



April 5, 2012

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

Dear Ms. Walli:

**Re: EB-2011-0283 – Union Gas Limited – Renewable Natural Gas Program  
Application – Union Response to Pollution Probe motion**

Please find attached Union Gas Limited's ("Union") response to the motion filed by Pollution Probe on March 26, 2012 in the EB-2011-0242/EB-2011-0283 Applications filed by Enbridge Gas Distribution and Union.

Yours truly,

*[original signed by]*

Karen Hockin  
Manager, Regulatory Initiatives

KH/la

c.c.: Alex Smith, Torys  
Mark Kitchen, Union  
Intervenors of Record (EB-2011-0242/EB-2011-0283)

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B); and in particular 36 (2) thereof;

**AND IN THE MATTER OF** an application by Enbridge Gas Distribution Inc. for an Order or Orders approving and setting the cost consequences associated with the purchase of Ontario biomethane by Enbridge Gas Distribution Inc.;

**AND IN THE MATTER OF** an application by Union Gas Limited for an Order or Orders approving and setting the cost consequences associated with the purchase of Ontario biomethane by Union Gas Limited.

**RESPONDING ARGUMENT OF UNION GAS  
(Pollution Probe Motion for Full and Adequate Interrogatory Response)**

**A. OVERVIEW**

1. Pollution Probe brings this motion to compel the Utilities to provide an estimate of the amount of biomethane that is already being captured and used for energy use that would be purchased by the Utilities under the biomethane program at issue in this application (the “Diverted Amount”). While it does not have particulars, Union believes that the Diverted Amount would be a very small amount of the biomethane purchased under the program and Union does not currently purchase any biomethane. Pollution Probe seeks an estimate of the Diverted Amount because Pollution Probe wishes to know the extent to which the program will cause a net reduction in greenhouse gas emissions, or, as Pollution Probe has termed it, a reduction in greenhouse gas emissions “net of free-riders”.

2. Union has answered Pollution Probe’s interrogatory. Union agrees that causing a net reduction in greenhouse gas emissions is an important benefit of the program, but, as Union has informed Pollution Probe, at this time Union does not have sufficient information to make and justify an assumption about the Diverted Amount, though Union believes it to be very small, if not zero. Union is aware of only one biomethane supplier--a waste water treatment plant

operated by the City of Hamilton--that exists in Union's franchise area and has expressed an interest in selling biomethane to Union under the program.<sup>1</sup> That supplier's potential contribution would be *de minimis* with respect to the project as a whole. As a result, Union has not included the Diverted Amount as an input assumption in its joint response with Enbridge to Pollution Probe's interrogatory, nor was Union required to do so by virtue of the fact that Pollution Probe made reference to a free-rider amount in the preamble to its interrogatory. On this motion Pollution Probe seeks to compel Union, in effect, to guess the quantum of the Diverted Amount, notwithstanding that Union has not included the Diverted Amount as an input assumption in its joint answer with Enbridge and notwithstanding that it does not have sufficient information to address the issue beyond stating that it is Union's belief that the Diverted Amount is *de minimis*.

3. The Utilities have answered the interrogatory and should not be compelled to hazard guesses that will be of no assistance to the Board on this application. The Board's process does not and cannot accommodate such a multi-staged interrogatory process. The motion should be dismissed.

## **B. FACTS**

4. In its interrogatory at Tab 2 of Pollution Probe's motion record, Pollution Probe requested the Utilities' best estimates of the incremental greenhouse gas emission reduction costs, in dollars per tonne, of the Utilities' proposed procurement programs for biomethane from landfill gas and anaerobic digestion. Pollution Probe further asked that the Utilities show their calculations and state and justify all input assumptions.

5. In their updated common response to Pollution Probe's interrogatory at Tab 3 of Pollution Probe's motion record, the Utilities show their calculations and state and justify all input assumptions.

6. In an email to Pollution Probe's counsel dated March 25, 2012, attached at Tab A of this record, counsel for the Utilities advised that the Utilities had insufficient information to address the topic of the Diverted Amount.

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<sup>1</sup> See Board Staff IR#8 and LPMA IR#3.

7. In a further email to Pollution Probe's counsel dated April 4, 2012, attached at Tab B of this record, counsel for the Utilities advised that the Utilities currently do not purchase any RNG and the Diverted Amount is likely very small, if it is above zero.

8. Union is not aware of evidence that suggests that the Diverted Amount would be greater than a *de minimis* amount, nor has Pollution Probe adduced such evidence. Union does not see how guessing the quantum of the Diverted Amount, which Union has no means of calculating but believes to be *de minimis*, will be of assistance to the Board in deciding this application.

### C. ISSUES

9. Should the Utilities be required to guess the Diverted Amount and provide information to justify the reasonableness of that guess?

### D. SUBMISSIONS

10. The Utilities should not be required to guess the Diverted Amount and provide information to justify the reasonableness of that guess because:

- (a) the Utilities have answered Pollution Probe's interrogatory,
- (b) in any event, the Utilities should not be required to guess the Diverted Amount as that guess will be of no assistance to the Board in deciding this application; and
- (c) the Board's process does not and cannot accommodate a multi-staged interrogatory process of the kind that this is becoming.

#### **The Utilities have answered Pollution Probe's interrogatory**

11. The Utilities have answered Pollution Probe's interrogatory in their updated common response at Tab 3 of Pollution Probe's motion record. In their answer the Utilities show their calculations and state and justify all input assumptions. The Utilities answer is full and adequate, as required by Rule 29(a) of the Board's *Rules of Practice and Procedure*.

12. Union has not included the Diverted Amount as an input assumption in its joint response to Pollution Probe's interrogatory because while Union believes the Diverted Amount to be *de*

*minimis*, Union has insufficient information to provide an estimate of the Diverted Amount that can be justified with reference to any evidence.

13. The fact that Pollution Probe made reference to a free-rider amount in the preamble to its interrogatory does not oblige Union to make up a number for the Diverted Amount and treat it as an input assumption for the purposes of the calculation provided in answer to Pollution Probe's interrogatory when, in fact, Union has insufficient information to provide an estimate of the Diverted Amount, beyond Union's stated belief that the Diverted Amount is *de minimis*.

**The Utilities should not be required to guess the Diverted Amount**

14. The purpose of all evidence adduced in a hearing before the Board is to assist the Board in making a decision. Only evidence that is relevant to an issue in the application that must be decided by the Board can be of assistance to the Board in its decision making. The Board will only direct a party to provide a response to an interrogatory if the Board is persuaded that the interrogatory relates to an issue in the application before it, and the response to the interrogatory is likely to adduce evidence that is relevant and helpful to the decision it must make.

*Toronto Hydro-Electric System Ltd. (Re)*, EB-2009-0139, para. 9

15. Union should not be required to guess the Diverted Amount, beyond stating its belief that the Diverted Amount is *de minimis*, as that guess will be of no assistance to the Board in deciding any issue before it on this application.

**The Board's process does not and cannot accommodate a multi-staged interrogatory process**

16. No further responses from the Utilities are warranted or necessary for the effective conduct of the proceeding. The Board's process does not and cannot accommodate a multi-staged interrogatory process.

*Union Gas Ltd. (Re)*, EB-2005-0520, paras. 10, 14

17. The Utilities' communications with Pollution Probe about its interrogatory are becoming a multi-staged interrogatory process. Pollution Probe will have an opportunity to cross-examine on this issue at the hearing. This multi-staged interrogatory process should end.

**E. CONCLUSIONS**

18. This motion should be dismissed.

April 5, 2011

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Toronto, Ontario  
M5K 1N2 Canada

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Lawyers for Union Gas Limited

TO: Klippensteins  
Barristers & Solicitors  
160 John Street, Suite 300  
Toronto, Ontario M5V 2E5

Murray Klippenstein (LSUC# 26950G)  
Kent Elson (LSUC#: 57091IH)  
Tel: 416-598-0288  
Fax: 416-598-9520

## Smith, Alexander

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**From:** Smith, Alexander  
**Sent:** March-25-12 7:23 PM  
**To:** 'Kent.Elson@klippensteins.ca'  
**Cc:** 'fcass@airdberlis.com'  
**Subject:** Re: EB-2011-0242/0283 - Enbridge Gas Distribution/Union Gas - Renewable Natural Gas Proceedings

Hi Kent,  
I can now advise that we have insufficient information to address the topic of free ridership.  
Alex

Alex Smith  
Torys LLP  
416.865.8142

----- Original Message -----

**From:** Kent Elson [mailto:Kent.Elson@klippensteins.ca]  
**Sent:** Sunday, March 25, 2012 01:40 PM  
**To:** Smith, Alexander  
**Cc:** fcass@airdberlis.com <fcass@airdberlis.com>  
**Subject:** Re: EB-2011-0242/0283 - Enbridge Gas Distribution/Union Gas - Renewable Natural Gas Proceedings

Hi Alex,

Thanks for your email.

I am drafting motion materials as we speak for planned service and filing on Monday, but would also prefer that a motion be avoided. Is there a good possibility that Union will provide its assumptions on the free rider issue next week without requiring a motion?

If you would like to discuss I can be reached on my cell phone this afternoon at 416 906-7305.

Best,

Kent

Kent Elson, LL.B.  
Klippensteins, Barristers and Solicitors  
160 John St., Suite 300  
Toronto ON M5V 2E5  
tel.: 416-598-0288  
fax: 416-598-9520

On 3/25/2012 1:06 PM, Smith, Alexander wrote:  
> Hi Kent,

>  
> Union still hopes that a motion can be avoided, but if there is to be a motion we would favour having the motion heard orally for perhaps half an hour.  
>  
> Alex Smith  
> Torys LLP  
>  
> -----Original Message-----  
> From: Kent Elson [mailto:Kent.Elson@klippensteins.ca]  
> Sent: March-23-12 12:41 PM  
> To: Smith, Alexander; fcass@airdberlis.com  
> Subject: Re: EB-2011-0242/0283 - Enbridge Gas Distribution/Union Gas - Renewable Natural Gas Proceedings  
>  
> Hello Alex and Fred,  
>  
> Based on the schedule for the biomethane proceedings, it looks like I  
> will need to serve and file a motion record by Monday. I will also be  
> proposing a schedule for submissions at that time. I think the issue in  
> the motion is fairly simple; would one week be sufficient time for your  
> submissions?  
>  
> Best,  
>  
> Kent  
>  
> Kent Elson, LL.B.  
> Klippensteins, Barristers and Solicitors  
> 160 John St., Suite 300  
> Toronto ON M5V 2E5  
> tel.: 416-598-0288  
> fax: 416-598-9520  
>  
>  
> On 3/22/2012 10:09 AM, Kent Elson wrote:  
>> Hello Alex,  
>>  
>> I spoke to Jack and Fred this morning, and it looks like we are going  
>> to go ahead and file a motion for a response on the free rider aspect  
>> of Pollution Probe's interrogatory.  
>>  
>> I will aim to have something out next week.  
>>  
>> Best,  
>>  
>> Kent  
>>  
>> Kent Elson, LL.B.  
>> Klippensteins, Barristers and Solicitors  
>> 160 John St., Suite 300  
>> Toronto ON M5V 2E5  
>> tel.: 416-598-0288  
>> fax: 416-598-9520

>>  
>>  
>> On 3/14/2012 11:37 AM, Kent Elson wrote:  
>>> Mr. Smith and Mr. Cass,  
>>>  
>>> Thank you for the updated interrogatory response in the biomethane  
>>> proceedings. Pollution Probe is satisfied with the adequacy of the  
>>> response except on the issue of free riders, and therefore requests  
>>> further information on that discrete point.  
>>>  
>>> In these circumstances, a free rider effect occurs where biomethane  
>>> is already being captured and used for energy use, and is simply  
>>> diverted for purchase by Enbridge or Union. Again, Pollution Probe is  
>>> looking for the estimated incremental cost of achieving greenhouse  
>>> gas reductions through the purchase of biomethane. Therefore, the key  
>>> consideration is the amount of greenhouse gas reductions that  
>>> directly result from Union and Enbridge's purchases of biomethane.  
>>> This in turn is a function of the additional biomethane that would be  
>>> captured and used for energy production as a result of the program,  
>>> as opposed to being vented or lost to the environment. Incorporating  
>>> a free rider rate estimate is important because it helps ensure that  
>>> the calculations are based on the estimated greenhouse gas reductions  
>>> that will result from the proposed procurement programs.  
>>>  
>>> It appears that Union and Enbridge have either assumed a free rider  
>>> rate of zero, or have not specifically incorporated a free rider  
>>> estimate in their calculations. Pollution Probe asks that Union and  
>>> Enbridge provide a free rider rate estimate in relation to greenhouse  
>>> gas reductions (or confirm that their estimated rate is zero) and  
>>> justify these estimates.  
>>>  
>>> Thank you again for the updated response, and we hope to hear from  
>>> you soon.  
>>>  
>>> Best,  
>>>  
>>> Kent  
>>>  
>>> Kent Elson, LL.B.  
>>> Klippensteins, Barristers and Solicitors  
>>> 160 John St., Suite 300  
>>> Toronto ON M5V 2E5  
>>> tel.: 416-598-0288  
>>> fax: 416-598-9520  
>>>  
>>>  
>>> On 3/5/2012 5:27 PM, Kent Elson wrote:  
>>>> Dear Mr. Cass and Mr. Smith,  
>>>>  
>>>> I am writing on behalf of Pollution Probe to request that Enbridge  
>>>> Gas Distribution and Union Gas provide a full and adequate response  
>>>> to Pollution Probe's interrogatory in the above matters.

>>>>

>>>> Generally speaking, Pollution Probe asked for the estimated  
>>>> incremental cost of achieving greenhouse gas reductions through the  
>>>> use of biomethane (i.e. the dollar cost per tonne of net greenhouse  
>>>> gas emission reductions). See the attached interrogatory, dated  
>>>> February 7, 2012, for full details. The common response referred  
>>>> Pollution Probe to the responses to GEC interrogatories 1 through 4.  
>>>> Unfortunately, those responses do not appear to address the question  
>>>> posed by Pollution Probe.

>>>>

>>>> Therefore, Pollution Probe respectfully asks that Enbridge and Union  
>>>> provide a full and adequate response to its interrogatory. Although  
>>>> we do not anticipate requiring a motion, we would appreciate hearing  
>>>> back from you shortly so that we will have time to make a motion if  
>>>> necessary.

>>>>

>>>> Please do not hesitate to contact me if you would like to discuss  
>>>> any of the above.

>>>>

>>>> Best Regards,

>>>>

>>>> Kent

>>>>

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> Any distribution, printing or other use by anyone else is prohibited. If you are not an intended recipient, please contact  
> the sender immediately, and permanently delete this email and attachments.

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## Smith, Alexander

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**From:** Smith, Alexander  
**Sent:** April-04-12 1:21 PM  
**To:** Kent Elson (Kent.Elson@klippensteins.ca)  
**Cc:** fcass@airdberlis.com  
**Subject:** Pollution Probe motion

Hi Kent,

The Utilities currently do not purchase any RNG and the free-rider amount is likely very small, if it is above zero. In light of this do we really need to proceed with this motion? Please let me know as soon as you can as we are continuing to prepare our materials.

Alex

Alex Smith  
**Torys LLP**  
Tel: 416.865.8142  
Fax: 416.865.7380  
<mailto:asmith@torys.com>  
[www.torys.com](http://www.torys.com)