

May 31, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2017-0224/0255 – Enbridge Gas Distribution Inc. and Union Gas Limited – Applications for Approval of the 2018 Cap and Trade Compliance Plans

We are representing the Consumers Council of Canada in the above-referenced proceeding. Please find, attached, the Final Argument of the Consumers Council of Canada regarding the Applications of Union Gas Limited and Enbridge Gas Distribution Inc. for approval of their 2018 Cap and Trade Compliance Plans.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: EGD, Regulatory Affairs
Union Gas, Regulatory Affairs
All Parties

ENBRIDGE GAS DISTRIBUTION INC. AND UNION GAS LIMITED

2018 CAP AND TRADE COMPLIANCE PLANS

EB-207-0255/0224

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

INTRODUCTION:

Enbridge Gas Distribution Inc. (EGD), Union Gas Limited (Union) and EPCOR Natural Gas Limited Partnership (EPCOR) each filed an application with the Ontario Energy Board (OEB) seeking approval of the forecast costs arising from their Cap and Trade Compliance Plan for the period January 1 to December 31, 2018. The Applications were filed in accordance with the OEB's Report of the Board – Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (Cap and Trade Framework).

This is the final argument of the Consumers Council of Canada (Council) regarding the Applications filed by EGD and Union. The Council is taking no position on the Application filed by EPCOR.

Much of the evidence in this proceeding was only available to the OEB and Board Staff as it was deemed strictly confidential through the legislation. Accordingly, the Council and other ratepayer groups cannot assess the reasonableness of the plans, whether they are consistent with the OEB Framework and whether the resulting costs and risks are appropriate. We therefore have no submissions on the plans themselves or whether the proposed costs are reasonable. The Council has limited its submissions on a few key issues that are within the scope of the OEB's review, but are not subject to the confidentiality provisions. These are:

- Proposed Merger
- Administrative Costs
- Low Carbon Initiative Funds
- RNG
- Demand Side Management

The Council acknowledges that this proceeding is limited to the 2018 Compliance Plans. This does not, however, preclude the OEB from providing guidance regarding future plans

BACKGROUND:

The *Climate Change Mitigation and Low-Carbon Economy Act, 2016* (Climate Change Act) was passed by the Government of Ontario on May 18, 2016. On May 19, 2016, Ontario Regulation 144/16, the Cap and Trade Regulation, was issued. The Climate Change Act and the associated Cap and Trade Regulation established the details on Ontario's Cap and Trade Program. Under the Cap and Trade Program natural gas local distribution companies have the following compliance obligations:

- Facility-related obligations for facilities they own or operate; and
- Customer-related obligations for natural gas fired generators, and residential, commercial and industrial customers who are not Large Final Emitters or voluntary participants.

On September 26, 2016, the OEB issued its Report on the Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (Cap and Trade Framework). The three utilities filed applications for approval of their 2017 Compliance Plans in November 2016. Those plans were approved by the OEB on September 21, 2017.

The OB accepted the proposed Customer-Related Obligation Costs and Facility Related Obligation Costs for the purposes of finalizing the 2017 rates. The OEB also found that the administrative costs proposed for each of the utilities to meet their 2017 Cap and Trade compliance obligations are consistent with the expectations established in the Cap and Trade Framework. The OEB further determined that the actual costs for each of the gas utilities to meet their 2017 cap and trade compliance obligations will be assessed for cost-effectiveness and reasonableness when they are filed as part of the 2019 Compliance Plan proceeding. Decisions around disposition of any variance accounts will be made in that proceeding and not part of a deferral and variance account proceeding.¹

On November 9, 2017 Union and EGD each filed their 2018 Cap and Trade Compliance Plans. Although the utilities sought approval, on an interim basis of their proposed 2018 cap and trade charges effective January 1, 2018, the OEB denied the request. Final 2017 charges will remain in place until the OEB completes its review of the 2018 plans.

THE APPLICATIONS:

EGD is seeking approval of the following:

- A determination that the Company's Compliance Plan is compliant with the Framework and accepted by the OEB;

¹ EB-2016-0296/0300/0330 – Decision and Order, September 21, 2017. P. 16

- 2018 Customer-related and Facilities-related Tariffs or Charges to recover the costs of meeting its obligations related to GHG emissions from relevant customers and Company facilities;
- The establishment of a 2018 greenhouse Gas Emissions Compliance Obligation – Customer-related variance account and a 2018 Greenhouse Gas Emissions Compliance Obligation – Facility related variance account;
- The amounts recorded in the 2016 Greenhouse Gas Emissions impact Deferral Account (GGEIDA) and an order to clear the account to customers at the next practical QRAM;
- The RNG procurement model proposed;
- The forecast costs associated with EGD’s planned abatement activities which are comprised of the costs for two additional full-time equivalent employee resources and available funds of up to \$2 million in the Low Carbon Initiative Fund (LCIF) that will be tracked through the 2018 GGEIDA.²

Union is seeking approval of the following:

- An order for rate rates pursuant to the Cap and Trade Framework effective January 1, 2018;
- A determination that the cost consequences of Union’s Compliance Plan are just and reasonable;
- Approval of up to \$2 million in cost consequences associated with the Low Carbon Initiative Fund in Union’s GGEIDA;
- Approval of the RNG mechanism and associated cost consequences;
- Final approval of the 2016 balance in the GGEIDA.³

Both EGD and Union were seeking approval of a Renewable Natural Gas (RNG) procurement funding model. They were specifically asking the OEB to approve the use of an RNG procurement mechanism and to fix the forecasted cost of conventional natural gas and its associated carbon cost for the term of the RNG contract. In its Procedural Order No. 4, dated February 7, 2018, the OEB determined that the RNG Procurement and Funding model does not require approval. During the hearing the utilities indicated that the Ontario Government had delayed the finalization of funding arrangements with the utilities in light of the Provincial election.

SUBMISSIONS:

Proposed Merger:

Effective February 27, 2017, Enbridge Inc. and Spectra Energy Corp. became a

² Ex. A/T2/S1

³ Union’s Application dated November 9, 2017

merged entity. Since that time EGD and Union became affiliates. The utilities currently have an application before the OEB to merge effective January 1, 2019. With respect to the development of the 2018 Compliance Plans the utilities have, with few exceptions, acted independently. Both utilities have dedicated Cap and Trade employees, and separate administrative budgets. Both utilities are seeking to increase their administrative costs in 2018. Both utilities are requesting approval of a Low Carbon Initiative Fund of up to \$2 million each, each pursuing different programs and projects within the context of that fund. As Union's witness stated at the Technical Conference:

And as we have noted at this time, it would be premature to comment on synergies. We've requested approval to amalgamated effective January of 2019. We continue to operate as separate entities until all necessary approvals are received, and only after the decision is made to proceed with amalgamation will a detailed integration plan be developed.⁴

EGD's witness confirmed this as well, indicating that they will continue to operate as separate entities until the EB-2017-0306 Decision is released.⁵

The Council submits that regardless of whether or not the OEB approves the merger, these two affiliated entities should be working collaboratively. Their ratepayers should not be required pay incremental Cap and Trade costs that are not required. The Council submits that in assessing whether the 2018 administration costs are reasonable the OEB must consider the fact that these two entities are affiliated and that they should be pooling their resources. To have two completely separate ratepayer-funded staffs, separate consulting contracts and separate LCIF Funds is not appropriate.

Administration Costs:

2016 Costs:

Union is seeking to recover from its customers \$2.3 million in Administration costs for 2016. These costs are captured in the Greenhouse Gas Emissions Deferral Account (GGEIDA). That account was established as a Z-factor as part of Union's most recent incentive regulation model (IRM) plan. Union filed for approval of the account on December 17, 2015 to "record the cost impacts of potential government requirements related to greenhouse gas emissions."⁶ In its application Union indicated that the forecast costs were outside of Union's 2014-2018 base upon which rates were derived, and also clearly out of management's control.⁷

⁴ Technical Conference Transcript, April 9, 2018, p. 161

⁵ Transcript Vol. 2, pp. 20-21

⁶ Procedural Order No. 1, EB-2015-0367

⁷ Application dated December 17, 2015, EB-2015-0367

The OEB considered the establishment of the account and approved it noting that, “At the time that Union brings forward a request for the disposition of the balances in the Greenhouse Gas Emission Impact Deferral Account, the OEB will review the costs for prudence and will determine whether the costs are appropriate for recovery from ratepayers in the context of Union’s IRM framework”.⁸ Included in that plan is a materiality threshold for Union of \$4 million.

Union’s evidence is that these costs were required once the OEB established its Framework and the requirement to start reflecting Cap and Trade charges on customer bills for January 1, 2017. Union was required to develop both internal and external expertise regarding the program and its impacts. Union relied heavily on external consultants with some familiarity with Cap and Trade programs in other jurisdictions.⁹

The Council does not take issue with the establishment of the account. Clearly it was approved by the OEB. It was done so in the context of the Union’s IRM plan for the period 2014-2018. As the OEB indicated in its Decision it would consider clearances in the context of that framework. The Cap and Trade obligations and the associated costs for Union and EGD are outside of the control of management (They were mandated by the Ontario Government). They are exactly the type of costs that Z-factors are meant to deal with. In Union’s case, however, there is a materiality threshold applicable to Z-factors. And in this case the amounts do not exceed the threshold. Accordingly, the Council does not support the recovery of the 2016 amount of \$2.3 million.

Union was a signatory to the Settlement Agreement that resulted in its approved IRM framework for the period 2014-2018 and agreed to the rules that are applicable to its plan. Union cannot now say that this is something altogether different. There was an agreed to materiality threshold, approved by the OEB of \$4 million. From the Council’s perspective it would be unfair to ratepayers at this point to somehow make an exception to that approved IRM framework under which Union is currently operating.

EGD is seeking approval to recover the \$840,000 balance in its GGEIDA. EGD’s account was established by the OEB in the context of its Custom IR plan approved by for the period 2014-2018 (EB-2012-0459). There was no materiality threshold associated with that account. The Council accepts that EGD should be permitted to recover the \$840,000 from its customers.

2018 Costs:

Both Union and EGD are seeking a ruling from the OEB that their Compliance Plans are reasonable and compliant with the OEB’s Framework and that it produces just

⁸ EB-2015-0367, Decision and Accounting Order

⁹ Ex. 6, pp. 4-5

and reasonable cost consequences for their customers. As Union's witness stated at the Technical Conference they are seeking a determination that the cost consequences of the \$6 million are "just and reasonable".¹⁰ EGD's witness made a similar statement.¹¹ This includes the up to \$2 million in the LCIF.¹² This was confirmed in Union's Argument in Chief¹³. Union's forecast costs for 2018 are \$6 million and EGD's forecast costs are \$5.65 million.

For 2017 costs Union and EGD are not seeking any relief from the OEB at this time.

The Council submits that it would be inappropriate for the OEB to declare the cost consequences associated with Union and EGD's 2018 Administration costs as "just and reasonable at this time" for a number of reasons.

As noted above the utilities are currently affiliates. They should be required to work together and look for cost efficiencies in the context of their Cap and Trade Plans. Even in the event that for some reason the OEB does not approve the merger, they should still be required to collaborate. It seems counterintuitive for the OEB to approve further incremental staffing costs at a time when these utilities are in the process of merging and reducing staff across both corporate entities. We cannot pretend that they are two distinct entities operating in silos, especially with respect to Cap and Trade. When the OEB considers the disposition of the 2018 accounts, it should be looking for areas of collaboration and the creation of efficiencies. The OEB should not, at this point be assessing the prudence of those costs.

In addition, the Council is concerned that the costs forecast for 2018 are now out of date and overstated. We are now well into 2018. Some of the incremental staff that are proposed to be hired, may never be hired. Given that is a large part of the budgets, exclusive of the LCIF, the cost levels proposed may no longer be appropriate.

There are a great deal of uncertainties with respect to Cap and Trade going forward. In fact, Union identified many of those in its Argument in Chief. These include:

- The finalization of outstanding Cap and Trade Regulations;
- The development and release of outstanding Offset Protocols;
- The details regarding Climate Change Action Plan and Green Ontario funding to support abatement initiatives;
- The definition of the post 2020 Cap and Trade program design for Ontario.

¹⁰ Technical Conference transcript Vol. 1, p. 150

¹¹ Technical Conference transcript Vol. 2, p. 70

¹² Union Argument in Chief, p. 2

¹³ Union Argument in Chief, p. 6

- The impact of the Pan-Canadian Framework on Clean Growth and Climate change.¹⁴

The outcome of the Ontario Provincial election on Ontario's Cap and Trade Program is also uncertain. The OEB should be reluctant to approve the proposed 2018 costs in light of all of these uncertainties and the fact that Union and EGD have not demonstrated that they are actively working together to reduce their overall Administration costs. The costs should be assessed for prudence when recovery is sought in a future proceeding.

Low Carbon Initiative Funds:

Both EGD and Union are seeking approval of Low Carbon Initiative Funds (LCIFs) for 2018. They are each seeking approval to spend up to \$2 million. The Council does not support the establishment of the LCIFs at this time. The Council has the following concerns regarding the LCIFs:

- As noted above, there is a great deal of uncertainty regarding Cap and Trade in Ontario going forward. One significant example is the uncertainty regarding the CCAP and the Green Ontario Fund. Money is currently being collected from Ontario natural gas consumers through rates, but it is unclear how that money is being used, and to what extent it is being used to consider Cap and Trade abatement activities. The utilities have acknowledged this uncertainty;
- There does not seem to be a good rationale, for Union and EGD to be pursuing high-level research on abatement activities independently. This is something that they should be doing already, in concert, and likely will be doing once the merger is approved;
- As indicated by EGD at the Technical Conference, "So the 2018 budget is a high level initiative piece. The next step would be to flesh out further the details in terms of concepts, work plans and next steps."¹⁵ This lack of detail is a good reason for the OEB to deny the funding request. There was no indication that any of this spending will be of value to customers. There was no cost-benefit analysis provided. There is no indication as to whether or not similar research is being undertaken by others (e.g. Universities, research organizations, Governments etc.). Union and EGD's customers are currently funding other initiatives (e.g. GreenOn), but it is not at all clear whether there may be overlap with LCIF spending and these other Government programs;

¹⁴ Union Argument in Chief, p. 5

¹⁵ Technical Conference transcript, Vol. 2, p. 77

- The utilities did not seek Provincial or Federal funding for its LCIF initiatives.¹⁶ It is not clear whether funding is available for these initiatives that would replace ratepayer funding;
- It is not clear as to whether or not ratepayers will derive the benefit from the research it funds.

The Council is not necessarily opposed to the utilities undertaking research into abatement activities. We are not convinced, however, that this should be ratepayer funded, as the value to ratepayers could be very uncertain. The current proposals are at such a high level that the proposed costs have not been justified. It should not be about – We are trying this out and that out, and we want ratepayers to fund us. At this time we urge the OEB to reject the LCIF proposals presented by EGD and Union. Once the lay of the land regarding Cap and Trade is more certain and the funding from other sources is made clear, there may be a role for the utilities to undertake research into abatement activities. At this point, from the Council’s perspective, it is premature.

Renewable Natural Gas:

The OEB has stated that the utilities do not need approval for RNG procurement because there is no impact on ratepayers. In addition, the Ontario Government is not making the funding available at this time because of the Provincial election.

The Council submits that if Provincial funding is made available for RNG, Union and EGD (or the newly merged entity) should be required to come back to the OEB for approval. It is not clear, from the evidence in this proceeding, that ratepayers would be held harmless. In the absence of having the contracts in hand it would be difficult for the OEB to assess any potential risk for ratepayers. There may also be inequities among the utility customers associated with RNG risk. The Council submits that, going forward, any utility contracts and proposals for cost recovery regarding RNG should be brought forward to the OEB for approval.

Demand Side Management:

There was a great deal of discussion at the hearing about Demand Side Management (DSM). Some parties are advocating that, going forward, more DSM should be pursued. The Council’s view is that for 2018, there is not an opportunity for the utilities to pursue DSM beyond the levels that they are currently doing.

The Council is supportive of considering whether further DSM is warranted (outside of the current plans) in the context of the OEB’s DSM Mid-term review. That review should also take into account what other entities are undertaking conservation

¹⁶ Technical Conference transcript, Vol. 1, p. 154

initiatives, the breadth of those activities and how Ontario natural gas DSM and Conservation and Demand Management (CDM) in the electricity sector can be aligned.

All of which is respectfully submitted.