January 26, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2017-0306- Application by Union Gas Limited and Enbridge Gas Distribution Inc. to Amalgamate

On November 2, 2017, Enbridge Gas Distribution Inc. ("EGD") and Union Gas Limited ("Union", collectively the "Applicants") applied to the Ontario Energy Board ("OEB" or "Board") for approval under section 43 (1) of the Ontario Energy Board Act for approval to amalgamate and to defer rate rebasing for a period of 10 years. On November 23, 2017, the Applicants filed an application for a rate plan for the period 2019-2029.

On December 22, 2017, the OEB issued its Procedural Order No. 1 which made provision for an Issues Conference. At that Issues Conference on January 15, 2017, the Applicants and the Intervenors were unable to reach a consensus regarding an Issues List for the proceeding. In its Procedural Order No. 2, issued on January 16, 2018, the Board established a process for the Applicants and the Intervenors to make submissions regarding their views as to the issues relevant to this proceeding. The Applicants filed an Argument in Chief on January 19, 2017, setting out a proposed issues list. In addition, Counsel for the Industrial Gas Users' Association filed a proposed Issues List on January 17, 2018, which was supported by 14 Intervenors, as a starting point for the Board's consideration subject to any further submissions made today ("Intervenors Issues List"). These are the submissions of the Consumers Council of Canada ("Council") regarding the appropriate issues for the Board to consider in this proceeding.

The applications that the Board has before it will have long lasting impacts on the Ontario natural gas sector. Union and Enbridge serve over 3.5 million customers. The merged entity will become the dominant provider of almost all of the distribution, storage and transportation of natural gas in the Province. The applications are complex and it is important for the Board, in its consideration of these applications, not to take an unnecessarily narrow approach. There are many issues to consider, all of which will ultimately impact Ontario natural gas consumers' rates and the services provided by the Applicants. The issues list proposed by the Applicants is, from the Council's perspective far too narrow.

The Applicants have proposed an Issues List that assumes, emphatically that the Board's policies regarding Ontario electricity mergers and acquisitions automatically apply to them. Their Application is entirely premised on this view.

The Council does not accept that the Board's policies regarding the Ontario electricity sector were meant to apply to the natural gas sector. The Board's policies were developed to provide incentives for

Ontario's electric utilities to consolidate. That fact is well known. Nowhere in any of the following documents that comprise that policy is the natural gas sector referenced:

- Report of the Board, Ratemaking Associated with Distributor Consolidation (July 23, 2007)
- Report of the Board, Ratemaking Associated with Distributor Consolidation (March 26, 2015)
- Handbook to Distributor and Transmitter Consolidations (January 19, 2016).

The utilities have premised their list on the application of the "no-harm" test, which has been applied in previous proceedings and set out in the OEB's consolidation policies. It is not a test that is prescribed by the *OEB Act*. The Intervernors Issues List, does not preclude anyone, including the Applicants from arguing that the "no-harm" test should apply. However, what it does is it allows parties to propose alternatives. In this case an alternative to the "no-harm" test may be appropriate given the unique characteristics of this transaction. Alternatively, the Board may decide the "no-harm" test should be applied. Determining the test to apply now, before any of the evidence has been tested would, from the Council's perspective, be unfair and inappropriate.

The Applicant's Issues List also presumes that the electric consolidation policies apply with respect to the deferred rebasing period. The issue, as drafted by the Applicants only addresses whether the Applicants have clearly identified the specific number of years for which they have chosen to defer the rebasing. Well, yes they have. The more important questions, the Council submits are the following:

- Is deferral of rebasing appropriate in the context of this application?
- If so:
  a) What is the appropriate deferral period?
  b) Is an earnings sharing mechanism appropriate and if so, what should that mechanism be?
  c) What additional considerations and requirements are appropriate to protect the interests of customers pending rebasing?

These have all been included on the Intervenors Issues List. In this case parties may want to suggest that a 10-year deferral may not be appropriate. In the original July 2007 Report the Board established that merged entities could defer rebasing for up to 5 years in order to retaining any savings generated through efficiencies to offset the transaction costs and transition costs associated with the merger. This was extended to 10 years in the March 2015 Report. The rationale for the 10-year period was to provide more time to offset the transition and transaction costs and encourage consolidation in the electricity sector. Union and Enbridge do not need incentives to merge. They are currently owned by the same parent and have begun to merge activities and operations.

Under the Applicants' proposal rebasing would be deferred for 10 years, which in this case would be 2029. Current rates for Enbridge are based on its 2013 rate proposal (EB-2011-0354). That application was filed on January 31, 2012. This means that under the Applicant's proposal, 2028 rates would be based on forecasts undertaken in 2011. Given this scenario some parties may want to argue for an earlier rebasing. The underlying cost structures of the Applicants are very different today than they were in 2011. The underlying cost allocations may no longer be appropriate (as was raised in the recent Union Panhandle proceeding). The cost structures will be even more different in 2028. The natural gas sector has changed considerablly since 2011 and will continue to change over the next 10 years. Again,

the Applicants and others are free to argue for a 10-year deferral period, but under the Intervenor's proposals alternatives can be considered.

With respect the earnings sharing mechanism (ESM), the Applicants are tying the issue to the electricity consolidation policy. The Council submits that parties should be free to argue for alternative ESM structures. Rather than waiting until year 6, an earlier ESM might be appropriate and more balanced. In addition, parties may want to argue for alternative models – ones more consistent with those currently in place for Union and Enbridge.

The Council submits that the Board should, in the context of this Application, consider alternatives as to what test should be applied in assessing the merits of the proposals. The Board should also allow for a consideration of alternatives regarding rebasing and an ESM. Adoption by the Board of the Intervenor Issues List would allow for this. The Intervenor Issues List also allows for the consideration of the following other issues:

- What commitments to future actions have Enbridge and Union made during their respective rate plans; what other rate setting issues merit attention now (including cost allocation issues), and when and how are these commitments and issues to be addressed;
- Would the proposed merger impact any other OEB policies?; and
- If leave is granted, what conditions should be attached?

From the Council's perspective, these are all important and relevant to this Application.

At the end of the day the Applicants are free to argue that the electricity consolidation policy should be applied in their case. However, the Council urges the Board not to pre-empt parties from putting forward alternative approaches to the issues relevant to a consideration of the Application. In approving an Issues List the Board is not determining the issues at this time, it is simply providing the scope of the issues. The Council submits that the Board should adopt the Intervenor's Issues List for this proceeding. This will allow for a fair and balanced consideration of the merger Application.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All Parties