

February 2, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2017-0307 Application by Union Gas Limited and Enbridge Gas Distribution Inc. for Approval of a Rate-Setting Mechanism

On November 2, 2017, Enbridge Gas Distribution Inc. ("EGD") and Union Gas Limited ("Union", collectively the "Applicants") applied to the Ontario Energy Board ("OEB" or "Board") for approval under section 43 (1) of the Ontario Energy Board Act for approval to amalgamate and to defer rate rebasing for a period of 10 years. On November 23, 2017, the Applicants filed an application for a rate plan for the period 2019-2029.

On December 22, 2017, the OEB issued its Procedural Order No. 1 which made provision for an Issues Conference. At that Issues Conference on January 22, 2018, the Applicants and the Intervenor were unable to reach a consensus regarding an Issues List for the proceeding. In its Procedural Order No. 2, issued on January 23, 2018, the Board established a process for the Applicants and the Intervenor to make submissions regarding their views as to the issues relevant to this proceeding. The Applicants filed an Argument in Chief ("AIC") on January 26, 2018, setting out a proposed issues list. In addition, Counsel for the Industrial Gas Users' Association filed a proposed Issues List on January 23, 2018, which was supported by a large group of Intervenor, as a starting point for the Board's consideration subject to any further submissions made today ("Intervenor Issues List"). These are the submissions of the Consumers Council of Canada ("Council") regarding the appropriate issues for the Board to consider in this proceeding. These submissions are consistent with the ones the Council made regarding a proposed Issues List for the merger proceeding.

The Applications that the Board has before it will have long lasting impacts on the Ontario natural gas sector. Union and Enbridge serve over 3.5 million customers. The merged entity will become the dominant provider of almost all of the distribution, storage and transportation of natural gas in the Province. The applications are complex and it is important for the Board, in its consideration of these applications, not to take an unnecessarily narrow approach. There are many issues to consider, all of which will ultimately impact Ontario natural gas consumers' rates and the services provided by the Applicants. The issues list proposed by the Applicants is, from the Council's perspective far too narrow. The Council urges the Board to adopt the Intervenor Issues List filed on January 23. That list will allow for a comprehensive consideration of all of the issues relevant to this Application.

The Applicants have proposed an Issues List that assumes, emphatically that the Board's policies regarding Ontario electricity mergers and acquisitions automatically apply to them. Their Application is entirely premised on this view.

The Council does not accept that the Board's policies regarding the Ontario electricity sector were meant to apply to the natural gas sector. The Board's policies were developed to provide incentives for Ontario's electric utilities to consolidate. That fact is well known. Nowhere in any of the following documents that comprise that policy is the natural gas sector referenced:

- Report of the Board, Ratemaking Associated with Distributor Consolidation (July 23, 2007)
- Report of the Board, Ratemaking Associated with Distributor Consolidation (March 26, 2015)
- Handbook to Distributor and Transmitter Consolidations (January 19, 2016).

The Applicant's Issues List assumes that the Board will, in the context of the merger proceeding approve a 10-year deferral period. From the Applicants' perspective the scope of this proceeding should be limited to determining the various elements of a price cap rate plan – the very price cap defined in the electricity consolidation policy.

Under the Applicants' proposal rebasing would be deferred for 10 years, which in this case would be 2029. Current rates for Enbridge are based on its 2013 rate proposal (EB-2011-0354). That application was filed on January 31, 2012. This means that under the Applicant's proposal, 2028 rates would be based on forecasts undertaken in 2011. Union's current rates are based on its 2013 rate proposal (EB-2011-0210). That application was filed on November 10, 2011. Given the timing when the underlying base rates were set some parties may want to argue for an earlier rebasing. The underlying cost structures of the Applicants are very different today than they were in 2011. The underlying cost allocations that were used to set the base rates may no longer be appropriate (as was raised in the recent Union Panhandle proceeding). The cost structures will be even more different in 2028. The natural gas sector has changed considerably since 2011 and will continue to change over the next 10 years. The Applicants and others are free to argue for a 10-year deferral period, but intervenors should not be precluded from arguing for an earlier rebasing. The Board may consider it appropriate to review the underlying cost structure of the merged entity prior to setting rates going forward. In addition, the Board may not consider it appropriate to wait until 2029.

Adoption of the Intervenor Issues List will allow for the Board to consider a wide range of options in setting natural gas rates for the merged entity. It in no way precludes the Applicants from arguing for their proposed rate proposals to be approved. From the Council's perspective all of the following issues are important, relevant and critical to a consideration of the rate framework:

- What rate-making framework should be used to set rates during the deferral period?
- What is an appropriate deferral period?
- If an incentive rate making formula is to be applied, what should be the components of that formula?
- What should be subject to Y-factor treatment?
- What are the parameters and materiality threshold associated with Z-factors?
- Should there be an earnings sharing mechanism and if so, how should it operate. When should sharing begin?
- Should capital modules be available and how should they be applied?
- 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?

- 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?
- What are the implications of the merger for gas supply planning and costing and how will those impact cost allocation and rates?
- What should the annual rate adjustment process be?
- What deferral and variance accounts should be continued and which ones should not?
- What additional deferral and variance accounts are appropriate?

These are all captured within the Intervenor Issues List on Section A.

In addition, the Intervenor Issues List addresses 2019 rates. The Applicants assume that 2019 rates will be set by applying their proposed price cap formula subject to a set of specific adjustments (which they have proposed). The issues under Section B of the Intervenor Issues List are structured to allow for the consideration of other approaches. Adjustments, other than those proposed by the Applicants may be appropriate. Another approach to setting rates (other than the proposed price cap) may be appropriate.

Section C of the Intervenor Issues List set out issues not specific to the framework, but relevant to the Application. Inclusion of these issues is appropriate.

At the end of the day the Applicants are free to argue that the electricity consolidation policy should be applied in their case and a price cap mechanism used to set rates. However, the Council urges the Board not to pre-empt parties from putting forward alternative approaches to the issues relevant to a consideration of the Application. The Board is not determining the issues at this time, it is simply determining the scope of the issues. The Council submits that the Board should adopt the Intervenor Issues List for this proceeding. This will allow for a fair and balanced consideration of the rate plan Application.

Given the interdependence of these two applications the Council submits that the Board should consider hearing the two applications (for merger approval and rate plan approval) at the same time.

Yours truly,

Julie E. Girvan

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CC: All Parties