uniongas
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January 10, 2012

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

Dear Ms. Walli:

Re: EB-2011-0242/EB-2011-0283 Renewable Natural Gas – Process

Attached, please find Union's submission with respect to the process issue to be heard before the Board on January 12, 2012.

Yours truly,

[Original signed by]

Karen Hockin
Manager, Regulatory Initiatives

Attach.

c.c.: A. Smith (Torys)
EB-2011-0283 Intervenors

KH/la

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 THE MATTER OF an Application by Union Gas Limited for an order or orders approving and setting Ontario RNG supply prices for Union's purchase of renewable natural gas;

ARGUMENT OF UNION GAS LIMITED RE: PROCESS

Overview

1. The position of Union Gas Limited ("Union") on the procedure for hearing the applications of Union and Enbridge Gas Distribution Inc. (Enbridge") is that these applications should proceed to a regular hearing in the normal course without delay. Bifurcation of the application or, as it has been described by some intervenors, "staging" of the proceedings to deal with what are said to be threshold issues is unnecessary, inefficient and will result in added expense and delay. Union makes these submissions without the benefit of having had the opportunity to review the written submissions of the intervenors who support the staging of Union's application, but the arguments made at the Procedural Conference held on December 16, 2011 in favour of staging the application are without merit.

2. Union asks that the Ontario Energy Board (the "Board") order a schedule for the hearing of the application. Union may make further submissions on this issue at the oral hearing on January 12, once Union has had the opportunity to review the intervenors' written submissions.

Facts

3. Union and Enbridge each filed an application with the Board dated September 30, 2011 seeking an order or orders approving or fixing rates for the sale of natural gas by Union and Enbridge that include the cost consequences of the purchase of biomethane.

4. In Procedural Order No. 1 issued December 5, 2011 the Board stated that it has already decided to conduct an oral hearing of the application, provided a Draft Issues List and ordered that a Procedural Conference be convened on December 16, 2011 as an organizational coordinating effort to ensure procedural efficiency and to solicit participants' input on timelines, hearing schedule and any plans for intervenor evidence.

5. At the Procedural Conference certain intervenors took the position that the application should be staged. While it is not clear that all of the intervenors who favour staging do so for the same reasons, there appear to be two arguments advanced:

(a) the Board lacks jurisdiction to hear the applications; and

(b) the Board does not require a hearing to dispose of the applications on policy or other grounds.

The hearing schedule and any plans for intervenor evidence were not discussed in any significant detail. Participants and Board staff concluded that the process issue would need to be heard by the Board.

6. On December 19, 2011 the Board issued Procedural Order No. 2 scheduling an oral hearing on the process issue for January 12, 2012 and allowing for written submissions, including these submissions, to be filed by January 10, 2012.

Law

7. Procedural issues are governed by the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B (the "Act") and the Board's Rules of Practice and Procedure. Rule 4.01 provides that the Board may at any time make orders with respect to procedure in a proceeding.

Jurisdiction

8. Rule 18.01(b) provides that the Board may dismiss a proceeding that relates to matters that are outside the jurisdiction of the Board. This application concerns the setting of rates for the sale of gas. The Board consequently has jurisdiction under section 36(2) of the Act to hear the application.

9. The application is not beyond the Board's jurisdiction merely because it involves policy considerations. See: *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board*, 2008 CanLII 23487 (ON SCDC). The existence of policy considerations does not oust the jurisdiction of the Board.

The need for a hearing

10. If the intervenors are proposing to forego their rights to interrogatories and to examine the applicants' witnesses and instead proceed directly to final argument, then Union has no objection. Union does object to the phasing of the oral hearing, which the Board has already decided to conduct, into a phase devoted to purportedly threshold issues and a subsequent phase devoted to a hearing on the merits. Union's view is that no serious question of jurisdiction exists and that if the intervenors think the Board has sufficient information to decide the issue, then the hearing should proceed directly to argument. Dividing the hearing into two phases will be duplicative and inefficient.

11. As the Court of Appeal for Ontario recently held, the inappropriate use of motions to dispose of an action at an early stage can have the perverse effect of creating delays and wasted costs associated with preparing for, arguing and deciding a motion for summary judgment, only to see the matter sent on for trial. See: *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 (CanLII), para. 4.

12. Union asks that the Ontario the Board order a schedule for the hearing of the application.

January 10, 2012

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