



Fogler,
Rubinoff
LLP

Fogler, Rubinoff LLP Barristers & Solicitors
95 Wellington Street West
Suite 1200, Toronto-Dominion Centre
Toronto, ON M5J 2Z9
Tel: 416.864.9700 Fax: 416.941.8852
www.foglers.com

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Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 116776

VIA ELECTRONIC MAIL AND COURIER

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli,
Board Secretary

Dear Ms. Walli:

**Re: EB-2011-0242 and EB-2011-0283
Enbridge Gas Distribution Inc. and Union Gas Limited – Renewable Natural Gas
Comments on behalf of BOMA**

The Building Owners and Managers Association for Greater Toronto ("BOMA") has reviewed the Board's Draft Issues List and the Comments of such other parties as were available to it prior to submitting this letter.

BOMA agrees with the additions proposed by PIAC to the List.

BOMA agrees with the remainder of the Board's Draft Issues List, except for proposed Issue 1.1.

Issue 1.1 states: "Do the applications fit with the objectives of natural gas under the Ontario Energy Board Act?" BOMA suggests that this proposed issue be removed from the List. It seems clear from the very high energy conversion efficiencies achieved by the direct burning of biogas blended with other natural gas (estimated at 90 percent or higher in the evidence) relative to, for example, the efficiency of 30 to 40 percent achieved if the biogas is converted into electricity, that the project fits easily within section 2.5 of the Board objectives for gas in the Ontario Energy Board Act, "To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the Consumer's economic circumstances". Its status is analogous to the reductions of transmission and distribution losses, leading to increased energy efficiency, in which the Board has expressed interest.

In addition, it is clear from the directives, pursuant to the Green Energy Act, that the Government considers biogas to be a renewable energy resource, the use of which the Government wishes to encourage.

Some intervenors have raised a policy question of whether the gas utilities should be purchasing natural gas from Ontario biomethane producers, and have suggested that their policy question should be dealt with as a preliminary matter, and that the procedure for the preliminary matter include provision for interrogatories.

BOMA notes that CCC, for example, has characterized this issue as whether gas utilities should be purchasing natural gas from production sources in Ontario other than traditional ones, and that they characterize the issue as a policy issue, not a legal issue. In BOMA's view, there are substantial differences in the way in which regulatory tribunals have traditionally dealt with jurisdictional issues and policy issues. CCC's request tends to conflate the two.

Issue 1.1 on the Board's Draft Issues List is: "Do the applications fit with the objectives of natural gas under the Ontario Energy Board Act". This is a legal issue; it deals with the jurisdiction of the Board to acquire natural gas from non-traditional sources in Ontario, as part of its gas supply portfolio.

Regulatory tribunals have often considered it appropriate to consider challenges to their jurisdiction to take some proposed action as a preliminary matter.

As noted above, BOMA is suggesting that Issue 1.1 be removed from the Issues List because BOMA does not believe there is a serious jurisdictional issue.

However, if the Board were to decide that there is a serious question as to its jurisdiction to sign contracts with Ontario biomethane producers, BOMA would suggest the Board accept written submission on that issue as a preliminary matter. However, there is no need for interrogatories prior to making submissions on the legal issue. The evidence contains more than enough factual material to underpin such submissions.

Issue 1.2 on the Board's Draft Issues List is another matter entirely. It states: "Is the proposed role of both Enbridge and Union in developing and implementing a RNG program reasonable and appropriate?". This issue is a valid issue, but it is not a legal issue. It can only be answered properly when all of the more detailed issues in sections 2, 3, and 4 of the Issues List have been considered. It cannot and should not be answered in a preliminary process in isolation and in the abstract, as it were, as suggested by the CCC. BOMA suggests, should the Board decide that the

issue of its jurisdiction should be retained in the List and should be considered as a preliminary matter, that the preliminary proceeding not include Issue 1.2, for the reason given above.

Respectfully yours,

FOGLER, RUBINOFF LLP



Thomas Brett
TB/dd

CC: Marion Fraser, Fraser & Company (*by e-mail*)
Chris Conway, BOMA (*by e-mail*)
Karen Hockin, Union Gas Limited (*by e-mail*)
Norm Ryckman, Enbridge Gas Distribution Inc. (*by e-mail*)