

May 19, 2017

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**VIA RESS AND COURIER**

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Ms. Kirsten Walli  
**ONTARIO ENERGY BOARD**  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
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Dear Ms. Walli:

**Re: EB-2016-0296; EB-2016-0300; EB-2016-0330 – Union Gas Limited (Union), Enbridge Gas Distribution Inc. (EGD) and Natural Resources Gas Limited (NRG) Cap and Trade Compliance Plans.**

**Industrial Gas Users Association (IGUA) Written Submissions with respect to EGD's Application.**

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These are the submissions of Industrial Gas User's Association ("**IGUA**") in respect of the public aspects of EGD's application for "approval of the reasonableness of its one-year Cap and Trade Compliance Plan for 2017, its cost consequences and final unit rates".<sup>1</sup>

Most of IGUA's members are large final emitters ("**LFEs**") who are responsible for their own compliance obligations. They have an interest in ensuring that the allocation of compliance costs for recovery from LFEs is reasonable and appropriate, particularly given that each LFE is required to fund its own compliance obligations. Access to information about natural gas utilities' cap and trade compliance activities, and their associated costs and customer rate impacts, is critical to allow consumer groups such as IGUA to advocate effectively for their members' rights.

On September 26, 2016, the OEB released the Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (the "**Framework**"). On November 15, 2016, Enbridge filed its 2017 Compliance Plan. With scarce two months to finalize its plan after release of the Framework<sup>2</sup> and the new rules around confidentiality undoubtedly it was challenging for Enbridge to compile the plan and file the associated application on time. Despite these constraints, Enbridge has prepared a comprehensive application that is responsive to the Board's filing requirements.

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<sup>1</sup> Enbridge Argument-in-Chief, at para. 1 [AIC].

<sup>2</sup> Exhibit K1.1, at pages 6 and 11.

## **Transparency and the Scope to Comment**

The Framework communicated the OEB's expectation that a utility "develop [a] Compliance Plan which provide[s] robust information describing how it will meet its obligations".<sup>3</sup> The OEB expressly identified transparency as one of the guiding principles for the assessment of the cost consequences of a utility's compliance plan.<sup>4</sup>

It is not possible for IGUA and other intervenors to fully assess the robustness of the information provided in EGD's compliance plan or to test the veracity of EGD's proposed compliance strategy; most relevant information has been filed confidentially. Under the current legislative structure and the Framework, interested parties other than the Board and its staff are not able to review and test the reasonableness of a utility's proposed compliance strategies.

It is hoped that as experience is gained with the carbon market, the rules around confidentiality will be relaxed where feasible, so as to enable interested and affected stakeholders to understand the features of a utility's compliance plan. With diminished redactions or more meaningful commentary provided on the nature of redactions made, interested and affected parties will be better able to understand and evaluate a utility's approach to carbon compliance and better able to contribute to the OEB's assessment of the prudence and reasonableness of a utility's compliance plan.

Within the current legislative and regulatory regime, IGUA and other stakeholders are constrained to commenting primarily on the principles and implementation of cost recovery. There are three types of compliance costs identified in EGD's Compliance Plan: (i) customer-related costs; (ii) facility-related costs; and (iii) administrative costs. IGUA's members are, for the most part, LFEs under the Ontario cap and trade program and thus only affected by facility-related and administrative costs; these submissions are therefore limited to costs falling into these categories.

## **Facility-related Costs**

In the Framework, the OEB determined that "facility-related costs will be allocated to rate classes based on consumption, given that the driver of GHG emissions is gas consumption. These costs will be recovered through a volumetric charge based on consumption". At the hearing, EGD's witness explained how EGD had implemented this direction.<sup>5</sup> Based on this evidence, IGUA accepts that the allocation of facility-related costs proposed by EGD is reasonable.

EGD seeks approval to establish a variance account, the Greenhouse Gas Emissions Customer and Facility Cost Variance Account ("**GGEFCVA**"),<sup>6</sup> which it will use to record any variances between the actual facility-related costs incurred by EGD and the amounts it recovers in rates from its customers on account of such costs. EGD proposes to bring forward any balance in this account for clearance as part of its true-up filing for 2017 costs, to be filed in 2018, or as otherwise directed by the Board.<sup>7</sup> In IGUA's view, any balance in EGD's cap and trade deferral accounts

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<sup>3</sup> Framework, at p. 1. See also, Framework, at pp. 15 and 22.

<sup>4</sup> Framework, at p. 8.

<sup>5</sup> Transcript of oral hearing, April 18, 2017, at pp. 64-65.

<sup>6</sup> AIC, at para. 56.

<sup>7</sup> AIC, at para. 59.

should be brought forward to be dispositioned in the next year's cap and trade compliance application. This will allow the cap and trade compliance plan subject matter – both prospective and retrospective - to be addressed at the same time. Such an approach is likely to yield greater regulatory efficiency than addressing these matters in different filings, particularly in the “early days” until more experience with these applications and the issues that arise is gained.

In this application EGD has not proposed any abatement activities in relation to its facilities, though in future applications it intends to do so. EGD has taken the same position in respect of customer abatement programs. IGUA agrees with EGD that greater focus on customer abatement activities is premature. There is significant potential for overlap in respect of carbon emission abatement programs and ratepayer-funded demand side management (“DSM”) programs. The appropriate forum for properly considering and reconciling this overlap is at the upcoming DSM mid-term review. IGUA has strong views and concerns on this topic, and looks forward to a proper and balanced consideration of the issue at that time.

### **Administrative Costs**

EGD incurred administrative costs related to cap and trade compliance, including costs in respect of IT billing system changes, completing measurement, verification and reporting of GHG emissions and legal services, among others. These costs have been recorded in the previously Board-approved Greenhouse Gas Emissions and Impact Deferral Account (the “GGEIDA”).<sup>8</sup> The administrative costs evidenced to date seem generally appropriate, but IGUA does not believe that the Board need comment on their reasonableness or prudence at this time. EGD has acknowledged that the disposition and allocation of amounts within the GGEIDA is an issue for a future proceeding.<sup>9</sup>

Nonetheless, both at the hearing and in its Argument-in-Chief, EGD submits that “where a utility has received a determination that its Compliance Plan is reasonable, the actual cost consequences of following that plan should also be considered reasonable and give rise to a presumption of prudence”.<sup>10</sup> IGUA submits that the prudence and allocation of administrative costs is a topic for a future proceeding in which EGD seeks to clear the balance in this account.<sup>11</sup> IGUA also has strong views regarding the proper allocation of administrative costs,<sup>12</sup> which it will advance at the appropriate time.

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<sup>8</sup> Approved in EB-2012-0459.

<sup>9</sup> Transcript of oral hearing, April 18, 2017, at pp. 79-80.

<sup>10</sup> AIC, at para. 70.

<sup>11</sup> AIC, at para. 58.

<sup>12</sup> Administrative costs, particularly where material, should be allocated in two steps; first, an allocation as between, and in proportion to, Facilities costs and Customer costs (i.e., on a volumetric basis), and then an allocation to ratepayers in accord with the allocation of Facilities Costs and Customer Costs (i.e., on a volumetric basis).

In summary, IGUA submits that:

- **DSM:** The direct and express carbon regulation now introduced by the government includes establishing a price for carbon emissions, and thus a value for carbon emission reduction. IGUA looks forward to the upcoming DSM mid-term review, which will provide an opportunity to address the extent to which ratepayer-funded DSM has now been supplanted by express and direct carbon regulation and the consequences of same for ratepayer-funded DSM. This issue is of particular concern for LFEs who are subject to their own direct emission reduction obligations and associated costs.
- **Facility-related Costs:** The Board should approve the final unit rates proposed by EGD, which appropriately reflect the Framework direction for recovery of these costs.
- **Administrative Costs:** The prudence, reasonableness and appropriate allocation for recovery of administrative costs should ultimately be determined when those costs are brought forward for clearance.

Sincerely,



Laura Van Soelen

c: V. Innis (Union)  
C. Smith (Torys)  
A. Mandyam (EGD)  
D. Stevens (Aird & Berlis LLP)  
B. Lippold (NRG)  
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Intervenors of Record

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