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**VIA RESS, EMAIL & COURIER**

Ontario Energy Board  
2300 Yonge Street  
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Toronto, Ontario  
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Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: EB-2017-0307: Union Gas Limited and Enbridge Gas Distribution Inc. (collectively, the "applicants"), Rate Setting Mechanism**

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Comments on the Intervenor's Proposed Issues List

BOMA is writing to provide its comments on the intervenors' Proposed Issues List for EB-2017-0307.

Issue A.1

*"If the Board grants the Applicants' request for approval of a merger, what rate making framework (the "Framework") should be used to set rates during the deferred period? (An IRM formula, a Custom IR plan, or another rate setting mechanism?)"*

This issue addresses the ratemaking framework that should be established for the merged utility in the event the Board were to approve the proposed merger. It is drafted in general enough terms that parties may argue for a variety of methods, including a fourth generation IRM (IRM formula), a custom IR plan, or some other method. It also permits parties to make proposals for the duration of the new rate plan, and whether, for example, current rates should be extended for a year in order for the applicant to further prepare or refine the framework which the Board endorses. There would, of course, be a need for new rate framework for the applicants, whether or not the Board approves the merger.

#### Issue A.2

*"How should the Framework:*

- (a) Include incentives for sustainable efficiency improvements?*
- (b) Allocate the benefit of those efficiency improvements as between the utility and customers?*
- (c) Ensure appropriate quality of service?*
- (d) Create an environment that is conducive to investment in utility infrastructure?"*

Issue A.2(a), (b), (c), and (d) allows the parties to argue, and the Board to determine, whether or not the applicants' proposed rate framework or any alternative rate framework the parties propose is compliant with the substance of the Board's RRF, as set out in the Handbook for Utility Rate Applications, October 13, 2016 (the "Handbook"). Compliance depends on many factors, including whether the rate framework provides for continuous improvements in efficiency and productivity, whether benefits of those improvements are fairly shared between the gas utility and its ratepayers, whether that the utility will provide a high level of customer service, and whether the utility will continue to make the necessary capital expenditures and maintenance programs that are necessary to maintain a sound infrastructure. The Board should also ensure that any specific rate proposals reflect stated customers' needs and preferences. In other words, is the ratemaking framework outcomes-oriented.

Issue A.3

*"If the Framework is an IRM formula:*

- (a) Should it be a rate cap or a revenue cap?*
- (b) What is the appropriate inflation factor [I]? [1]*
- (c) What is the appropriate productivity factor [X]? [2]*
- (d) Should there be a productivity stretch expectation and if so what should it be?*
- (e) Should there be pass through (Y factor) treatment for: [3]*
  - (i) Gas commodity and upstream transportation costs?*
  - (ii) Demand side management (DSM) costs?*
  - (iii) A lost revenue adjustment mechanism (LRAM) for the contract market?*
  - (iv) Cap-and-trade costs?*
  - (v) Changes to normalized average consumption/average use?*
  - (vi) Other factors?*
- (f) Should there be a Z factor, and if so what are the appropriate parameters and materiality threshold? [4]*
- (g) Should there be an earnings sharing mechanism and if so what are the appropriate parameters?*
- (h) Should capital module (ICM & ACM) mechanisms be available, and if so under what parameters?"*

Proposed Issue A.3 identifies the questions that need to be asked about the characteristics of an IRM plan, including the (inflation-productivity factor) formula, in the event the Board were to decide that an IRM rate-setting approach is appropriate.

Subsections (a) through (h) raise the questions that are necessary to decide the nature of any IRM program, including the formula and pass-through items, and whether there should be a Z-factor.

These questions are related to Issue A.2, as the answer to some questions will determine the degree to which the resulting rates framework is outcome-based, and has the characteristics outlined in Issue A.2. Some of the sub-issues of Issue A.3 deal with the same topics as some issues in the applicants' Proposed Issues List, but the intervenors' version of the issues is phrased in a more neutral, less prescriptive (biased), manner. These instances are noted in the square brackets following the issue in the intervenors' List. The numbers inside the brackets are the counterpart issues on the applicant's Proposed Issues List.

Issue A.3(h) is of particular interest, given the fact that large ICM/ACM proposals carry the risk of effectively changing the chosen rates framework. For example, large ICM/ACMs may transform an IRM framework into more of a custom IR framework.

#### Issue A.4

*"Are there determinations requested in the merger approval application which will have to be reconsidered in light of the Board's determinations on the appropriate rate framework to be applied post-merger (e.g. deferred period, earnings sharing parameters, other), and how should the Board address these in its determinations on each of the two applications?"*

Issue A.4 underlines the close relationship between the two applications, and allows parties to make suggestions on how to make the required connection between the merger proposal and the rates proposal, notwithstanding that they are the subject of separate proceedings.

#### Issues A.6 and A.7

- "6. How should gas cost, gas transportation and related delivery rate adjustments be made post-merger, and what process should be required for such adjustments to be made?"*
- 7. What are the implications of the merger for gas supply planning and costing and how will any changes impact cost allocation and rates?"*

These issues recognize that the parties will wish to address and the Board will wish to determine what the implications for having one large gas utility instead of two separate utilities, on gas storage (the merged entity will have a virtual monopoly on the supply of regulated and

unregulated Ontario-based, gas storage), as well as gas transportation arrangements and costs, and related delivery rate adjustments, and for residential and small commercial customers' gas commodity costs, and through what process the adjustments will be made. Moreover, the impact of the merger on gas supply planning, costing, and acquisition, should be addressed.

#### Issue A.8

*"What should the annual rate adjustment process be?"*

Issue 8 recognizes that, regardless of the type of rate framework chosen, the Board should have submissions on what the annual rate adjustment will be. BOMA also endorses the submissions of OAPPA on this issue, Issue A.5, and Issue C.1.

#### Issue B – Setting 2019 Rates

- "1. Given the timing, prior commitments and determination of the appropriate rate setting mechanism, how should rates be set for 2019?"*
- 2. What adjustments, if any, are appropriate in setting 2019 rates, including:*
  - (a) Adjustments to costs? [5] [6] [Addendum filed 2018-01-11]*
  - (b) Adjustments to revenues?*
  - (c) Adjustments to cost allocations?*
  - (d) Adjustments to rates?*
  - (e) Other adjustments?"*

Issues B.1 and B.2 deal with how 2019 rates should be set. In 2018, each of Union and Enbridge is in the last year of a five-year IRM program and custom IR program, respectively. Their last cost of service rate cases were held in 2013. But for the proposed merger, each of Union and Enbridge would likely be proposing a cost of service rate case to be followed by a five-year IRM or a custom IR proposal with year one effectively a cost of service year.

In addition, Union and Enbridge have outstanding commitments taken on either during the IRM and custom IR program years, or in leave to construct cases, such as EB-2017-0086. Moreover,

in its EB-2017-0087 decision on Union's 2018 rates, the Board, in turning down IGUA's request for what was effectively a cost allocation change, stated that the required changes should be made as part of an overall cost allocation study. Such a study would often be done as part of a cost of service proposal. In that decision, the Board stated:

*"The OEB will not provide for interim rates associated with Panhandle Project costs. The issue of the allocation of these costs on a going-forward basis to Union rate classes will be dealt with in Union's 2019 rates proceeding as provided by the OEB decision in the Panhandle leave to construct decision".*

And,

*"The OEB is of the view that any change to the existing cost allocation model should be done with the assistance of a comprehensive system-wide full cost allocation study. Cost allocation is a zero sum exercise. A full study ensures that all changes to facilities, operations and use in the transmission system since the development of the previous cost allocation model are recognized across all customer classes. This form of study provides that positive and negative changes in costs throughout the system are accounted for. A finding that current rates are inequitable because of the underlying allocation of costs for one project could introduce other inequalities by an incomplete analysis of the changing cost impacts on customers. Equitable cost causality is only possible with a full study. The OEB will not vary the Panhandle leave to construct decision that declined to change the cost allocation methodology for Panhandle Project costs and directed that any change should be considered in the next Union rates proceeding. Consistency in OEB decisions is important to regulatory clarity and predictability."*

In BOMA's view, the Board should address this matter in its rates submission for 2019. The issue is whether to do so in 2019, or at some other time.

The fact that the Board has stated that the revision to the cost allocation of Panhandle reinforcement project costs should be done in Union's 2019 rates application, and that cost allocation changes should not be done piecemeal, but part of a comprehensive cost allocation exercise, suggests that a comprehensive cost allocation for Union should be part of Union's 2019 rates application. Following the merger, cost allocation would presumably be for the whole of the merged entity, but could be for Union alone, depending on the decision on rate consolidation.

The current cost allocation, rate design, and cost structure of the applicants are based on facilities, operation, and use of utility infrastructure as of 2012. If the applicants' proposal to not

hold a cost of service hearing until 2029 were accepted, that cost allocation would be fifteen years old. One issue is whether that result is appropriate.

Parties will want to explain the nature of the adjustments that need to be made in 2019 rates to reflect difference in several factors.

#### Issue C.14

*"Should rates/conditions of service be harmonized, and if so when and how?"*

This issue is proposed so that parties and the Board can examine and determine cost allocation and rates design in a manner consistent with basic regulatory principles, for example, that cost allocation be comprehensive rather than adhoc (see B.1 above), and that rate design changes and changes to service offerings be made in a coherent fashion, to allow customers to plan and budget their energy costs.

#### Issue C.15

*"How should past Board directives and utility commitments be addressed (including those listed at ExB/T1/Att5) of the applicants' evidence?"*

This issue is to allow parties to examine and the Board to determine when the commitments made to the Board, and the Board's directions to the applicants over the terms of their respective five-year incentive rate plans should be fulfilled.

Comments on the applicants' "Argument in Chief" on the Issues List in EB-2017-0307 proceeding, filed January 26, 2018

#### General

The applicants' comments on their Revised Draft Issues List is in good part a repeat of their comments in their January 26, 2018 submission, save for replacing the word "linkages" with "inter-relate" to describe the "guidance" provided by various Board documents. However, the inter-relationships that the applicants' purport to find are fictional. BOMA refers the Board to BOMA's January 24, 2018 submission, especially pp 3 to 6, which deal with how these

documents apply, or not, to the transaction before the Board. Given that Enbridge also has a right of reply in both cases, BOMA expects to hear the argument about "guidance" from these documents twice more in almost identical terms. However, constant repetition of a proposal does not make it right. The argument is simply incorrect, and will remain so, no matter how many times it is repeated and how many different ways Enbridge can think of to indicate the contrived relationship among the documents and the "guidance" they provide.

To summarize, the Board's Handbook to Electricity Distributor and Transmitter Consolidation is about electricity mergers, and does not apply to gas company mergers. The Rate Handbook for Utility Rate Applications (the "Handbook"), on the other hand, applies to gas and electric utilities.

The Handbook for Utility Rate Applications has several Appendices, one of which is Appendix 3, entitled Rate Setting Policies, which deals with, for example, the accounting regimes the utilities must use in the course of rate-making. Under the heading "Rate-Setting Policies for Consolidation", the Handbook simply refers the readers to the Board's 2007 and 2015 Merger Policy Reports.

#### New Issues Proposed by Applicants

The applicants then propose to add two issues to the List, linked to their addendum evidence. "Is the proposed adjustment to EGD's Pension and OPEB costs appropriate" (Issue 9), and "Is the proposed adjustment to reflect the removal of EGD's tax reduction associated with the discontinued SRC referral appropriate" (Issue 10).

BOMA supports the addition of these two issues.

#### Applicants' Revised Issues List

In addition, the applicants submitted a Revised Draft Issues List which contains some modifications to the Draft Issues List filed as part of their Application.



For example, Section 5 of the Revised Draft Issues List deals with the OEB's ICM policy, but in a manner that assumes that the ICM modules policy will be available to the applicants in this proceeding, by focusing only on the method by which materiality should be calculated, by prescribing a particular method favourable to the applicants. The intervenors' Issues List, on the other hand, poses the more neutral question (3(k)), "Should capital module (ICM and ACM) programs be available and, if so, under what parameters".

Second, Issues 14, 15, and 16, dealing with reporting, stakeholder engagement, and Board directives and utility commitments are derived from the issues Other 2, 4, and 5 of the intervenors' Issues List, but refer to the treatment of these activities during the "deferred rebasing period", rather than "during the rate plan period", used in the intervenors' Issues List. The applicants' version of the three issues assumes there will be a rebasing period, a position which intervenors argue should be an issue in this proceeding. Moreover, Issue 16 on the applicants' List is not as clearly drafted as issue Other 2 in the intervenors' Issues List.

The applicants then moved on to deal with what it terms "duplicate issues". They claim the intervenors' list states the same issue using different language, as paragraphs 22 to 26 of their submission. BOMA is of the view that in each case mentioned, the intervenors' formulation of the issue is more balanced and neutral and does not assume a particular outcome. To the applicants' paragraph 23, BOMA responds that "Other Factors" is a useful part of the Issues List, as a party may well propose the use of an additional factor in setting 2019 rates. BOMA does not understand the applicants' paragraph 25.

In paragraphs 28 to 44, the applicants deal with what they say are "contentious" Issues.

Much of this part of the applicants' argument is a repetition of comments in their submission on the merger case (EB-2017-0306), in particular, is consistent reliance on the "Consolidation Handbook", which BOMA and other intervenors have argued does not apply to natural gas mergers, including the part of the Handbook that prescribes a "rebasing deferred period" after a merger.

Issue A.1 on the intervenors' Issues List is appropriate as the ratemaking framework for a gas merger is not predetermined at this time. According to the Filing Requirements for Natural Gas Rate Applications, either a price cap, IRM or a custom IR are ratemaking options available to the utility, and the Board has, in the past, approved "price-cap" applications that are effectively revenue caps. As the Board well knows, normally either of these rate plans are preceded by a cost of service proceeding to ensure that underlying costs, revenues, cost allocation and rate design remain appropriate or need to change, given changes that have occurred in these factors, and the facilities, operations and use of the system over the preceding five years.

The applicants' argue that the effect of A.1 is to repudiate and call into question the Board's fundamental policies on rates and mergers. But that argument begs the question of whether the Board's merger policies should apply to this transaction at all, including whether its lengthy deferred rebasing is appropriate or desirable.

The applicants also try to make much of the fact that the Issue A.1 includes the phrase "or another rate-setting mechanism", as something that amounts to a "reopening" of general Board policies. That is not correct. Issue A.1 is fully compliant with the "Filing Requirements for Natural Gas Rate Applications", as it proposes the two options, IRM formula or a custom IR plan. The reference to other rate-setting mechanism is simply a way of permitting a party to raise the possibility of a modification of the IRM price cap, perhaps to a revenue cap or specify one aspect of a custom IR. The custom IR option provides a great deal of flexibility to the utility. The intention is not to permit, for example, a return to cost of service ratemaking, except as may be required to anchor a subsequent IRM program, or custom IR program.

In fact, the applications' quotation from the Rate Handbook at paragraph 35 of their submission:

*"The OEB expects utilities to file rate applications consistent with the Handbook unless the utility can demonstrate a strong rationale for departing from it"*

recognizes that there are some circumstances when another rate plan may be more appropriate.

The argument that Issues A.1 and A.3 invite "reopening a general re-examination of the Board's ratemaking models" is neither accurate nor fair. The question is rather should existing

consolidation policies apply to the specific transaction before the Board. BOMA believes that issue needs to be examined in this case. Almost every single footnote cited by the applicants on p8 of their submission refers to the Consolidation Handbook, which may not apply to this transaction.

As for the wording of Issue 3(f) on the intervenor's List, the framing of this issue is not inconsistent with the passage quoted from p27 of the Rate Handbook (at p8, footnote 26 of the applicants' submission) that "the OEB has approved Z-factor mechanisms for natural gas distributors in previous proceedings, and they may propose mechanisms in their future rate applicants" (BOMA's emphasis). It does not say the Board must approve a Z-factor, and therefore, the intervenors' statement of the issue is fair.

In paragraph 40, the applicants state that if the Board approved a rate framework, different from price cap IR, it would not have time to prepare a rate submission for rates to commence January 1, 2019. That may be, but it is not totally clear that this would be the case, given the amount of work that the utilities have done since the merger, looking at common processes, common costs, and the like. And, as noted in Energy Probe's submission on the EB-2017-0306 Issues List, current rates could be extended for a year, allowing the applicants to file their new rates, including their commitments for 2019 rates one year later (in 2019 for implementation January 1, 2020). This may be helpful for the applicants in that they would have a better understanding of their "integration costs".

All of which is respectfully submitted, this 2<sup>nd</sup> day of February, 2018.

Yours truly,

**FOGLER, RUBINOFF LLP**



Thomas Brett

TB/dd

cc: All Parties (*via email*)