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Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
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DELIVERED BY EMAIL

Dear Ms. Walli,

**RE: EB-2017-0307 Enbridge Gas Distribution Inc. and Union Gas Limited
– Rates Application-Submissions on behalf of OGVG**

These are the submissions on behalf of the Ontario Greenhouse Vegetable 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 23, 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: how rates for the Applicants should be set in the context of an approved merger between EGD and Union.

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’ specific opposition to a number of issues in the Intervenor List on the grounds that those issues should not be considered by the Board in this proceeding at all (the Applicants’ argument in chief refers to these

issues as “Contested Issues”), as well as a short submission on the interrelated nature of the within Rates application with the (currently) separate MAADs application in EB-2018-0306.

CONTESTED ISSUES

In general it appears that the Applicants oppose the inclusion of the Contested Issues on the basis that existing Board policies govern the ultimate resolution of those issues, such that it would inappropriate for the Board to entertain in this specific case deviations from those policies:

The Applicants submit that considerable time, effort and resources have gone into the development of the Board’s policies for rate-making and for utility consolidations. The rate-making and consolidation policies come together as an inter- related and integrated package to guide applications just like this one. The intervenors who have put forward the Intervenor Proposal, however, seek to sweep all of this aside and to set the Board out on a reconsideration of many aspects of Board policy.

There is no legitimate basis for the Issues List in this case to set the Board out on a reconsideration of its rate-making and consolidation policies. Further, it is both inefficient and impractical to reopen and re-examine the Board’s policies in an individual case when no good reason has been brought forward for doing so.¹

With respect to the assertion that Board should simply apply Board policies and prevent, *ab initio*, the consideration of alternative rate making proposals, OGVG notes, as it did in its submissions in the EB-2017-0306 proceeding, that in its decision approving the Issues List in EB-2016-0025 the Board addressed 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.² (emphasis added)

¹ AIC, Applicants, paragraphs 38 and 39.

² EB-2016-0025, Decision on Issues List, June 30. 2016, page 5.

In short, OGVG respectfully submits, and with respect to the specifics of this case, whether and how the Board's rate making policies should be applied to the proposed merger between EGD and Union is, of course, a live issue.

OGVG notes that in their submissions it appears that the Applicants are wilfully blind to the sheer magnitude and unique scope of the proposed consolidated entity, including, as we expect many other intervenors will detail, the number of customers that will be served by the new entity and the potential impacts the new entity will have on the transmission and storage of natural gas in Ontario. OGVG respectfully submits that the Board should recognize the "one of a kind" nature of the proposed merger in the context of Ontario's regulatory regime, and that that nature is a "good reason" for a careful examination of alternatives outside the Board's existing policies with respect to rate making options, assuming the Board approves the proposed merger.

While it may be the case that the Board ultimately decides that some or all of the elements of the Board's existing policies should apply, OGVG respectfully submits that the Board can only responsibly make that decision after considering the decidedly unique specifics of the application before it.

INTERRELATED NATURE OF PROCEEDINGS

The Applicants appear confused about the proposed intervenor issue that leaves open the question as to whether the Board's decision in this "Rates" proceeding may require the Board to re-visit findings in the "MAADs" proceeding:

For example, Issue A.4 in the Intervenor Proposal asks whether determinations requested in the merger application will have to be reconsidered in light of the Board's determinations on the appropriate rate framework. Subject to further explanation of this proposed issue in intervenor submissions, the Applicants find it inconceivable that the Board will make determinations in respect of the merger application and then reconsider those determinations in its conclusions with respect to this application.³

In OGVG's respectful submission, the inclusion of this issue highlights the notion that the two applications should be considered at the same time in the same proceeding, rather than (as it appears is currently the case) separately. One example of why that is the case, OGVG respectfully submits, is the likely consideration of an ESM in the context of both the MAADs application and again in the Rates application.

The Applicants have proposed an ESM in the context of their MAADs application, with the ESM to operate from years 6-10 of their proposed 10 year deferral period with 50/50 sharing of profits in excess of 300 basis points. At the same time,

³ AIC, Applicants, paragraph 42.

OGVG expects, the Intervenor and the Board are likely to explore the appropriateness of an ESM for either or both of EGD and Union's rates as part of the Rate setting application, particularly in light of the fact that an ESM has been an essential feature of the rate setting mechanism for natural gas utilities since 2008, a span of 10 years, even in the absence of a merger as the impetus for the ESM. By way of example, the Board's Decision in EB-2007-0606 established an ESM with 50/50 sharing of profits in excess of 200 basis points for Union between 2008 and 2012, and the Board's Decision in EB-2013-0202 established an ESM with 50/50 sharing of profits in excess of 100 basis points, and 90/10 sharing (in favour of customers) of profits in excess of 200 basis points for Union between 2014 and 2018.

In OGVG's view it may not be appropriate for the Board to, for example, establish an ESM in the MAADs application to share overearnings with customers, ostensibly in relation to efficiencies caused by the merger, and then (possibly) approve an ESM in the context of the rate setting application to share overearnings with customers in a proportion higher than what is contemplated by the MAADs related ESM proposal in order to capture overearnings not necessarily related to efficiencies caused by the merger, without revisiting the merger related ESM to ensure that it remains appropriate. In OGVG's submissions this example illustrates both why it may be necessary to revisit aspects of the MAADs decision, and why it may be more efficient to consider and decide both the MAADs application and the Rates application at the same time in order to avoid the need for such reconsideration.

SUMMARY

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 rate setting in the context of the proposed merger other than an approach based strictly on existing Board policies 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,

A handwritten signature in blue ink, appearing to read 'M. Buonaguro', with a stylized, cursive script.

Michael R. Buonaguro