

ONTARIO ENERGY BOARD

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

Comments on the Proposed Issues List

Vulnerable Energy Consumers Coalition  
(VECC)

26 January 2018

---

**Ben Segel-Brown, Counsel for  
Vulnerable Energy Consumers Coalition**

**Public Interest Advocacy Centre:**  
1 Nicholas Street, Suite 1204  
Ottawa, ON K1N 7B7  
613-562-4002  
[piac@piac.ca](mailto:piac@piac.ca)

**Direct:**  
[bsegel-brown@piac.ca](mailto:bsegel-brown@piac.ca)  
613-864-6322

## 1.0 Introduction

---

1. VECC supports the Proposed Issues List of the Intervenors (January 17, 2018). We have also reviewed the submissions of the School Energy Coalition and support their arguments.
2. The heart of the disagreement between the Intervenors and the Applicant is whether the policy set out in Board's Handbook to Electricity Distributor and Transmitter Consolidations can be applied to proposed merger without considering whether that approach is applicable or appropriate. In VECC's opinion:
  - a) The Board should consider whether the "no harm" test is appropriate and how it should be applied
  - b) The Board should consider whether the Applicant should be allowed the full 10 year deferral of rebasing available under the Board's "Handbook to Electricity Distributor and Transmitter Consolidations"

## 2.0 The Board should consider whether its policies regarding electricity distributor and transmitter consolidations are applicable and appropriate

---

3. In this proceeding, the key issue is the applicability and appropriateness of the policy set out in the Board's "Handbook to Electricity Distributor and Transmitter Consolidations" to a merger between two affiliated gas utilities. The Applicant argues that they do apply, with reference to the similarity between the two legislative regimes and the Board's commitment to certain fundamental principles in both electricity and gas regulation.
4. VECC submits that the Board's guidelines were designed to promote consolidation with the particular structure of Ontario's electricity distribution and transmission markets in mind. As a result, the Board must consider whether the Board policy regarding electricity distributor and transmitter consolidations apply to the gas distribution sector, and whether those policies are appropriate in the particular circumstances of this merger.
5. There is nothing in Board's "Handbook to Electricity Distributor and Transmitter Consolidations" that indicates it was meant to apply to natural gas. The policy set out in that handbook is explicitly intended to promote consolidation in the electricity distribution and transmission sectors. It is premised on three reports which advised a reduction in the number of local distribution companies, all of which made that recommendation solely in relation to the large number of local distribution companies in the electricity sector – a feature not present in the

natural gas sector.<sup>1</sup> In addition to supposed cost-efficiencies from economies of scale, the policy also favoured consolidation to allow distributors respond to emerging challenge in electricity distribution, including the implementation of a smart grid and promotion of the generation of electricity from renewable energy sources. These considerations do not apply to the natural gas sector, so it should not be assumed that the same low standard (“no harm”) and high benefits (10 year deferral of rebasing) should apply.

6. VECC acknowledges that the principles Board’s Renewed Regulatory Framework apply to both the electricity and gas sector. However much lies between “principles” and “practice”. The RRF principles are:
  - a) Customer Focus,
  - b) Operational Effectiveness,
  - c) Public Policy Responsiveness, and
  - d) Financial Performance<sup>2</sup>
7. Broadly speaking these principles have evolved to an emphasis in rate making on customer engagement (usually in for form of Utility surveys), the introduction of benchmarking (both external and internal) and the application of performance based rate making techniques(as opposed to cost of service).
8. To be internally consistent it is clear the Board should strive to have all its policies - both gas and electric - be consistent with the RRF broad principles. However, it does not follow that all RRF policies apply to both gas and electricity. Surely the Applicants are not striving to meet the Board’s policies as set out in the Regional Planning for Electricity Infrastructure. Might we enquire how Enbridge has applied the Board’s policies put forth in the Approaches to Migration for Electricity Transmitters and Distributors? These policies, set out on the Board’s website under RRF initiatives, are no more applicable to the Enbridge or Union then are the STAR rules for storage and transportation applicable to electricity distributors.
9. If that is the case then how does one determine what policies which incorporate the practical applications of these broad principles? Well the clearest way is when the Board explicitly says so. The Board’s EB-2014-0138 Report on Rate-Making Associated with Distributor Consolidation (March 26, 2015). The Handbook to Electricity Distributor and Transmitter Consolidations, (January 19, 2016) in addition to having the name in its title contains the word “electricity” 33 times in its 32 pages. The word gas? Not once.

---

<sup>1</sup> [https://www.oeb.ca/oeb/\\_Documents/Regulatory/OEB\\_Handbook\\_Consolidation.pdf](https://www.oeb.ca/oeb/_Documents/Regulatory/OEB_Handbook_Consolidation.pdf) at 1; <https://www.fin.gov.on.ca/en/reformcommission/chapters/ch12.html> at Recommendation 12-13; <http://www.energy.gov.on.ca/en/ldc-panel/#j> at Chapter 6; <https://www.ontario.ca/page/initial-report-premiers-advisory-council-government-assets#section-4> at Distribution.

<sup>2</sup> While these principles are in the original RRF Report they were most recently reiterated in the Handbook for Utility Rate Applications, October 13, 2016.

10. The other way to determine whether any specific policy applies to both electricity and natural gas is to look to its genesis. Why does the policy exist? Take for example the Report of the Board on the Cost of Capital for Ontario's Regulated Utilities (December 11, 2009). This policy, which names both electricity and natural gas sectors, explicitly outlines the commonality of the issues in establishing cost of capital when setting rates.
11. Viewed through that test what does the MAADs policy provide as its setting? The recent history of the electricity distribution sector is much different than natural gas. While there have been a limited number of natural gas consolidations – the largest being Centra Gas with Union Gas – the sector in scale is very dissimilar to electricity. When the Board began regulating electricity distributors beginning around 2000 it faced the daunting task of setting just and reasonable rates for over 300 electricity distributors organized and owned on a public municipal basis. It is clear that in electricity the Board has always found at least some consolidation beneficial and if for no other reason that the sheer difficulty of regulating a large number of utilities. However, for other reasons the Government of Ontario also signalled its desire to see the number of electric utilities to shrink. The Board has a number of times outline these concerns, most recently in the Handbook to Electricity and Transmitter Consolidation where it said<sup>3</sup>:

*The Commission on the Reform of Ontario's Public Services, the Distribution Sector Review Panel and the Premiers Advisory Council on Government Assets have all recommended a reduction in the number of local distribution companies in Ontario and have endorsed consolidation. According to these reports, consolidation can increase efficiency in the electricity distribution sector through the creation of economies of scale and/or contiguity. Consolidation permits a larger scale of operation with the result that customers can be served at a lower per customer cost. Consolidations that eliminate geographical boundaries between distribution areas result in a more efficient distribution system.*

12. These comments were made exclusively with respect to electricity distributors. The Board must consider whether that policy is applicable outside of that sector. In a sector operating at below an efficient scale, they would support consolidation. In a sector which has reached or exceeded an efficient scale of operation, they would not. In VECC's view, the different structures of the electricity and gas sectors necessitate different approaches.
13. Even if the Board is of the opinion that its policies regarding electricity distribution and transmission mergers are applicable, it should consider whether it is appropriate to apply them in the circumstances of this case. There is no evidence that amalgamation in any way adds value or reduces costs. The Board as an economic regulator should, in our view, rely on evidence, not adages to determine its policies. And we are concerned that there has never been a government policy which directs the Board (as had been the case in the installation of smart

---

<sup>3</sup> Handbook to Electricity and Transmitter Consolidation, page 1

meters) to do what might ultimately be an exercise with a net cost to ratepayers. In our view the Board's current electricity MAADs policy does an injustice to ratepayers by excluding them from any potential benefit for a period of 10 years. This leaves ratepayers to underpin the risk of an amalgamation but without the possibility of benefit for an extended period.

14. Having jumped to the premise that the Board's electricity consolidation policy applies to natural gas the Applicants explains that its entire application is built upon that foundation the implication that to depart would be disastrous. VECC disagrees. Should the Board decide to adapt the "Handbook to Electricity Distributor and Transmitter Consolidations", for example by considering how long to defer rebasing, the applicant will still have ample opportunity to submit arguments and evidence regarding those issues. The basis upon which the Applicants have filed their application is not a relevant consideration for the Board in determining the standard to which the Board will hold that application.

### 3.0 Scope of the "no harm" test

---

15. The *Ontario Energy Board Act* does not specify the test which applies to mergers. Rather, it simply requires Board approval for mergers and assumes that the Board will exercise that power in a manner consistent with the policy objectives.<sup>4</sup>
16. The Board has traditionally used a "no harm" test for considering mergers.<sup>5</sup> This is a very lax test intended to encourage consolidation. The policy of encouraging consolidation is premised on the anticipated economies of scale arising from consolidation in the electricity distribution and transmission sectors.
17. Other regulators apply much stricter standards to mergers. For example, when considering whether to approve the license transfer required for a broadcasting merger, the Canadian Radio-television and Telecommunications Commission considers whether the application "is the best possible proposal and that approval is in the public interest, consistent with the overall objectives of the Broadcasting Act."<sup>6</sup> The "tangible benefits" paid under this policy have contributed hundreds of millions to the creation of Canadian content.<sup>7</sup>
18. Even within the "do no harm test", there is significant scope for interpretation regarding what the test requires. For example, it is sometimes suggested that no harm exists if the cost of combining two entities have costs no greater than the sum of the parts. We think this is not necessarily true, since customers pay rates not the costs. In VECC's opinion, there is harm to

---

<sup>4</sup> S 43 and S 2.

<sup>5</sup> The most recent Board Decision being EPCOR-NRG EB-2016-0351

<sup>6</sup> <https://www.crtc.gc.ca/eng/archive/2014/2014-459.htm>

<sup>7</sup> <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2017/cmr4.htm#s43ix>

consumers if cost-efficiencies which have already been realized through affiliation are not passed on to consumers for another decade due to a merger and resultant deferral of rebasing. In our view, the merger is doing harm by delaying the realization of price reductions for consumers even if the merger does not increase the merging entities' costs.

19. The broadness of the no harm test is for us encompassed as well under the issues on the Intervenor list titled "Impacts of the Merger." In our view a unique issue in this case arise out of the fact that Union Gas is both a transmitter of natural gas and major natural gas storage owner. It proposes to amalgamate with the only other Ontario natural gas utility with large storage assets. This proposal therefore raises questions about the Board's prior premise of competition as an alternative to regulation for these assets. The Board has a broad public interest mandate with respect to natural gas (and electricity).

#### 4.0 Rebasing – Cost of Service, Cost Allocation and Rate Design

---

20. As noted above, VECC believes that the Board should consider whether the deferral of rebasing for up to 10 years available under the Board's Handbook to Electricity and Transmitter Consolidation applies to gas mergers and is appropriate in the particular circumstances of the applicant. VECC submits that the deferral of rebasing is an incentive for electricity distribution and transmissions mergers, motivated by a perception the existing scale of distributors is inefficiently small. VECC submits that that incentive does not apply, and is not appropriate, in the gas distribution sector.
21. As noted in the Interveners list a number of issues related to the issue of rebasing remain on the list as does the issue of an earning sharing mechanism. We struggle with having what are quasi rate issues on the proceeding to determine an amalgamation. This is because it seems to us that such matters are inextricably linked with the rate plan that follows. Put simply one's view of what constitutes a good earning sharing mechanism must to some extent be informed by one's view of how the rates are set annually. At its simplest a utility with annual cost of service has little need for an ESM. Nevertheless we believe that matter also goes to the heart of a "no harm" or "net benefit" test used to judge the entire transaction.
22. We would also like to clarify one aspect of the intervenor list. That is in the term "rebasing." This is a term, largely imported from the MAADs framework conflates three separate and distinct exercises: cost of service, cost allocation and rate design. When the term "rebasing" is used VECC takes it to mean all three but separately. That is it is possible to argue that harm might exist to customers if no cost allocation is completed even no cost of service or review of rate design is undertaken. Likewise the issue of rate design in such cases usually gets conflated with the issue of rate harmonization. Again, the harmonization of rate or not is an issue but not one to be confused with the issue of how existing rate design if left unattended for a prolonged

period of time might lead to unjust and unequitable rates. Any of which can be done separately and at different times<sup>8</sup>.

## 5.0 Summary

---

23. In our submission the joint intervenor list provides the broadest and most comprehensive view of the issues before the Board. The Applicants have attempted to circumvent the very basis of the test to be used of consider the amalgamation by importing electricity polices which patently do not apply and are not appropriate.

## 6.0 Costs Incurred

---

24. VECC respectfully submits that it has acted responsibly and efficiently in this stage of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

---

<sup>8</sup> The Board may wish to consider the case of FortisBC Energy Inc. Project 369889 before the British Columbia Utilities Commission in which a cost allocation and rate design application is being applied to rates based on a cost of service exercise completed years earlier.