

February 23, 2018

EMAIL AND RESS

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

Dear Ms. Walli:

Re: EB-2017-0255 – Union Gas Limited (“Union”) – 2018 Cap-and-Trade Compliance Plan – Environmental Defence (“ED”) and Green Energy Coalition (“GEC”) Evidence Outline and Proposed Budget.

I write on behalf of Union in response to the evidence outline submitted by Mr. David Poch (on behalf of ED and GEC) on February 14, 2018 with respect to the proposed intervenor evidence to be prepared by Mr. Chris Neme, submitted pursuant to the Board’s Procedural Order No. 2. I also refer to my letter submitted on behalf of Union on January 18, 2018 in response to the various letters exchanged among Mr. Kent Elson (on behalf of ED and GEC), Mr. David Poch (on behalf of GEC) and Mr. Dennis O’Leary (on behalf of Enbridge Gas Distribution), and to Mr. Poch’s letter of February 22, 2018.

Union has reviewed the evidence outline submitted on February 14, 2018 pursuant to Procedural Order No. 2 and repeats its concern that Mr. Neme’s evidence will exceed the scope of this proceeding. It would also disrupt the procedural schedule and delay the approvals process. The evidence therefore should not be permitted.

Union agrees with Enbridge’s submissions made in its February 23, 2018 letter that Mr. Neme’s evidence as described would improperly, and unfairly, expand the scope of this proceeding.

As Mr. Poch’s letter makes clear (at page 3), Mr. Neme’s evidence will be premised on the use of tests in addition to those directed by the Cap-and-Trade Framework to determine the cost-effectiveness of incremental abatement opportunities. The use of alternative tests to determine cost-effectiveness of incremental abatement can be expected to affect each of the four issues on which GEC and ED propose to ask Mr. Neme to opine (the “quantification” of incremental abatement opportunities under item 1, the “cost savings” that utilities could have achieved under

item 2, the comparison of incremental abatement with other options under item 3, and compliance portfolio risk under item 4).

While Mr. Poch's letter does not identify the tests upon which Mr. Neme's evidence will be based, Union expects that these tests will be either the Total Resource Cost ("TRC") test, the Societal Cost Test ("SCT"), or some variant of these tests for which ED and GEC advocated in the context of the 2015-2020 DSM Framework and the utilities' respective 2015-2020 DSM Plan proceedings and the proceeding that led to the Board's Cap and Trade Framework.

The Board has already rejected the use of these tests for utilities' Cap and Trade compliance plans. At page 22 of the Framework, the Board stated:

Given the newness of the Cap and Trade program the OEB considers it premature to apply the TRC or SCT to the Utilities' Compliance Plans at this time. The OEB will consider the use of additional tests such as the TRC or SCT after gaining experience with the assessment of Compliance Plans.

The Board went on to determine that, "[a]s part of its assessment of cost-effectiveness and reasonableness, the OEB [would] assess whether the Utilities effectively used the OEB MACC [Marginal Abatement Cost Curve], their forecasts, and any other inputs to prioritize and select the compliance instruments and activities they have decided to include in their Compliance Portfolio."

Therefore, any evidence from Mr. Neme that proposes or applies any test to measure cost-effectiveness of incremental abatement other than the application of the OEB MACC and Long Term Carbon Price Forecast pursuant to the Framework is out of scope for this proceeding and should not be permitted.

In addition, Mr. Neme's evidence would disrupt the current procedural schedule fixed in the Board's Procedural Order No. 2. As set out in my January 18 letter, if Mr. Neme's evidence is permitted, procedural safeguards must be put in place, including allowing Union to ask interrogatories, to file responding evidence and to cross-examine Mr. Neme at the oral hearing. In his February 22 letter, Mr. Poch states that Mr. Neme's evidence will not be ready until 15 working days after the Board determines whether the evidence may be submitted – meaning that the evidence would be filed by March 16, 2018 at the earliest. This does not allow sufficient time for the interrogatory process to take place, and for Union to submit responding evidence, before the oral hearing which is scheduled to begin on April 3, 2018. Thus, the submission of intervenor evidence by Mr. Neme will inevitably delay and disrupt this proceeding, and should be denied for that reason.

In the event that the Board decides to allow the evidence, Union repeats its request that the following procedural safeguards be put in place: (1) that it be permitted to submit written interrogatories to Mr. Neme within one week of Mr. Neme's evidence being filed, (2) that Mr. Neme's interrogatory responses be due within one week of the interrogatories being requested, (3) that the utilities be permitted to file responding evidence by a date to be determined after a

proposal by the utilities within one week of Mr. Neme's interrogatory responses being filed, and (4) that Mr. Neme be available to be cross-examined at an oral hearing. As these steps cannot be achieved before the oral hearing currently scheduled to being April 3, 2018, Union expects that the hearing would be adjourned and would resume at a later date to allow cross-examination of Mr. Neme and in respect of any responding evidence.

The various letters submitted on this topic on behalf of ED and GEC and the evidence outline contain a number of statements with which Union disagrees. None of those statements are evidence in this proceeding. To the extent that any of those statements are submitted as part of evidence filed in this proceeding, Union reserves all of its rights to respond to that evidence through its own evidence, and to cross-examine on that evidence at an oral hearing.

Yours truly,

[Original signed by]

Myriam Seers

c.c.: Crawford Smith, Torys
Adam Stiers, Union Gas