominated by Customer, pursuant to the nomination process in Section 1 of the General Terms and Conditions.

These services may be subject to scheduling reductions or interruptions. Union shall advise the party who nominated on behalf of Customer only of such scheduling reduction or interruption.

Each Transactional Balancing Service is nominated separately and is independent of any other Transactional Balancing Service. Notwithstanding the scheduling of any Transactional Balancing Services, Customer bears the risk that the Transactional Balancing Service may result in overrun. Scheduling a particular Transactional Balancing Service does not constitute the authorization of any overrun of any Contract parameter.

3 MINIMUM ANNUAL VOLUME

3.01 Firm Minimum Annual Volume

In each Contract Year, the Customer shall consume or, in any event, pay for the Firm Minimum Annual Volume ("FMAV") in the formula below. The payment required for the firm quantity not consumed in any Contract Year (the "Firm Deficiency Volume" or "FDV") shall be calculated by multiplying FDV by the Firm Transportation Commodity charge as of the last day of the Contract Year, if applicable. This payment would only apply if the FDV was greater than zero.

Where:

$$FDV = [FMAV \times [(U - D_f) / U]] - [FV - (F + O)]$$

And:

- FMAV = Firm Minimum Annual Volume (as identified in Schedule 1)
- U = number of days in the Contract Year
- D_f = number of days of Force Majeure in the Contract Year where service is curtailed below the Firm Contract Demand, then in effect
- FV = total firm volume taken in the Contract Year
- F = volumes delivered to the Points of Consumption during Force Majeure
- O = total Authorized and/or Unauthorized Overrun Gas taken in the Contract Year

3.02 Interruptible Minimum Annual Volume

In each Contract Year, the Customer shall consume or, in any event, pay for the Interruptible Minimum Annual Volume ("IMAV") in the formula below. The payment required for the

5 ENERGY CONVERSION

Balancing of Gas receipts by Union with Gas distributed to Customer is calculated in energy. The distribution to Customer is converted from volume to energy at the Customer site-specific heat measurement value.

Site-specific heat measuring equipment will be supplied, installed and maintained by Union Gas at each Point of Consumption, or as determined necessary by Union Gas, at the Customer's expense. The resulting heat value adjustment quantity shall be applied to the Customer's storage account.

6 STORAGE SERVICES

6.01 Storage Injection and Withdrawal

Subject to Section 2, if on any Day the quantity of Gas Union receives from Customer exceeds the quantity distributed to Customer, the amount of such excess shall be deemed to have been injected into Customer's storage account.

Subject to Section 2, if on any Day the quantity of Gas Union distributed to Customer exceeds the quantity received from Customer, the amount of such excess shall be deemed to have been withdrawn from Customer's storage account.

6.02 Deliverability Inventory Provided By Customer

If Customer has agreed to supply their own deliverability inventory, Customer's right to withdraw Gas under the Firm Withdrawal Right shall be adjusted between January 1 and April 30. During this period, if Customer's inventory level in storage at the start of each Day is less than 20% of Storage Space entitlement then Customer's Firm Withdrawal Right will be adjusted in accordance with the following formula:

If: $I \geq CDI$,
Then: $AFW = FW$
However if: $I < CDI$
Then: $AFW = FW \times (I / CDI)$

Where:

AFW = Adjusted Firm Withdrawal
 FW = Firm Withdrawal Right (Schedule 1. Storage parameters plus Schedule 1a, Supplemental Deliverability)
 I = Actual Inventory at the beginning of each Day
 CDI = Customer Deliverability Inventory (Lesser of: $0.2 \times SP$ or $FW/0.075$)
where: SP = Firm cost-based Storage Space

6.03 Disposition of Gas at Contract Termination

If this Contract terminates or expires and Customer does not have a contract for Storage Service with Union then, except as authorized by Union, any Gas balance remaining in Customer's Storage Space shall incur a charge equivalent to the Unauthorized Storage Space Overrun rate in the

applicable Rate Schedule. Customer shall incur such charge monthly until the Gas balance remaining has been reduced to zero.

7 CUSTOMER'S FAILURE TO DELIVER GAS

7.01 Customer's Failure to Deliver Obligated DCQ to Union

If on any Day, for any reason, including an instance of Force Majeure, Customer fails to deliver the Obligated DCQ to Union then such event shall constitute a Failure to Deliver as defined in the General Terms and Conditions. The Failure to Deliver rate in the RL Rate Schedule shall apply to the quantity Customer fails to deliver. The upstream transportation costs (if any) (Section L) shall also apply and be payable by Customer.

For Gas that should have been received, Union may make reasonable attempts, but is not obligated to acquire an alternate supply of Gas ("Alternate Supply Gas"). Union's costs and expenses associated with acquiring Alternate Supply Gas will be payable by Customer. For greater certainty, payment of the Failure to Deliver charge is independent of and shall not in any way influence the calculation of Union's costs and expenses associated with acquiring the said Alternate Supply Gas.

Union's obligation to deliver Gas to the Point(s) of Consumption shall be reduced to a quantity of Gas (the Reduced Distribution Obligation) in aggregate not to exceed the sum of:

- a) The confirmed Nomination quantity of Gas to be delivered to Union;
- b) Alternate Supply Gas if acquired by Union;
- c) Customer's Firm Withdrawal Right subject to Section 6.02.

In addition to any rights of interruption in the Contract, if the Customer consumes Gas in excess of the Reduced Distribution Obligation, Union may immediately suspend deliveries of Gas to the Point(s) of Consumption. In addition, Union may direct Customer to immediately curtail or cease consumption of Gas at the Point(s) of Consumption.

Customer shall immediately comply with such direction. Such suspension or curtailment shall not constitute an interruption under the Contract.

Union shall not be liable for any damages, losses, costs or expenses incurred by Customer as a consequence of Union exercising its rights under this Section.

7.02 Notice of Failure

Each Party shall advise the other by the most expeditious means available as soon as it becomes aware that such failure has occurred or is likely to occur. Such notice may be oral, provided it is followed by written notice.

7.03 Customer Failure to Deliver Compressor Fuel

For Gas to be delivered by Customer to Union at an Upstream Point of Receipt, if Customer fails to deliver sufficient Compressor Fuel then in addition to any other remedy Union shall deem the first Gas delivered to be Compressor Fuel and Section 7.01 will apply.

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GENERAL TERMS AND CONDITIONS

1 NOMINATION REQUIREMENTS FOR IN-FRANCHISE CONTRACTED SERVICES

Customers with contracted Services requiring Nominations to Union must submit Nominations to Union in accordance with Union's nomination provisions. These Nominations must be submitted to Union via fax or Unionline where available for Nominations.

Union follows the North American Energy Standard Board (NAESB) timeline standards providing for 4 available nomination cycles for each Gas Day. Each of the nomination cycles follows the same process sequence: Nomination, acceptance, confirmation and scheduling.

1.01 Nomination Cycle Timelines

The table below identifies the deadlines for each of the 4 standard nomination cycles. All times are identified as Eastern Clock Time ("ECT")

Nomination Cycle	Fax Deadline	Unionline Deadline (where available)	Scheduling Deadline	Effective Flow
Timely (Cycle 1)	1130 hours	1230 hours	1730 hours	1000 hours
Evening (Cycle 2)	1800 hours	1900 hours	2300 hours	1000 hours

Intra-Day Nominations can be used to modify nominated quantities on the current Gas Day.

Nomination Cycle	Fax Deadline	Unionline Deadline (where available)	Scheduling Deadline	Effective Flow
Intra-Day 1 (Cycle 3)	1000 hours	1100 hours	1500 hours	1800 hours
Intra-Day 2 (Cycle 4)	1700 hours	1800 hours	2200 hours	2200 hours

1.02 Nomination Deadline for Services requiring Union to Nominate on Other Pipelines

The Nomination deadline for any contracted services (ie. exchanges) requiring Union to nominate on upstream pipelines is 1030 hours ECT. These services are only offered on the Timely Nomination Cycle. If nominated after 1030 hours ECT and before the close of the Timely Nomination Cycle deadline Union will attempt to accommodate on a reasonable efforts basis. Union does not accept changes to the nominated quantities for these services after the close of the Timely Nomination Cycle deadline.

1.03 Nomination Quantities (Units)

All Services are required to be nominated in whole Gigajoules (GJ's)

1.04 Compressor Fuel

For Services requiring Customer to provide Compressor Fuel in kind, the nominated fuel requirements will be calculated by rounding to the nearest whole GJ.

1.05 Union's Acceptance of Nominations

Union will accept Nominations for contracted Services on each of the 4 standard nomination cycles. The Nomination will be rejected if the activity on the Nomination does not properly balance or if the nominated quantities violate Customer's contractual entitlements.

If a Nomination is not received prior to the nomination deadline it will be held for scheduling in the subsequent nomination cycle for the Gas Day.

1.06 Confirmation Process

The confirmation process validates nominated quantities to flow between interconnecting pipelines to ensure Customers have nominated identical quantities to both pipeline operators. In the case where there is a discrepancy between the nominated quantities and the discrepancy cannot be resolved with Customer, then the lower quantity will be the confirmed scheduled quantity.

1.07 Scheduling Process

During the scheduling process Union compares all of the Nominations to the physical capacity available for the Gas Day in question.

If there is insufficient capacity available to meet all of the nominated quantities Union will complete scheduling reductions of nominated Interruptible Services.

If Union is unable to completely schedule an Interruptible Service, Customer will be advised of its scheduled quantities no later than the close of the scheduling deadline for the applicable Nomination cycle. Once notified, Customer is, within 30 minutes, required to submit a revised Nomination to meet the scheduled quantity for the Interruptible Service. In order to be accepted, this Nomination must be properly balanced and the nominated quantities must not violate Customer's contractual entitlements. If a revised Nomination is not submitted, Union will, using the contracted Services Customer has available, re-balance the Nomination to match the scheduled quantities.

Scheduling of Firm Services must be nominated on the Timely Nomination Cycle. Nominations for increasing quantities for Firm Services after the Timely Nomination Cycle will be treated as Interruptible Services and will only be scheduled if there is sufficient capacity available.

1.08 Subsequent Nominations

All scheduled Nominations for Services will remain in effect until a new Nomination is provided by Customer.

The Unbundled Service requires a valid daily Nomination.

1.09 Parkway Call

This Section 1.09 is only applicable to Services taken under Rates U2, U5, U7 and U9. Union shall advise Customer of the Parkway Call requirement on or before 1730 hours ECT on the day immediately preceding the Gas Day for which the Parkway Call is required.

After being notified by Union, but no later than 1900 hours ECT on the same day, Customer shall provide a revised Nomination to Union, which shall include the entire Parkway Call. If a revised Nomination acceptable to Union is not provided by 1900 hours ECT or does not include the entire Parkway Call, a Failure to Deliver will be deemed to have occurred, and the Failure to Deliver section in Schedule 2 of this Contract shall apply.

2 FORCE MAJEURE

In the event that either Customer or Union is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Contract then, subject to the provision of this Section 2, the obligations (other than the obligations to make payment of money then due) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.

The party claiming Force Majeure shall give Notice, with full particulars of such Force Majeure, to the other party as soon as possible after the occurrence of Force Majeure.

The party claiming Force Majeure shall also give Notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.

Force Majeure means:

- a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
- b) freezing or failure of wells or lines of pipe; curtailment of firm transportation and/or firm storage by Transporters;
- c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;
- d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
- e) any act or omission by parties not controlled by the party claiming Force Majeure; and
- f) any other similar causes not within the control of the party claiming Force Majeure and which by the exercise of due diligence such party is unable to prevent or overcome.

The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

2.01 Force Majeure Not Available

A party claiming Force Majeure shall not be entitled to the benefit of the provisions of Force Majeure if any one or more of the following circumstances prevail:

- a) the Force Majeure was caused by the negligence of the party claiming Force Majeure;
- b) the party claiming Force Majeure failed to make all reasonable efforts (not including litigation, if such remedy would require litigation) to remedy the Force Majeure;
- c) the Force Majeure was caused by lack of funds;
- d) the party claiming Force Majeure did not give Notice required, as soon as reasonably possible after the Force Majeure occurred.

2.02 Force Majeure Declared by Union

During a Force Majeure declared by Union, Customer will be responsible for commodity charges and will only be relieved of the demand charges applicable to that part of the Services not available to Customer as a result of the Force Majeure. Union will not be responsible for any Transporter charges.

2.03 Force Majeure Declared by Customer

During a Force Majeure declared by Customer, all demand charges and all commodity charges otherwise payable under this Contract will continue to be payable. Where this Contract includes an Obligation to Deliver Gas, such Obligation to Deliver Gas shall not be relieved under Force Majeure. Union will not be responsible for any Transporter charges.

2.04 Applicability to Contractual Annual Quantity Requirements

- a) The number of days of Force Majeure will proportionally reduce any minimum annual quantity upon which any minimum bills are determined, and such reduced minimum annual quantity will not be limited to the minimum quantity required to qualify for the applicable Rate Schedule.
- b) Services taken during the period of Force Majeure will be deemed not to have been taken for purposes of determining the applicable minimum annual quantity.

3 TERMINATION and SUSPENSION

3.01 Termination of Contract and Suspension of Service

In the event of a breach, misrepresentation, non-observance or non-performance by any party to this Contract of any covenant, provision, representation, condition, continuing condition, restriction or stipulation contained in this Contract (including, without limiting the generality of the foregoing, any failure to pay, any failure to provide financial assurances when required pursuant to the terms of this Contract, or any Failure to Deliver), the party not in default may give written Notice to the defaulting party requiring it to remedy such default. If the defaulting party fails to fully remedy the party not in default for all consequences of such default within a period of ten (10) Business Days from receipt of such Notice, then:

- (a) this Contract may be terminated by Notice from the party not in default; and/or

(b) if the Customer is the defaulting party, Union may suspend Services under this Contract. Such suspension shall not relieve Customer from paying any charges payable under this Contract.

If either party makes an assignment in bankruptcy, is a party against whom a receiving order is made, or for whom a receiver or monitor has been appointed under a security agreement or by a court or any similar action under any law, the other party may terminate this Contract immediately, except where not permitted by such law.

(c) The rights set forth in this Section 3.01 shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

3.02 Effect of Termination

Notwithstanding the termination of this Contract, each party shall continue to be liable to pay on the terms herein specified any amount accrued and payable up to the time of termination. Termination will be without waiver of any other remedy to which the party not in default may be entitled including breaches of contract, for past and future damages, and losses.

4 NOTICE

All Notices required hereunder (each a "Notice"), except for those in Section 1 (Nominations) of these General Terms and Conditions shall be in writing and shall be sufficiently given and received if personally delivered or sent by mail, Unionline, fax or e-mail to the address of the party specified in Schedule 1 to this Contract.

Personally served Notice is deemed to be received when actually delivered.

Notice sent by mail, Unionline, or e-mail is deemed to have been received when actually received.

Notice sent by fax is deemed to have been received on the date of receipt of the transmission.

Notwithstanding the above, with the exception of Notice of interruption of Interruptible Services or Force Majeure, any Notice received after 5:00 pm or on a weekend or a statutory holiday is deemed to be received on the next Business Day.

The addresses of Customer and Union for receipt of Notices are as set out in Schedule 1 and such addresses may be changed by Notice given in accordance with this Section 4.

5 BILLING

5.01 Monthly Billing

Each Month, Union shall render a bill for Services and any other charges for the preceding Month. Charges may be based on estimated quantities. If based on an estimate, Union shall provide, in a future Month's billing, an adjustment based on any difference between actual quantities and estimated quantities.

5.02 Right of Examination

Both Union and Customer shall have the right to examine at any reasonable time, copies of the books, records and charts of the other to the extent necessary to verify the accuracy of any statement, chart or computation made under or pursuant to the provisions of this Contract.

5.03 Payments

5.03-1 Payment Date

Payment date is identified in the applicable Rate Schedule. If payment date is not identified in a Rate Schedule, it will be as identified on the invoice.

5.03-2 Remedies For Non-Payment

In the event that Customer fails to pay Union when payment is due, late payment charges as identified in the applicable Rate Schedule and the termination and suspension provisions in Section 3 will apply.

5.03-3 Adjustment of Underpayment or Overpayment

If a Customer in good faith disputes a bill or any portion thereof, Customer shall pay the undisputed portions of the bill. Together with such payment, Customer shall provide written Notice to Union setting out the portions of the bill that are in dispute, an explanation of the dispute and the amount that Customer believes is the correct amount.

If it is subsequently determined that a bill or any portion thereof disputed by Customer is correct, then Customer shall pay the disputed portions of the bill with Interest within thirty (30) days after the final determination.

If it is subsequently determined that Customer has been overcharged and Customer has actually paid the bill(s) containing the overcharge then, within thirty (30) days after the final determination, Union shall refund the amount of any such overcharge with Interest.

If it is subsequently determined that Customer has been undercharged, Customer shall pay the amount of any such undercharge within thirty (30) days after the final determination.

Customer and Union each expressly disclaims and waives any claim or dispute (including those related to amounts charged for Services or quantities of Gas distributed, stored, or transported) that relate to a period that is earlier than 12 Months prior to the date written Notice to the other party of such claim or dispute is asserted. This applies to the extent allowed under law and whether such claim or dispute is related to a billing error or measurement error or any other error or circumstance whatsoever.

5.04 Financial Assurance

If at any time during the term of this Contract, Union has reasonable grounds to believe that Customer's creditworthiness under this Contract has become unsatisfactory, then Union may by written Notice request financial assurances from Customer in an amount determined by Union in a commercially reasonable manner. Upon receipt of such written Notice, Customer shall have 14 days to provide such financial assurances.

The financial assurances requested by Union will not exceed the sum of the following:

- a) an amount equal to 60 days of all Services; and,
- b) if Customer holds a temporary capacity assignment from Union of a third party asset (for example, upstream pipeline capacity), an amount equal to the higher of 60 days of all charges for the third party asset, or security equivalent to that which may be required by the third party asset provider as if Customer held the asset directly; and,
- c) if Customer supplies their own Gas, an amount equivalent to the value, as determined by Union, of any current or projected negative Banked Gas Account balance.

Customer may provide Union such financial assurances in the form of cash, letters of credit, guarantees or such other form as may be agreed upon between Customer and Union.

In the event that Customer fails to provide financial assurances as set out above, the termination and suspension provisions in Section 3 shall apply.

Where Customer has provided financial assurances to Union, and the grounds for requesting such financial assurances have been removed so that Customer's creditworthiness under this Contract has become satisfactory, then Customer may request the return of such financial assurances from Union by written Notice. Upon receipt of such written Notice Union shall have 14 days to return such financial assurances to Customer.

5.05 Non-Payment Remedy

If Customer shall be indebted (whether past, present, or future, liquidated or unliquidated) to Union, under this Contract, Union has the right to reduce any amount payable by Union to Customer under this Contract by an amount equal to the amount of such indebtedness to Union.

As part of this remedy, Union may take title to any or all of Customer's Gas in Union's possession. Such Gas shall be valued at the day price for Gas at Dawn as listed in Canadian Gas Price Reporter for the day of non-payment.

6 QUALITY

6.01 Natural Gas Quality

In any Month, the minimum average gross heating value of the Gas received by Union from Customer and delivered to Customer by Union shall be thirty-six (36) Megajoules per Cubic Metre. Gas shall not contain more than twenty-three (23) milligrams of hydrogen sulphide per Cubic Metre nor four hundred and sixty (460) milligrams of total sulphur per Cubic Metre of Gas, as determined by standard methods of testing.

6.02 Freedom from Objectionable Matter

The Gas received by Union and delivered to Customer hereunder shall be free (at prevailing pressure and temperature in Union's pipeline at the Point of Receipt or Point of Consumption, as the case may be) from dust, or other solids or liquids which cause injury to, or interfere with proper operation of the lines, regulators, or meters through which it flows.

6.03 Parties' Responsibilities

If the Gas being received by Union from Customer or delivered by Union to Customer fails at any time to conform to any of the specifications set forth in this Section 6, the party receiving such Gas shall notify the delivering party of such deficiency and thereupon the party receiving the Gas may, at its option, refuse to accept receipt of Gas pending correction by the party delivering the Gas. Neither party is responsible for any loss, damage, or injury resulting from such party's delivery of Gas that does not conform to any specifications set forth in Section 6 except to the extent any such loss, damage or injury arises as a result of such party's gross negligence or wilful misconduct.

7 MEASUREMENT

7.01 Determination of Volume and Energy

- a) The volume and energy amounts shall be determined in accordance with the Electricity and Gas Inspection Act, R.S.C. 1985 c. E-4 (the "Act") and the Electricity and Gas Inspection Regulations, S.O.R. 86/131 (the "Regulations"), and any documents issued under the authority of the Act and Regulations and any amendments thereto. Where there is no site specific energy measurement, Union's Average Heat Value will be used to convert volumes to energy.
- b) The supercompressibility factor shall be determined in accordance with either the "Manual for Determination of Supercompressibility Factors for Natural Gas" (PAR Project NX-19) published in 1962 or with American Gas Association Transmission Measurement Committee Report No. 8, Nov. 1992, at Union's discretion.

7.02 Metering by Union, Check Measuring Equipment

Union will install and operate meters and related equipment in accordance with the Act and the Regulations referenced in these General Terms and Conditions.

Customer may install, maintain, and operate, such check measuring equipment as desired, and shall be so installed as not to interfere with the operation of Union's measuring equipment at

or near the Consumption Point. This check measuring equipment will be downstream of the Consumption Point and at Customer's own expense.

Where Union has installed heat value measuring equipment at Customer's end use location, the heating value properly measured at this site will be used to convert volume to energy for Gas delivered by Union to Customer.

7.03 Observation of Measurement Work

Union and Customer shall have the option to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment. Each party shall provide reasonable notification to the other party in connection with testing, calibrating or adjusting measuring equipment, to enable the other party to be present if desired.

7.04 Calibration and Test of Meters

The accuracy of Union's measuring equipment shall be verified by Union at reasonable intervals.

If Customer notifies Union that it desires a special test, the expense of any such test shall be borne by Customer if the measuring equipment tested is found to be in error by two per cent (2%) or less. In this event, previous recordings shall be considered accurate, but such equipment shall be adjusted to record as near to absolute accuracy as possible. If the special test shows a percentage of inaccuracy greater than two percent (2%), the expense of the test will be borne by Union and the financial adjustment shall be calculated in accordance with the Act and Regulations thereunder, and any successor statutes and regulations. Union shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

7.05 Correction of Metering Errors - Failure Of Meters

In the event a meter is out of service, or registered inaccurately, the volume or quantity of Gas shall be determined by Union as follows:

- a) by using the registration of any check meter or meter, if installed and accurately registering; or, in the absence of (a) then;
- b) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or in the absence of both (a) and (b), then;
- c) by estimating the quantity of Gas delivered during periods under similar conditions when the meter was registering accurately.

8 POSSESSION OF AND RESPONSIBILITY FOR GAS

8.01 Point of Receipt and Point of Consumption Controls

As between Union and Customer, control, responsibility, and possession of all Gas received and/or delivered and transported hereunder shall pass from the delivering party to the receiving party at the Points of Receipt and the Points of Consumption as applicable.

8.02 Title to the Gas

Each party warrants that it owns or controls, or has the right to deliver or have delivered to the other party, Gas that is free and clear of any lien, mortgage, security interest or other encumbrance whatsoever. The delivering party shall indemnify and hold harmless the receiving party from all claims, actions, or damages arising from any adverse claims by third parties claiming an ownership or an interest in such Gas.

8.03 Common Carrier and Insurance

To further clarify the relationship between Union and Customer, Union is not a common carrier and Union is not an insurer of Customer's Gas.

8.04 Right to Commingle the Gas

Union shall have the right to commingle and use the Gas received under this Contract with Gas owned by Union or others and deliver such commingled Gas to Customers.

9 FACILITIES AT CONSUMPTION POINT

9.01 Construction, Maintenance and Entry

Union may construct on Customer's property (whether owned by Customer or any other party), at each Point of Consumption the metering stations and facilities required by Union. Union employees or agents may at any reasonable time, with notification to Customer (except in cases of emergency where no notification is required), enter Customer's property provided that in all cases Union's employees or agents agree to abide by Customer's facility security policies and procedures and health and safety policies provided that they are reasonable and provided by Customer to Union's employees or agent prior to entry to the property.

9.02 Property, Easements, Utilities

Customer agrees that all stations and facilities installed by Union, including the meter station, are the property of Union whether the facilities are on property belonging to Customer or some other party.

Customer grants to Union on such non-financial commercial terms and conditions as may be agreed upon any required easements or agreements and undertakes to obtain or execute and deliver to Union such required easements or agreements to allow Union to have the related use of Customer's land interests which may be reasonably required by Union to facilitate Construction.

In the event that the station at the Point of Consumption requires electrical power circuitry, exclusive telecommunications and/or telecommunications lines, or other utility supply apparatus ("Equipment"), at each or any meter in the station, for telemetry; in addition to telemetry; or for purposes unrelated to telemetry, Customer agrees to provide and pay for all such Equipment and all utilities required (including power and telephone service as specified by Union) for the purpose of serving the Equipment. The exclusive telephone line for each meter must not employ a manual switchboard.

10 INDEMNITY

Each party (the "Indemnifying Party") hereby agrees to indemnify and save the other party (the "Indemnified Party") harmless from and against all claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be brought against the Indemnified Party or which Indemnified Party may suffer or incur as a result of, in respect of, or arising out of any of the following:

- a) any non-performance or non-fulfilment of any covenant or agreement on the part of the Indemnifying Party contained in this Contract;
- b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the Indemnifying Party contained in this Contract or contained in any document given pursuant to this Contract;
- c) *(Subsection 10(c) is only applicable to Agent or Customer as the Indemnifying Party)* the failure of the Indemnifying Party to satisfy its obligations to End Use locations listed in Schedule 3 (where a Schedule 3 is included in this Contract);
- d) *(Subsection 10(d) is only applicable to Agent as the Indemnifying Party)* any dispute arising out of any aspect of the relationship between the Agent and Customer;
- e) any negligence or wilful misconduct of the Indemnifying Party;
- f) all costs and expenses including, without limitation, legal fees, incidental to or in respect of the foregoing.

This indemnity shall survive the termination or expiration of this Contract.

11 REPRESENTATIONS AND WARRANTIES BY AGENT

Agent hereby represents and warrants to Union as follows and confirms that Union is relying upon the accuracy of each of such representations and warranties in connection with the execution of this Contract by Union and the acceptance of its rights and obligations hereunder:

- a) Agent is the duly appointed agent of Customer and, in such capacity, is entitled to enter into this Contract on behalf of Customer and to act on its behalf hereunder;
- b) Union is entitled to rely on anything done or any document signed by Agent on behalf of Customer, in respect of this Contract as if the action had been taken or the document had been signed by Customer; and
- c) payments made by Customer to Union pursuant to invoices shall be made without any right of deduction or set-off regardless of any rights Customer may have against Agent or any rights Agent may have against Customer.
- d) Agent shall be the only person to deliver or receive all Notices, invoices, and payments. Any Notice, invoice, or payment made to Union by Agent will be deemed to be received

from Customer. Any Notice, invoice, or payment made by Union to Agent will be deemed to be received by Customer. Union shall not be responsible to communicate to End Users any such Notice, invoice, or payment from or to Agent.

12 MISCELLANEOUS PROVISIONS

12.01 Interpretation

12.01-1 Definitions and Industry Usage

Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in these General Terms and Conditions, Schedules and/or Rate Schedule. Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the exploration, production, transmission, storage, and distribution or sale of natural gas in Canada have an accepted meaning shall have that meaning.

12.01-2 Expanded Meaning

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- a) words importing the singular shall include the plural and vice versa;
- b) words importing the gender shall include the masculine, feminine and neuter genders; and
- c) references to any statute shall extend to any orders in-council or regulations passed under and pursuant thereto, of any amendment or re-enactment or such statute, orders-in-council or regulations, or any statute, orders-in-council or regulations substantially in replacement thereof.

12.01-3 Inconsistency

In the event of a conflict among the terms of the (i) Rate Schedules; (ii) the body of the Contract; (iii) Schedules to the Contract; and, (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority as listed.

12.01-4 Currency

Unless otherwise indicated, all reference to dollars in this Contract shall mean Canadian dollars.

12.01-5 Time

All references to time in this Contract shall be stated in Eastern Clock Time.

12.02 Assignability

Neither the rights nor the obligations of Customer under this Contract shall be assignable without the prior written consent of Union. Union's consent may not be unreasonably withheld or delayed.

12.03 Proper Law of Contract

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario, and the parties to this Contract exclusively attorn to the jurisdiction of the Courts of Ontario.

12.04 Successors and Assigns

The Contract shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted and lawful assigns.

12.05 Entire Contract

This Contract constitutes the entire agreement between the parties pertaining to the subject matter hereof. This Contract supersedes any prior agreements, understandings, negotiations or discussions, whether oral or written, between the Parties in respect of the subject matter hereof.

12.06 Confidentiality

Except for credit purposes, unless the Parties to this Contract otherwise expressly agree in writing, the terms of this Contract will remain strictly confidential except as otherwise required by applicable law or by any competent regulatory body or court of competent jurisdiction.

12.07 Priority of Service

Despite any other provision of this Contract, when the use of Gas or Service is curtailed or restricted, by order of any authorized government agency, or by Force Majeure, Customer shall, in accordance with the direction of Union, curtail or discontinue use of Gas or Service during the period in which such Gas or Service is so jeopardized. Union shall not be liable for any loss of production or for any damages whatsoever by reason of such curtailment or discontinuance or because of the length of advance Notice given directing such curtailment or discontinuance. However, Union shall use its reasonable efforts to provide Notice as soon as possible to Customer, of such curtailment or discontinuance of Gas or Service as aforesaid.

12.08 Waiver and Future Default

No waiver by either Union or Customer of any one or more defaults by the other in the performance of any provisions of this Contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

12.09 Laws, Regulations and Orders

This Contract and the respective rights and obligations of the Parties hereto are subject to all present and future valid laws, statutes, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction. This Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency, which affects any of the provisions of this Contract.

12.10 Right to Contract

Customer hereby represents and warrants to Union that it or its Agent has the sole right to enter into this Contract for each of the Points of Consumption, for the term of this Contract.

12.11 Surviving Obligations

Despite the termination or expiry of this Contract, the following defined provisions shall remain in full force and effect in accordance with their terms and shall survive termination or expiry. The term of the survival shall be for the period referenced in this section.

- a) confidentiality as outlined in Section 12.06
- b) liability and Gas balancing obligations to the extent any liabilities and Gas balancing obligations have accrued prior to the date of termination or expiry of this Contract, and may continue as a result of an event occurring prior to the termination or expiry of this Contract (for the period until all liabilities and Gas balancing and reconciliations have been completed)
- c) Settlement of accounts; rights to set off; calling any Letter of Credit; collecting on any security (for the period until all accounts have been settled).

12.12 Joint and Several Liability

In the event that Customer is more than one person the obligations of all of such persons shall be joint and several and Union shall not be required to exhaust its rights and remedies against any one person prior to exercising its rights and remedies in respect of any other person.

12.13 Invalidity of Provisions

If any of the provisions of this Contract are invalid, illegal or unenforceable in any respect, the validity or legality of enforceability of the remaining provisions shall not in any way be affected.

12.14 Service Curtailment

Union may be required from time to time to perform Construction to its facilities, which may impact Union's ability to meet Customer's requirements. In such event, Union shall have the right to suspend any Service in whole or in part but will use reasonable efforts to determine a mutually acceptable period during which such Construction will occur and also to reasonably limit the extent and duration of any impairments. Union shall provide at least fifteen (15) days Notice (except in cases of emergency, in which event it may be done immediately with Notice provided as soon as reasonably possible afterwards) to Customer of the extent that Union's ability to provide Service may be impaired. During any such curtailment, Customer will be relieved of the demand charges for Services directly related to the said curtailment, but commodity and proportionate demand charges for Services available to Customer will be payable.

12.15 Unauthorized Use of Services

If Customer exceeds the Contract parameters (including Service parameters, after notification of interruption of Interruptible Service or curtailment resulting from a Force Majeure), in

addition to charges identified in the Rate Schedules, Customer shall also be responsible for any direct damages resulting from exceeding the Contract parameters and/or not complying fully with any Notice.

If Customer uses Interruptible Services, in breach of notification of interruption, Union will have the right to change Customer from Interruptible Service to Firm Service or increase its Firm Service, by an amount equivalent to the quantity of such excess Interruptible Service used on any day effective on the first Day of any Month following such breach.

12.16 Consequential Claims or Damages

Neither party shall be responsible for any consequential, incidental, special or indirect damages whatsoever, including, without limitation, loss of profits, loss of earnings, business interruption losses, cost of capital or loss of business opportunities. This provision shall survive the termination or expiration of this Contract.

12.17 Further Assurances

Each party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents, and assurances as may reasonably be requested for the carrying out and performance of this Contract.

12.18 Amendment

Union may from time to time incorporate updates to Schedule 2 to this Contract and/or these General Terms and Conditions which are intended to be applicable to all of Union's customers on non-discriminatory basis. Union will notify Customer not less than 60 days prior to the effective date of the update and post the update on Unionline. Union will notify Customer again not less than 30 days prior to the effective date of the update. If 10 Business Days prior to the effective date, Customer has not provided Notice to Union objecting to the update, then Customer will be deemed to have accepted the revised Schedule 2 to this Contract and/or these General Terms and Conditions, as the case may be, which shall, as of the effective date, apply to this Contract. If Customer has provided Notice objecting to the update, the revision shall not apply to this Contract.

12.19 Counterparts

This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original. Such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

13 DEFINITIONS

Except where this Contract expressly states another meaning, the following definitions, when used in these General Terms and Conditions or in this Contract, shall have the following meanings:

“Agent” means such person as appointed by Customer as its agent to enter into the Contract on behalf of the Customer and to act on Customer's behalf hereunder.

“Average Heat Value” means the average forecasted heating value of all Gas to be received by Union for the applicable Delivery Area for the applicable period.

“Authorization Notice” means the written approval provided by Union in response to Customer’s request for a short-term amendment to certain contract parameters or additional Services. Such Authorization Notice shall specify the approved amended parameters and the term for the amendment.

“Business Day” means any day upon which Union's head office in Chatham, Ontario, is normally open for business.

“Bundled Service” means a Service provided by Union under the Gas Distribution Contract and/or the Bundled T Gas Contract without daily Nominations at the Consumption Point.

“Bundled T” means the Bundled T Gas Contract with Union under which Customer receives Receipt Services.

“Compressor Fuel” means an amount of Gas specified by Transporter to be supplied by a shipper as a fuel source for Transporter’s pipeline compressors.

“Construction” means constructing, maintaining, removing, operating and/or repairing Union’s facilities for the purpose of commencing, maintaining, or discontinuing deliveries of Gas to Customer.

“Contract” means the contract entered into between Union and Customer to which these General Terms and Conditions, Rate Schedules and Schedules apply, and into which they are incorporated by reference.

“Contract Demand” (“CD”) means the maximum volume or quantity of Gas that Union is obliged to deliver in any one day to a Customer under all Services or, if the context so requires, a particular Service at the Consumption Point.

“Contract Year” means a period of twelve (12) consecutive Months beginning on the day of First Delivery and each anniversary date thereafter unless mutually agreed otherwise.

“Cubic Metre” (“m³”) means the volume of Gas which occupies one cubic metre when such Gas is at a temperature of 15 degrees Celsius, and at an absolute pressure of 101.325 kilopascals.

“Customer” shall have the meaning as defined in this Contract.

“Daily Contract Quantity” (“DCQ”) means that portion of the daily parameters as set out in Schedule 1, being a quantity of Gas which Customer must deliver to Union on a Firm basis. The DCQ (GJ/day) is equal to 12 months of consumption of end-use locations underlying the direct purchase contract / 365 days * heat value (GJ/m³). If this Contract has a term greater than 12 months, the DCQ is calculated by dividing the historical consumption for the term of this Contract by the number of Days in this Contract term. The consumption of general service end-use locations is weather normalized.

“Day of First Delivery” means the date the Service, obligations, terms and conditions of the Gas Distribution Contract commence, as set out in its Schedule 1.

“Day of First Receipt” means the date the Service, obligations, terms and conditions of the Bundled T commence, as set out in its Schedule 1.

“Delivery Area” means the receipt zone(s) of Union (Manitoba, Western, Northern, Sault Ste. Marie, Central, North Central or Eastern Delivery Areas) which are defined as the delivery zone(s) of TCPL for service under its applicable toll schedules.

“Delivery Service” means the transportation of Gas by Union to storage or the Consumption Points.

“Distribution Service” means any combination of Delivery Service and Storage Service.

“End User” means the ultimate user of the Gas in Union’s franchise area.

“Failure to Deliver” means the circumstance where Customer is obligated to deliver a quantity of Gas to Union, and all or a portion of the said quantity is not received by Union at the Points of Receipt.

“Firm” means any Services not subject to interruption or curtailment except under sections titled Force Majeure; Service Curtailment; and Priority of Service of these General Terms and Conditions.

“Firm Entitlements” means the quantity of Gas as set out in Schedule 1 of the Unbundled Service contract which Customer will nominate and deliver to Union and Union shall receive at each contracted Receipt Point.

“Gas” means Gas as defined in the Ontario Energy Board Act, 1998, as amended, supplemented or re-enacted from time to time, which may be commingled supplies.

“Gas Day” means a period of twenty-four (24) consecutive hours beginning at 10:00 a.m. in the Eastern Time Zone. The reference date for any day shall be the calendar date upon which the twenty-four (24) hour period shall commence.

“Interruptible” means any Services subject to interruption, after being notified by Union.

“Interest” means the minimum commercial lending rate of Union’s principal banker for the relevant period.

“Joule” (J) means the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force. The term “Megajoule” (MJ) shall mean 1,000,000 Joules. The term “gigajoule” (GJ) shall mean 1,000,000,000 Joules.

“Month” means a period beginning at 10:00 a.m. (Eastern Clock Time) on the first day of the calendar month and ending at the same hour on the first day of the next succeeding

calendar month.

“Nomination” means a request to Union for a Service in accordance with Union’s nomination provisions.

“Non-Obligated” means any quantities of Gas that are not committed to be delivered by Customer on a Firm basis and which Union will receive on a Firm basis when delivered by Customer.

“Obligated” means that quantity of Gas which Customer is committed to deliver to Union on a Firm basis at the Points of Receipt.

“Points of Consumption” or “Consumption Points” means, unless otherwise specified in this Contract, the outlet side of the Union measuring equipment located at Customer’s or End User locations as specified in Schedule 1 or Schedule 3, as applicable.

“Rate Schedule” means the Ontario Energy Board approved rate schedule applicable to the Service being provided, (including schedules attached thereto), or such other replacement rate schedule as approved by the Ontario Energy Board from time to time.

“Receipt Service” means the approved receipt of Gas from Customer to Union at the Points of Receipt.

“Receipt Point” or “Points of Receipt” shall mean the points listed on Schedule 1 of this Contract where Union may receive Gas from Customer.

“Schedules” means the schedules attached to and forming part of this Contract.

“Seasonal” means any Service that is available during a specified period of the Year.

“Service(s)” means Receipt, Delivery or Storage Service as defined herein.

“Storage Service” means the space and deliverability service for storage under either Bundled Service or Unbundled Service.

“TCPL” means TransCanada PipeLines Limited.

“Transporter” means the transmission company that transports the Gas to the Receipt Point.

“Unbundled Service” means a Service provided by Union under which Customer will nominate and balance daily for Receipt, Storage and Delivery Services.

“Unionline” means Union’s electronic web based system for Customer and Union to interact electronically, including but not limited to nominating and information exchange.

“When Available” means any interruptible Service that is available based on Union’s sole discretion after Firm and Interruptible Services have been exhausted and is priced at the interruptible rate in the applicable Rate Schedule.

"Western" means the points of receipt on the TCPL system where Union is able to receive Gas.

"Year" means a period of 365 days; provided, however, that any such Year, which contains a date of February 29, shall consist of 366 days.

Appendix B

March 7, 2014

Union Gas
C/O Tom Byng
Manager, Contracting and Customer Support
50 Keil Drive North
Chatham, ON
N7M 5M1

Dear Tom,

Re: Daily Contract Quantity ("DCQ") Obligation under Contract SA-6233-10

Further to discussions with Union regarding this matter, we have examined the terms of the Gas Storage and Distribution Contract (the "Contract") between TransAlta and Union dated November 1, 2012. The Contract incorporates the latest posted version of Union's General Terms and Conditions,¹ where DCQ is defined as follows:

*"Daily Contract Quantity" ("DCQ") means that portion of the daily parameters as set out in Schedule 1, being a quantity of Gas which Customer must deliver to Union on a Firm basis. The DCQ (GJ/day) is equal to 12 months of consumption of end-use locations underlying the direct purchase contract / 365 days * heat value (GJ/m³). If this Contract has a term greater than 12 months, the DCQ is calculated by dividing the historical consumption for the term of this Contract by the number of Days in this Contract term. The consumption of general service end-use locations is weather normalized.*

Section 3 of the Contract (cover letter) clearly indicates that the Contract term is greater than the 12 month Contract Year. We have taken steps to calculate the DCQ from November 1, 2012 to January 31, 2014 in accordance with the definition above, and we can advise that the DCQ is equal to 12,912 GJ/day. Union's past and current demands that TransAlta provide 17,904 GJ per day are inconsistent with the express terms of Union's own Contract. These demands have caused, and continue to cause damage to TransAlta, by forcing TransAlta to purchase considerable additional gas per day over and above its preferred usage.

TransAlta is therefore taking steps to reduce its DCQ to 12,912GJ/day, effective immediately.

Yours very truly,



Pete Serafini
Commercial Specialist
TransAlta Generation Partnership

c.c. Frank Ries

¹ Section 1(c) of the Contract.

Appendix C



TransAlta Corporation
Box 1900, Station "M"
110-12th Avenue S.W.

Calgary, Alberta
T2P 2M1
T (403) 267 7110

March 11, 2014

David Simpson
Vice President
Union Gas
P.O. Box 2001
50 Keil Drive North
Chatham, Ontario N7M 5M1

Dear Mr. Simpson:

Re: Dispute Regarding Daily Contract Quantity in Union Gas Contract

As you are aware, a dispute has arisen between TransAlta Generation Partnership (TransAlta) and Union Gas (Union) in relation to Daily Contract Quantity (DCQ) obligations under TransAlta's Contract with Union dated November 1, 2012 (Contract Number SA-6233-10) (the Contract). Union and TransAlta fundamentally disagree on the volume of gas that TransAlta is required to deliver under the terms of the Contract. TransAlta is of the view that the definition of DCQ¹ and the definition of "Contract Term" in section 3 of the Contract support that the maximum DCQ amount that Union may demand is 12,912 GJ per day. Union takes a different view, and since January 18, 2014, Union has required TransAlta to deliver a volume of 17,904 GJ of gas daily at exceptionally high prices.

On Friday, March 7, TransAlta took the step of reducing its DCQ to 12,912 GJ per day. Union has in turn demanded that the DCQ be increased to 17,904 GJ per day, and has advised TransAlta that it will be billing TransAlta for replacement gas, and imposing penalties under the Contract. TransAlta does not believe that the express terms, conditions and supporting definitions of the Contract support Union's position that DCQ is 17,904 GJ per day.

Notwithstanding that, TransAlta will take steps, effective today, to deliver 17,904 GJ per day as requested by Union. Please be advised that TransAlta will provide this amount under protest, and without prejudice to any rights that it may exercise under Contract, through Ontario Energy Board processes, and at common law or equity. To be clear, TransAlta does not believe that Union has the right under the Contract to require that TransAlta deliver 17,904 GJ per day. This unsupported demand by Union has caused and is causing ongoing harm to TransAlta.

TransAlta will simultaneously begin a Complaint Process ("Complaint") under the Storage and Transportation Access Rules (STAR), which Mr. Rick Birmingham of your office will receive later today or tomorrow. The Complaint will outline TransAlta's complaint relating to Union's discriminatory treatment of storage and transportation customers, and related areas where the Contract does not comply with STAR. By way of example, STAR requires that a transmitter's tariff include Alternative Dispute Resolution provisions.² The Contract, along with a number of other anomalies, currently has no dispute resolution provisions. TransAlta hopes to ensure that its complaint is resolved by Union in a manner that is consistent with the requirements and spirit and intent of the STAR and the best customer relations standards that should apply to a longstanding and significant customer like TransAlta. However TransAlta is prepared to take the STAR process to the Ontario Energy Board (OEB) if necessary.

In light of Union's stated urgency and need to resolve the contractual dispute in a timely matter, TransAlta proposes the following Alternative Dispute Resolution to resolve this matter as quickly and efficiently as possible. Continued uncertainty on this issue is not in the interest of either party.

¹ General Terms and Conditions

² Storage and Transportation Access Rule, Ontario Energy Board, Section 2.3.4(viii).

We propose the following binding, fast track arbitration process:

(i) The process would involve two stages, with the first stage examining the legal question of "what is the correct interpretation of the definition of DCQ under the Contract?". We believe that this is a relatively simple issue, where Union and TransAlta will largely agree on what documents and facts should be placed before the arbitrator.

(ii) The legal issue outlined in step (i) above, would be determined by a single arbitrator through a time limited, written process targeting resolution of this matter within the next two weeks. Please note that we have made inquiries, and Mr. Gordon Kaiser, former Vice Chair of the Ontario Energy Board, is available during this period.

(iii) If the arbitrator determines that Union's interpretation of the Contract is entirely correct, the matter ends. If the arbitrator determines that TransAlta's interpretation is partially or entirely correct, there will need to be a second arbitration process with procedure to be agreed upon by the parties, for the purpose of determining and awarding damages to TransAlta³. We do not believe that we need to address and agree upon all of the procedural details of a second stage at this time, before the first stage is complete but we anticipate that any such second phase will take place in accordance with the *Arbitration Act, 1991*, S.O. 1990, c.17.

We believe that this proposal to resolve this issue through the above-mentioned binding arbitration process is both fair and reasonable. As noted above, section 2.3.4 of the STAR and its related processes require (among other things) that Union have such alternative dispute resolution provisions. It is our view that moving directly to such a dispute resolution process, while Union remedies the noteworthy gaps in its Contract is in the best interest of both TransAlta and Union in order to facilitate the timely resolution of this matter.

I look forward to hearing from you on the proposed course of action in a timely manner.

Yours very truly,



Calvin Johnson
Vice President Trading & Asset Optimization
TransAlta Corporation

c.c. Frank Ries, Union Gas
Pete Serafini, TransAlta

³ We acknowledge that Union will likely take the position that TransAlta has suffered no damages.

Appendix D



TransAlta Corporation
Box 1900, Station "M"
110-12th Avenue S.W.

Calgary, Alberta
T2P 2M1
T (403) 267 7110

March 12, 2014

Rick Birmingham
Vice President Regulatory Public Affairs
Union Gas
P.O. Box 2001
50 Keil Drive North
Chatham, Ontario N7M 5M1

Dear Mr. Birmingham:

Re: Complaint under the Storage and Transportation Access Rule ("STAR")

TransAlta Generation Partnership (TransAlta) hereby submits the following complaint in accordance with section 5 of the STAR and Union's related "Informational Posting". The complaint relates to Union's treatment of TransAlta in relation to Daily Contract Quantity (DCQ) obligations under TransAlta's Contract with Union dated November 1, 2012 (Contract Number SA-6233-10) (the "Contract") and Union's apparent failure to comply with a number of provisions of the STAR including but not limited to sections 1.1.1, 2.1.1, 2.1.4, 2.3.2, 2.3.4, 2.3.6, 2.3.7, 3.1.3, 4.1.1, and 4.1.2. The following sets out the facts giving rise to the complaint and proposed steps in attempt to facilitate the timely resolution of this matter.

Between January 4 and 9, 2014, and since January 18, 2014, Union has required TransAlta to deliver a volume of 17,904 GJ of natural gas daily at exceptionally high prices, notwithstanding the fact that such volume is not required under the terms of the Contract and TransAlta has not wanted to burn the gas at our facilities as power prices do not support the additional generation. The Contract and the definition of DCQ included in the Contract do not support Union's contention that it has the contractual right to demand delivery of 17,904 GJ daily. Rather Union's practices, the Contract, the definition of DCQ, and section 3 of the Contract cover each and all support that the maximum DCQ amount that Union may demand is 12,912 GJ per day. On March 7, 2014, TransAlta therefore took steps to reduce its delivered quantities of gas to correspond to a maximum DCQ of 12,912 GJ/day. We attach a copy of a letter sent to Union, dated March 7, 2014 providing notice of this measure. Yesterday, TransAlta agreed to continue to deliver a volume of 17,904 GJ per day, but does so under protest and on a without prejudice basis, as it does not believe that Union has the right to demand this volume under the Contract. A copy of a letter sent yesterday is attached.

TransAlta has suffered and continues to suffer considerable losses as a result of Union's unsupported demands. TransAlta has also attempted to mitigate its losses resulting from Union's ongoing and unsupported demands, but continues to incur losses between \$100,000 and \$300,000 per day. Further, we have also attempted to resolve this issue of discriminatory treatment and unsupported delivery demands in discussions with Union, including an offer to cap our gas use in exchange for a lower DCQ. We have also contacted Union's President regarding this issue. Please find a copy of an email sent on March 7, 2014 attached. To date, all attempts to resolve this matter in a collaborative way have been unsuccessful.

TransAlta is of the view that Union's position is not only contrary to the clear terms of its own Contract, but that by requiring TransAlta to deliver DCQ far in excess of its requirements, Union is forcing TransAlta to take a loss, with discriminatory benefits accruing to other consumers on the system. We are also concerned that TransAlta is being discriminated against.

Union has confirmed to TransAlta that not all transportation and storage contracts are being managed in the same manner, and therefore all shippers are not being treated in the same manner. By way of example, not all contracts have an obligated DCQ requirement. Further, the method for allocating the

differential treatment and related access to transportation and storage services, and any underlying differences in the related tariffs and contracts are not web-posted and transparent as required by the STAR. Moreover, the Contract does not appear to comply with a number of the terms of service and the standard form Contract required by the STAR, and in particular, the Contract does not include the requisite alternate dispute resolution provisions that would facilitate the timely resolution of this matter.

We hope that you can assist us in coming to a satisfactory and timely resolution of this complaint and the underlying matter. In the absence of a satisfactory resolution, TransAlta will be required to afford itself the rights and processes available under s.1.4.1 of the STAR, the Contract, and the Ontario Energy Board Act.

Yours very truly,

Original Signed By

Laura-Marie Berg
Regulatory Counsel
TransAlta Corporation

Attachments: Email dated March 7, 2014 from Brenda Marshall to Steve Baker
 Letter dated March 7, 2014 from Pete Serafini to Tom Byng
 Letter dated March 11, 2014 from Calvin Johnson to David Simpson

Appendix E

March 20, 2014

BY EMAIL

Calvin Johnson
Vice-President Trading & Asset Optimization
TransAlta Corporation
Box 1900, Station "M"
110-12th Avenue S.W.
Calgary, Alberta T2P 2M1

Dear Mr. Johnson:

Re: Gas Storage and Distribution Contract between Union and TransAlta

We are counsel to Union Gas Limited. We write in response to your letter of March 11, 2014 addressed to David Simpson and to Ms. Berg's letter of March 12, 2014 addressed to Rick Birmingham.

We understand the above correspondence to raise two issues: first, in relation to the Daily Contract Quantity ("DCQ") of gas TransAlta is required to deliver to Union on a daily basis; and second, in relation to the applicability of the Ontario Energy Board's Storage and Transportation Access Rule ("STAR"). Union's position in relation to these two issues is set out below.

In Union's view there is no merit to TransAlta's suggestion that the "maximum DCQ amount that Union may demand is 12,912 GJ per day". As set out in Schedule 1 to the Gas Storage and Distribution Contract between Union and TransAlta, TransAlta's Obligated DCQ is 17,904 GJs/day at Dawn. In accordance with section 2.01 of Schedule 2 of the Contract, TransAlta is required to deliver the DCQ to Union on a Firm basis every day. There is no ambiguity in the Contract with respect to TransAlta's DCQ. Indeed, TransAlta's own conduct under the Contract confirms Union's position. Until TransAlta failed to deliver in early March, and thus well after it had renewed the Contract for a term of one year commencing November 1, 2013, TransAlta regularly delivered 17,904 GJ/day of gas to Union at Dawn.

Further, TransAlta's actions are inconsistent with its position that the DCQ is only 12,912 GJs/day. If that were the case, TransAlta's Firm cost-based Storage Space would be 15 times 12,912 GJs, or approximately 193,680 GJs, and not 268,000 GJs as specified on Schedule 1. Yet, on 26 days in November 2013, 16 days in December 2013 and 5 days in January 2014, TransAlta's storage balance exceeded 193,680 GJs.

Union also disagrees with your suggestion that STAR applies to the Contract and has been breached. STAR does not apply to distribution contracts like the Contract. This is plain from the wording of STAR and the historical context giving rise to its passage. It is also entirely unclear

from your letter what breach of the substantive provisions of STAR TransAlta alleges has occurred, or what the nature of any complaint to the Board would be, even if STAR applied.

To the extent that TransAlta disagrees that it has a contractual obligation to deliver 17,904 GJs per day to Dawn, then a contractual dispute exists between Union and TransAlta. The Contract contemplates that contractual disputes be resolved in Ontario courts (General Terms and Conditions, section 12.03). Union is prepared to consent to the dispute being heard by a Commercial List judge, subject of course to the Commercial List's agreement, but does not consent to arbitration.

Please direct all future correspondence concerning this matter to my attention.

Yours truly,



Crawford Smith

CS/MS/lt

Appendix F

**Ontario Energy
Board**

**Commission de l'Énergie
de l'Ontario**



EB-2005-0551

**NATURAL GAS ELECTRICITY
INTERFACE REVIEW**

DECISION WITH REASONS

November 7, 2006

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 advanced 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%.

Appendix G

**Ontario Energy
Board**

**Commission de l'énergie
de l'Ontario**



**EB-2007-0724
EB-2007-0725**

**Enbridge Gas Distribution Inc.
Union Gas Limited**

NATURAL GAS STORAGE ALLOCATION POLICIES

DECISION WITH REASONS

April 29, 2008

Contract Sanctity and Settlement Agreements

The Board also does not agree with IGUA that Union's June 2006 NGEIR settlement agreement in some way bound Union to propose retaining existing allocations to T1 customers. The NGEIR settlement related solely to new storage services (to gas-fired power generators and other similar customers) and the impact of those specific proposals on Union's other customers. The Board concludes that Union's position in this proceeding is not inconsistent with its commitment in the NGEIR settlement agreement.

Similarly, the Board does not agree that there are restrictions arising from its RP-1999-0017 decision and settlement agreement. In the RP-1999-0017 decision, the Board was quite explicit about the transitional nature of the arrangements in the settlement agreement:

This Decision should be regarded as a component of an overall, longer term transition to increased competition. It is hoped that when a more robust fluid market exists, many features in the Settlement Agreement and in this Decision will have evolved and been replaced with improved features. [RP-1999-0017, paragraph 6.3.2]

The Board agrees with the many parties who indicated that Union's proposal should be viewed as a continued evolution of new services in support of a competitive market in natural gas commodity and other non-monopoly services should not be considered. [RP-1999-0017, paragraph 6.3.3]

The Board would remind parties about the fundamental nature of settlement agreements and what the Board intends when it approves such agreements. The appropriate interpretation of the Board's approval was succinctly summarized in a recent oral decision on a settlement proposal in an electricity distribution rates case:

Settlement proposals are a result of a complex relationship of issues. One should not look for precedential value with respect to specific elements of the settlement agreement in this case.

It is the overall cost consequences or rate outcome that the Board accepts, not necessarily the results of specific methodologies or proposals that may or may not deviate from the Board regulatory

instruments that may otherwise apply. [EB-2007-0713, Transcript, January 24, 2008, page 42]

If the Board concludes that the terms and conditions of Union's contracts for cost-base storage must evolve to respond to changing circumstances, it will order such changes regardless of the rollover provision in current T1 contracts or the provisions of the June 2000 settlement agreement. The rollover provision might be an important consideration when assessing how customers could be affected by any new allocation rules, and when determining appropriate transition mechanisms. Such considerations, however, do not change the Board's overriding obligation to ensure rates and contract terms are just and reasonable.

IGUA's Proposed Excessiveness Audit

Under its excessiveness audit approach, IGUA is effectively arguing that the allocation methods should be governed by a "use it and you don't lose it" principle. For IGUA's approach to be correct, it must be true that use of the current storage allocation is good evidence of a customer's "reasonable needs." While this might appear to be a sensible conclusion at first, further consideration makes it clear that such a conclusion is incorrect:

- IGUA's analysis shows the impact of the allocation methods on customers, assuming no active storage management is undertaken. This is not an appropriate assumption. The semi-unbundled service is designed with the expectation that customers will be more active managers of their storage than they would be under bundled service. Therefore, it is inappropriate to assume a totally passive approach to storage management.
- The proposed additions of a 5% safety margin and a 15% materiality threshold have no corollary in the A/E Method, nor are they equivalent to any provisions in the bundled service.

- The evidence shows that some customers have used part of their storage allocations for market activities, unrelated to “reasonable customer needs” as defined by the Board. There is nothing inappropriate about these activities, but they are not related to “reasonable customer needs” for purposes of cost-based storage allocation.

The Board concludes that the “use it and you don’t lose it” principle is not appropriate. The Board finds that a customer’s past use of storage, either actual or theoretical, is not necessarily determinative of that customer’s “reasonable needs”. The Board will be governed by the principles underpinning the definition of “reasonable customer needs” as articulated earlier in this decision.

The Board notes that not all T1 customers object to the loss of their grandfathered position. While acknowledging that the implementation of the proposed A/E Method would reduce its storage space allocation by 60%, Innophos Canada argued for transition mechanisms which would assist all T1 customers to adapt to a reduction in storage space allocation.

Conclusion

The Board finds that it would be inappropriate to retain the roll over provisions in the current T1 and T3 contracts because that would preserve storage allocations which are not necessarily related to a customer’s “reasonable needs,” and would be contrary to the objective of “standardized, and consistently applied rules” set out in the NGEIR Decision.

The Board concludes that the allocation methods approved in this decision shall be applicable to all T1 and T3 customers – existing, including grandfathered customers, and future. There is no longer a compelling reason to treat similar customers differently. Indeed, now that the Board has embarked on a comprehensive examination of storage allocation methodologies, the Board concludes that there are compelling reasons to implement standardized and consistently applied rules, as contemplated in the NGEIR Decision. These rules, and the reasons for them, will be transparent and arise from an

Appendix H



STORAGE AND TRANSPORTATION RATES
FOR CONTRACT CARRIAGE CUSTOMERS

(A) Availability

Available to customers in Union's Southern Delivery Zone.

(B) Applicability

To a customer:

- a) who has a daily firm contracted demand of at least 140 870 m³. Firm and/or interruptible daily contracted demand of less than 140,870 m³ cannot be combined for the purposes of qualifying for this rate class; and
- b) who enters into a Carriage Service Contract with Union for the transportation or the storage and transportation of Gas for use at facilities located within Union's gas franchise area; and
- c) who has meters with electronic recording at each Point of Consumption; and
- d) who has site specific energy measuring equipment that will be used in determining energy balances; and
- e) for whom Union has determined transportation and/or storage capacity is available.

For the purposes of qualifying for a rate class, the total quantities of gas consumed or expected to be consumed on the customer's contiguous property will be used, irrespective of the number of meters installed.

(C) Rates

The following rates shall be charged for all quantities contracted or handled as appropriate. The identified rates represent maximum prices for service. These rates may change periodically. Multi-year prices may also be negotiated, which may be higher than the identified rates.

STORAGE SERVICE:

	Demand Charge Rate/GJ/mo	Commodity Charge Rate/GJ	For Customers Providing Their Own Compressor Fuel	
			Fuel Ratio	Commodity Charge Rate/GJ
a) Annual Firm Storage Space Applied to contracted Maximum Annual Storage Space	\$0.011			
b) Annual Firm Injection/Withdrawal Right: Applied to the contracted Maximum Annual Firm Injection/Withdrawal Right Union provides deliverability Inventory	\$1.688			
Customer provides deliverability Inventory (4)	\$1.210			
c) Incremental Firm Injection Right: Applied to the contracted Maximum Incremental Firm Injection Right	\$1.210			
d) Annual Interruptible Withdrawal Right: Applied to the contracted Maximum Annual Interruptible Withdrawal Right	\$1.210			



	Demand Charge Rate/GJ/mo	Commodity Charge Rate/GJ	For Customers Providing Their Own Compressor Fuel	
			Fuel Ratio	Commodity Charge Rate/GJ
e) Withdrawal Commodity Paid on all quantities withdrawn from storage up to the Maximum Daily Storage Withdrawal Quantity		\$0.032	0.397%	\$0.008
f) Injection Commodity Paid on all quantities injected into storage up to the Maximum Daily Storage Injection Quantity		\$0.032	0.397%	\$0.008
g) Short Term Storage / Balancing Service Maximum		\$6.000		

Notes:

1. Demand charges for Annual Services are paid monthly during the term of the contract for not less than one year unless Union, in its sole discretion, accepts a term of less than one year. Demand charges apply whether Union or the customer provides the fuel.
2. Annual Firm Injection Rights are equal to 100% of their respective Annual Firm Withdrawal Rights. Injection Rights in excess of the Annual Firm Injection Rights will be charged at the Incremental Firm Injection Right.
3. Annual Firm Storage Space

The maximum storage space available to a customer at the rates specified herein is determined by one of the following storage allocation methodologies:

3.1 Aggregate Excess

Aggregate excess is the difference between a customer's gas consumption in the 151-day winter period and consumption during the balance of the year. This calculation will be done using two years of historical data (with 25% weighting for each year) and one year of forecast data (with 50% weighting). If a customer is new, or an existing customer is undergoing a significant change in operations, the allocation will be based on forecast consumption only, as negotiated between Union and the customer. Once sufficient historical information is available for the customer, the standard calculation will be done. At each contract renewal, the aggregate excess calculation will be performed to set the new space allocation.

3.2 Obligated daily contract quantity multiple of 15

Obligated daily contract quantity is the firm daily quantity of gas which the customer must deliver to Union. The 15 x obligated daily contract quantity calculation will be done using the daily contract quantity for the upcoming contract year. At each contract renewal, the 15 x obligated daily contract quantity calculation will be performed to set the new space allocation.

3.3 For new, large (daily firm transportation demand requirements in excess of 1,200,000 m³/day) gas fired power generation customers, storage space is determined by peak hourly consumption x 24 x 4 days. Should the customer elect firm deliverability less than their maximum entitlement (see Note 4.2), the maximum storage space available at the rates specified herein is 10 x firm storage deliverability contracted, not to exceed peak hourly consumption x 24 x 4 days.

Customers may contract for less than their maximum entitlement of firm storage space.



4. Annual Injection/Withdrawal Right

The maximum level of deliverability available to a customer at the rates specified herein is determined by one of the following methodologies:

4.1 The greater of obligated daily contract quantity or firm daily contract demand less obligated daily contract quantity.

4.2 For new, large (daily firm transportation demand requirements in excess of 1,200,000 m³/day) gas fired power generation customers, the maximum entitlement of firm storage deliverability is 24 times the customer's peak hourly consumption, with 1.2% firm deliverability available at the rates specified herein.

Customers may contract for less than their maximum entitlement of deliverability. A customer may contract up to this maximum entitlement with a combination of firm and interruptible deliverability as specified in Section (C) Storage Service.

5. Additional storage space or deliverability, in excess of the allocated entitlements per Notes 3 and 4, may be available at market prices.
6. Storage Space and Withdrawal Rights are not assignable to any other party without the prior written consent of Union.
7. Deliverability Inventory being defined as 20% of annual storage space.
8. Short Term Storage / Balancing Service is:
 - i) a combined space and interruptible deliverability service for short-term or off-peak storage in Union's storage facilities, or
 - ii) short-term firm deliverability, or
 - iii) a component of an operational balancing service offered.

In negotiating the rate to be charged for service, the matters that are to be considered include:

- i) The minimum amount of storage service to which a customer is willing to commit,
- ii) Whether the customer is contracting for firm or interruptible service during Union's peak or non-peak periods,
- iii) Utilization of facilities, and
- iv) Competition



TRANSPORTATION CHARGES:

	Demand Charge <u>Rate/m³/mo</u>	Commodity Charge <u>Rate/m³</u>	For Customers Providing Their Own Compressor Fuel	
			Fuel <u>Ratio (5) (6)</u>	Commodity Charge <u>Rate/m³</u>
a) Annual Firm Transportation Demand Applied to the Firm Daily Contract Demand				
First 140,870 m ³ per month	20.3436 ¢			
All over 140,870 m ³ per month	10.7608 ¢			
b) Firm Transportation Commodity Paid on all firm quantities redelivered to the customer's Point(s) of Consumption				
Commodity Charge (All volumes)		0.0664 ¢	0.248%	0.0078 ¢
c) Interruptible Transportation Commodity Paid on all interruptible quantities redelivered to the customer's Point(s) of Consumption				
Maximum		4.0752 ¢	0.248%	4.0166 ¢

Notes:

1. All demand charges are paid monthly during the term of the contract for not less than one year unless Union, at its sole discretion, accepts a term of less than one year. Demand charges apply whether Union or the customer provides the fuel.
2. Effective January 1, 2007, new customers and existing customers with incremental daily firm demand requirements in excess of 1,200,000 m³/day and who are directly connected to i) the Dawn-Trafalgar transmission system in close proximity to Parkway or ii) a third party pipeline, have the option to pay for service using a Billing Contract Demand. The Billing Contract Demand shall be determined by Union such that the annual revenues over the term of the contract will recover the invested capital, return on capital and operating and maintenance costs associated with the dedicated service in accordance with Union's system expansion policy. The firm transportation demand charge will be applied to the Billing Contract Demand. For customers choosing the Billing Contract Demand option, the authorized transportation overrun rate will apply to all volumes in excess of the Billing Contract Demand but less than the daily firm demand requirement.
3. In negotiating the rate to be charged for the transportation of gas under Interruptible Transportation, the matters that are to be considered include:
 - a) The amount of the interruptible transportation for which customer is willing to contract,
 - b) The anticipated load factor for the interruptible transportation quantities,
 - c) Interruptible or curtailment provisions, and
 - d) Competition.
4. In each contract year, the customer shall pay for a Minimum Interruptible Transportation Activity level as specified in the Contract. Overrun activity will not contribute to the minimum activity level.
5. Transportation fuel ratios do not apply to customers served from dedicated facilities directly connected to third party transmission systems with custody transfer metering at the interconnect.



6. Firm transportation fuel ratio does not apply to new customers or existing customers with incremental daily firm demand requirements in excess of 1,200,000 m³/day that contract for M12 Dawn to Parkway transportation service equivalent to 100% of their daily firm demand requirement. If a customer with a daily firm demand requirement in excess of 1,200,000 m³/day contracts for M12 Dawn to Parkway transportation service at less than 100% of their firm daily demand requirement, the firm transportation fuel ratio will be applicable to daily volumes not transported under the M12 transportation contract.
7. Either Union or a customer, or potential customer, may apply to the Ontario Energy Board to fix rates and other charges different from the rates and other charges specified herein if the changed rates and other charges are considered by either party to be necessary, desirable and in the public interest.

SUPPLEMENTAL CHARGES:

Rates for supplemental services are provided in Schedule "A".

Notes:

1. All demand charges are paid monthly during the term of the contract for not less than one year unless Union, in its sole discretion, accepts a term of less than one year.

OVERRUN SERVICE:

1. Annual Storage Space

Authorized

Authorized Overrun is provided as Storage/Balancing Service. It is payable on all quantities on any Day in excess of the customer's contracted Maximum Storage Space. Overrun will be authorized by Union at its sole discretion. Storage Space Overrun equal to the customer's firm deliveries from TCPL: less the customer's Firm Daily Contract Demand, all multiplied by the Days of Interruption called during the period of November 1 to March 31, will be automatically authorized until the following July 1.

Unauthorized

If in any month, the customer has gas in storage in excess of the contracted Maximum Storage Space, and which has not been authorized by Union or provided for under a short term supplemental storage service, such an event will constitute an occurrence of Unauthorized Overrun. The Unauthorized Overrun rate will be \$6.000 per GJ applied to the greatest excess for each occurrence.

If on any Day the gas storage balance for the account of the customer is less than zero, the Unauthorized Overrun charge will apply for each GJ of gas below a zero inventory level and this amount of gas shall be deemed not to have been withdrawn from storage. The gas shall be deemed to have been sold to the customer at the highest spot price at Dawn in the month of occurrence and the month following occurrence as identified in the Canadian Gas Price Reporter and shall not be less than Union's approved weighted average cost of gas. If the customer has contracted to provide its own deliverability inventory, the zero inventory level shall be deemed to mean twenty percent (20%) of the Annual Firm Storage Space.



2. Injection, Withdrawals and Transportation

Authorized

The following Overrun rates are applied to any quantities transported, injected or withdrawn in excess of 103% of the Contract parameters. Overrun will be authorized by Union at its sole discretion.

Automatic authorization of Injection Overrun will be given during all Days a customer has been interrupted.

	Union Providing <u>Fuel</u>	For Customers Providing Their Own Compressor Fuel <u>Firm or Interruptible Service</u>	
	Firm or Interruptible <u>Service</u>	Fuel <u>Ratio</u>	Commodity <u>Charge</u>
Storage Injections	\$0.116/GJ	0.857%	\$0.063/GJ
Storage Withdrawals	\$0.116/GJ	0.857%	\$0.063/GJ
Transportation	0.7352 ¢/m ³	0.248%	0.6766 ¢/m ³

Unauthorized

For all quantities on any Day in excess of 103% of the customer's contractual rights, for which authorization has not been received, the customer will be charged 4.6241 ¢ per m³ or \$1.208 per GJ, as appropriate.

3. Storage / Balancing Service

Authorized

The following Overrun rates are applied to any quantities stored in excess of the Contract parameters. Overrun will be authorized by Union Gas at its sole discretion.

	Firm Service <u>Rate/GJ</u>
Space	\$6.000
Injection / Withdrawal Maximum	\$6.000



OTHER SERVICES & CHARGES:

1. Monthly Charge

In addition to the rates and charges described previously for each Point of Consumption, a Monthly Charge shall be applied as follows:

Monthly Charge	\$6,013.02
----------------	------------

2. Diversion of Gas

The availability of the right to divert gas will be based on Union's ability to accommodate the diversion. The price to be charged for the right to divert shall be determined through negotiation.

3. Delivery Obligations

Effective January 1, 2007, new customers and existing customers with incremental daily firm demand requirements in excess of 1,200,000 m³/day who are delivering gas to Union under direct purchase arrangements may be entitled to non-obligated deliveries. The delivery options available to customers are detailed at www.uniongas.com/business/account-services/unionline/contracts-rates/T1-service-features

Unless otherwise authorized by Union, all other customers who are delivering gas to Union under direct purchase arrangements must obligate to deliver at a point(s) specified by Union and must acquire and maintain firm transportation on all upstream pipeline systems. Customers initiating direct purchase arrangements, who previously received Gas Supply service, must also accept, unless otherwise authorized by Union, an assignment from Union of transportation capacity on upstream pipeline systems.

4. Nominations

Effective January 1, 2007, new customers and existing customers with incremental daily firm demand requirements in excess of 1,200,000 m³/day who have non obligated deliveries may contract to use Union's 5 additional nomination windows (13 in total) for the purposes of delivering gas to Union. These windows are in addition to the standard NAESB and TCPL STS nomination windows. Customers taking the additional nomination window service will pay an additional monthly demand charge of \$0.068/GJ/day/month multiplied by the non-obligated daily contract quantity.

5. Additional Service Information

Additional information on Union's T2 service offering can be found at:

The additional information consists of, but is not limited to, the following:
www.uniongas.com/business/account-services/unionline/contracts-rates/T1-service-features

- i. Storage space and deliverability entitlement;
- ii. The determination of gas supply receipt points and delivery obligations;
- iii. The nomination schedule;
- iv. The management of multiple redelivery points by a common fuel manager; and
- v. The availability of supplemental transactional services including title transfers.



Effective
2014-01-01
Rate T2
Page 8 of 8

(D) Delayed Payment

The monthly late payment charge equal to 1.5% per month or 18% per annum (for an approximate effective rate of 19.56% per annum) multiplied by the total of all unpaid charges will be added to the bill if full payment is not received by the late payment effective date, which is 20 days after the bill has been issued.

Effective

January 1, 2014
O.E.B. Order # EB-2013-0365

Chatham, Ontario

Supersedes EB-2014-0050 Rate Schedule effective April 1, 2014.

Appendix I

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, and in particular, S.91 thereof;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order granting leave to construct natural gas supply facilities in the Township of St. Clair.

UNION GAS LIMITED

1. Union Gas Limited (“Union” or “Applicant”) hereby applies to the Ontario Energy Board (the “Board”), pursuant to Section 91 of the *Ontario Energy Board Act* (the “Act”), for an Order granting leave to construct approximately 60 metres of NPS 8 (8 inch) natural gas pipeline and a customer station that would have the following components: measurement, odorant, filters, heat exchangers, telemetry and regulation (the “Proposed Facilities”).
2. Union’s Sarnia Industrial Line system would be used to meet the natural gas service requirements of the 280 MW natural gas-fired combined cycle electricity generating facilities (the “Generating Facilities”) being developed by Greenfield South Power Corporation (“Greenfield South”), together with its affiliate Eastern Power Limited, as the Green Electron Power Plant. The Generating Facilities will be built in the Township of St. Clair on a 100-acre site on Oil Springs Line near Greenfield Road in Union’s franchised service area.
3. Attached hereto as Schedule ‘A’ is a map showing the general location of the Proposed Facilities and the Generating Facilities.
4. The construction of the Proposed Facilities will allow Union to meet the natural gas requirements of the Generating Facilities and represents an alternate proposal to the proposal by Greenfield South to pursue a bypass of Union’s distribution system through Vector Pipeline.
5. As the local natural gas distribution utility, Union further submits that its proposal best supports the Board’s public interest mandate and in doing so, constitutes the preferred solution for delivering the required natural gas volumes and services to the Generating Facilities.
6. Union now therefore applies to the Board for an Order granting leave to construct the Proposed Facilities. Union plans to construct the Proposed Facilities during 2015.

1 BCD to lower its costs relative to Rate T1 service without BCD. Union currently has one electricity
2 generator taking service under BCD since 2009.

3
4 Since the NGEIR Decision was issued, 7 electricity generation facilities have been built and placed
5 into service in Ontario without any bypass applications. This coincides with the change in the OPA's
6 Clean Energy Supply contract that now prohibits the bypass of the distribution systems within the
7 franchised service areas of Union and Enbridge Gas Distribution and prevents the electricity
8 generator from constructing, owning or operating the gas pipeline that serves the generator.

9
10 ***Rate Design Changes That Further Benefited Electricity Generators***

11 Union's Rate T2 service was introduced and approved as part of its 2013 rates application (EB-2011-
12 0210). In that application, Union split the Rate T1 rate class into two rate classes in order to improve
13 rate class composition and ensure that both Rate T1 and Rate T2 would be comprised of more
14 homogeneous customers in terms of firm contracted demands and firm annual consumption. Union
15 estimates that its Rate T1/T2 redesign proposal resulted in savings to Rate T2 electricity generators of
16 approximately \$1.8 million per year (see Schedule 3).

17
18 The split of Rate T1 into two rate classes better aligned cost incurrence and cost recovery by
19 recognizing the differences in distribution demand and distribution customer-related costs between
20 small Rate T1 and large Rate T1 customers. The split also addressed the significant diversity in daily
21 contracted demand and firm annual consumption that exists between small and large customers
22 within the previous Rate T1 rate class.

23
24 The Rate T2 service is a semi-unbundled service with contractual parameters which are tailored to a
25 specific customer's needs. This allows the daily balancing of the customer's deliveries to Union with
26 the consumption at its facility at the customer's chosen level of risk. The rate the customer ultimately
27 pays is tied to the specific level of contracted service.

1 Union offers the Rate T2 service to its largest contract rate customers, including the electricity
2 generators in the Southern delivery area of Union's franchised service area. The Rate T2 service
3 provides customers with the flexibility required to operate their plants economically. Approximately
4 22 large industrial customers contract for this service. These customers collectively consume
5 approximately 150 Bcf of gas annually. This total includes all 7 gas-fuelled electricity generation
6 plants in Union's franchised service area in Southern Ontario which generate over 2,700 MW of
7 electricity and consume approximately 36 Bcf of gas annually.

8
9 Rate T2 consists of a monthly customer charge, a two block monthly demand charge and a single
10 block commodity charge. Rate T2 service is available to customers with a minimum firm daily
11 contracted demand of 140,870 m³.

12
13 Rate T2 also includes all the Board-approved storage space and storage injection/withdrawal rights
14 per the previously approved Rate T1 service.

15
16 Union's Rate T2 service provides the following benefits to customers:

- 17 i. The ability to tailor the service parameters to best suit the needs of the customer.
- 18 ii. There is no requirement to nominate consumption at the plant or injections and withdrawals
19 into or out of storage. An end of day true-up results in either an automatic injection into
20 storage or withdrawal from storage depending on whether too much or too little gas was
21 delivered in comparison to plant consumption. This provides the maximum flexibility with
22 no notice requirement.
- 23 iii. The ability to better control and predict costs by having the option to supply the customer's
24 own compressor fuel and storage deliverability.
- 25 iv. Having a non-obligated Daily Contract Quantity (DCQ) gives these new electricity generators
26 significant delivery flexibility. If the plant is not operating for any reason, there is no
27 obligation to deliver gas to Union.

- 1 v. The Rate T2 service permits the customer to buy gas at Dawn. Dawn is a highly liquid
2 trading point with many buyers and sellers, with prices that are both transparent and easily
3 discoverable.
- 4 vi. Customers have access to both cost-based storage space and deliverability to meet their
5 requirements.
- 6 vii. There is no requirement to match consumption and supply volumes on an hourly basis.
- 7 viii. An appropriate combination of storage space and deliverability allows the customer to better
8 manage acquiring supply and helps avoid the intra-day gas markets and the price volatility
9 that can arise.
- 10 ix. A Union firm Rate T2 customer avoids the impacts related to a non-bumping pipeline as
11 consumption is not required to be nominated.
- 12 x. Customers receive high levels of security of supply and reliability by being connected to an
13 integrated distribution system with a large number of pipeline interconnections.
14

15 *Specific Services Offered to Greenfield South*

16 Firm and Interruptible Rate T2 Service

17 When developing the service proposal for Greenfield South, Union initially considered options that
18 would allow it to provide firm service. The two options Union considered were a connection to the
19 NPS 42 Vector Pipeline and a connection to the NPS 12 and NPS 20 pipelines of the Sarnia Industrial
20 Line system. On review, a firm service connection to the Vector Pipeline was not a practical
21 alternative because Vector is a sole source pipeline. In the event that gas is not flowing on Vector, it
22 would not be possible to provide firm service to Greenfield South without adding firm capacity from
23 Dawn to Dawn-Vector. The cost of adding this capacity would be significant.
24

25 Although, the BCD option is available in the Sarnia area to customers directly connected to a third
26 party pipeline, Union did not pursue this option for Greenfield South because firm service was not a
27 viable option on Vector.
28

Appendix J



EB-2010-0155

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

AND IN THE MATTER OF an Application by Union Gas
Limited for approval of its tariffs for its M12 and C1
transportation services;

AND IN THE MATTER OF the Storage and Transportation
Access Rule.

BEFORE: Paul Sommerville
Presiding Member

Paula Conboy
Member

DECISION ON TARIFFS

August 30, 2010

Background

On December 9, 2009, the Ontario Energy Board (the "Board") issued a Notice of Issuance of a New Rule, under section 44(1) of the *Ontario Energy Board Act, 1998* (the "Act"). The new rule, known as the Storage and Transportation Access Rule ("STAR") came into effect on June 16, 2010. All materials related to the STAR are available on the Board's website (EB-2008-0052).

On April 1, 2010, in accordance with sections 2.3.3 and 2.4.3 of the STAR, Union Gas Limited ("Union") filed with the Board an application seeking Board approval of tariffs for its M12, C1 and M16 transportation services to be effective as of June 16, 2010. Union

has proposed revisions to the tariffs for its M12, C1 and M16 transportation services in order for these tariffs to be compliant with the STAR.

Section 2.3.3 of the STAR applies to a transmitter that provides transportation services for a shipper while section 2.4.3 applies to a transmitter that provides transportation services for an embedded storage provider. Sections 2.3.3 and 2.4.3 of the STAR read as follows:

2.3.3 A transmitter shall include in its tariff the terms of service for each of its transportation services. The tariff shall be filed with the Board for approval and the approved tariff shall be posted on the transmitter's website.

2.4.3 A transmitter shall include in its tariff the standard terms of service for each of its transportation services. The tariff shall be filed with the Board for approval and the approved tariff shall be posted on the transmitter's website.

The Board issued a Notice of Application and Procedural Order No. 1 on April 9, 2010, which allowed registered participants in the development of the STAR (EB-2008-0052) and all shippers taking M12, C1 or M16 transportation service from Union to file submissions on Union's application. The Board decided to proceed by way of a written proceeding.

On April 27, 2010, the Board issued Procedural Order No. 2. In its application, Union expressed concern that there would be a two week period when it would not have Board-approved M12, C1 and M16 transportation contracts for potential shippers and/or storage providers. The Board decided to extend the implementation date for sections 2.3.3 and 2.4.3 to July 1, 2010 to coincide with the issuance of the Quarterly Rate Adjustment Mechanism ("QRAM") Rate Order.

On June 3, 2010, the Board issued a Decision (the "STAR Decision") approving Union's M16 tariff. With regard to C1 and M12 tariffs the Board directed Union to make changes as follows:

Allocation of Capacity - Section XVI

- The Board required Union to clearly define its transmitter-specific allocation methods in its M12 and C1 transportation tariffs. The definitions should include the rules that will be applied to the allocation of capacity using these methods.
- The Board directed that the phrase “but not limited to” in section XVI.5 be deleted from the M12 and C1 tariffs.
- The Board required Union to define “long-term firm transportation” in its tariffs for M12 and C1 transportation services.

Service Curtailment - Section XVIII

- The Board noted that the wording “in *Union’s sole discretion*, capacity or operating conditions” is not in the existing contracts for Union’s M12 and C1 transportation services but may be implied in Union’s Priority of Service Policy on its website. The Board required that Union should include the phrase “acting reasonably” in section XVIII.1. The sentence therefore should read “... or when, in Union’s sole discretion, *acting reasonably*, capacity or operating conditions so require ...”.
- The Board directed that the full Priority of Service policy, namely the 11 categories of service, should be listed in Union’s M12 and C1 tariffs.

Renewal Rights – Section XVII in the C1 Tariff

- The Board required Union to modify the language in its proposed C1 Tariff. Specifically, section XVII dealing with C1 transportation should include the contracts that contain a receipt point at Parkway and a delivery point at Kirkwall in the list of contracts with renewal rights.

On June 14, 2010, the Board issued Procedural Order No. 3 requiring Union to file changes to the proposed C1 and M12 tariffs, as directed by the STAR Decision.

On July 9, 2010, Union filed its proposed changes to its M12 and C1 tariffs.

Positions of Parties

On July 23, 2010, the Board received written submissions from Canadian Manufacturers & Exporters (“CME”); Industrial Gas Users Association (“IGUA”); and Board staff (“Staff”).

CME supported the changes to the proposed M12 and C1 tariffs requested by Union.

On July 30, 2010, the Board received Union’s Reply. Union argued that the proposed M12 and C1 transportation service tariffs as filed with the Board on July 9, 2010 meet the requirements of the STAR.

Below, the Board will address the respective positions of the parties with respect to the Allocation of Capacity - section XVI of the tariffs proposed by Union. Excerpts of section XVI of the M12 and C1 tariffs respectively as proposed by Union may be found in Appendix A. All of the comments were directed to these sections of the respective tariffs.

Allocation of Capacity - Sections XVI (1) and XVI (4) in the M12 and C1 Tariffs

Staff submitted that Union should clearly define the terms “proposed payment” and “proposed per-unit rate” in its tariffs. Also, staff proposed as part of this definition that Union should explain whether these terms mean that Union may accept a premium or a discount on the regulated firm transportation rate.

In Reply, Union clarified that the “proposed per unit rate” referenced in section XVI (4) is potentially a different rate than the “proposed payment” in the customer’s request outlined in section XVI (1). Union indicated that a customer’s “proposed payment” may not always meet the requirements of Union’s regulated rate schedule or be in consistent units to allow a meaningful net present value (NPV) comparison (e.g., Cdn \$/GJ/month).

Union noted in its Reply that under the Board approved Settlement Agreement in its 2007 rate case (EB-2005-0520), any premium offered would not be used as a factor to allocate firm transportation capacity greater than one year, and that for the purposes of the NPV calculations, the proposed per unit rate will be the regulated rate. Union also commented that neither the M12 or C1 rate schedules allow Union to accept a discount rate.

Board Findings

The Board is satisfied with Union's clarification with respect to the terms "proposed payment" and "proposed per unit rate".

Allocation of Capacity - Section XVI (5) (c) in the M12 and C1 Tariffs

Staff submitted that the "offer to supply the Available Capacity to the potential shipper" provision is currently included in the sub-section that sets out the reasons for Union to reject an offer. For clarity, Staff proposed that this provision should be set out in a separate sub-section that comes before XVI (5) (c) i) and after (5) (b) i).

Union, in its Reply, argued that this provision is placed in the list of reasons for rejecting a request for service because "insufficient capacity" is one of several possible reasons for rejecting a request for service. Also, Union disagreed with staff's suggestion of a separate section because there may be other reasons why Union cannot offer the service (even if there is sufficient capacity) such as the reasons listed in sub-sections XVI (5)(c) ii) to iv).

Board Findings

The Board accepts Union's tariffs as filed in this regard, and will not require any modifications.

Allocation of Capacity - Section XVI (5) (c) iii) in the M12 and C1 Tariffs

Staff submitted that Union should provide clarification on the process and the length of time it takes Union to accept a request for long-term firm transportation services and short-term firm transportation services. Staff also sought clarification as to why the allocation of available capacity (not in an open season) is triggered when the requests are accepted and not when the requests are received.

In Reply, Union indicated that due to the complexity of its services as well as other market activities happening at the time of the request, Union cannot outline the process or length of time for accepting requests. However, Union stated that it is mindful of the requirement for a timely response to requests for service and acknowledged that it is prudent to respond to all requests for service in a prompt manner.

Board Findings

The Board is concerned with the lack of specificity with respect to the length of time it takes Union to process and accept a customer's request for transportation services. This uncertainty with respect to Union's acceptance process may lead to the potential for Union to treat shippers differently or to appear to do so. The Board believes that this uncertainty does not meet the STAR requirement of ensuring that the allocation of capacity is consistent, predictable and transparent.

Union commented that it cannot outline the process or length of time for accepting a request because of the complexities of its services. However, the Board notes that the STAR requires Union to post on its website "Operationally-Available Transportation Capacity" at each nomination cycle. Also, the STAR requires Union to have a standard transportation contract for each of its transportation services. STAR also requires that all transportation contracts containing negotiated variations from the standard form of contract and/or standard terms of service must be posted on Union's website. At this time, no negotiated contracts have been posted. Therefore, the Board concludes that available capacity for Union's transportation services are known and that a standard contract is available for Union's transportation services.

The Board is of the view that to ensure non-discriminatory access, customer requests for transportation services must be accepted on a timely basis. Therefore, the Board finds that Union will be allowed up to five (5) calendar days to process and accept a customer's request for transportation services.

The Board finds that this time limit is necessary to ensure that the allocation of capacity is done fairly.

Allocation of Capacity - Section XVI (5) (d) in the M12 and C1 Tariffs

Staff submitted that Union's requirement for resubmission of service requests when multiple requests are received is inconsistent with industry practice and may lead to unfair treatment of potential shippers. Staff commented that industry practice for allocating limited available capacity is typically on a pro-rata basis. Therefore, staff suggested that the process for resubmission is not required.

IGUA submitted that Union did not indicate on what basis it would choose between the “open season” response and the “opportunity for resubmission” response.

Union submitted in its Reply that customers are not required to resubmit their requests; rather, they have the option to do so. Union stated that allowing interested customers to submit new bids with the knowledge that their service requests will be considered along with a competing bid provides more transparency, since customers may be willing to bid for a longer term if they knew that would have a better opportunity to obtain the capacity.

Union also indicated that because of the wide variety of possible circumstances and factors for consideration, no firm criteria can be listed in the tariffs for choosing between the “open season” response and the “opportunity for resubmission”.

Board Findings

The Board notes that Union indicated that the “situation of competing bids would occur very rarely because Union would likely initiate an Open Season if there was a lot of interest in a service”.

The Board agrees with Union that it would be difficult to outline the criteria for choosing between the “open season” response and the “opportunity for resubmission” in its tariffs. Accordingly, the Board finds that the criteria for choosing between the “open season” response and the “opportunity for resubmission” does not need to be included in Union’s revised tariffs.

THE BOARD ORDERS THAT:

1. Union Gas Limited shall amend its M12 and C1 tariffs to allow up to five (5) calendar days to process and accept a customer’s request for transportation services, subject to Union’s conditions precedent (as outlined in section XVI (5) (c) v)), if necessary.

2. Intervenors eligible for a cost award shall file with the Board and forward their respective cost claims for the proceeding to Union no later than **21 days** of the issuing of this decision.
3. Union shall file with the Board and deliver to the applicable intervenor any objections to the claimed costs no later than **14 days** upon receipt of cost claims.
4. The intervenors shall file with the Board and forward to Union any responses to any objections for cost claims no later than **7 days** upon receipt of objection by the Union.

All filings to the Board must quote the file number, EB-2010-0155, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available parties may email documents to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, August 30, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

**EXCERPTS FROM THE M12 ANC C1 TARIFF
AS PROPOSED BY UNION GAS LIMITED**

EB-2010-0155

Union's peak day requirements for such facilities, and Shipper's service entitlement during such period of impairment, shall be pro-rated. This pro rationing shall be determined by multiplying the daily capability of such facilities, as available downstream of the impairment, by a fraction, the numerator of which is Shipper's firm Contract Demand and the denominator of which is the total of all such firm contract demands, including the firm Contract Demand hereunder and Union's said peak day requirements downstream of the impairment. For the purposes of this Article XI, firm contract demand shall mean all firm services provided by Union, including firm service under Rate Schedules M2, M4, M5A, M6A, M7, M9, M10, M12, C1, T1, T3, U2, U5, and U7, plus any new firm service that may be created in the future.

XII. DEFAULT AND TERMINATION

In case of the breach or non-observance or non-performance on the part of either party hereto of any covenant, proviso, condition, restriction or stipulation contained in the Contract (but not including herein failure to take or make delivery in whole or in part of the gas delivered to/by Union hereunder occasioned by any of the reasons provided for in Article XI herein) which has not been waived by the other party, then and in every such case and as often as the same may happen, the non-defaulting party may give written notice to the defaulting party requiring it to remedy such default and in the event of the defaulting party failing to remedy the same within a period of thirty (30) days from receipt of such notice, the non-defaulting party may at its sole option declare the Contract to be terminated and thereupon the Contract shall be terminated and be null and void for all purposes other than and except as to any liability of the parties under the same incurred before and subsisting as of termination. The right hereby conferred upon each party shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

XIII. AMENDMENT

Subject to Article XV herein and the ability of Union to amend the M12 Rate Schedule with the approval of the OEB, no amendment or modification of the Contract shall be effective unless the same shall be in writing and signed by each of the Shipper and Union.

XIV. NON-WAIVER AND FUTURE DEFAULT

No waiver of any provision of the Contract shall be effective unless the same shall be in writing and signed by the party entitled to the benefit of such provision and then such waiver shall be effective only in the specific instance and for the specified purpose for which it was given. No failure on the part of Shipper or Union to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under the Contract shall operate as a waiver thereof.

XV. LAWS, REGULATIONS AND ORDERS

The Contract and the respective rights and obligations of the parties hereto are subject to all present and future valid laws, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction and the Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency which affects any of the provisions of the Contract.

XVI ALLOCATION OF CAPACITY

1. Any ~~Shipper~~potential shipper may request firm ~~Transportation Services~~transportation service on Union's system at any time. Any such ~~request for firm M12 transportation service~~ must include: ~~Shipper~~potential shipper's legal name, Receipt Point(s), Delivery Point(s), Commencement Date, Initial Term, ~~and Contract Demand and proposed payment~~. This is applicable for M12 service requests for firm transportation service with minimum terms of ten (10) years where Expansion Facilities are required and/or a minimum term of five (5) years for use of existing capacity.

2. ~~If requests for firm Transportation Services~~transportation services cannot be met through existing capacity such that the only way to satisfy the ~~request~~requests for transportation service would require the construction of Expansion Facilities which create new capacity, Union shall allocate any such new capacity by open season, subject to the terms of the open season, and these General Terms and Conditions.
3. If requests for long-term firm transportation service can be met through existing facilities upon which long-term capacity is becoming available, Union shall allocate such long-term capacity by open season, subject to the terms of the open season, and these General Terms and Conditions. "Long-term", for the purposes of this Article XVI, means, in the case of a transportation service, a service that has a term of one year or greater.
4. Capacity requests received during an open season shall be awarded starting with those bids with the highest economic value. If the economic values of two or more independent bids are equal, then service shall be allocated on a pro-rata basis. The economic value shall be based on the net present value ("NPV") using the effective rate at the time the capacity is allocated which shall be calculated based on the proposed per-unit rate and the proposed term of the contract and without regard to the proposed Contract Demand ("NPV").
5. ~~If Shippers request firm Transportation Services where the firm Transportation Services requested were previously offered in an open season but were not awarded, then the allocation of such capacity shall be carried out by one of Union's methods for allocation of such capacity, which methods include, but are not limited to, "first come, first served" basis, open season, or direct negotiations, provided any such requesting Shipper meets all conditions in Article XXI herein, subject to the remaining Available Capacity. Union may at any time allocate capacity to respond to any M12 transportation service request through an open season. If a potential shipper requests M12 transportation service that can be provided through Available Capacity that was previously offered by Union in an open season but was not awarded, then:~~

(a) Any such request must conform to the requirements of Section 1 of this Article XVI;

(b) Union shall allocate capacity to serve such request pursuant to this Section 5, and subject to these General Terms and Conditions and Union's standard form M12 transportation contract;

(c) Union may reject a request for M12 transportation service for any of the following reasons:

- i) if there is insufficient Available Capacity to fully meet the request, but if that is the only reason for rejecting the request for service, Union must offer to supply the Available Capacity to the potential shipper;
- ii) ~~6.~~ Union is not obligated to accept requests for service whereif the proposed monthly payment is less than Union's monthly demand charge plus fuel requirements for the applicable service;
- iii) if prior to Union accepting the request for transportation service Union receives a request for transportation service from one or more other potential shippers and there is, as a result, insufficient Available Capacity to service all the requests for service, in which case Union shall follow the procedure in Section 5(d) hereof; -
- iv) if Union does not provide the type of transportation service requested; or
- v) if all of the conditions precedent specified in Article XXI Sections 1 and 2 herein have not been satisfied or waived.

If Union rejects a request for service, Union shall inform the potential shipper of the reasons why its request is being rejected; and

(d) If Union has insufficient Available Capacity to service all pending requests for transportation service Union may:

- i) Reject all the pending requests for transportation service and conduct an open season; or

- ii) Union shall inform all the potential shippers who have submitted a pending request for transportation service that it does not have sufficient capacity to service all pending requests for service, and Union shall provide all such potential shippers with an equal opportunity to submit a revised request for service. Union shall then allocate the Available Capacity to the request for transportation service with the highest economic value to Union. If the economic values of two or more requests are equal, then service shall be allocated on a pro-rata basis. The economic value of any request shall be based on the NPV.

XVII. RENEWALS

For contracts with an Initial Term of five (5) years or greater, the Contract will continue in full force and effect beyond the Initial Term, automatically renewing for a period of one (1) year, and every one (1) year thereafter, subject to notice in writing by Shipper of termination at least two (2) years prior to the expiration thereof.

XVIII. SERVICE CURTAILMENT

1. ~~Union shall have the right to curtail or not to schedule part or all of Transportation Services, in whole or in part, on all or a portion of its pipeline system at any time for reasons of Force Majeure or when, in Union sole discretion, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its pipeline system. Union shall provide Shipper such notice of such curtailment as is reasonable under the circumstances.~~
1. Union shall have the right to curtail or not to schedule part or all of Transportation Services, in whole or in part, on all or a portion of its pipeline system at any time for reasons of Force Majeure or when, in Union sole discretion, acting reasonably, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its pipeline system. Union shall provide Shipper such notice of such curtailment as is reasonable under the circumstances. If due to any cause whatsoever Union is unable to receive or deliver the quantities of Gas which Shipper has requested, then Union shall order curtailment by all Shippers affected and to the extent necessary to remove the effect of the disability. Union has a priority of service policy to determine the order of service curtailment. In order to place services on the priority of service list, Union considers the following business principles: appropriate level of access to core services, customer commitment, encouraging appropriate contracting, materiality, price and term, and promoting and enabling in-franchise consumption.

~~The priority of service guidelines~~Priority ranking for all services utilizing Union's Transportation Services shall be as follows, with detailed policies and procedures available on Union's website. The highest ranked service has Gas' storage, transmission and distribution system as applied to both in-franchise and ex-franchise services are as follows: with number 1 having the highest priority and is curtailed last and the lowest ranked service has the lowest priority and is curtailed first; the last interrupted.

- a. ~~Any firm ex-franchise transportation service(s), firm in-franchise transportation and distribution service(s)~~
- b. ~~Interruptible in-franchise distribution service(s)~~
- c. ~~C1/M12 interruptible transportation and exchange(s), balancing activity (ex-franchise/in-franchise), overrun (ex-franchise/in-franchise)~~
1. Firm In-franchise Transportation and Distribution services and firm Ex-franchise services (Note 1)
 2. In-franchise Interruptible Distribution services
 3. C1/M12 IT Transport and IT Exchanges with Take or Pay rates
 4. Balancing (Hub Activity) < = 100 GJ/d; Balancing (Direct Purchase) < = 500 GJ/d; In-franchise distribution authorized overrun (Note 3)
 5. C1/M12 IT Transport and IT Exchanges at premium rates
 6. C1/M12 Overrun < = 20% of CD (Note 4)
 7. Balancing (Direct Purchase) > 500 GJ/d
 8. Balancing (Hub Activity) > 100 GJ/d; C1/M12 IT Transport and IT Exchanges
 9. C1/M12 Overrun > 20% of CD

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9. If due to the occurrence of an event of force majeure as outlined above, the capacity for gas deliveries by Union is impaired, making it necessary for Union to curtail Shipper's gas receipts to Union hereunder, then Union agrees that the firm Contract Demand for Transportation Services under the Contract shall be combined with the firm contract demand set out in other Union contracts then in effect with Union's customers utilizing such facilities as well as quantities set out in Union's peak day requirements for such facilities, and Shipper's service entitlement during such period of impairment, shall be pro-rated. This pro rationing shall be determined by multiplying the daily capability of such facilities, as available downstream of the impairment, by a fraction, the numerator of which is Shipper's firm Contract Demand and the denominator of which is the total of all such firm contract demands, including the firm Contract Demand hereunder and Union's said peak day requirements downstream of the impairment. For the purposes of this Article XI, firm contract demand shall mean all firm services provided by Union, including firm service under Rate Schedules M2, M4, M5A, M6A, M7, M9, M10, M12, C1, T1, T3, U2, U5, and U7, plus any new firm service that may be created in the future.

XII. DEFAULT AND TERMINATION

In case of the breach or non-observance or non-performance on the part of either party hereto of any covenant, proviso, condition, restriction or stipulation contained in the Contract (but not including herein failure to take or make delivery in whole or in part of the gas delivered to/by Union hereunder occasioned by any of the reasons provided for in Article XI herein) which has not been waived by the other party, then and in every such case and as often as the same may happen, the non-defaulting party may give written notice to the defaulting party requiring it to remedy such default and in the event of the defaulting party failing to remedy the same within a period of thirty (30) days from receipt of such notice, the non-defaulting party may at its sole option declare the Contract to be terminated and thereupon the Contract shall be terminated and be null and void for all purposes other than and except as to any liability of the parties under the same incurred before and subsisting as of termination. The right hereby conferred upon each party shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

XIII. AMENDMENT

Subject to Article XV herein and the ability of Union to amend the C1 Rate Schedule with the approval of the OEB, no amendment or modification of the Contract shall be effective unless the same shall be in writing and signed by each of the Shipper and Union.

XIV. NON-WAIVER AND FUTURE DEFAULT

No waiver of any provision of the Contract shall be effective unless the same shall be in writing and signed by the party entitled to the benefit of such provision and then such waiver shall be effective only in the specific instance and for the specified purpose for which it was given. No failure on the part of Shipper or Union to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under the Contract shall operate as a waiver thereof.

XV. LAWS, REGULATIONS AND ORDERS

The Contract and the respective rights and obligations of the parties hereto are subject to all present and future valid laws, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction and the Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency which affects any of the provisions of the Contract.

XVI ALLOCATION OF CAPACITY

1. Any Shipper ~~A potential shipper~~ may request ~~Transportation Services~~ transportation service on Union's system at any time. Any such request for C1 transportation service must include: Shipper ~~potential shipper's~~ legal name, Receipt Point(s),

Delivery Point(s), Commencement Date, Initial Term, Contract Demand, proposed payment, and Type of Transportation Service and type of transportation service requested.

2. If requests for firm ~~Transportation Services~~ transportation services cannot be met through existing capacity such that the only way to satisfy the ~~request~~ requests for transportation service would require the construction of Expansion Facilities which create new capacity, Union shall allocate any such new capacity by open season, subject to the terms of the open season, and these General Terms and Conditions.
3. If requests for long-term transportation service can be met through existing facilities upon which long-term capacity is becoming available, Union shall allocate such long-term capacity by open season, subject to the terms of the open season, and these General Terms and Conditions. "Long-term", for the purposes of this Article XVI, means, in the case of a transportation service, a service that has a term of one year or greater.
4. Capacity requests received during an open season shall be awarded starting with those bids with the highest economic value. If the economic values of two or more independent bids are equal, then service shall be allocated on a pro-rata basis. The economic value shall be based on the net present value ("NPV") using the effective rate at the time the capacity is allocated which shall be calculated based on the proposed per-unit rate and the proposed term of the contract and without regard to the proposed Contract Demand ("NPV").
5. If Shippers request ~~Transportation Services~~ where (a) the ~~Transportation Services requested were previously offered in an open season but were not awarded, or (b) the requests for Transportation Services may be served on existing facilities for a term no greater than one year, then the allocation of such capacity shall be carried out by one of Union's methods for allocation of such capacity, which methods include, but are not limited to, "first come, first served" basis, open season, or direct negotiations, provided any such requesting Shipper meets all conditions in Article XXI herein, subject to the remaining Available Capacity. Union may at any time allocate capacity to respond to any C1 transportation service request through an open season. If a potential shipper requests C1 transportation service that can be provided through Available Capacity that was previously offered by Union in an open season but was not awarded, then:~~

(a) Any such request must conform to the requirements of Section 1 of this Article XVI;

(b) Union shall allocate capacity to serve such request pursuant to this Section 5, and subject to these General Terms and Conditions and Union's standard form C1 transportation contract;

(c) Union may reject a request for C1 transportation service for any of the following reasons:

- i) if there is insufficient Available Capacity to fully meet the request, but if that is the only reason for rejecting the request for service, Union must offer to supply the Available Capacity to the potential shipper;
- ii) -6. Union is not obligated to accept requests for service where if the proposed monthly payment is less than Union's monthly demand charge plus fuel requirements for the applicable service;
- iii) if prior to Union accepting the request for transportation service Union receives a request for transportation service from one or more other potential shippers and there is, as a result, insufficient Available Capacity to service all the requests for service, in which case Union shall follow the procedure in Section 5(d) hereof; -
- iv) if Union does not provide the type of transportation service requested; or
- v) if all of the conditions precedent specified in Article XXI Sections 1 and 2 herein have not been satisfied or waived.

If Union rejects a request for service, Union shall inform the potential shipper of the reasons why its request is being rejected; and

(d) If Union has insufficient Available Capacity to service all pending requests for transportation service Union may:

- i) Reject all the pending requests for transportation service and conduct an open season; or
- ii) Union shall inform all the potential shippers who have submitted a pending request for transportation service that it does not have sufficient capacity to service all pending requests for service, and Union shall provide all such potential shippers with an equal opportunity to submit a revised request for service. Union shall then allocate the Available Capacity to the request for transportation service with the highest economic value to Union. If the economic values of two or more requests are equal, then service shall be allocated on a pro-rata basis. The economic value of any request shall be based on the NPV.

XVII. RENEWALS

For contracts with an Initial Term of five (5) years or greater, with (a) a Receipt Point of Parkway or Kirkwall and a Delivery Point of Dawn (Facilities), or (b) a Receipt Point of Dawn (Facilities) and a Delivery Point of Parkway or Kirkwall, or (c) a Receipt Point of Parkway and a Delivery Point of Kirkwall, the Contract will continue in full force and effect beyond the Initial Term, automatically renewing for a period of one (1) year, and every one (1) year thereafter, subject to notice in writing by Shipper of termination at least two (2) years prior to the expiration thereof.

For all other contracts, the Contract will continue in full force and effect until the end of the Initial term, but shall not renew.

XVIII. SERVICE CURTAILMENT

1. Union shall have the right to curtail or not to schedule part or all of Transportation Services, in whole or in part, on all or a portion of its pipeline system at any time for reasons of Force Majeure or when, in Union sole discretion, acting reasonably, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its pipeline system. Union shall provide Shipper such notice of such curtailment as is reasonable under the circumstances.

If due to any cause whatsoever Union is unable to receive or deliver the quantities of Gas which Shipper has requested, then Union shall order curtailment by all Shippers affected and to the extent necessary to remove the effect of the disability. Union has a priority of service policy to determine the order of service curtailment. In order to place services on the priority of service list, Union considers the following business principles: appropriate level of access to core services, customer commitment, encouraging appropriate contracting, materiality, price and term, and promoting and enabling in-franchise consumption.

~~The priority of service guidelines~~Priority ranking for all services utilizing Union's Transportation Services shall be as follows, with detailed policies and procedures available on Union's website. The highest ranked service has Gas' storage, transmission and distribution system as applied to both in-franchise and ex-franchise services are as follows; with number 1 having the highest priority and is curtailed last and the lowest ranked service has the lowest priority and is curtailed first; the last interrupted.

- ~~a. Any firm ex franchise transportation service(s), firm in franchise transportation and distribution service(s)~~
- ~~b. Interruptible in-franchise distribution service(s)~~
- ~~c. M12/C1 interruptible transportation and exchange(s), balancing activity (ex-franchise/in-franchise), overrun (ex-franchise/in-franchise)~~
 1. Firm In-franchise Transportation and Distribution services and firm Ex-franchise services (Note 1)
 2. In-franchise Interruptible Distribution services
 3. C1/M12 IT Transport and IT Exchanges with Take or Pay rates
 4. Balancing (Hub Activity) < = 100 GJ/d; Balancing (Direct Purchase) < = 500 GJ/d; In-franchise distribution authorized overrun (Note 3)
 5. C1/M12 IT Transport and IT Exchanges at premium rates
 6. C1/M12 Overrun < = 20% of CD (Note 4)
 7. Balancing (Direct Purchase) > 500 GJ/d