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VIA RESS AND COURIER

Ms. Kirsten Walli
ONTARIO ENERGY BOARD
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Ian A. Mondrow
Direct: 416-369-4670
ian.mondrow@gowlingwlg.com

Assistant: Cathy Galler
Direct: 416-369-4570
cathy.galler@gowlingwlg.com

Dear Ms. Walli:

Re: EB-2015-0363: Cap and Trade Framework for Natural Gas Utilities.

Early Determination regarding Billing of Cap and Trade Related Costs and Customer Outreach (July 28, 2016).

Request for Further Information and Reasons.

We write as counsel to the Industrial Gas Users Association (IGUA).

IGUA has reviewed and considered the Board's *Early Determination regarding Billing of Cap and Trade Related Costs and Customer Outreach*, July 28, 2016 (Determination), made in the captioned proceeding. Despite the overwhelming amount of reasoned support placed before the Board for a separate line on customers' gas bills for cap and trade compliance costs, the Determination directs that cap and trade compliance costs are to be blended in the delivery line item on the bill.

In order for IGUA to properly assess the reasonableness of the Determination and its implications for IGUA's members, IGUA requests from the Board;

- 1. further detail on the "information on cap and trade" which the Board has indicated the utilities will be required to include in the description section of monthly customer bills (as indicated in the 3rd paragraph on page 6 of the Determination); and***

2. ***reasons why blending cap and trade compliance costs in the current delivery charge line of gas customer bills is the better option for presentation to customers, and recovery, of such costs.***

The “Record” Before the Board

From among scores of submissions and recommendations to the Board on billing for carbon compliance costs, the only advocate of blending these costs in the existing delivery line on customer’s bills is Board Staff.

In addition to IGUA, the following parties all advocated a separate line on the bill: CCC, AMPCO, CME, Energy Probe, Federation of Rental Housing Providers, Ontario Greenhouse Vegetable Growers, School Energy Coalition, APPrO, Ontario Sustainable Energy Association, Vulnerable Energy Consumers Coalition, Low Income Energy Network, GEC, TransCanada, Ontario Federation of Agriculture, Kitchener, Ontario Mining Association, Veresen, Northeast Midstream, London Property Managers Association, TransAlta, NRG, CRH Canada Group Inc., Hamilton Port Authority, Pomas Farms Inc., Arauco North America Inc., Just Energy, Colleges Ontario, the IESO, Ontario Association of Physical Plant Administrators, Coalition of Large [Electricity] Distributors, Ontario Energy Association, 47 additional gas customers who wrote letters to the Board, and of course Union Gas (Union) and Enbridge Gas Distribution (EGD).¹

Union’s submissions on the topic of bill presentment for cap and trade compliance costs were particularly comprehensive, and included the following points:

- A separate line is fundamental to transparency, and thus to meet the fundamental objectives of the cap and trade program.
- A separate line would minimize call centre impacts and assist customers in accepting the change and managing the transition. Union anticipates an increase in both volume and complexity of customer calls, and a 25% increase in the number of escalated customer complaints (all of which would, of course, increase costs), if the cap and trade costs are not displayed clearly on customer bills.
- A separate line would facilitate billing system changes (the effort for which would not be decreased by blending charges into the delivery line).

¹ The Low Income Energy Network did not advocate a separate line item on the bill, but rather sought more information from the utilities on this issue. The one outlier on this issue, other than Board Staff, was Environmental Defence. Environmental Defence made the point that if carbon compliance costs are separately listed, so should be the associated savings. Environmental Defence submitted that: “Customers would likely be misled if they are shown the costs associated with cap and trade without also being shown the bill reduction benefits flowing from the conservation component of the cap and trade costs.” There is no reference to Environmental Defence’s reasoning in the Determination.

- A separate line is necessary for proper carbon cost reconciliation and regulatory accounting treatment.
- The other Canadian carbon regulation jurisdictions, BC and Quebec, have separate lines on the bill.
- More than 92% of customers surveyed expressly supported a separate line on the bill, and participants in the survey felt that *“not showing the cost would amount to being deceived”*.
- Other cost items are transparently reflected on Ontario utility bills; i) unbundled components of the gas bill itself; ii) time of use electricity rates; iii) the Ontario Clean Energy Benefit; and iv) the debt retirement charge.
- A separate line would facilitate customer validation of accurate billing (in particular for LFEs and customers who have the option of opting in to a direct carbon compliance obligation).

Many of these points were echoed in the various submissions of other parties.

The “record” herein thus reflects an overwhelming chorus of well reasoned support for a separate line on the bill. That chorus includes the voices of dozens of customers and customer representatives, and evidence that customers overwhelmingly endorse a separate line on the bill for carbon compliance costs and are of the view that *“not showing the cost would amount to being deceived”*.

Despite this chorus of well reasoned support for a separate line on the bill, the OEB has accepted Staff’s outlying position and has directed that carbon compliance costs be blended into the delivery charge line on customers’ bills.

A Lack of Reasons

The Determination does not provide the reasons which led the Board to conclude that blending cap and trade compliance costs into the existing delivery charge line on customers’ gas bills is the better option.

To meet its obligation to provide adequate reasons, an administrative decision maker should; i) state its findings of fact and the principal evidence upon which those findings were based; ii) address the major points in issue; and iii) set out the reasoning process that was followed in consideration of the main relevant factors.²

² *Northwestern Utilities et al. v. City of Edmonton*, [1979] 1 S.C.R. 684, at pp. 706-707; *Desai v. Brantford General Hospital*; *Desai v. St. Joseph’s Hospital* (1991), 87 D.L.R. (4th) 140 (Ont. Div. Ct.), at p. 148; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 F.C. 592 (C.A.), at pp. 637, 687-688.

In response to scores of submissions to the effect that a separate line on the bill would provide greater transparency, the Board wrote: *Some residential consumer groups specifically stated that it was not necessary to reflect Cap and Trade Program costs as a separate line as long as customers were otherwise informed of the Cap and Trade Program and resulting costs.* We have reviewed all of the submissions, and could not find any consumer group which said this, without also saying that a separate line would be the best solution.

The Determination also explains that:³

- The utility tariff sheet will separately identify carbon compliance charges.
- *“Utilities will also be required to include information on Cap and Trade in the description section of the monthly customer bills.”* (IGUA notes that this was not a concept that was discussed anywhere else, including in the Staff discussion paper, and no more reference to this concept was made in the Determination beyond the statement here excerpted.)
- *“In addition...the Utilities will be expected to provide customers with ongoing information about the Cap and Trade Program in accordance with guidance provided by the OEB.”* (This is an express reference to the communications plans which will be required, and does not address customer specific identification of the carbon compliance costs to be charged.)

In the following paragraph from the Determination the Board seeks to explain its decision to blend cap and trade costs into the delivery line on customers' bills:⁴

In the OEB's view, separating out Cap and Trade related costs as a line item on the bill is inconsistent with the manner in which all other ongoing costs of operating the utility are reflected on the bill. The public policy objective of the Cap and Trade Program is to reduce GHG emissions. For the vast majority of customers, a separate line item will not provide any form of meaningful price signal. Customers other than voluntary participants cannot avoid Cap and Trade Program related costs which will be borne by the Utility and allocated to them. Costs associated with Cap and Trade Program compliance are part of the Utilities' cost of providing natural gas service similar to other delivery costs. In the OEB's view the most important driver of consumer behaviour is total price. This has been borne out by research that the OEB has undertaken in the past in relation to consumers' response to electricity bills. This research showed that low volume customers are much more focused on the total amount owing on their bill than individual line items.

³ Determination, page 6.

⁴ Determination, page 6.

The Determination further notes that separation of the component charges on the tariff sheets should provide LFEs and other large gas users with the information that they need.⁵

Despite the language in the determinative paragraph excerpted above that “costs associated with Cap and Trade Program compliance are part of the Utilities’ cost of providing natural gas service similar to other delivery costs”, elsewhere in the Determination⁶ the Board specifically notes that the customer related carbon compliance costs “are not specifically tied to the activity of operating a gas transmission or distribution system” [emphasis added].

Review of the Determination, as outlined above, indicates that the Determination seeks to provide explanation of why carbon compliance costs need not be separately identified on customer bills, but, with respect, does not provide an explanation for why such costs should not be separately set out on customer bills.

Basis for IGUA’s Requests

The reasons provided by an administrative decision maker must in fact or in principle support the conclusion reached.⁷ The Board’s conclusion is that carbon compliance costs should be blended on the delivery line of customers’ gas bills. IGUA has not been able to identify any basis on the “record” of this proceeding to support the determination by the Board that carbon compliance costs should be blended into delivery rates. All of the credibly supported information put before the Board, and all of the customer and utility views advocated, support the opposite conclusion.

Only Board Staff advocated blending costs, and the rationale asserted by staff in support of that position (essentially less customer confusion and less call centre activity than if the costs were separately presented) has been refuted by Union’s submissions and those of customers and their representatives.

Further, as Union and the IESO have noted in their submissions,⁸ the decision to blend carbon compliance costs into the existing delivery charge line on customers’ bills is a departure by the Board from its otherwise demonstrated policy of disaggregating customer bills. Past directives from the Board that have been intended to enhance bill presentment transparency and consumer education include; i) the unbundling of components of the natural gas bill into delivery, storage, transportation and commodity; ii) the implementation of time of use rates for electricity customers in order to shape customer behaviour; ii) the disclosure of the Ontario Clean Energy Benefit; and iii) the disclosure of the Debt Retirement

⁵ Determination, page 6, bottom.

⁶ Determination, page 5, bottom.

⁷ *EllisDon Corp v. Ontario Sheet Metal Workers’ and Roofers’ Conference*, 2014 ONCA 801, 123 OR (3d) 253.

⁸ Union Gas June 22nd Submission, page 15, second paragraph; IESO June 22nd Submission, pp. 3-4.

Charge. The position of Board Staff that all customers care about is the bill bottom line is inconsistent with the bill transparency policy reflected in these earlier Board determinations.

The Determination is essentially a final one in respect of bill presentment of gas distributor carbon compliance costs. The Determination directly impacts IGUA members and other gas customers in respect of access to information on the cap and trade compliance costs to be included on their bills. The Determination is also expected to lead to an increase in costs (including higher call centre and customer complaint resolution costs) relative to separate bill identification of carbon compliance costs. Accordingly, the Determination carries significance for individuals and businesses in the province. The law therefore requires that the Board provide reasons for its determination, in sufficient detail to permit those affected to understand the basis for the determination, in light of the record and issues raised before the Board.⁹ We have been unable to identify any such reasons in the Determination.

Full and clear analysis and reasoning in support of regulatory determinations is essential to support consumer and stakeholder confidence in reasoned and independent decision making by the regulator,¹⁰ and has been a common practice of the Board. Such public confidence is particularly important in the context of a matter of the degree of public importance as carbon regulation and compliance therewith. It is also particularly important, and legally required, where the Board departs from a longstanding policy, in this instance that of bill disaggregation.

IGUA therefore respectfully requests that the Board provide the reasons in support of its Determination that carbon compliance costs should be blended rather than separately identified on customer bills.

IGUA acknowledges that the Board has signalled it will require distributors to provide some information on customer bills regarding cap and trade. However, no indication of the scope or substance of such bill information has been provided, and none of the submissions to the Board, including the Staff Discussion Paper, identified this concept. It is thus not possible, on the information and direction provided in the Determination, to assess whether this additional information to be included on customer bills addresses the almost unanimous views expressed to the Board regarding the imperative for customer level transparency and accessibility of carbon compliance charges.

⁹ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 74 DLR (4th) 193 at para 43. See also *Northwestern Utilities et al. v. City of Edmonton*, [1979] 1 S.C.R. 684, at pp. 706-707; *Desai v. Brantford General Hospital*; *Desai v. St. Joseph's Hospital* (1991), 87 D.L.R. (4th) 140 (Ont. Div. Ct.), at p. 148; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 F.C. 592 (C.A.), at pp. 637, 687-688.

¹⁰ *Baker* at para 39, citing R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 C.J.A.L.P. 123, at p. 146; *Williams v. Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 4972 (FCA), [1997] 2 F.C. 646 (C.A.), at para. 38; *Baker* at para 39, citing de Smith, Woolf, & Jowell, *Judicial Review of Administrative Action* (5th ed. 1995), at pp. 459-60; *Baker* at para 38, citing *Northwestern Utilities Ltd. v. City of Edmonton*, 1978 CanLII 17 (SCC), [1979] 1 S.C.R. 684.

In order for IGUA to properly understand and assess the Determination, IGUA also respectfully requests that the Board provide further details regarding the information on cap and trade that the Board envisions requiring the utilities to include on monthly customer bills.

The reasons and information requested are required in order for interested and affected parties to properly understand and assess the impact on them of the Board's Determination regarding customer bill presentment of carbon compliance costs.

ALL OF WHICH IS RESPECTFULLY REQUESTED by:


GOWLING WLG (CANADA) LLP, per:

Ian A. Mondrow
Counsel to IGUA

c: Dr. Shahrzad Rahbar (IGUA)
Laurie Klein (Board Staff)
Rachele Levin (Board Staff)
Participants of Record

TOR_LAW\ 8999064\4