

JACK HUGHES  
T 613.787.3509  
jhughes@blg.com

Borden Ladner Gervais LLP  
World Exchange Plaza  
100 Queen St, Suite 1100  
Ottawa, ON, Canada K1P 1J9  
T 613.237.5160  
F 613.230.8842  
F 613.787.3558 (IP)  
blg.com



**By electronic filing**

January 10, 2012

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> floor  
Toronto, ON M4P 1E4

Dear Ms Walli,

<b>Union Gas Limited ("Union") Renewable Natural Gas Application</b>		<b>Enbridge Gas Distribution Inc. ("EGD") Renewable Natural Gas Application</b>	
<b>Board File No.:</b>	<b>EB-2011-0283</b>	<b>Board File No.:</b>	<b>EB-2011-0242</b>
<b>Our File No.:</b>	<b>339583-000121</b>	<b>Our File No.:</b>	<b>339583-000121</b>

Please find attached the Written Submissions of Canadian Manufacturers & Exporters ("CME") with respect to the process issue.

Yours very truly,  
**Borden Ladner Gervais LLP**



Jack Hughes

\slc  
enclosure

- c. Karen Hockin (Union)
- Alexander Smith (Torys LLP)
- Norm Ryckman (EGD)
- Fred Cass (Aird & Berlis)
- Paul Clipsham (CME)

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**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.14, Schedule B, and in particular, section 36(2) thereof;

**AND IN THE MATTER OF** an application by Enbridge Gas Distribution Inc. for an order or orders approving and setting Ontario renewable natural gas prices for Enbridge Gas Distribution Inc.'s purchase of renewable natural gas;

**AND IN THE MATTER OF** an application by Union Gas Limited for an order or orders approving and setting Ontario renewable natural gas prices for Union Gas Limited's purchase of renewable natural gas.

**WRITTEN SUBMISSIONS OF  
CANADIAN MANUFACTURERS & EXPORTERS ("CME")  
ON THE PROCESS ISSUE**

**Guiding Principles**

1. The principles that guide CME's response to the question pertaining to the appropriateness of dividing this proceeding into two (2) phases include the following:
  - (a) The level of costs incurred by utilities for recovery from their ratepayers must be just and reasonable; and
  - (b) While the level of recoverable costs can vary from case to case, to be recoverable in rates gas costs incurred by a utility for its system gas users must reflect the prevailing competitive market prices for gas commodity.

**Undisputed Facts**

2. Facts that cannot reasonably be disputed include the following:
  - (a) Natural gas is in abundant supply;

- (b) The Renewable Natural Gas (“RNG”) costs that Enbridge Gas Distribution Inc. (“EGD”) and Union Gas Limited (“Union”) are asking the Board to approve, within the pricing framework component of the Proposed RNG Program, for recovery from their system gas customers materially exceed the prevailing competitive natural gas commodity market prices;
- (c) In their applications, both EGD and Union seek *Ontario Energy Board Act*, section 36(2) orders that, if granted, will permit them to recover RNG premium costs from their system gas customers<sup>1</sup>;
- (d) The commitments EGD and Union propose to make to their RNG suppliers are effectively conditional upon prior Board approval of the recovery of the premium costs for RNG supply from their system gas customers;
- (e) Absent a decision favourable to EGD and Union with respect to “Premium Recoverability”, there will be no gas supply contracts between EGD and Union and their RNG suppliers; and
- (f) If EGD and Union fail to succeed on the Premium Recoverability issue, there will be no gas cost consequences to be considered for ratemaking purposes.

**Premium Recoverability is a Threshold Issue**

- 3. Having regard to the foregoing Guiding Principles and Undisputed Facts, CME submits that the Premium Recoverability issue is the preliminary or threshold issue that the Board should consider and determine.
- 4. Absent a prior unconditional commitment from the utilities to acquire RNG, there are no RNG gas supply contracts. The principle pertaining to the recovery of prudently incurred costs has no application to gas supply contracts that are effectively conditional on prior Board approval.

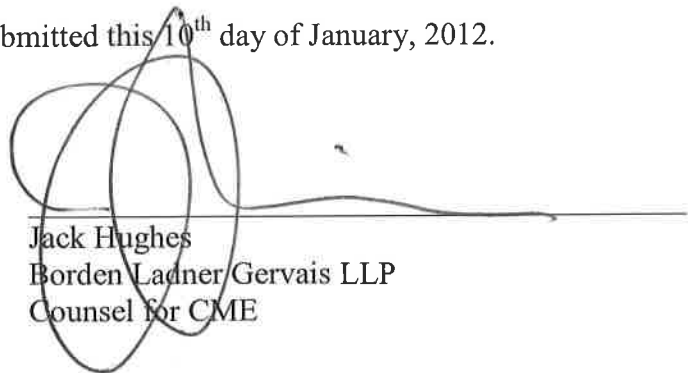
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<sup>1</sup> Union Application para. 6(a) and EGD Application para. 4.

5. Premium Recoverability is the threshold issue. It should be decided at the outset. Absent a decision favourable to EGD and Union on that threshold issue, there are no further ratemaking issues to be considered. Matters described in the Draft Issues List would not need to be considered absent a decision favourable to EGD and Union on the Premium Recoverability issue.
6. The shareholders of EGD and Union are at liberty to facilitate the development of a viable non-utility RNG industry in Ontario as they see fit, as long as the premium costs for RNG supplies are not recoverable from utility ratepayers.
7. For all these reasons, CME submits that the most expeditious and least expensive way to proceed with this combined proceeding is for the Board to consider the Premium Recoverability issue as a preliminary matter. To that end, and as previously stated in its letter dated December 14, 2011, CME submits that this issue should be framed as follows:

*Whether any amounts over and above the prevailing competitive prices for natural gas ("premiums") that Enbridge and Union Gas are proposing to pay to RNG suppliers are recoverable from ratepayers.*

ALL OF WHICH IS RESPECTFULLY submitted this 10<sup>th</sup> day of January, 2012.



Jack Hughes  
Borden Ladner Gervais LLP  
Counsel for CME