

EB-2017-0224
EB-2017-0225
EB-2017-0275

Ontario Energy Board

IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders approving and/or accepting its 2018 Cap and Trade Compliance Plan and approving or fixing rates and/or changes to recover the costs incurred undertaking its Cap and Trade Compliance Plan.

AND IN THE MATTER OF an Application by Union Gas Limited, pursuant to section 36(1) of the Ontario Energy Board Act, 1998, for an order or orders approving rates resulting from the 2018 Cap-and-Trade Compliance Plan.

ENERGY PROBE RESEARCH FOUNDATION

(“ENERGY PROBE”)

ARGUMENT

May 31, 2017

Section I. Executive Summary

1. Energy Probe Research Foundation (“Energy Probe”) is submitting a combined argument for the EB-2017-0255 and EB-2017-0224 applications, which deal with cap and trade compliance applications from Union Gas (“Union”) and Enbridge Gas Distribution (“Enbridge”), respectively.¹ While there are differences between the two applications, nearly all of our concerns relate to matters that are similar to the two applications. Where there are differences, Energy Probe will highlight those in order to allow that particular utility to respond if they desire to do so.
2. **The Board should not approve the \$2 million request in funding for the Low Carbon Initiative Fund (LCIF).** Neither of the utilities have presented formal or structured plans for the LCIF, the need for the fund remains unclear given many of its activities are either being undertaken by the private sector or other government agencies, it muddies the water between unregulated and regulated businesses and the utilities have not considered combining or coordinating their LCIF activities, even though they are now owned by the same corporate entity and are currently asking the Board for approval to merge their operations (EB-2017-0306/07). It’s premature – and potentially wasteful – to approve \$4 million in ratepayer funds to support activities that are either unnecessary, unclear or duplicative – or a combination of all three.
3. **The Board should not, at this time, approve any more conservation funding, as has been proposed by parties to this proceeding.** While Energy Probe’s reasons for arguing against more Demand Side Management (DSM) funding are explained in more detail and nuance below, the main thrust of our argument is that the cap and trade system, by its very nature, was established as a means to “internalize” the external costs of pollution (carbon emissions). In Energy Probe’s view, the cap and trade market should move the regulated gas sector – and the OEB – to promote less utility-led DSM activities, as consumers are now paying a higher price on each unit of gas they purchase. That higher price better reflects the economic and environmental cost of gas consumption. Increasing DSM spending at this time is contradictory to the nature of the cap and trade program.
4. **The Board should also consider lowering the proposed administration costs for both utilities.** Both utilities have admitted that they have yet to fill a number of forecasted positions in 2018 and the reality – as much as the utilities may want to argue against it – is that they are owned by the same corporate parent and can easily consolidate some of their cap and trade activities. There’s also a very significant discrepancy in administration costs – particularly those related to staffing – between the two utilities and little-to-no explanation as why that is the case.
5. **The Board should require a variance account for any RNG costs that should flow to the province rather than ratepayers.** While the utilities maintain that ratepayers will be held harmless from RNG costs, their evidence shows that if the market price for natural gas is below

¹ Energy Probe has no comments on EB-2017-0275

the forecasted market price, then ratepayers will be providing a subsidy to RNG producers. A variance account will collect that difference and apportion it to the province.

Section II. The LCIF should not be approved at this time

6. The Board should not approve the Low Carbon Initiative Fund (LCIF) as it's currently presented in the cap and trade compliance applications from Union and Enbridge. Energy Probe's biggest concern over the LCIF proposals is that they lack a formal planning structure. When asked whether there was a "written-down process" for determining what types of projects and programs would be eligible to be included in the \$2 million LCIF, Union's witness responded that eventually "we will get to a point where we actually have very formal documents...", but not at this time. Instead, as the witness explained, the utility took the "more practical" approach of relying on internal processes of project management in which the utility doesn't have to have "everything formally defined at the beginning."² When Enbridge was asked whether it had a work plan for the \$1.16 million in LCIF spending it's forecasting to spend in 2018, it responded that it has a "document that is starting to come together."³ The witness then went on to say that, even though there is no work plan to spend more than \$1 million, it doesn't matter because ratepayers will be able to review the spending when the utility seeks clearance of the account.
7. This is all totally backwards from a regulatory perspective in Energy Probe's view. Typically, as both Union and Enbridge are aware, the utilities come to the Board seeking approval in rates for a particular, defined project, which would include a formal process detailing its need, cost, plans for project management and so on. In this case, it's the exact opposite. The utilities are asking the Board for approval to spend up to \$2 million – they currently aren't forecasting to actually spend that amount, as addressed in point #9 – for a series of fairly undefined projects that in many cases lack a structured process for why they were chosen or a work plan for how, exactly, the money will be spent on that particular project. In Energy Probe's view, the utilities need to come back to the Board with, at the minimum, a clear process and plan for how the projects in the fund were chosen and how any money in the LCIF will be spent. It's not good enough to simply list a particular sector – the natural gas trucking industry for example – and say that you're going to research it as reason enough to collect money from ratepayers.
8. Until that time, it's premature to give them a \$2 million cheque to see what they can come up with. Doing so would create the regulatory contradiction in having the Board or parties figure out if money was spent imprudently when there's no formal process or work plan that would help define "prudence." As it's currently proposed, in the next hearing – when this spending would be reviewed – it would be left to parties or the Board to try and lay the foundation for what should be considered prudent, as it's unclear what exactly the utilities are planning to do with the money at this point in time. Again, this is backwards, as the utility should have a clear

² EB-2017-0224, Transcript Volume 1, page 38-39

³ EB-2017-0224, Transcript Volume 4, page 9-10

plan and process for the projects it is proposing and parties can then hold the utility to those plans and procedures when the deferral account is cleared.

9. The utilities are also asking the Board to approve a funding envelope for the LCIF that is larger than their forecasted budget. Energy Probe fails to see how this is appropriate. In the case of Union, it's planning to spend \$1.158 million, not the \$2 million that it's asking the Board to approve.⁴ According to Union, if the Board approves a \$2 million budget, the utility will go back and look "for new initiatives."⁵ Again, Energy Probe fails to see how it's appropriate for ratepayers to provide Union with a \$2 million blank cheque when we know it doesn't have \$2 million worth of LCIF projects and, only if afforded the full \$2 million, would it go out and look for ways to spend that money.
10. In the case of Enbridge, the utility admits that it hasn't hired three employees that are expected to manage and execute various cap and trade activities. One of those employees is an "offset instrument procurement specialist" while the other two employees would be "abatement initiative identification development and reporting specialists."⁶ It's clear that at least a portion of those roles would be directly involved in the LCIF and yet, Enbridge hasn't actually filled those roles at the time of the oral hearing. Again, it seems premature for the Board to approve a \$2 million fund when the utility, in Energy Probe's view, is lacking the people required to adequately and responsibly spend that money.
11. It's also clear that there is some level – possibly a significant level – of overlap between the LCIF activities of the two utilities. For example, Union is seeking funding to monitor Enbridge's ground source heat pump (geothermal) projects, even though Enbridge is already further along in testing and introducing geothermal (and has an application before the Board to include its geothermal projects in rate base).⁷ Union is also planning on monitoring Enbridge's power-to-gas projects. Energy Probe doesn't see the reason to fund the same activity twice.
12. It's also not clear whether the LCIF will perform work that's not already being undertaken by both the private sector and government agencies. Enbridge, for example, is planning to spend \$300,000 on expanding its natural gas vehicle program.⁸ Yet, Enbridge admits that there are already privately financed natural gas refueling facilities in Ontario.⁹ And both utilities are proposing to fund research into power to gas projects, even though the Independent Electricity System Operator (IESO) is pursuing similar – if not the same – research. Union's witness responded that it must consider the "implication on our infrastructures" for these hydrogen

⁴ EB-2017-0224, Transcript Volume 1, page 30

⁵ EB-2017-0224, Transcript Volume 1, page 32

⁶ Exhibit D, Tab 1, Schedule 1, Page and Transcript Volume 3, page 126-127

⁷ EB-2017-0224, Transcript Volume 1, page 43-44

⁸ EB-2017-0224, Exhibit I, Staff 23

⁹ EB-2017-0224, Transcript Volume 3, page 70-71

projects.¹⁰ Yet, IESO operates in the same province as Union and Energy Probe sees no reason why ratepayers should fund a research that is already being undertaken by a government agency that would clearly seek to understand how this technology would work in Ontario's environment and climate. Given that Union is one of two major gas utilities in the province, it would be expected that it would be consulted throughout the research project by IESO.

- 13.** The LCIF creates a messy mix of unregulated and regulated operations for the two utilities. When asked whether Union had established any guidelines on whether any of the LCIF activities were “appropriate for inclusion in regulated services and activities”, as opposed to unregulated businesses, the utility’s witness responded that they had not. Union then went on to admit that some of the early projects financed by ratepayers could ultimately become an unregulated business.¹¹ Enbridge offered a similar response to that question, admitting that if one of the projects in the LCIF were to become an unregulated business, the utility would “bring that before the Board.”¹² Of particular concern would be any intellectual property that ratepayers financed, but will ultimately benefit shareholders if it’s moved to the utilities’ unregulated businesses.
- 14.** And while the utilities say they are asking the Board for approval of \$2 million for the LCIF, that number is, in fact, higher. In the case of Union, three employees are directly associated with the LCIF.¹³ Union’s witness confirmed that if the Board were to reject its proposal for the LCIF, there is the potential for up to \$2.6 million in annual savings.¹⁴ In the case of Enbridge, as discussed above in point #10, three of its unfilled positions would likely be undertaking roles related to its LCIF, so the annual amount of savings if the Board were to not approve the fund would likely be higher than the \$2 million nominal amount of the LCIF.
- 15.** The utilities are also adamant that their cap and trade compliance programs remain fully distinct from one another even though the utilities are now owned by the same parent company and are currently applying to the Board to merge (EB-2017-0306/07).¹⁵ Enbridge’s witness confirmed that the utilities will continue to operate as separate entities until the EB-2017-0306 decision is made. Yet, as part of evidence in that proceeding, the utilities are already moving ahead with consolidating a number of corporate costs.¹⁶ It would, in Energy Probe’s view, be irresponsible to provide funding for both the LCIF and any employees associated with it on a standalone basis when, in reality, the utilities are already in the process of merging their operations (to some extent). While it would have been prudent at one point in time to regulate the cap and trade activities of the two utilities on a standalone basis, that no longer is appropriate.

¹⁰ EB-2017-0224, Transcript Volume 1, page 45

¹¹ EB-2017-0224, Transcript Volume 1, page 91

¹² EB-2017-0224, Transcript Volume 3, page 41

¹³ EB-2017-0224, Transcript Volume 2, page 163

¹⁴ EB-2017-0224, Transcript Volume 2, page 165

¹⁵ EB-2017-0224, Transcript Volume 2, page 20-21

¹⁶ EB-2017-0306/EB-2017-0307, Exhibit JT3.1, Page 1

JT 3.1 Union/EGD Corporate Cost Savings (in Millions)

Functional Area	Union 2017			EGD 2017		
	Costs to Achieve	Savings	Net Total	Costs to Achieve	Savings	Net Total
Finance/Regulatory	(0.2)	-	(0.2)	(0.9)	0.2	(0.7)
Facilities	(0.1)	-	(0.1)	-	0.6	0.6
HR	(1.0)	0.7	(0.3)	(0.6)	(0.6)	(1.2)
IT	(3.5)	1.5	(2.0)	(1.6)	1.2	(0.4)
Legal	(0.3)	-	(0.3)	-	0.1	0.1
SCM	(0.3)	0.3	-	-	(0.1)	(0.1)
Other	(0.7)	1.3	0.6	-	(0.1)	(0.1)
Total (Costs)/Savings	(6.1)	3.8	(2.3)	(3.1)	1.4	(1.7)

Notes
Costs to achieve include:
1. Unbudgeted expenses such as legal transaction costs and travel
2. Employee related costs such as severance, relocation and retention expenses
3. Included in the costs to achieve are severance costs of \$4.7M for Union, and \$3.1M for EGD
4. Credit in savings for EGD are a result of reorganizations, certain costs/savings regrouped between departments

Section III: The Board should not approve more DSM funds at this time

16. The Board should not, at this time, approve an increase in DSM spending. Energy Probe’s main concern is a principled one. The cap and trade framework was explicitly established to internalize environmental costs (emissions) and so, in and of itself, should promote consumers to look for innovative ways to reduce those costs without the utility having to incent them to do this. That’s the whole point of cap and trade – to incent consumers through additional pollution charges to lower their usage and reduce those costs or find ways to use energy more efficiently. The province has explicitly stated this is the purpose of cap and trade:¹⁷

A cap and trade program is a cost-effective way to reduce greenhouse gas pollution. It limits the amount of emissions that can come from the economy (the cap), and then allows those covered by the cap to trade among themselves (the trade) in a flexible and cost-effective way, thereby creating a price on carbon.

Cap and trade allows the market — not government — to set the carbon price. The cap also ensures greenhouse gas reductions will occur: this is what makes it different and more certain than other carbon pricing mechanisms.

The Board should steer clear of arguments to use cap and trade fees as a reason to increase DSM spending. In fact, it should be the exact opposite.

¹⁷ <https://news.ontario.ca/ene/en/2016/06/reducing-greenhouse-gas-pollution-through-cap-and-trade.html>

- 17.** Secondly, through its Climate Change Action Plan (CCAP) and the Green Investment Fund (GIF) the province is moving ahead with plans to spend billions of dollars on conservation, among other activities. A large chunk of that money – “significant” in the words of Union – is coming from natural gas ratepayers.¹⁸ The cost to ratepayers of buying carbon credits is \$273 million in the case of Union and \$377 million in the case of Enbridge (not including facility-related costs). The province is then using those proceeds – among others – to fund various conservation activities. The utilities are already receiving more than \$115 million in DSM funds on top of what the Board approved as part of the 2015-2020 DSM plans -- \$58 million to Enbridge and \$57 million to Union.¹⁹ And that’s just the tip of the iceberg, as the cap and trade program is expected to generate \$1.8 to \$1.9 billion in annual revenues over the next five years.²⁰ A significant amount of that money will go to conservation programs, which will undoubtedly overlap with that of the gas utilities. Already the province has initiated a thermostat program that overlapped with utility led DSM programs.²¹ Both of the utilities warned of high free ridership, but at this point, it’s not clear how high that could be until it’s clear what the province will do – in terms of what conservation or other environmental programs it will pursue – with its cap and trade funding.
- 18.** And thirdly, the Board is currently reviewing the first year results of audits on the utilities 2015 DSM results. The findings of that audit – led by OEB staff’s consultant – are highly contested, as they show significant free ridership levels. It would be premature to start throwing more money into the pot when it’s unclear what level of free ridership is occurring on current DSM programs, particularly with the province also now pouring hundreds of millions of dollars into conservation programs. We are providing a table from Union’s application from that proceeding as an example of the contested free rider rates.²² It’s clear that free ridership levels are a concern and, in Energy Probe’s view, can only go one way (up) now that the province is putting significant money into DSM.

¹⁸ EB-2017-0224, Transcript Volume 1, page 91

¹⁹ EB-2017-0224, Transcript Volume 3, page 124 and EB-2017-0224, Exhibit I, CCC 14

²⁰ http://www.applications.ene.gov.on.ca/ccap/products/CCAP_ENGLISH.pdf, page 14

²¹ EB-2017-0224, Transcript Volume 2, page 13

²² EB-2017-0323, Exhibit B, staff 3, page 2

Table 1

NTG strata as defined by the EC	EC Free Rider rate*	EC Spillover rate	Union Free Rider rate	Union Spillover rate
Custom Commercial & Institutional Buildings-Banner projects	59.4875861 613878%	3.4%	54%	0'
Custom Commercial & Institutional Buildings-Contrax projects	55.5752365 045723%	3.4%	54%	0'
Custom Agriculture & Greenhouse-Banner projects	62.6919985 626682%	3.4%	54%	0'
Custom Agriculture & Greenhouse-Contrax projects	58.7836857 460643%	3.4%	54%	0'
Custom Industrial-Banner projects	70.7516474 681682%	3.4%	54%	0'
Custom Industrial-Contrax projects	59.9631861 363962%	3.4%	54%	0'
Custom Large Industrial R100 projects	91.8260361 7511760%	3.4%	54%	0'
Custom Large Industrial T1 projects	90.8753705 80202480%	3.4%	54%	0'
Custom Large Industrial T2 projects	92.3286399 86915410%	3.4%	54%	0'
Custom Low Income projects	5.0%	0%	5%	0'

** The EC did not round the Free Rider rates it used to calculate findings. The full values as presented in Table 1 are needed to recreate 2015 Audited Results*

19. And finally, the DSM framework was explicitly established to deal with issues like free ridership, spillover and other concerns regarding utility-led DSM programs. The cap and trade framework, as it is currently run, is not set up to deal with these issues. If the utilities were told to increase DSM spending and include it in their cap and trade compliance programs, it's not clear to Energy Probe how – or when – those results would be audited for cost effectiveness. It would also result in duplication with the audits and annual results that in the 2015-2020 DSM framework. And it may also create contradictory decisions from the OEB, with multiple panels tasked with overseeing multiple DSM projects in various applications, as well as how they those DSM programs are interacting with GIF funding.

20. A more appropriate approach would be to either include this issue as part of the DSM mid-term review or, even more appropriate in Energy Probe's view, direct the utilities to investigate this issue in their next DSM plan, which is likely to be created over the next year or two. At that point, the cap and trade program will have matured for a couple of additional years, the province may have clarified how it intends to spend the annual proceeds from the cap and trade program and parties will be able to fully test whether the utilities are achieving as much conservation potential as is economically efficient.

Section IV: Employee and administrative costs are too high

- 21.** As detailed above, Energy Probe is concerned that there is a significant amount of overlap in staffing between the two utilities, particularly as it relates to the LCIF.
- 22.** Even on a standalone basis and ignoring duplicative costs, Union and Enbridge also have vastly different staffing costs when it comes to their cap and trade programs. In Union's case, it's asking the Board to approve \$2.328 million in staffing costs for about 11.25 employees.²³ In Enbridge's case, the staffing costs related to cap and trade are \$1.5 million in 2018 for eight employees. When asked why there was a difference in both the cost associated with each FTE and the number of employees between the two utilities, Union's witness could provide no explanation. Given that both Union and Enbridge are pursuing very similar activities in terms of compliance costs, Energy Probe believes the Board should consider – as much as possible – that the administrative costs are more aligned between the two utilities. Given that Union is unable to explain why it needs more FTEs for its cap and trade activities, Energy Probe would suggest to the Board that it approve the same amount of funding as it does for Enbridge. Union could provide evidence in next year's application on why its costs are different than Enbridge, if that's the case, as it hasn't done so adequately in this proceeding.
- 23.** Union attempted to explain away the discrepancy in its staffing costs related to cap and trade to that of Enbridge's as a result of the different IR models being used by the utilities to set rates. Essentially, it claimed that Enbridge is already including cap and trade costs as part of its five-year rate plan.²⁴ Yet, Enbridge has clearly not included cap and trade costs in its five-year rate plan.²⁵ When asked to explain its argument, Union's witness simply responded that it couldn't speak to Enbridge's evidence, even though it attempted to deflect its higher staffing costs as a direct result of Enbridge's evidence. Unless Union can provide a clear and detailed rationale for why the Board should approve higher staffing and administration costs than it does for Enbridge, that difference shouldn't be included in rates.
- 24.** Both of the utilities are also behind in actually hiring the employees they are seeking approval for (in costs) from ratepayers. In Enbridge's case, the utility admits that it currently hasn't filled three positions, amounting to around \$525,000 in annual costs.²⁶ When asked why it hadn't filled those positions, Enbridge said it was waiting for the EB-2017-0306 decision, which isn't expected to come until near the end of the year (intervenor arguments are due on June 15th). In Energy Probe's view, the utility should not be allowed to collect more than half a million dollars in costs for employees that, at this point, it clearly won't hire before the end of the year. In Union's case, it actually lowered the amount of FTEs it was initially requested from 12.5 to 11.25.

²³ Exhibit J1.1

²⁴ EB-2017-0255, SEC 15

²⁵ EB-2012-0459, Exhibit D1, Tab 8, Schedule 5, Page 1

²⁶ EB-2017-0224, Transcript Volume 3, page 126

25. Energy Probe recommends that the Board not approve Enbridge's request to collect as much as \$525,000 in costs related to three employees that, at this point in the year, it's not clear will actually be hired by year end. In Union's case, Energy Probe recommends that the Board approve funding for staffing resources that are more in-line with Enbridge's.²⁷

Section V: A Renewable Natural Gas Variance account may be appropriate

26. Energy Probe's argument regarding RNG will only focus on Enbridge and will be in response to, one comment made by the utility: whether "ratepayers will be kept whole" by the proposed RNG funding model.²⁸
27. It is clear from the evidence that the statement that ratepayers will be held harmless under the RNG procurement model is not completely accurate, Enbridge (and Union) was asked repeatedly in this hearing whether ratepayers will bear any cost related to its RNG programs. The utility's response was consistently "no".²⁹ But when asked if the actual market price over the ten years of an RNG contract was different than the forecasted market price at the time the contract was signed, the utilities admit that would be a (albeit small) benefit or cost to ratepayers. Put more simply, if the market price of gas is lower than the utilities forecast, ratepayers will be, in essence, paying a subsidy to RNG producers. Again, while utilities admit that in the context of their entire gas portfolio this amounts to just 0.3%, it remains an unnecessary cost to ratepayers.³⁰
28. If the Board endorses the RNG procurement model, which is fully dependent on provincial funding, and the utilities want to ensure ratepayers are truly held harmless from RNG costs, then the Board should consider requiring the utilities to establish a deferral account to capture any difference and charge it to the province.

COSTS

Energy Probe requests that it be awarded 100% of its reasonably incurred costs. Energy Probe worked with other intervenors throughout the process to limit duplication while ensuring that the record was complete

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 31, 2018

Brady Yauch, consultant to Energy Probe Research Foundation

²⁷ As detailed in EB-2017-0255, SEC 15

²⁸ Enbridge Argument-in-Chief, page 21-22, paragraph 60.

²⁹ EB-2017-0224, Transcript Volume 1, page 62

³⁰ EB-2017-0224, Transcript Volume 2, page 183