IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B; and in particular section 36 (20) 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.

SUBMISSIONS OF

FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO (FRPO)

SUBMITTED

MAY 15, 2012

Introduction

1. The prospect of the potential for improved environmental solutions can be embraced by all. When we were invited to preview the utilities plan for the development of a program to harness greenhouse gases and combust them for environmental benefit, we were intrigued with the potential. It is self-evident that the efficient burning of methane to produce energy that can be used as opposed to being flared is economically-efficient. Further, the reduction of methane escaping to atmosphere as a green house gas is environmentally beneficial. However, the rational development of a market to bring these benefits must be designed well in the public interest to ensure that the goal of a viable, sustainable market.

Our Main Premise

2. **The utilities have put forth a program that in their view is intended to enable a market for Renewable Natural Gas (RNG)[1]. The design of the program however is based upon theoretical calculations of fixed price 20-year contracts offered on a first-come, first-served basis to provide an assumed required return[2] without an RFP to determine a competitive market price[3]. The volume forecasted for purchase is then capped by the amount determined by an estimated level of acceptance from a consumer willingness to pay survey[4] that in our view is flawed. Using this approach, the utilities believe it is appropriate to require their system gas customers[5] to pay the premium for the gas**

[1] Exhibit B, Tab 1, page 11, lines 7-8
[2] Exhibit B, Tab 1, pages 21 and 22
[3] Transcript, Volume 3, May 1, 2012, pages 88-94
[4] Exhibit B, Tab 1, page 23
[5] Exhibit B, Tab 1, page 24, lines 9-11

without the option to opt in or opt out[6]. Even if this approach, with all of its flaws is somehow deemed appropriate, it is clear from the record that the utilities have not provided any evidence that this approach will result in a sustainable RNG market after the standard offer program is removed. In fact, the utilities acknowledge that, at the end of their 5-year program, the industry still may not be viable.[7]

3. **We submit that this program ought not be approved by the Ontario Energy Board as designed in the application. Further, it is our view that the Board allow time for Conditions for Success to be evident prior to providing the utilities with the approval for a program which ought to be different than the current application. In the following body of our submissions, we will address each of our above concerns with the main components of the proposed program and provide the Board with our views on the Conditions for Success for consideration of the benefits of an RNG program.**

Utilities Role in Enabling an RNG Market

4. Issue 1.2 focused on the reasonableness and appropriateness of the utilities proposed role in developing and implementing a biomethane program. In hindsight, in our view, it may have been more effective to have phrased the issue as the appropriateness of the role of the utilities enabling a biomethane market. The utilities were clear that their proposed program was a means to an end in enabling the development of the market. We would respectfully submit that, while the utilities could be a facilitator of the market, the Board ought to exercise

[6] Exhibit I-1-5
[7] Transcript, Volume 3, May 1, 2012, page 38, lines 22-25

caution in approving the role of the utilities as a market enabler. Our submission is based upon three main concerns:

a) **Market development is not a utility core competency:** Generally speaking, utilities are provided with franchises to serve an aggregated need where that need is best served by a natural monopoly. Therefore, the utility organizations are not well equipped to develop a market for yet un-served consumer demand. The utilities admitted that they did not consult with market enabling experts.[8] While the first witness panel was asked about their challenges in creating a viable market for natural gas vehicles[9], they later referred to the success in establishing a rental water heater market.[10] In our view, a review of the history of the rental water heater market does not point to the establishment of a sound market. The utilities agreed that a viable market needs robust supply and robust demand[11]. Yet, as history reveals, the rental water program was cross-subsidized by utility ratepayers requiring an approximately 40% increase in rental rates within a year prior the transition from utility to market provision.[12] Further a decade later, the market was clearly an oligopoly with the two successor companies created by the divestiture of the utilities' programs dominating the rental water heater market.[13] If a viable market requires robust supply, we submit that the oligopoly that continues in the rental water heater market is evidence that utility is not equipped to enable a market especially when their predominant strategy is through long-term ratepayer subsidization.

[8] Transcript, Volume 3, May 1, 2012, page 55, line 2
[9] Transcript, Volume 3, May 1, 2012, page 38, lines 14-18
[10] Transcript, Volume 3, May 1, 2012, page 56, lines 2-9
[11] Transcript, Volume 2, April 30, 2012, page 81, lines 17-20
[12] EBO 177-17 Decision dated May 28, 1998
[13] Ministry of Energy, Solar Panel Task Force Report, submitted October 31, 2008 to Minister of Energy, page 11

b) **Lack of evidence of comparable precedent:** Notwithstanding the utilities stated position that it is difficult to draw on the experience of other jurisdictions,[14] the fact is the utilities could not provide any examples of viable renewable energy markets that were enabled in the same fashion as they are proposing. At the same time, they had not taken the time to understand how the only active biomethane facility in Ontario, the Hamilton Wastewater Treatment Plant, made their project a reality.[15]

c) **No evidence that the proposed RNG enablement will result in a sustainable market:** The utilities presented no evidence that there proposed enablement strategy would result in a sustainable market. They did concede that it was possible that the market would not be viable.[16] It is our submission that as, described above in a), history reveals that ratepayer subsidization of a utility program as a market development strategy does not guarantee a viable, sustainable market.

<u>Utility Process for Contracting Results in Potential for Undue Costs</u>

5. Issues 2.1, 2.2 and 2.3 consider the reasonableness and appropriateness of the utilities standard offer contract to potential RNG providers. The utilities have placed a significant amount of evidence on the record that describes the process they completed to determine prices they believe will result in a sufficient rate of return to stimulate investment in RNG capability using a range of hypothetical scenarios. However, they have not done reasonable due diligence to determine if that investment could occur at a lower ratepayer cost by testing

[14] Transcript, Volume 4, May 3, 2012, pages 13-14 and 105-108
[15] Transcript, Volume 5, May 4, 2012, pages 18-23
[16] Transcript, Volume 3, May 1, 2012, page 38, lines 22-25

their assumptions in the market as covered in cross-examination by the Consumers Coalition of Canada[17].

6. The utilities reasons for not doing an RFP were covered in response to a Board staff IR[18] and explored further in cross-examination by London Property Management Association.[19] Our view of the answers given can be simplified as:

   a) **An RFP would favour more sophisticated proponents:** The concern with this potential is premised on the fact the utilities believe to facilitate the market, they need to make the offer available to all.[20] Given that there is no evidence that the utilities require to subsidize a cross-section of operations of different scales and levels of sophistication to make the market viable, there is no support for their initial premise. We would submit that if the innovators and early adopters are inherently more sophisticated, an RFP process would likely result in a more economically-efficient price.

   b) **To be able to include all types of providers, the utilities would need to do nine separate RFP's[21] which would be quite costly[22].** Once again, the premise is that it must be available to all types and sizes of providers. The presumed result is the potential for the cost of an RFP to rise dramatically. With all due respect, in our view, the utilities are making the described challenge of an RFP seem more burdensome than it would need to be. If an RFP were incorporated into the process and the utilities would desire to ensure both landfills and digestors, then two RFP's could be sufficient to determine potential producers and the process would be informed by a competitive price.

[17] Transcript, Volume 4, May 3, 2012, pages 105-113
[18] Exhibit I-1-5
[19] Transcript, Volume 3, May 1, 2012, pages 88-94
[20] Transcript, Volume 3, May 1, 2012, page 89, lines 15-28
[21] Transcript, Volume 3, May 1, 2012, page 90, lines 5-6
[22] Transcript, Volume 3, May 1, 2012, page 90, line 15-17

c) **Time and difficulty in assessing connection to the system and the system's take-away capacity[23].** The utility panel described the complexity with assessing the connection to the system and the system take-away capacity as a limiting factor. However, through our cross-examination[24], it was clear that whether the price is set as a standard offer or an RFP elicits a price proposal, there would need to be an iterative process of working with the producer before an agreement could be struck and either of those processes could be completed in the one year allowed for in the utility proposal.

7. In our respectful submission, each of the barriers to determining an economically-efficient price, as described by the utilities, can be overcome and ought to be to ensure that ratepayers are not unduly burdened.

Utilities Assessment of Willingness to Pay is Flawed

8. Issues in section 2.0 Cost Consequences dealt with the reasonableness and appropriateness of the application. The utilities presented a survey performed by Ipsos-Reid to demonstrate customer's acceptance of a reasonable premium added to their bill to support an RNG program.[25] In our view, the survey is flawed and the results exaggerate the customers' willingness to pay for the program. Our line of questions to the witness panel was intended to ask what survey techniques were used to reduce the impact of cognitive dissonance and hypothetical bias on the results.[26] Our major concerns stem from:

a) **Impact of Cognitive Dissonance:** We were surprised that the expert witness provided to speak to this survey could not provide a working definition of cognitive dissonance as it

[23] Transcript, Volume 3, May 1, 2012, page 90, line 20 to page 92, line 2
[24] Transcript, Volume 5, May 4, 2012, pages 24-28
[25] Exhibit B, Tab 1, pages 11-14 and Appendix 3
[26] Transcript, Volume 3, May 1, 2012, page 104, line 4-11

pertains to a market survey[27]. We believe it is important that this term have definition in the proceeding:

> ***Cognitive Dissonance is "the feeling of uncomfortable tension which comes from holding two conflicting thoughts in mind at the same time. To release the tension we can take one of three actions:***
> ***(1) Change our behaviour***
> ***(2) Justify our behaviour by changing the conflicting cognition***
> ***(3) Justify our behaviour by adding new cognitions***
> ***Dissonance is most powerful when it is about our self-image***."[28]

Preceding the questions about RNG, the survey asked questions about customers concerns for the environment. Clearly, most people are socially responsible and would have some level of concern for the environment and the results reported that.[29] The survey then asks what the respondent has done about saving energy and their level of support for their utility "investing" in a program to reduce greenhouse gas emissions through a biogas program. Again, the results produced high levels of support for the utility purchasing biogas[30]. So with those questions answered in a positive way, the respondent is then asked if they would be willing to pay incrementally more for their gas to support biogas. At that point, having stated they have a concern for the environment and having acknowledged that they would support their utility purchasing biogas, they are asked if they would pay a small amount to make it happen. The effect of cognitive dissonance would tend to sway the respondents opinion to support so that their actions

[27] Transcript, Volume 3, May 1, 2012, page 104, line 4-11
[28] http://changingminds.org/explanations/theories/cognitive_dissonance.htm
[29] Exhibit B, Tab 1, Appendix 3, page 9
[30] Exhibit B, Tab 1, Appendix 3, page 15

would be consistent with their stated beliefs. This effect is amplified when the respondents are not making a true purchase decision as described below.

b) **Hypothetical Bias:** We were also disappointed that the witness was unable to provide a working definition of this concept even though the concept is well researched and documented especially as it pertains to surveying. Hypothetical bias is simply the difference between intention and action and is especially important in attempting to assess the perceived value of goods not currently marketed (known as contingent valuation). Absent provision of descriptions of this effect from the witness, we provide referenced studies to inform this issue:

> ***In the present study, we investigated the intention behavior discrepancy in the context of contingent value measurement. Contingent valuation is a popular tool for assessing the monetary value of goods not traded in the market place (for reviews, see Cummings, Brookshire, &Schulze, 1986; Mitchell & Carson, 1989). Respondents in a survey are asked to indicate their willingness to pay for a certain good in a hypothetical or contingent market. The monetary value of the good in question is measured by aggregating these willingness-to-pay judgments in the relevant population. Unfortunately, scores of contingent valuation surveys conducted in recent years have revealed that many factors bias the amount of money participants indicate they would be willing to pay, thus jeopardizing the method's validity (see Hoehn & Swanson, 1988; Mitchell & Carson, 1989, for reviews).***[31]

[31] **Explaining the Discrepancy Between Intentions and Actions: The Case of Hypothetical Bias in Contingent Valuation.** Ajzen, Brown and Carvajal. *Personality and Psychology Bulletin, Volume 30, No. 9, September 2004, pages 1108-1121.* Also found at http://web.psych.utoronto.ca/psy320/Required%20readings_files/week6-1.pdf

> ***In this paper, we address this issue statistically by using a meta-analysis to examine data from 29 experimental studies. Our empirical findings suggest that on average subjects overstate their preferences by a factor of about 3 in hypothetical settings, and that the degree of over-revelation is influenced by the distinction between willingness-to-pay and willingness-to-accept, public versus private goods, and several elicitation methods.***[32]

9. What these references and many others available tell us is that a willingness to pay survey will exaggerate the markets true uptake. We had intended on understanding how the Ipsos-Reid had designed the survey to limit this effect or how they analyzed the results with these factors in mind. However, what is clear is if these factors were not considered, they could not have been mitigated.

10. The utilities have testified that they have used these survey results as their mandate to bring this program to their system gas customers and expect that they would willing pay even if not given a subsequent choice[33]. Clearly, the best indication would be actual customer choice. But that would necessitate the program being designed as opt-in and the utilities chose not to evaluate this potential even through initial survey.[34] In our respectful submission, the Board ought not rely on this survey as an unbiased metric for consumers willingness to pay.

[32] **What Experimental Protocol Influence Disparities Between Actual and Hypothetical Stated Values?** List and Gallet. *Environmental and Resource Economics, Volume 20, 2001, pages 241-254.* Also available at http://www.rps-chicago.com/papers/33-fulltext.pdf
[33] Transcript, Volume 2, page 147, lines 2-5
[34] Transcript, Volume 2, page 108, line 1 to page 109, line 21

Alternatives to Consider for an RNG Program

11. We believe that an RNG program would be a benefit to Ontario in many ways. Further, we commend the utilities for bringing forward their willingness to be an integral part of making that happen. However, we believe the Board ought to consider ensuring that Conditions for Success are in place before approving an RNG program. We submit the primary Conditions are as follows:

    a) **A true carbon market to determine the value of carbon to support the economics:** Fundamentally, we believe that this entire exercise is about taking conscious steps to mitigate the potential effects of carbon on climate change. Absent a carbon tax, cap and trade or similar construct, we are left to speculate, as was done in this proceeding, what the value of the program may be in the future and who should pay the premium in the interim. Understanding the legislative framework, would allow the program to be developed in a more economically rational fashion.

    Contrary to the Argument-in-Chief[35], this approach is not "burying our heads in the sand" but is prudent approach. That Argument was premised on the presumption that if we do not start now, we won't be ready if and when a framework is imposed. With all due respect, we would encourage the Board to dismiss this premise as "forecasting a crisis". If the government drafted framework legislation, it would be unlikely to impose any initiation of the system without the supporting regulations and would be allowing time for systems to be implemented. This period of time would allow the Board to consider what could do to support an RNG market.

[35] Transcript, Volume 5, page 149

b) Customer choice:

As has been supported by the Board in many decisions, the informed choice of customers is foundational to an effective system. Incorporating this principle may, and likely will, require the contribution of retailers and marketers. We support their involvement and contribution toward informed choice.

c) RFP to ensure capacity allocation:

Despite concerns raised during the oral portion of the proceeding, the utilities' response to Undertaking J3.1 stated "The Utilities believe that an RFP process could possibly be established for those RNG production scenarios where potential benefits may outweigh the drawbacks". We firmly believe the RFP would be instrumental in ensuring an economically viable allocation.

d) Utility facilitation:

As was clear from this application, from capacity allocation to connection procedures to the importance of gas quality, the utility has the main facilitation role. We believe this is more appropriate role than a "market enabler".

12. We recognize that the Board may be persuaded to initiate the groundwork for an RNG market prior to the initiation of a carbon market. Therefore, we had intended on providing our " in the alternative" submissions for the Board's consideration. However, we have had an opportunity to view the submissions of LPMA and would support their well-thought out 3-Step approach as an alternative to awaiting the initiation of a carbon market.

Costs

13. We respectfully submit that the Federation of Rental-housing Providers of Ontario has acted responsibly in its intervention in this matter and respectfully requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

All of which is respectfully submitted on behalf of FRPO,

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