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Our File: EB20160296

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2016-296/300/330 – 2017 Cap & Trade Compliance Plans – SEC Submissions

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No.3, these are SEC's final submissions on the applications by Enbridge Gas Distribution Inc. ("Enbridge"), Union Gas Ltd. ("Union"), and Natural Gas Resources Limited ("NRG"), for approval of their 2017 Cap and Trade compliance plans. While all three utilities are seeking approval of their applications in this combined proceeding, SEC has focused its submissions on Enbridge and Union.

All three utilities have brought forward Cap and Trade compliance plans pursuant to the Board's *Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* ("Cap and Trade Framework")[1]. Under the Cap and Trade program[2], the utilities are required to meet the compliance obligations not only of the emissions caused by the facilities they own and operate, but also the emissions caused by their customers, with the exception of program participants.[3] The compliance plans provide each of the utilities' 2017 plans, for meeting the compliance obligations.

Ratepayers Cannot Assess Appropriate Compliance Plans

The Board's primary task in this proceeding is to determine if the proposed cost consequences of the Compliance Plans are reasonable and appropriate (Issue 1). SEC is not in a position to provide assessment on the central issues due to confidentiality restrictions in place in this proceeding.

The Board has required extensive information in this proceeding to be treated as strictly confidential, that is information that is only available to the itself, the utilities, and Board Staff . The information is not available to any other party, including ratepayer groups, pursuant to the Board's *Practice*

[1] *Report of the Board, Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* (EB-2015-0363), September 26 2016 ("*Cap and Trade Framework*")
[2] Cap and Trade program is legislated by the *Climate Change Mitigation and Low Carbon Economy Act*, *2016*, and regulations made pursuant to it, most notably O.Reg 144/16
[3] Program participants are mandatory participants (also known as Large Final Emitters) as well as voluntary participants

Direction on Confidential Filings ("*Practice Direction*").[4] This includes both, information relating to participation in auctions for which disclosure is restricted under the *Climate Change Mitigation and Low Carbon Economy Act* ("*Climate Change Act*"), and information that is market sensitive.[5] Almost all of the important parts of the utilities' Compliance Plan evidence have been redacted.

All three utilities recognized that because of these restrictions, they cannot provide to the public or ratepayers, on a confidential basis or otherwise, the specifics of how they plan to meet their compliance obligations.[6] Without knowing their plan to meet their obligations, neither SEC, nor any other ratepayer group, can provide an opinion on the reasonableness of the compliance plan and the cost consequences.

The Cap and Trade Framework sets out the criteria that the Board will use in assessing the cost-effectiveness and reasonableness of the cost consequences of the Compliance Plan.[7] As SEC explored with Enbridge at the hearing, each criteria can only be assessed with access to strictly confidential information, or is premature at this time.[8]

The Board's view of why market sensitive information should be treated as strictly confidential should be revisited. SEC reiterates the comments it made during the consultation on the Cap and Trade Framework. There is no statutory restriction on the utilities providing this information to parties; there are simply consequences to those entities who misuse that information for financial gain (i.e. tipping, etc.). Those provisions of the *Climate Change Act* mirror those in the *Securities Act*. The Board's *Practice Direction* specifically mentions confidential treatment to information that securities law requires to be treated as confidential.[9] Going forward, the Board should treat the market sensitive information the same way, confidential pursuant to the *Practice Direction*, but not strictly confidential in the sense of being secret from even the customers are bearing the costs.

This proceeding has revealed to the Board that contrary to what may have reasonably been the expectation at the time the Board released the Cap and Trade Framework, the "non-confidential aggregated information filed by Utilities in support of their Cap and Trade costs will provide sufficient transparency and protection of the public interest"[10], cannot be said to be true. The aggregate information provided does not allow for any real transparency on the utilities' proposed compliance plans.

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[4] *Practice Direction On Confidential Filings*, April 24, 2014 ("Practice Direction")
[5] *Procedural Order No.1*, p.4
[6] Tr.1, p.20; Tr.2, p.95; Tr.3, p.51
[7] *Cap and Trade Framework,* p.21:

> Inherent in the OEB's review of cost-effectiveness and reasonableness is an assessment of whether Compliance Plans reflect optimized decision-making. This includes:
>
> • A consideration of a diversity of compliance options;
> • Risk mitigation;
> • Whether a Utility has approached its compliance strategy in an integrated manner that extracts maximum value from commitments that integrate multiple benefits; and,
> • Whether a Utility has demonstrated flexibility to adapt to changes.
>
> The OEB believes that assessing the Utilities' plans through this lens will lead to cost effectiveness and greater rate predictability, and will reduce the costs and risk to customers.

[8] Tr.1, p.39-43
[9] *Practice Direction* Appendix B, p.19
[10] *Cap and Trade Framework*, p.12

Reporting and Monitoring of the Compliance Plan

Both Enbridge and Union have proposed ways in which they will report on their compliance plans.[11] This information is not just important for the purpose of assessing the success of their compliance plans, but also for determining if the amounts that may have accumulated in the deferral and variances accounts are prudent.

Much like the problems with reviewing their compliance plans, both Enbridge and Union have said that all but the total cost, volume of emissions, and weighted cost per ton of emissions overall, will be treated as strictly confidential.[12] Enbridge and Union confirmed that under their understanding of what is to remain strictly confidential, if their compliance costs are higher than they are forecasting and that have been approved in this application, ratepayers will not be able to find out why.[13]

SEC submits that historic information regarding Compliance Plan execution should not be strictly confidential. The statutory requirements under the *Climate Change Act* do not apply to that information, nor do the same harms with respect to market sensitive information. The Board should reconsider the view it took in the Cap and Trade Framework in this regard.[14] Insofar as the Board believes that future auction strategy and market sensitive activities information can be gleaned from this information, it should treat it as confidential pursuant to the *Practice Direction*.

Administrative Costs

Enbridge and Union each have a deferral account in place to track administrative costs related to implementing the Cap and Trade program incurred in 2016.[15] Both are seeking approval for creation of a similar account or continuation of the account to track costs in 2017.[16] They both have confirmed in their respective Argument-in-Chief that neither is seeking disposition of either the 2016 or 2017 balances in this application. Disposition will be sought for 2016 amounts later this year, and for the 2017 amounts, at the time of the application for the 2019 Compliance Plan.[17] Since neither utility is seeking any disposition in this proceeding, SEC is not providing any comments on the appropriateness of the forecast costs at this time, except to note there is a significant disparity between the utilities.[18] In addition, whenever the requests for disposition will be made, not only will the utilities need to show that the amounts were prudently incurred, but also that they meet the materiality threshold of their respective incentive-regulation plans.[19]

Abatement Opportunities

Enbridge and Union both publically confirmed that neither has proposed any incremental demand side management ("DSM") or any other abatement type programs in their 2017 Compliance Plan.[20] Both take the view that it is more appropriate to consider these programs in the context of the

[11] Union Ex.4, Schedules 1-3; Enbridge Ex.D1-1, p.3-5
[12] B.LPMA.15, Attachment 1; Tr.1, p.30; Tr.2, p.95
[13] Tr.1, p.30; Tr.2, p.97
[14] *Cap and Trade Framework*, p.13
[15] Enbridge Argument-in-Chief, para. 58; Union Argument-in-Chef, para 38
[16] *Ibid*
[17] *Ibid*
[18] Enbridge forecasts $2.9M in 2017 (Ex.C-3-6 p.13), whereas Union forecasts $4.2M for 2017 (Ex.3, Schedule 2)
[19] For example, Enbridge has a Z-Factor materiality threshold of $1.5M as set out in EB-2014-0459. Union has a Z-Factor materiality threshold of $4M as set out in the Settlement Agreement approved in EB-2013-0202.
[20] Tr.1, p.150; Tr.1, p.84

Board's DSM midterm review considering the timing of the Cap and Trade framework rollout and this application.[21]

SEC generally agrees that it is more appropriate to consider increased DSM and abatement activities in the context of the Board's DSM mid-term review which is scheduled to take place early next year. This will ensure that the proper framework for Cap and Trade abatement activities is designed to ensure it works in conjunction and not at cross-purposes with the Board's DSM activities. As Enbridge noted, "[t]here were no other references in any other jurisdiction on how they have integrated these two ideas of cap and trade compliance planning and energy efficiency."[22]

Moreover, considering the issue on a comprehensive basis in the context of the DSM midterm review would allow the Board to consider the Government's various Climate Change Action Plan ("CCAP") programs as well[23], so as to ensure that there is an alignment between all three categories of programs (CCAP, DSM, and Cap and Trade abatement).

Deferral and Variance Accounts

Both Enbridge and Union have used a forecast proxy price for the price of carbon, as required by the Cap and Trade Framework, for the purposes of setting the volumetric Cap and Trade rate.[24] Each has proposed to use the forecast of the average Ontario allowance auction reserve price, since this year, Ontario will not be linked to the broader WCI market. At the time of filing their applications in November 2016, both forecast a reserve price of $17.70 per tonne.[25]

Since the filing, Ontario has conducted its first auction, where the reserve price was set at $18.07 per tonne, and the settlement price was $18.08 per tonne.[26] Neither utility is seeking to amend their application to account for the actual reserve price.[27] Enbridge submitted that the forecast was annualized and Ontario's recent auction is only the first of four this year.[28] However, it is very unlikely that the reserve price will do anything but increase. SEC is not aware of any California allowance auctions where the reserve price was less than the previous auction.

The concern SEC has of using the lower November forecast price is that there is a significant chance of very material balance accumulating in the utilities' proposed deferral and variance accounts, since actual costs will be higher. The total cost difference between $17.70 per tonne and $18.08 per tonne is $8.04M[29] for Enbridge and $5.91M for Union[30]. If the reserve price increases in the next auction, or the cost of the allowances more generally, those amounts may increase substantially. Due to each of the utilities' preliminary views on disposition methodology, this may

[21] Tr.1, p.150-151; Tr.2, p.156
[22] Tr.1, p.151
[23] Tr.2, p.184; B. Staff.14
[24] *Cap and Trade Framework*, p.19
[25] Tr.1, p.20; Tr.2, p.92-93
[26] Summary Results Report, Ontario Cap and Trade Program Auction of Greenhouse Gas Allowances March 2017 Ontario Auction #1, p.2 (K1.2, p.7)
[27] Tr.1, p.22; Tr.2, p.93
[28] Tr.1, p.22-23
[29] See difference between total cost for emissions at $18.08 per tonne (J1.1 Table A1 and A2) and cost of emissions at $17.70 per tonne (Enbridge G-1-1, Appendix A, Table A1 + A2).
[30] See difference between total cost for emissions at $18.08 per tonne (J2.5) and cost of emissions at $17.70 per tonne (Union Ex.7-1, p.1).

lead to significant one-time adjustments on customers' bills. SEC's view is the amounts should be cleared on a going-forward basis similar to the treatment of commodity balances in the Purchased Gas Variance Account disposed of during the QRAM process.

Regardless of the actual methodology that will be proposed and approved in a future proceeding, the Board should provide clear guidance to the utilities regarding if, and at what point, they should provide notice that a significant balance is accumulating in the deferral and variance accounts. This would be similar to what is required in QRAM applications. Enbridge proposed at the start of the hearing that they will provide advance notice if either the actual weighted cost, or actual revenues collected, differs from the approved forecasts by 25% or more.[31]

The importance of establishing an early-warning threshold is so that the Board can determine if an annual disposition to the deferral account is still appropriate or if some alternative is required.

Based on Enbridge's proposed 25% threshold, the balance in the deferral account would be at least $93.5M.[32] This is a very significant amount, especially if it is added to all other deferral and variance accounts that Enbridge seeks to clear annually. To put that amount in perspective, Enbridge testified that last year, the deferral and variance account application sought to clear its largest ever balance of $60M.[33] The previous record was $33M.[34] The Board should set the threshold for early warning at 10%. The utilities should be required to report to the Board and ratepayers, as soon as practical after the end of 2017, if the actual costs or revenues differ from what was approved by more than 10%.

Final Relief Should Not Be Granted

Both Enbridge and Union are seeking final approval of the cost consequences of their Compliance Plans, specifically the per m^3 tariff amount for customer and facilities related obligations. Both are seeking approval of a deferral/variance account to track the actual cost/revenues from forecast. The combination of final approval and the deferral/variance accounts will mean that the only prudence review going forward will be for debits in the account. Practically speaking that means, if Enbridge or Union passes up on opportunities to lower compliance costs for customers, as compared to their plan, there will be no review. This approach would be for a guaranteed floor, with an asymmetrical upwards only adjustment potential, and no incentive to reduce costs.

This is not appropriate at this time. The Board and the utilities do not have enough experience meeting compliance obligations. The Board should consider only granting interim approval, so that it can determine after the fact if the utilities were passing up opportunities to lower costs for customers, and acted imprudently by limiting their implementation to compliance actions and costs that are consistent with the cost underlying their Compliance Plan.[35]

All of which is respectfully submitted.

[31] K1.1, p.14; Tr.1, p.24
[32] J1.4
[33] Tr.1, p.33
[34] *Ibid*
[35] SEC points to the apt example provided by CME during its cross-examination of Enbridge at Tr.1, p.73-74.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Interested parties (by email)