

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF Applications by Union Gas Limited, Enbridge Gas Distribution Inc. and Natural Resource Gas Limited for approval of the cost consequences of Cap and Trade Compliance Plans and for interim rates effective January 1, 2017.

**SUBMISSIONS OF THE
ASSOCIATION OF POWER PRODUCERS OF ONTARIO (“APPrO”)**

May 19, 2017

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INTRODUCTION:

1. The Association of Power Producers of Ontario ("**APPrO**") makes these written submissions on the applications filed by each of Union Gas Limited ("**Union**") and Enbridge Gas Distribution Inc. ("**Enbridge**") with the Ontario Energy Board ("**OEB**") on November 15, 2016 seeking approval of the forecast costs arising from their respective Cap and Trade Compliance Plans for the January 1 - December 31, 2017 time period (the "**2017 Cap and Trade Compliance Plans**").
2. APPrO has no members that are affected by the Natural Resource Gas Limited ("**NRG**") application. Consequently, APPrO has limited the scope of its submissions to the Enbridge and Union applications.
3. The Board assigned file numbers EB-2016-0296, EB-2016-0300, and EB-2016-0330 to this combined proceeding.
4. APPrO's submissions are informed by the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (the "**Climate Change Act**"), O.Reg. 144/16 (the "**Cap and Trade Regulation**"), the Report of the Board, *Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities*, EB-2015-0363 dated September 26, 2016 (the "**Framework**").

IMPACT ON APPrO MEMBERS:

5. Among APPrO's members are gas-fired generators in the Enbridge and Union Gas franchise areas. Within the Enbridge franchise, these generators take service primarily under Rate 125. Within the Union's North and South franchise areas, gas-fired generators primarily contract for distribution and transportation services under several rate classes, including Rate T2, Rate 20, Rate 100 and Rate M12.
6. These APPrO members participate in Ontario's electricity market administered by the Independent Electricity System Operator (the "**IESO**"). Gas-fired generators must, pursuant to the IESO market rules, make offers to bid into the electricity market based only upon their "marginal costs". The Hourly Ontario Electricity Price ("**HOEP**") is

established as these offers are cleared and scheduled by the IESO.

7. In making these submissions, APPrO's objectives are to: (1) protect the interests of consumers with respect to price of electricity service, (2) to promote the economic efficiency and cost effectiveness in the generation of electricity, and (3) to facilitate the maintenance of a financially viable electricity industry.
8. APPrO's submissions are guided by the principles of cost-effectiveness, rate predictability, transparency, flexibility and continuous improvements.

RATE PREDICTABILITY:

9. APPrO's submissions are focused principally on issue number 4.

4. Deferral and Variance Accounts – Are the proposed deferral and variance accounts reasonable and appropriate? Is the disposition methodology appropriate?

10. No party objected to the inclusion of this issue, including the question "Is the disposition methodology appropriate?" in the issues list in this proceeding.¹ In fact, Union agreed that it was appropriate to include this question on the issues list in this proceeding.²
11. APPrO submits that this Board panel should give meaning to the inclusion of the question "Is the disposition methodology appropriate?" on the Board's approved issues list.
12. APPrO submits that this can be done by this Board panel focusing on a high-level analysis:

Whether the disposition methodology proposed by each gas utility is consistent with the Board's Framework?

13. APPrO agrees with Enbridge³ and Union⁴ that final approval of specific account

¹ Enbridge letter dated February 3, 2017 with subject "Enbridge Gas Distribution Inc. ("Enbridge") Cap and Trade Compliance Plan ("Application") Ontario Energy Board ("Board") File Number: EB-2016-0300".

² Union letter dated February 3, 2017 with subject "EB-2016-0296 – Union Gas Limited – 2017 Cap-and-Trade Compliance Plan – Comments on Draft Issues List".

³ Transcript Vol. 1 dated April 18, 2017 at page 79, line 17 to page 80, line 7.

dispositions should await a subsequent disposition proceeding, when the actual account balances are known and can inform the final disposition methodology.

14. However, APPrO submits this Board panel can and should as part of this proceeding assess the gas utilities' proposed disposition methodologies for consistency with the Board's Framework. This approach would be consistent with the Board's assessment of the balance of the applications.
15. Enbridge and Union now argue that this panel should defer any questions about the proposed disposition methodologies to a future panel. In effect, they want to deal with this at a future date.
16. APPrO submits that the Board should reject this suggestion for two reasons.
17. First, this Board panel is likely to be the only Board panel that will have an opportunity to consider all of these deferral and variance accounts in the context of the Framework at one time.
18. Union has already filed for disposition of 2016 Cap-and-Trade Administrative costs as part of its 2016 Non-Commodity Deferral Disposition proceeding (EB-2017-0091).⁵ Enbridge may bring its 2016 impact deferral account forward for disposition with its other 2016 deferral and variance accounts.⁶ And facilities and customer related emissions variance accounts will be dealt with in future true-up filings.
19. Before we embark on a multitude of different disposition proceedings, this Board panel has the sole opportunity to review all of these accounts at one time and provide some overarching guidance on compliance with the Framework.
20. Second, time is of the essence. The question of whether the proposed disposition methodologies are consistent with the Board's Framework must be determined now to create market certainty and relieve investor and market anxiety.

⁴ Transcript Vol. 2 dated April 20, 2017 at page 112, lines 19-23.

⁵ Union Argument-in-Chief at para. 38.

⁶ Enbridge Argument-in-Chief at para. 58 and Transcript Vol. 1 dated April 18, 2017 at page 80, lines 13 to 20.

21. The evidence is clear: neither Enbridge⁷ nor Union⁸ have considered potential market distortions arising from their proposed disposition methodologies.
22. They say this even though APPrO first raised its concerns with the disposition of deferral and variance accounts in its June 21, 2016 submissions⁹ in the Board's Consultation to Develop a Regulatory Framework for Natural Gas Distributors' Cap and Trade Compliance Plans (EB-2015-0363) (emphasis added):

“At any rate, adjustments that occur must only occur prospectively, i.e., variances must be rolled forward to be included in future periods. There cannot be any “one-time” adjustments or true ups representing past variances and customer activity. Generators make the commercial decision to operate based on their marginal operating costs. If a cost is restated after the fact, it is no longer a marginal operating cost but a “one-time” fixed cost. Ontario’s current electricity market structure makes it difficult to recover this type of cost and therefore goes against the intent of the C&T program as it does not provide the appropriate price signal to the consumer. **Any variances must be included in, or rolled forward, for computing and establishing the new rates for future periods. This is especially important for settlement of contracts between the IESO and generators which underpinned the significant investments in the electricity sector in order to reduce its carbon footprint.”**¹⁰

23. The Board incorporated APPrO’s feedback directly into its Framework at Section 6.2.1 (emphasis added):

“The OEB also believes that deferral account balances should be apportioned between customer-related and facility-related obligations and, to avoid any market distortions, the balances should be administered on a prospective basis, not a retroactive basis.”¹¹

24. Despite this clear statement in the Framework, both Enbridge¹² and Union¹³ have proposed using a retroactive one-time adjustment for contract rate classes to true up past variances.

⁷ Transcript Vol. 1 dated April 18, 2017 at page 85, line 26 to page 86, line 1.

⁸ Transcript Vol. 2 dated April 20, 2017 at page 118, line 13 to line 17.

⁹ Available online at: <http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/532823/view/>

¹⁰ Ibid. at pg. 3, paragraph (i).

¹¹ Framework, Section 6.2.1 at pages 32-33.

¹² Enbridge interrogatory responses at Exhibit I.4.EGDI.STAFF.24.

¹³ Union interrogatory responses at Exhibit B.Staff.17.

25. Specifically, Union stated:

“In accordance with past practice, Union will propose to dispose of deferral account balances over a six-month period for general service customers and as a one-time adjustment for contract rate classes.

The disposition of deferral account balances for general service customers is included in the delivery price adjustment line item on the bill. The disposition of deferral account balances for contract rate classes is included as a separate line item on the bill along with an explanation of the one-time adjustment.”¹⁴

26. And Enbridge stated:

“the Company anticipates that the proposed disposition of the 2017 GGECFCVA balance would be similar to the Board-approved methodology for disposition of the Company's existing Deferral and Variance account balances to customers.

Following the current Board-approved methodology for disposition of deferral and variance account balances, the 2017 GGECFCVA balance would be cleared as a one-time credit or debit and would be administered to customers as a one-time billing adjustment (note that the 2017 GGECFCVA balance would be apportioned between customer-related and facility-related obligations. The amount of credit or debit each customer would be allocated would be a function of the total 2017 GGECFCVA balance, each customer's responsibility for customer and facility-related costs, and each customer's 2017 actual volumes). The one-time adjustment would appear as a separate line item on customer's bills.”¹⁵

27. This issue is of fundamental concern to APPrO members that are operating in Ontario's electricity markets.

28. Under the IESO Market Rules, a one-time disposition is not considered to be a marginal operating cost that can be bid into Ontario's electricity market to shape HOEP. Instead, it is a one-time fixed cost. Ontario's current electricity market structure makes it difficult to recover this type of cost and therefore goes against the underlying intent of the Cap-and-Trade program as it does not provide the appropriate price signal to the consumer.

29. APPrO submits that a one-time billing adjustment is – in any meaningful and practical

¹⁴ Ibid.

¹⁵ Supra note 12.

sense – a retroactive adjustment that is prohibited by the Framework.

30. Union defended its approach to using a one-time billing adjustment by referencing a different statement in the Framework, which states that “the re-calibration of the rates for customer-related and facility-related costs and any required true-ups should be done annually”.¹⁶
31. Union’s witness may have been confused. True-ups can occur annually or quarterly or over some other period. But the frequency that the true-up occurs is different, conceptually, to whether the true-up should be disposed of on a prospective basis (e.g. over a period of time in the future) or on a retroactive basis (e.g. as a one-time disposition).
32. APPrO submits a one-time disposition of cap-and-trade variances is not consistent with the Framework. At a minimum, to avoid market distortions, the disposition of an annual true-up amount should be completed on a prospective basis (e.g. a volumetric charge administered over a subsequent twelve-month period). If additional mitigation measures are required depending on the actual balance of the accounts, this should be determined by the Board panel in subsequent disposition proceedings. Finally, both Enbridge and Union are held harmless with, and should be indifferent to, a prospective disposition of these variance amounts.
33. The OEB does have a precedent upon which to base the prospective disposition of cap-and-trade variance accounts. Gas commodity variances are disposed of on a prospective basis, not using a one-time adjustment. Enbridge agrees in principle that cap-and-trade emissions variances are similar to gas commodity variances.¹⁷ Both accounts might face significant variances due to changes in actual volumes and actual market prices, both of which are factors that are largely outside of the gas utilities’ control. Given this, it makes sense to dispose of cap-and-trade emissions variances prospectively on an annual basis, in a manner similar to how commodity variances are disposed of prospectively on a quarterly basis.

¹⁶ Transcript Vol. 2 at page 118, line 13 to page 119, line 14.

¹⁷ Transcript Vol. 1 at page 82, line 3 – line 14.

34. Enbridge estimates in a sensitivity analysis variances ranging up to \$60 million (roughly 16% of the total compliance cost), driven by a carbon allowance price increase of a modest 3% and an exchange rate increase of a modest 13%.¹⁸ In this context, APPrO submits that both Enbridge and Union should be required to give early warning to the OEB and ratepayers as soon as they become aware that actual costs exceed approved forecasted amounts by more than 10%. A lower threshold than the 25% threshold that was proposed by Enbridge is appropriate given the magnitude of the sums.

TRANSPARENCY, COST EFFECTIVENESS AND CONTINUOUS IMPROVEMENT:

35. This combined proceeding was a difficult for intervenors to assess cost-effectiveness of the 2017 Cap-and-Trade Compliance Plans in a meaningful way. Due to legitimate legislative constraints, the OEB elected to take a cautious and conservative approach and treat much of the substantive evidence as strictly confidential.
36. What do we know? Union's estimated administrative costs are 69% higher than Enbridge's estimated administrative costs, while Union's estimated compliance obligation is 26% lower than Enbridge's estimated compliance obligation.
37. Specifically, Enbridge's forecasted compliance obligation is 21.1 million tonnes of CO₂e.¹⁹ Enbridge's estimated administrative cost for 2017 is approximately \$2.9 million.²⁰ Union's forecasted compliance obligation is 15.6 million tonnes of CO₂e.²¹ Union's estimated administrative cost for 2017 is approximately \$4.2 million.²² Union says that \$2.5 million in incremental costs is required to hire 13.5 incremental cap-and-trade FTEs in 2017. By contrast, Enbridge is forecasting \$1.12 million for 7 incremental cap-and-trade FTEs in 2017.
38. Union has produced no evidence to reasonably explain why it needs to hire nearly double the FTEs and incur 65% higher costs to meet a lower compliance obligation than Enbridge must meet. Both utilities have access to the exact same tools and compliance instruments.

¹⁸ Enbridge response to Undertaking J1.3.

¹⁹ Enbridge application at Exhibit B, Tab 3, Schedule 1 at page 5.

²⁰ Enbridge application at Exhibit C, Tab 3, Schedule 6, Table 2.

²¹ Union application at Exhibit 2 at pages 6 - 7.

²² Union application at Exhibit 3 at page 29.

While Enbridge has explained a cost-conscious approach to minimizing incremental administrative costs,²³ it is not clear that Union has given the same attention to productivity improvements and minimizing ratepayer impacts.

39. However, these incremental administrative costs represent only 1.5% (Union) and less than 1% (Enbridge) of the total costs of the 2017 compliance plans. Because the information required to assess the balance of these costs was not made publically available, APPrO is relying on the OEB and OEB staff who have access to the complete evidentiary record to assess the cost-effectiveness of the proposed plans.
40. Finally, in the spirit of continuous improvement, the OEB should order Union and Enbridge to create proposals to increase transparency in future compliance plan proceedings. In this regard we would note that:
 - a. Enbridge is represented by Aird & Berlis LLP and Union is represented by Torys LLP, both reputable independent law firms that act for hundreds if not thousands of different clients. APPrO submits that a form of confidentiality undertaking should be created to bind APPrO's independent legal counsel (Borden Ladner Gervais LLP) so as to allow the disclosure of strictly confidential information to counsel to intervenors to the same extent as it has been disclosed to Torys LLP and Aird & Berlis LLP.
 - b. Enbridge's plan was informed by Alpha Inception (AI) and Union's plan was informed by ClearBlue Markets (CB), both independent consulting firms with expertise in carbon market activities that serve many different clients. APPrO submits that a form of confidentiality undertaking should be created to bind APPrO's independent consultants (Elenchus) so as to allow the disclosure of strictly confidential information to consultants to intervenors to the same extent as it has been disclosed to AI and CB.

²³ Transcript Vol. 1 at page 67, line 13 to page 70, line 11.

COSTS:

41. APPrO has participated in this proceeding in a responsible and efficient manner, including coordinating interrogatories and cross-examination with other intervenors to minimize duplication and maximize efficiency of the hearing process. APPrO requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19TH DAY OF MAY, 2017

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A.D. Vellone

John A.D. Vellone