

# MICHAEL R. BUONAGURO

Barrister and Solicitor

24 HUMBER TRAIL  
TORONTO, ONTARIO, M6S 4C1  
P: (416) 767-1666  
F: (416) 767-1666  
EMAIL: [mrb@mrb-law.com](mailto:mrb@mrb-law.com)

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January 26, 2018

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
26<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON  
M4P 1E4

DELIVERED BY EMAIL

Dear Ms. Walli,

**RE: EB-2017-0306 Enbridge Gas Distribution Inc. and Union Gas Limited -  
Application for Amalgamation-Issues List Submissions-OGVG**

These are the submissions on behalf of the Ontario Vegetable Greenhouse Growers (“OGVG”) with respect to the appropriate Issues List to be approved by the Board in this proceeding.

The Board will have received a proposed Draft Issues List from IGUA on January 17, 2018 (the “Intervenor List”). OGVG notes that it was listed as one of the intervenors supporting the Intervenor List as an appropriate model for this proceeding. OGVG continues to be supportive of the Intervenor List as an appropriate way to define and organize the issues in this proceeding.

OGVG is aware that the Board will be receiving several submissions in support of the Intervenor List. To the extent those submissions support the scope of the Intervenor List (as opposed to any submissions as to how any of the proposed issues on that list should be resolved) OGVG relies on those submissions. In OGVG’s respectful submission the Intervenor List properly captures the scope and nature of the various issues that the Board should resolve in the course of deciding on the ultimate question in this proceeding: should EGD and Union be granted leave to merge, and what, if any, conditions should be imposed as part of that leave, given the Board’s objectives with respect to natural gas under the OEB Act.

In light of the number and breadth of submissions in support of the Intervenor List that OGVG expects the Board will receive, OGVG will limit its submissions to a consideration of the Applicants’ reliance on the Board’s decision in EB-2016-0025 with respect to the proper scope of the issues before the Board.

In its Argument in Chief with respect to the Issues List in this proceeding, the Applicants rely on the form and content of the Issues List in EB-2016-0025:

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") 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.<sup>1</sup>

OGVG notes that in its decision approving the Issues List in EB-2016-0025, the Board addresses a submission requesting a separate issue requiring the Board to determine whether its policies with respect to distributor consolidation should be applied. The Board rejected that proposed issue as unnecessary, confirming that the issue of the extent to which and the manner in which its policies are applied is always determined based on the specifics of the applications before it:

With respect to SEC's argument that the OEB is legally obligated to put its mind to whether or not policies relating to distributor consolidation should be applied, the OEB observes that the extent to which and the manner in which its policies are applied is always determined based on the specifics of the applications before it. The OEB does not in assessing applications require a specific issue regarding the applicability of the OEB's policies. The OEB sees no reason to depart from this approach in this case.<sup>2</sup> (emphasis added)

In short, OGVG respectfully submits, and with respect to the specifics of this case, whether and how the Board's consolidation policy should be applied to the proposed merger between EGD and Union is, of course, a live issue. While it may be the case that the Board ultimately decides that some or all of the elements of the Board's existing consolidation policy should apply, the Board can only make that decision after considering the decidedly unique specifics of the application before it.

OGVG recognizes that in EB-2016-0025, notwithstanding the Board's specific finding that the applicability of its policies is always a live issue, the Board did not adjust the draft issues list. OGVG cannot know with certainty why that was the case, other than to point out that the issue with respect to the applicability of Board policy was presented to the Board as a potential addition of a single issue to an existing issues list, as opposed to a reimagining of the Issues List from scratch that ensured that the nature of the live issue was properly reflected throughout the draft.

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<sup>1</sup> AIC, Applicants, paragraph 18.

<sup>2</sup> EB-2016-0025, Decision on Issues List, June 30, 2016, page 5.

The failure to redraft the Issues List in EB-2016-0025 to reflect the Board's finding that the applicability of the Board's policies is always a live issue is perhaps, OGVG respectfully submits, the reason the Applicants treat the applicability of the Board's policies with respect to electricity distributor consolidation as having been pre-determined.

With respect to the appropriate test to apply with respect to the proposed merger, the Applicants take the position that the Board's existing policies are beyond reproach, and that, despite the fact that the evidence in support of their application has yet to be tested, and despite having yet to receive argument as to the appropriateness of other tests that may be applied in conjunction with the unique circumstances of this case, the Board's policies should be strictly applied:

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.<sup>3</sup>

Similarly, with respect to the issue of the appropriateness of the requested rebasing deferral period, the Applicants simply dismiss the notion that anything other than the Board's existing policies might apply, rather than acknowledge, as the Board has, that the applicability of the Board's existing policies is dependant on a review of the circumstances in each application before it:

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.<sup>4</sup>

OGVG respectfully submits that, in light of:

- a) the Board's comments in EB-2016-0025 acknowledging that, even in the circumstances of the merger of electricity distributors as specifically contemplated by the Board's merger policies, the issue of the applicability of those policies remained an open issue, and

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<sup>3</sup> AIC, Applicants, paragraph 33.

<sup>4</sup> AIC, Applicants, paragraph 38.

- b) the unique aspects of the proposed merger between Union and EGD, including:
- i) the fact that EGD and Union are natural gas, rather than electricity distributors,
  - ii) the fact that in combination EGD and Union will serve as the natural gas distributor to almost the entire province, and
  - iii) the fact that the combination of EGD and Union will serve as a dominant force in both the transmission and storage of natural gas in Ontario, expanding the scope of affected customers well beyond their own distribution customers,

the Board should ensure that it approves a sufficiently robust Issues List so as to properly consider the proposed application for leave under s. 43 of the OEB Act, without prejudging the applicability of existing Board policy with respect to electricity distributor consolidations.

In OGVG's view, the proposed Intervenor List filed by IGUA is an appropriately constructed Issues List in light of the appropriate scope of this proceeding. It not only allows for exploration and consideration of all the Applicants' positions as set out in their Application, it also properly recognizes the possibility that approaches to the merger other than an approach based strictly on the Board's Handbook to Electricity Distributor and Transmitter Consolidations may be warranted in the undeniably unique circumstances of this proceeding, both in terms of the nature of the potentially merging utilities and the sheer magnitude of the resulting entity.

For all these reasons OGVG respectfully submits the Board approve the Intervenor List as the Issues List for this proceeding.

Yours very truly,



Michael R. Buonaguro