GOWLING WLG

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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
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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 Union's Application.

These are the submissions of Industrial Gas User's Association ("**IGUA**") in respect of the public aspects of Union's application for relief in connection with its 2017 Cap-and-Trade Compliance Plan"[1], including: (a) an order approving just and reasonable rates; (b) approval of two new deferral accounts; and (c) approval of updated wording in the Greenhouse Gas Emissions and Impact Deferral Account ("**GGEIDA**").[2]

Most of IGUA's members are large final emitters ("**LFEs**") who are responsible for their own compliance obligations under the cap and trade program. They have an interest in ensuring that the allocation of compliance costs for recovery from Union's customers is reasonable and appropriate. 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 effectively advocate 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, Union filed its 2017 Compliance Plan. With scarce two months to finalize its plan after release of the Framework[3] and the new rules around confidentiality undoubtedly it was challenging for Union to compile its plan and file the associated application on time. Despite these constraints, Union has prepared an application that is responsive to the Board's filing requirements.

[1] Argument-in-Chief of Union Gas Limited (Public), at para. 3 [AIC].
[2] *Ibid.*
[3] 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".[4] The OEB expressly identified transparency as one of the guiding principles for the assessment of the cost consequences of a utility's compliance plan.[5]

It is not possible for IGUA and other intervenors to fully assess the robustness of the information provided in Union's compliance plan or to test the veracity of Union'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 facilitate the ability for interested and affected stakeholders to assess 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 Union's Compliance Plan: (i) customer-related costs; (ii) facility-related costs; and (iii) administrative costs. While the bulk of IGUA's members are LFEs, which are affected only by facility-related and administrative costs, this is not true of all members. For example, three of IGUA's members who buy electricity and steam from TransAlta are not treated as LFEs in respect of the volumes of gas that they deliver to TransAlta for generation of that heat and steam.[6] These submissions address all three categories of compliance costs.

Facility-related Costs and Customer-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".[7] At the hearing, Union's witness explained how Union had implemented this direction.[8] Based on this evidence, IGUA accepts that the allocation of facility-related costs proposed by Union is reasonable.

Union seeks approval to establish two new variance accounts, the Greenhouse Gas Emissions Compliance Obligation – Facility Related Deferral account and the Greenhouse Gas Emissions Compliance Obligation – Customer Related Deferral account,[9] which it will use to record any

[4] Framework, at p. 1. See also, Framework, at pp. 15 and 22.
[5] Framework, at p. 8.
[6] Transcript of oral hearing, April 20, 2017, at p. 115.
[7] Framework, at p. 30.
[8] Transcript of oral hearing, April 20, 2017, at pp. 132 -133.
[9] AIC, at p. 2.

variances between the actual facility-related and customer-related costs incurred by Union and the amounts it recovers in rates from its customers on account of such costs. Union proposes to bring forward any balances in these accounts as part of Union's annual cap and trade compliance application.[10] IGUA supports the establishment of these variance accounts and submits that the clearance of any balance in these accounts should be made part of the cap and trade compliance application process. This approach should yield more regulatory efficiency as the cap and trade compliance plan subject matter – both prospective and retrospective – can be addressed together.

Union does not seek any decision on the methodology for disposal of the deferral account balances in this proceeding.[11] IESO, however, submits that the Board should set parameters for how these deferral accounts will be disposed of, arguing in favour of a volumetric basis for disposal over a prospective period of a number of months. We expect that APPrO may make a similar request based on questions asked by its counsel at the hearing. IGUA is sympathetic to this view and understands the challenges that power generators may face if amounts in these deferral accounts are cleared by way of a one-time adjustment. A one-time adjustment could also negatively impact certain of IGUA's members (for example, the members who buy steam from TransAlta) depending on the magnitude of the proposed adjustment. Whether the Board decides to set parameters for the disposal methodology now or later, IGUA submits that the Board should ensure that it has sufficient flexibility to provide for disposal over a period of months should the balances in these accounts prove to be significant.

After explaining, in its Argument-in-Chief, that it had not proposed any abatement activities as part of its 2017 compliance plan, Union observed that the "integration between Cap-and-Trade and DSM still needs to be addressed."[12] IGUA agrees. 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

Union has incurred administrative costs related to cap and trade compliance, including costs in salaries and wages, consulting fees and market research, among others. These costs have been recorded in the previously Board approved GGEIDA.[13] Union acknowledges that the disposition and allocation of amounts within the GGEIDA is not within the scope of this proceeding.[14] IGUA agrees with Union that the prudence and allocation of administrative costs is a topic for a future proceeding in which Union seeks to clear the balances in this account. IGUA also has strong views

[10] AIC, at p. 14, para. 38.
[11] AIC, at p. 14, para. 38.
[12] AIC, at p. 12, para. 31.
[13] Application, at p. 29 of 47.
[14] AIC, at p. 14, para. 38; see also transcript of oral hearing, April 20, 2017, at p. 109.

regarding the proper allocation of administrative costs,[15] which it will advance at the appropriate time.

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 offer 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 Union, 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)
R. King (Osler, Hoskin & Harcourt LLP)
S. Rahbar (IGUA)
J. Wasylyk (OEB Staff)
Intervenors of Record

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[15] 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).