

January 19, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2017-0306 – Enbridge Gas Distribution Inc. and Union Gas Limited – MAAD
Application – Argument-in-Chief on Issues List**

On November 2, 2017 Enbridge Gas Distribution Inc. and Union Gas Limited (collectively “the Applicants”) filed for approval to amalgamate under EB-2017-0306. In accordance with Procedural Order No. 2 issued on January 16, 2018, enclosed is the argument-in-chief of the Applicants with respect to the Draft Issues List.

If you have any questions on this matter, please contact me at 519-436-5334.

Sincerely,

[original signed by]

Vanessa Innis
Manager, Regulatory Applications

cc: Andrew Mandyam, EGD
Mark Kitchen, Union
Fred Cass, Aird & Berlis
EB-2017-0306 Intervenors

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Enbridge
Gas Distribution Inc. and Union Gas Limited, pursuant
to section 43(1) of the *Ontario Energy Board Act*,
1998, for an order or orders granting leave to
amalgamate as of January 1, 2019.

ARGUMENT-IN-CHIEF ON DRAFT ISSUES LIST

Introduction

1. In this proceeding, Enbridge Gas Distribution Inc. (“EGD”) and Union Gas Limited (“Union”) have applied under subsection 43(1) of the *Ontario Energy Board Act*, 1998 (the “OEB Act”) for leave to amalgamate. The application filed by EGD and Union (the “Applicants”) is based on guidance provided in Board policies and decisions, including the Board’s policies for mergers, acquisitions, amalgamations and divestitures (“MAADs”).

2. The evidence filed in support of the application explicitly addresses how the Applicants were guided by the MAADs policies and decisions, including the Board’s *Handbook to Electricity Distributor and Transmitter Consolidations* (“Consolidation Handbook”) issued on January 19, 2016.¹ Indeed, the Applicants included a table with the application that maps the pre-filed evidence to the Consolidation Handbook filing requirements.²

3. The Applicants also filed a Draft Issues List (the “Draft Issues List”) with the application.³ Like the pre-filed evidence, the Draft Issues List was based on guidance from the Board in respect of consolidation applications. On December 22, 2017, the Board issued Procedural Order No. 1 in this proceeding, to which the Draft Issues List was attached as Schedule A.

4. Procedural Order No. 1 made provision for an Issues Conference on January 15, 2018 to review the Draft Issues List, with the objective of developing an issues list for

¹ Pre-filed evidence, Exhibit B-1, pages 3-4.

² Pre-filed evidence, Exhibit A-3.

³ Pre-filed evidence, Exhibit A-4.

presentation to the Board. Procedural Order No. 1 also said that, if necessary, an Issues Day proceeding would be convened on January 18, 2018

5. In accordance with Procedural Order No. 1, the Issues Conference was held on January 15, 2018. At the Issues Conference, all parties agreed to add three issues to the Draft Issues List (about Undertakings given to the Lieutenant Governor in Council), but no other agreement was reached on the Draft Issues List. The three issues that all parties have agreed to add to the Draft Issues List are as follows:

- (i) What is the status of the Undertakings given to the Lieutenant Governor in Council?
- (ii) Should the Undertakings be replaced by a condition of the approval of the proposed merger?
- (iii) If so, what should the content of the condition be?

6. On January 16, 2018, the Board issued Procedural Order No. 2 in this proceeding. Procedural Order No. 2 provides for the Applicants to file argument-in-chief with respect to the Draft Issues List by January 19, 2018. Procedural Order No. 2 also provides for submissions by intervenors and Board staff to be filed by January 26, 2018 and reply argument to be filed by February 2, 2018. This is the argument-in-chief of the Applicants with respect to the Draft Issues List, filed in accordance with Procedural Order No. 2.

Draft Issues List

7. As indicated above, in preparing the Draft Issues List, the Applicants followed the Board's guidance in respect of consolidation proceedings. More specifically, the Applicants were guided by the Consolidation Handbook, the Board's related rate policies, and by previous Board decisions and proceedings. The Applicants took this approach because the Board's MAADs policy and associated rate policies are integrated and intended to apply to gas utilities as well as electric utilities.

The Policy Foundation for the Draft Issues List

8. The *Handbook for Utility Rate Applications* ("Rate Handbook") issued by the Board in October of 2016 confirms that the Board's MAADs policies provide guidance for both gas and electricity utilities. The Rate Handbook is applicable to all rate-regulated utilities, including electricity distributors, electricity transmitters and natural

gas utilities.⁴ The Rate Handbook contains a section on MAADs applications and this section cross-references to the Consolidation Handbook.⁵

9. The MAADs section of the Rate Handbook says that rate-making is generally not a consideration in reviewing a consolidation and that, in the first cost of service or Custom IR application following the consolidation, the Board will scrutinize specific rate-setting aspects of the MAADs transaction, including a rate harmonization plan and/or customer rate classifications. This guidance in the Rate Handbook links to the Consolidation Handbook⁶ and it also links to the Board's *Filing Requirements for Natural Gas Rate Applications* ("Gas Filing Requirements") where, in a section entitled Utility Consolidations, it is stated that: "In the first cost of service application following a consolidation, the applicant is expected to address any rate-making aspects of the MAADs transaction, including a rate harmonization plan and/or customer rate classifications post consolidation."⁷

10. It is evident from the Rate Handbook itself, and from the linkages among the Consolidation Handbook, the Rate Handbook and the Gas Filing Requirements, that the Board's MAADs policies provide guidance for consolidations by both gas and electricity distributors. This can also be seen from the linkages between the MAADs policies and the Board's Renewed Regulatory Framework ("RRF"), formerly the Renewed Regulatory Framework for Electricity.

11. As stated in its opening words, section 4 of the Consolidation Handbook sets out how the Board applies the no harm test in the context of the RRF. The first part of section 4 discusses the RRF and concludes with the statement that the Board assesses applications for consolidation within the context of the RRF.⁸

12. The RRF, which provides the context for the Board's assessment of applications for consolidation, applies to both electricity and gas distributors. In this regard, the Rate Handbook says that,

Although the RRFE was developed specifically for electricity distributors, the OEB has for some time indicated that the principles underpinning the RRFE are applicable to all regulated utilities (natural gas utilities, electricity distributors, electricity transmitters and Ontario Power Generation).⁹

⁴ [Rate Handbook](#), page 1.

⁵ [Rate Handbook](#), page 21.

⁶ [Consolidation Handbook](#), page 11.

⁷ [Gas Filing Requirements](#), pages 17-18.

⁸ [Consolidation Handbook](#), page 5.

⁹ [Rate Handbook](#), page 4.

13. The applicability of these policies to gas distributors is reiterated in the Gas Filing Requirements, which state that,

...the RRFE principles will be applied to all regulated utilities going forward (natural gas utilities, electricity distributors, electricity transmitters and Ontario Power Generation). The framework is now referred to as the Renewed Regulatory Framework (RRF) to reflect this transition.¹⁰

14. Thus, the RRF, the MAADs policies, including the Consolidation Handbook, and the Rate Handbook are a series of inter-related Board policies that provide guidance for both gas and electricity distributors.

The Draft Issues List

15. With respect to the issues to be considered by the Board in a MAADs proceeding, the Consolidation Handbook states as follows:

The OEB has implemented a number of instruments ... that ensure regulated utilities continue to meet their obligations with respect to the OEB's statutory objectives relating to conservation and demand management, implementation of smart grid and the use and generation of electricity from renewable resources. ...the OEB is satisfied that the attainment of these objectives will not be adversely [a]ffected by a consolidation There is no need or merit in further detailed review as part of the OEB's consideration of the consolidation transaction.¹¹

16. The Applicants followed this guidance in developing the Draft Issues List and did not include, for example, an issue with respect to objective 5 (energy conservation and energy efficiency) in section 2 of the OEB Act.¹²

17. The Applicants were also guided by the Board's EB-2016-0351 Decision and Order (the "NRG/EPCOR Decision") in respect of the application by Natural Resource Gas Limited ("NRG") for approval to sell its natural gas distribution system to EPCOR Natural Gas Limited Partnership. In the NRG/EPCOR Decision, the Board indicated that it had:

...focused on the objectives that are of most direct relevance to the impact of the proposed sale transaction; namely, price, reliability and quality of gas service, and financial viability.¹³

¹⁰ Gas Filing Requirements, page 1.

¹¹ Consolidation Handbook, page 6.

¹² Objective 5 in section 2 is: "To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances."

These objectives that were the focus of the Board's review in the NRG/EPCOR proceeding line up very closely with the discussion in the Consolidation Handbook (under the heading "Scope of the Review") about the factors that are to be considered in detail when the Board reviews a proposed MAADs transaction.¹⁴

18. Further, in developing the Draft Issues List, the Applicants looked for guidance from previous Board-approved issues lists in MAADs cases. To the best of the Applicants' knowledge, the leading example of a Board-approved issues list in a MAADs proceeding is the EB-2016-0025 issues list in respect of the MAADs application by Enersource Hydro Mississauga Inc., Horizon Utilities Corporation and PowerStream Inc. ("Enersource/Horizon/PowerStream")¹⁵ The approved Issues List in EB-2016-0025 is Schedule A to the Decision on Issues List in that proceeding, which is attached hereto as Attachment 1.

19. In short, the Applicants prepared a Draft Issues List that follows the format of the approved EB-2016-0025 issues list and that takes account of other Board guidance, including the NRG/EPCOR Decision.

20. On further consideration, though, the Applicants have concluded that, at least arguably, certain objectives in section 2 that were not considered to be of the most direct relevance in the NRG/EPCOR case may give rise to appropriate issues in this proceeding, namely objective 3 (facilitate rational expansion of transmission and distribution systems) and objective 4 (facilitate rational development and safe operation of gas storage).

21. The Applicants therefore propose that issues be added to the Draft Issues List in respect of objectives 3 and 4 in section 2 of the OEB Act, as set out in the revised version of the Draft Issues List attached hereto as Attachment 2 (the "Revised Issues List"). The Revised Issues List also includes the three issues that all parties have agreed to include in the final Issues List for this proceeding, as referred to in paragraph 5, above. The Applicants respectfully request that the Board approve the Revised Issues List as the Issues List for this proceeding.

Issues Proposed by Intervenors

22. By letter dated January 17, 2018, counsel for the Industrial Gas Users Association ("IGUA") provided to the Board and the Applicants a "consensus alternative proposed issues list" ("Intervenor Proposal") on behalf of a group of intervenors identified in IGUA's letter. The Intervenor Proposal is attached hereto at Attachment 3.

¹³ [NRG/EPCOR Decision](#), page 3.

¹⁴ Consolidation Handbook, pages 6 to 9. "Scope of the Review"

¹⁵ EB-2016-0025 Decision on Issues List dated June 30, 2016, Schedule A.

23. The issues listed in the Intervenor Proposal fall into three categories, namely, the test for approval of consolidation, the proposed deferred rebasing period and the potential “impact” of the consolidation on other OEB policies, rules or orders (meaning, presumably, non-MAADs policies, rules or orders). The Applicants will address each of these proposed issue categories under the sub-headings that follow.

Test for Approval of Consolidation

24. On August 31, 2005, the Board issued its decision in respect of the “Combined Proceeding”, which was a case where the Board combined three applications under section 86 of the OEB Act for the purpose of addressing certain common issues.¹⁶ The Board considered the proper test to be applied on a section 86 application involving the acquisition of shares or an amalgamation and decided that the no harm test is the appropriate test.¹⁷

25. The no harm test is sound and proven and the Board’s reasoning in the Combined Proceeding holds true in the present case when the test is measured against the purpose of the MAADs application. Specifically, the Board’s reasoning on the subject of the no harm test in the Combined Proceeding included the following comments:

...most importantly, in the context of share acquisition and amalgamation applications it is the test that best lends itself to the objectives of the Board as set out in section 1 of the Act. The Board is of the view that its mandate in these matters is to consider whether the transaction that has been placed before it will have an adverse effect relative to the status quo in terms of the Board’s statutory objectives. It is not to determine whether another transaction, whether real or potential, can have a more positive effect than the one that has been negotiated to completion by the parties. In that sense, in section 86 applications of this nature the Board equates “protecting the interests of consumers” with ensuring that there is “no harm to consumers”.¹⁸

26. Not long after the Combined Proceeding Decision, the Board applied the no harm test in a case involving an acquisition of shares of a natural gas distributor. On November 3, 2005, the Board issued its decision in respect of an application under section 43 of the OEB Act for approval of an acquisition of more than 20 per cent of the

¹⁶ [RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257 Decision](#) (“Combined Proceeding Decision”) dated August 31, 2005, page 2.

¹⁷ Combined Proceeding Decision, pages 6-7.

¹⁸ *Ibid.*

voting securities of NRG.¹⁹ The OEB found that the transaction had no adverse impact on the factors identified in the objectives set out in section 2 of the OEB Act.²⁰

27. In May of 2009, the Board issued a decision that addressed the appropriate test in respect of an application by an electricity distributor, under clause 86(1)(a) of the OEB Act, for approval to sell distribution assets. The Board referred to the Combined Proceeding, in which it had been found that the no harm test is the appropriate test for the purposes of amalgamation or share acquisition applications, and went on to find that this test should also be applied to asset disposals under clause 86(1)(a) of the OEB Act.²¹

28. Later in 2009, the Board issued a decision that addressed the appropriate test in respect of an application by a gas distributor, under subsection 43(1) of the OEB Act, for approval to sell distribution assets. The Board said that it did not see any reason to depart from the no harm test.²²

29. In 2013, the Board issued a decision in respect of an application by an electricity transmitter for approval to sell transmission assets and, in that decision, the Board again applied the no harm test.²³ In 2016, the Board issued a decision in respect of an application for leave to acquire an electricity transmitter (the “Hydro One/Great Lakes Power” application) where, once again, the Board applied the no harm test.²⁴ And, in 2017, the Board issued the NRG/EPCOR decision in which the no harm test was applied to an application for approval to sell a natural gas distribution system.²⁵

30. In short, it is now clear beyond any shadow of a doubt that the no harm test has wide-ranging applicability in cases under sections 43 and 86 of the OEB Act. The range of cases in which the test has been applied by the Board covers the spectrum from electricity distributor share acquisition, gas distributor share acquisition and electricity transmitter share acquisition through to electricity distributor asset disposition, gas distributor asset disposition and electricity transmitter asset disposition.

31. Further, there is no difference between section 43 (gas) cases and section 86 (electricity) cases that justifies a different test under one section than the other.²⁶ In this

¹⁹ [EB-2005-0445 Decision and Order](#) dated November 3, 2005.

²⁰ EB-2005-0445 Decision and Order, page 3.

²¹ [EB-2009-0072/EG-2009-0073/EB-2009-0075 Decision and Order](#) dated May 5, 2009, pages 3-4.

²² [EB-2008-0411 Decision and Order](#) dated November 27, 2009 (Union application for approval to sell gas pipeline), at page 15.

²³ [EB-2013-0078 Decision and Order](#) dated November 28, 2013 (Hydro One Networks Inc. application for approval to sell electricity transmission assets to B2M Limited Partnership).

²⁴ [EB-2016-0050 Decision and Order](#) dated October 13, 2016 (Hydro One Inc. application for approval to acquire Great Lakes Power Transmission Inc.).

²⁵ NRG/EPCOR Decision, *supra*.

²⁶ In the [EB-2008-0310 Decision](#) (application by the Town of Essex to acquire shares of E.L.K. Energy Inc.), the Board commented (at pages 8-9) on the introduction of sections 43 and 86 of the OEB Act and said, among other things, that: “At the same time Section 43 was introduced, the Government introduced

context, the only real difference between section 43 and section 86 cases is that, because there are far fewer gas distributors than electricity distributors, it stands to reason that the cases in which the Board considers section 43 will tend to be less frequent than those in which it considers section 86. While there may be fewer decisions relating to gas distributors than those relating to electricity distributors, it is just as clear from the gas cases as it is from the electricity cases that the no harm test applies.

32. Given the many decisions confirming the wide-ranging applicability of the no harm test, it is patently reasonable, and indeed to be expected, that the Applicants' evidence in this proceeding would focus on meeting the no harm test. It is neither reasonable nor fair, however, that, when an applicant has focused its evidence on meeting a widely-applied test, other parties should be free to put into issue some other test that the applicant could have had no expectation that it would need to address in its pre-filed evidence.

33. The applicability of a particular test cannot continue to be a legitimate issue, in case after case, when it has been as widely applied (in many cases and over many years) as the no harm test. Thus, there is no legitimate issue in this case about the appropriate test to be applied in the consideration of the application. At the very least, the Board should reject departure from the no harm test as a legitimate issue unless a very compelling rationale for doing otherwise is put forward. There is no such rationale in this proceeding.

Deferred Rebasing Period

34. The Consolidation Handbook reiterates earlier Board guidance that "consolidating distributors may defer rebasing up to ten years". The Consolidation Handbook also says that the extent of the deferred rebasing period "is at the option of the distributor" and that no supporting evidence is required to justify the selection of the deferred rebasing period subject to certain minimum requirements.²⁷

35. In decisions issued after the release of the Consolidation Handbook, the Board has reconfirmed its guidance with respect to the deferred rebasing period. The Board's decisions in the Enersource/Horizon/PowerStream case²⁸ and in the Hydro One/Great Lakes Power proceeding²⁹ both indicate that consolidating distributors are permitted to defer rebasing for up to ten years from the closing of the transaction, that the extent of the deferred rebasing period is at the option of the distributor and that no supporting evidence is required to justify the selection of the deferred rebasing period.

Section 86 in exactly the same terms to apply to electricity distributors. It is reasonable to assume that the intent of Section 86 was the same as Section 43 ... "

²⁷ Consolidation Handbook, page 12.

²⁸ [EB-2016-0025 Decision and Order](#), *supra*, at page 6.

²⁹ [EB-2016-0050 Decision and Order](#), *supra*, page 7.

36. The minimum requirements set out in the Consolidation Handbook in relation to the distributor's option to select a rebasing deferral period are: (i) the consolidating distributors must identify in their application the specific number of years for which they choose to defer and (ii) distributors cannot select a deferred rebasing period that is shorter than the shortest remaining (rate model) term of one of the consolidating distributors.³⁰ As well, a later section of the Consolidation Handbook says that consolidating entities that propose to defer rebasing beyond five years must implement an Earnings Sharing Mechanism ("ESM") for the period beyond five years.³¹

37. In this proceeding, the Applicants have exercised the option to select a deferred rebasing period and, in doing so, they have met the minimum requirements set out in the Consolidation Handbook. More particularly, the Applicants have identified in their application the specific number of years for which they choose to defer rebasing, 10 years,³² and the selected deferred rebasing period is not shorter than the shortest remaining rate model term of either of the consolidating distributors.³³ Further, the Applicants have proposed to implement an ESM for the period beyond five years of the 10 year deferred rebasing, in accordance with the provisions of the Consolidation Handbook.³⁴

38. In light of the guidance provided by the Board for consolidation applications, there is no legitimate issue in this case about the deferred rebasing period. The Board's policy is that the extent of the deferred rebasing period is at the option of the distributor and that no supporting evidence is required to justify the selection of the deferral period. While the selection of the deferred rebasing period by the distributor is subject to certain minimum requirements, it is beyond dispute, and essentially self-evident, that the minimum requirements have been met in this case.

Other OEB Policies, Rules or Orders

39. The Board's policies and decisions have been unequivocal and consistent in making clear that the no harm test is applied by reference to the Board's statutory objectives. For example, in the NRG/EPCOR Decision, the Board said that: "The no harm test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives ...".³⁵ A similar formulation of the test can be found in many other Board decisions, as well as, for example, the Consolidation Handbook.³⁶

³⁰ *Ibid.*

³¹ Consolidation Handbook, page 16.

³² Exhibit B-1, page 41.

³³ The term of the rate models for both EGD and Union ends on December 31, 2018: Exhibit A-2, pages 2-3 and Exhibit B-1, page 42.

³⁴ Exhibit B-1, pages 42-43.

³⁵ NRG/EPCOR Decision, page 3.

³⁶ Consolidation Handbook, page 6.

40. The Intervenor Proposal, however, is that that the final Issues List for this proceeding should include issues that specifically address the potential “impact” of the proposed consolidation on “other OEB policies, rules or orders”. This proposal raises issues that are far outside the Board’s no harm test, because the no harm test is applied in relation to the Board’s statutory objectives as set out in the OEB Act, not in relation to Board “policies, rules or orders”.

41. To put it another way, in addition to an assessment of whether a proposed transaction will have an adverse effect on the attainment of the statutory objectives, the no harm test is not separately applied by reference to particular aspects or instruments of Board regulation. Otherwise, in a case where the no harm test applies, the issues for consideration by the Board could extend into the potential “impact” of the proposed transaction in relation to any number of orders, decisions, directions, policies or other elements of Board regulation.

42. It may be that intervenor questions or positions about potential “impacts” of the consolidation will fall within the scope of the Board’s consideration of the no harm test by reference to the statutory objectives. If so, the Revised Issues List, which is framed in relation to the statutory objectives, allows scope for intervenors to pursue such issues. But it is not appropriate to include in the Issues List, and there is no need for, separate issues about the “impact” of the proposed consolidation on “policies, rules or orders” because the assessment of whether the application satisfies the no harm test is made in relation to the statutory objectives.

Conclusion

43. For the reasons set out above, the Applicants submit that the Board should reject the three categories of issues set out in the Intervenor Proposal. The no harm test has been widely accepted for many years as the appropriate test for applications under section 43 and 86 of the OEB Act; the Applicants have selected a deferred rebasing period of 10 years in accordance with Board policy that gives consolidating distributors the option to make this selection; and the no harm test has consistently been applied by reference to the Board’s objectives, not by reference to “policies, rules or orders”.

44. The Applicants respectfully request that the Board approve the Revised Issues List (Attachment 2 to this argument-in-chief) as the Issues List for this proceeding.

All of which is respectfully submitted.

January 19, 2018

Fred D. Cass
Counsel for the Applicants.

**Schedule A – OEB Approved Issues List
EB-2016-0025**

Price, Cost Effectiveness and Economic Efficiency:

1. Does the proposed consolidation protect the interests of consumers with respect to price?
2. Have the applicants clearly identified the specific number of years for which they have chosen to defer the rebasing?
3. If the applicants have identified a deferred rebasing period greater than five years, have they identified an Earnings Sharing Mechanism (ESM), and does it follow the form set out in the OEB's 2015 Report – Rate-Making Associated with Distributor Consolidation and the OEB's 2016 Handbook to Electricity Distributor and Transmitter Consolidations?
4. Does the ESM, as defined in the application, achieve the objective of protecting customer interests during the deferred rebasing period?

Reliability and Quality of Electricity Service:

5. Does the proposed consolidation protect the interests of consumers with respect to adequacy, reliability, and quality of electricity service?

Financial Viability:

6. Does the proposed consolidation maintain the financial viability of the consolidated entity in the delivery of the ongoing investment and maintenance of the distribution system?
7. What is the effect of the consolidation on the cost structures of the consolidating distributors?
8. What is the impact of the purchase price, including any premium paid above the historic (book) value of the assets involved on the financial viability of the purchasing entities?
9. What is the impact of the financing of incremental costs (transaction and integration costs) on the consolidating entities?

ENBRIDGE GAS DISTRIBUTION INC. AND UNION GAS LIMITED

MAAD APPLICATION

REVISED DRAFT ISSUES LIST

PRICE, COST EFFECTIVENESS AND ECONOMIC EFFICIENCY:

1. Does the proposed consolidation protect the interests of consumers with respect to price?
2. Have the Applicants clearly identified the specific number of years for which they have chosen to defer the rebasing?
3. Have the Applicants identified an Earnings Sharing Mechanism (ESM) in accordance with the OEB's 2015 Report – Rate-Making Associated with Distributor Consolidation and the OEB's 2016 Handbook to Electricity Distributor and Transmitter Consolidations?
4. Does the ESM, as defined in the application, achieve the objective of protecting customer interests during the deferred rebasing period?

RELIABILITY AND QUALITY OF GAS SERVICE:

5. Does the proposed consolidation protect the interests of consumers with respect to adequacy, reliability, and quality of gas service?

FINANCIAL VIABILITY:

6. Does the proposed consolidation maintain the financial viability of the consolidated entity in the delivery of the ongoing investment and maintenance of the distribution system?
7. What is the effect of the consolidation on the cost structures of the consolidating distributors?
8. What is the impact of the financing of incremental costs (transaction and integration costs) on the consolidating entities?

OTHER STATUTORY OBJECTIVES:

9. Does the proposed consolidation impact the rational expansion of transmission and distribution systems?
10. Does the proposed consolidation impact the rational development and safe operation of gas storage?

UNDERTAKINGS TO THE LIEUTENANT GOVERNOR IN COUNCIL:

11. What is the status of the Undertakings to the Lieutenant Governor in Council of Ontario?
12. Should the undertakings be replaced by a condition of the approval of the OEB of the proposed merger?
13. If so, what should the content of the condition be?



January 17, 2017

VIA RESS AND COURIER

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Dear Ms. Walli:

**Re: EB-2017-0306 – Enbridge Gas Distribution Inc. (EGD) and Union Gas Limited (Union)
MAAD Application.**

Alternative Proposed Issues List

This letter is written on behalf of a number of intervenors in this matter and to provide to the Board and the applicants a consensus alternative proposed issues list (Alternative Issues List) for consideration.

Background

Prior to the issues conference held earlier this week many of the intervenors met to discuss views on the appropriate scope for this proceeding. From that meeting a working consensus issues list emerged, as an alternative to the issues list pre-filed by the applicants. That consensus alternative issues list was provided to Board Staff and the utilities in advance of the issues conference.

As Procedural Order No. 2 notes, there was no consensus reached at the issues conference on an issues list for this matter, save in respect of the 3 issues related to the LGIC undertakings and proposed by Chatham-Kent.

Following the issues conference, and in light of the discussions there had, the intervenors involved in the previous issues discussions again exchanged views on an alternative issues list, and the attached Alternative Issues List was developed. This Alternative Issues List is based on the previous consensus working list, attempts to incorporate the issues as put forward by the utilities, and incorporates the issues put forward by Chatham-Kent.



Alternative Issues List

The following parties (Endorsing Parties) have adopted the attached Alternative Issues List as the basis for their submissions on the issues appropriate for this proceeding:

SEC	FRPO	Energy Probe
OGVG	CCC	Six Nations Natural Gas
LPMA	Kitchener	VECC
APPrO	IGUA	TCPL
CME	OAPPA	

The Endorsing Parties support the Alternative Issues List as a starting point, but wish to reserve the ability to provide further comment on additions or modifications to this list based on the submissions of the utilities and their own further considerations of the matter prior to the date for their own submissions on issues for the proceeding.

The Endorsing Parties are filing the attached Alternative Issues List now so that other parties, including Board Staff and the applicants, can provide their comments on this alternative in their respective submissions. This would assist each of the Endorsing Parties in finalizing their issues positions, and best assist the Hearing Panel in its issues deliberations.

Yours truly,

Ian A. Mondrow

c: A. Mandyam (EGD)
 M. Kitchen (Union)
 F. Cass (Aird & Berlis)
 C. Smith (Torys)
 S. Rahbar (IGUA)
 K. Viraney (Board Staff)
 M. Millar (Board Staff)
 I. Richler (Board Staff)
 Intervenors of Record

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EB-2017-0306

**Enbridge Gas Distribution Inc.
and Union Gas Limited**

**Application for approval to amalgamate Enbridge Gas
Distribution Inc. and Union Gas Limited**

PROPOSED ISSUES LIST

[Bold & italicized numbers reference utilities' proposed issues list.]

TEST FOR APPROVAL OF THE MERGER

1. What is the appropriate test for approval of the merger under section 43(1)(c) of the Ontario Energy Board Act, 1998; "no harm", "net benefits", other?
2. How should the test for approval be applied in this case, including in consideration of the Board's statutory objectives in relation to gas? ***[Utilities Issues 1, 5, 6, 7 and 8]***
3. Have the applicants met the appropriate test?

REBASING DEFERRAL

4. Is deferral of rebasing appropriate in the context of this application?
5. If so:
 - (a) What is the appropriate deferral period?
 - (b) Is an earnings sharing mechanism [ESM] appropriate and if so what should that mechanism be and when should it apply? ***[Utilities Issues 3 & 4]***
 - (c) What additional considerations and requirements are appropriate to protect the interests of customers pending rebasing?
6. What commitments to future action have the utilities made during their respective 2013-2018 rate plan terms, what other rate setting issues merit attention now (including cost allocation issues), and when and how are these commitments and issues to be addressed?

IMPACTS OF THE MERGER

7. Would the proposed merger impact any other OEB policies, rules or orders (e.g. regulation of new storage, Storage and Transmission Access Rule (STAR))? If so, what are those impacts and how should the Board address them?

8. If leave is granted, what conditions should be attached?
9. What is the status of the Undertakings to the Lieutenant Governor in Council of Ontario?
10. Should the undertakings be replaced by a condition of the approval of the OEB of the proposed merger?
11. If so, what should the content of the condition be?