

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by Enbridge
Gas Distribution Inc. and Union Gas Limited, pursuant
to section 36 of the *Ontario Energy Board Act*, 1998,
for an order or orders approving a rate setting
mechanism and associated parameters during the
deferred rebasing period, effective January 1, 2019.

**Energy Probe Research Foundation
ARGUMENT
ISSUES LIST**

February 2, 2018

Introduction

In the EB-2017-0307 proceeding, Enbridge Gas Distribution Inc. (“EGD”) and Union Gas Limited (“Union”) have applied under section 36(1) of the *Ontario Energy Board Act, 1998* (the “OEB Act”) for approval of a rate-setting mechanism to be effective January 1, 2019.

Enbridge and Union (“the utilities”) also filed an addendum (the “Addendum”) to their evidence in support of the application on January 11, 2018. The Addendum arose from the Settlement Proposal in Enbridge’s 2018 rate adjustment case, EB-2017-0086.

In accordance with Procedural Order No. 1, an Issues Conference was held on January 22, 2018. No agreement was reached with regard to an Issues List for this proceeding.

In a concurrent proceeding, EB-2017-0306, the utilities have applied to amalgamate and to operate as a new gas transmission, storage and distribution company (“Amalco”). Many of the issues in the two proceedings are interrelated.

Overview: The Utilities’ Issue List is One-Sided

The overarching theme to Energy Probe’s argument is that the current issues list proposed by the utilities is self-serving and inappropriate. The utilities frame their issue list on two key components. First, that they are allowed to defer rebasing of rates for ten years, as stipulated in the Handbook to Electricity Distributor and Transmitter Consolidations (“MADDs handbook”), as well as the Handbook for Utility Rate Applications (“Rate Handbook”). Second, the Board should only consider one ratemaking framework for 2019 – a price cap IRM based on 2018 rates with an Incremental Capital Module (ICM). All other considerations, according to the utilities, should be blocked from the hearing.

It’s obvious to Energy Probe that framing the issues in such a manner is advantageous to the utilities. It limits a deeper look at whether the proposed amalgamation of the two utilities, and subsequent rate setting that will occur as a result of that merger, will lead to “just and reasonable” rates for customers.

Energy Probe supports and recommends for the Board’s consideration that the proposed draft issues list (“Intervenor Proposal”), filed with the Board by Mr. Mondrow, counsel for the Industrial Gas Users Association (“IGUA”), as a more appropriate starting point.

The Utilities’ Framework

Similar to the EB-2017-0306 proceeding regarding amalgamation, the utilities are once again framing their issues list on the policy guidelines in the MADDs handbook and Rate Handbook. As Energy Probe noted extensively in its comments on the issues list for the EB-2017-0306 – and was echoed by a number of other parties, including Board

Staff – we remain unconvinced that the policy guidelines established to explicitly encourage consolidation among the province’s many electricity distributors should be the de facto framework for the amalgamation, and subsequent rate-setting, of the province’s two dominant gas utilities.

As explained below, Energy Probe is of the view that framing the issues list in such a manner will severely limit the ability of both the Board and parties to the proceeding to adequately ascertain whether the utilities’ proposal(s) are beneficial for ratepayers and the gas sector in the long-run. This is particularly important given the long-term nature of the proposal that will see the utilities defer rebasing for a decade.

The intervenors have held numerous discussions regarding an appropriate issues list to address the, among others, the concerns noted above. The result is the Intervenor Proposal, which was endorsed by 15 intervenors when it was filed.

The utilities have filed comments in response to the Intervenor Proposal and have included some issues raised by intervenors, but have rejected others as duplicative and or “contested”.

For the following reasons, Energy Probe believes the Intervenor Proposal is a more appropriate issues list.

The Appropriate Ratemaking Framework

Energy Probe’s main concern regarding the issues list is whether the MADDs handbook, specifically its policy regarding deferred rebasing of rates, is appropriate and the de facto starting point for this proceeding. As noted above, Energy Probe raised this issue extensively in its comments in the EB-2017-0306 amalgamation case, noting that the MADDs policy was designed to explicitly encourage consolidation in the electricity sector, not the gas sector. In fact, the gas sector is never even mentioned in the MADDs handbook. If the MADDs handbook was strictly followed by the OEB the applicants would not meet any of the statutory objectives as stated in Section 3 of the handbook, such as:

The OEB will consider whether the “no harm” test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application.

The OEB’s objectives under section 1 of the OEB Act are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

- 1.1 To promote the education of consumers.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

Given the application does not deal with any of these objectives listed in the MADDs handbook, why should the rate setting portions of the handbook be used to strictly limit the issues in this case? The answer is they should not; the handbook should only be used to inform the Board's review and should not be used to limit its scope. Applicants should not be allowed to cherry-pick portions of the MADDs handbook to their advantage.

As such, Issue #1 on the intervenors' proposed issues list allows parties and the Board to consider what rate making framework is appropriate in this proceeding. It's unclear that at the outset that Energy Probe will argue that the utilities' proposal for deferred rebasing of rates is inappropriate. But we do believe it's unhelpful to ratepayers to have rate base deferral policy – designed specifically for the electricity sector – be the de facto starting point.

The utilities have argued that re-examining the rate-making framework is contrary to Board policies and guidelines contained in the MADDs Handbook, the Rate Handbook (which references the policies in the MADDs Handbook) and the Gas Filing Requirements.

Energy Probe suggests the Board does have the option in this case to reexamine those policies, as highlighted in Section 36 of The Act Subsections (1) & (3):

Order of Board required

36 (1) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

1998, c. 15, Sched. B, s. 36

Power of Board

(3) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate. 1998, c. 15, Sched. B, s. 36
(3). [emphasis added]

In setting “just and reasonable” rates the Board does, in Energy Probe’s view, have discretion as to how that should be done.

The Board has established certain ratemaking policies and guidelines to achieve the objective of “just and reasonable” rates. The primary outline for doing so was articulated in 2012 in the Renewed Regulatory Framework (RRF) and initially applied only to the electricity sector. Subsequently, those policies were applied to the gas distributors rates as part of the updated RRF in 2016. The Rate Handbook, which was first developed in 2006 and subsequently applied to the gas utilities in 2016, also forms the foundation for the Board’s rate setting policy. The Rate Filing Guidelines supplement those two key documents for the setting of gas rates in Ontario.

As such, Energy Probe believes the first point to consider in this proceeding is whether the 2018 rates for the gas utilities will still be “just and reasonable” in 2019 under the policy framework laid out in the RRF. If that question remains unclear – as it initially appears to Energy Probe – the Board should have the option to review and approve – or adjust – those rates in this hearing to ensure they do meet the “just and reasonable” threshold. The utilities’ issues list simply blocks this discussion and discovery from happening. Instead, it relies on a combination of the MADDs Handbook and Rate Handbook to argue that deferring of rate base for ten-years is a foregone conclusion and is in-line with Board policy.

Energy Probe believes the Board has ample discretion, as laid out in legislation, to consider whether that is actually the case and should not accept the utilities’ proposition that the issue be taken off the table.

Just and Reasonable Rates in the wake of an Acquisition

The Board has recently questioned whether the rates established in the wake of a merger or acquisition are “just and reasonable.” Energy Probe highlights the Board’s last procedural order in the Hydro One acquisition of Orillia Power (EB-2016-0276). The OEB determined that Hydro One should defend its cost allocation proposal in Hydro One Distribution’s 2019-22 Rates case and adjourned the hearing until the completion of that proceeding.

While comparisons to the electricity sector are of somewhat limited value to this case, Energy Probe interprets this procedural order as a general indication that Board will consider if rates, and the allocation of those rates to various customer classes, will be just and reasonable following the amalgamation of utilities. In short, it’s not a foregone conclusion, as the utilities argue in their comments regarding the issues list.

The parties to this proceeding should be allowed to ask the utilities to provide sufficient evidence to the Board showing that 2019 rates for Enbridge and Union customers are “just and reasonable.” It’s certainly not a foregone conclusion in our view.

Setting 2019 Rates

If the Board ultimately approves the amalgamation of the two utilities, effective January 1, 2019, Energy Probe submits there needs to be a process for setting rates for the amalgamated utilities for 2019 and beyond. There are various options to set rates for 2019 that meet the requirements of Section 36 of The Act and in considering these, Energy Probe believes the Board would be assisted by input from the utilities and other parties.

The Intervenor Proposal facilitates this input by exploring the options, including what parameters should be set around the utilities’ proposed rate cap formula in 2019.

The intervenors also have a different view than the utilities regarding the RRF and the Rate Handbook and how the RRF policies apply in the wake of the amalgamation. The RRF sets a number of outcomes that the Rate Setting Framework attempts to achieve -- customer focus, operational effectiveness, public policy responsiveness and financial performance. The Intervenor Proposal clearly lays out these outcomes in Issue List #2. The utilities’ issues list doesn’t directly address these four outcomes.

Energy Probe is also concerned that the utilities’ proposal to neither review or adjust rates in 2019 is inconsistent with the Renewed Regulatory Framework (RRF). Under the RRF, the approved rates for utilities will be just and reasonable only until the end of 5-year IRM terms that expire in 2018. At that point, according to the RRF, the rates should be reviewed or adjusted.

The utilities’ counter that the policies contained in the MADDs handbook, which provide the option for a ten-year deferral of rebasing, in essence supersede the RRF and ensure that rates won’t be reviewed or adjusted for 2019. Energy Probe hopes that the Board will consider whether such a situation is in the best interest of ratepayers and result in “just and reasonable” rates. It’s not clear to Energy Probe that is the case.

That said, Energy Probe accepts there are real and practical constraints to putting in place new rates for January 2019. For example, the evidence for a forward 2019 test year has not been filed and would require ample work by the utilities. Other practical issues include timing and completion of the Amalgamation application (EB-2017-0306).

Yet, the Intervenor Proposal provides the ability to examine options to deal with these practical constraints, including whether to make the existing rates interim or making appropriate adjustments to 2018 rates, but without a full cost-of-service rebasing. These options are contained within Issue #2 on the Intervenor Proposal:

2. What adjustments, if any, are appropriate in setting 2019 rates, including:

- (a) Adjustments to costs?
- (b) Adjustments to revenues?
- (c) Adjustments to cost allocations?
- (d) Adjustments to rates?
- (e) Other adjustments?

There are several other important considerations that may affect 2019 rates that are addressed in the Intervenor Proposal – including regulated services, rate design, gas cost, gas transportation and related delivery rate adjustments (Issues 4, 5, 6 and 7). The issues list proposed by the utilities doesn't address many of these concerns.

Conclusion

The utilities' issues list is self-serving and designed to constrain the hearing on this important rate-setting matter.

The Intervenor's Proposal is broader and allows for additional evidence, such as the appropriate rate-setting approach and formula to allow for just and reasonable rates in 2019 and beyond.

Respectfully Submitted on behalf of Energy Probe Research Foundation

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Enbridge Gas Distribution Inc. and Union Gas Limited
Application for approval of a rate setting mechanism and associated
parameters from January 1, 2019 to December 31, 2028
PROPOSED ISSUES LIST

[Bold & italicized numbers reference utilities' proposed issues list.]

A. THE APPROPRIATE RATEMAKING FRAMEWORK

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

2. How should the framework ensure:

(a) Customer engagement, and the reflection of customer interests and preferences through the provision of "value for money" services which are responsive to customer preferences?

(b) Operational effectiveness through ongoing continuous improvement in productivity and cost performance while delivering system reliability, quality of service and "value for money"?

(c) Public policy responsiveness?

(d) Financial performance which demonstrates continuing financial viability, sustainable efficiency improvements and returns that are not excessive?

(e) Rational expansion of gas transmission and distribution systems and rational development and safe operation of gas storage?

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?

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. deferral period, earnings sharing parameters, other), and how should the Board address these in its determinations on each of the two applications?

5. What changes to rates, regulated services, cost allocation or rate design should be permitted or required during the rate plan period and what process should be required for such changes to be made?
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 those impact cost allocation and rates?
8. What should the annual rate adjustment process be?
9. What deferral and variance accounts should continue?
10. What deferral and variance accounts should not continue? **[8]**
11. What additional deferral and variance accounts are appropriate? **[7]**

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?

C. OTHER

1. Should rates/conditions of service be harmonized, and if so when and how?
2. How should past Board directives and utility commitments be addressed (including those listed at ExB/T1/Att5)?
3. Is the proposed scorecard appropriate? **[9]**
4. What reporting should be required during the rate plan period?
5. What stakeholder engagement should be required during the rate plan period?

Appendix B

ENBRIDGE GAS DISTRIBUTION INC. AND UNION GAS LIMITED RATE SETTING MECHANISM APPLICATION REVISED DRAFT ISSUES LIST

1. Is the proposed inflation factor appropriate?
2. Is the proposed X factor appropriate?
3. Should there be a productivity stretch factor and if so, what should it be?
4. Is the proposed Y factor treatment appropriate?
 - a. Continued pass-through of routine gas commodity and upstream transportation costs, demand side management cost changes, lost revenue adjustment mechanism changes for the contract market, Cap-and-Trade costs and normalized average consumption/average use
5. Are the proposed parameters for calculating treatment of qualifying capital investments through the OEB's ICM appropriate?
 - a. Separate materiality threshold calculations using rate base and depreciation expense last approved by the Board
 - b. Using incremental cost of capital to calculate the revenue requirement to fund capital investment
6. Is the proposed Z factor and associated materiality threshold of \$1.0 million appropriate?
7. Is the proposed adjustment to reflect the full amortization of Union's accumulated deferred tax balance at the end of 2018 appropriate?
8. Is the proposed adjustment to unwind smoothing of costs related to EGD's Customer Information System and customer care forecast costs appropriate?
9. Is the proposed adjustment to EGD's Pension and OPEB costs appropriate?
10. Is the proposed adjustment to reflect the removal of EGD's tax deduction associated with the discontinued SRC refund appropriate?
11. Are the proposed deferral and variance accounts appropriate?
12. Should the following deferral accounts be discontinued as proposed?
 - EGD
 - 179.16_ Customer Care CIS Rate Smoothing Deferral Account
 - 179.34_ Constant Dollar Net Salvage Adjustment Deferral Account

179.96_ Relocations Mains Variance Account
179.98_ Replacement Mains Variance Account
179.24_ Post-Retirement True-up Variance Account
179.58_ Earnings Sharing Mechanism Deferral Account
Union
179-120 CGAAP to IFRS Conversion Costs
179-134 Tax Variance Deferral Account

13. Is the proposed scorecard appropriate?
14. What reporting is appropriate during the deferred rebasing period?
15. What stakeholder engagement is appropriate during the deferred rebasing period?
16. Is the proposed method of addressing directives and commitments during the deferred rebasing period appropriate?