

Scott Pollock
T 613.787.3541
spollock@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1300
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
F 613.787.3558 (IP)
blg.com



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February 2, 2018

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Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Ms. Walli

**Re: Enbridge Gas Distribution Inc. ("EGD") and Union Gas Limited ("Union")
Rate Setting Mechanism Application
Board File No.: EB-2017-0307**

Please find attached the Submissions of Canadian Manufacturers & Exporters ("CME") regarding the draft Issues List in the above-noted proceeding.

Yours very truly

Borden Ladner Gervais LLP

A handwritten signature in black ink, appearing to read "Scott Pollock", is written over a horizontal line.

Scott Pollock

enclosure

c. Andrew Mandyam (EGD)
Fred Cass (Aird & Berlis LLP)
Mark Kitchen (Union)
Crawford Smith (Torys)
Intervenors in EB-2017-0307
Paul Clipsham and Ian Shaw

OTT01: 8746456; v1

ONTARIO ENERGY BOARD

**Enbridge Gas Distribution (“EGD”)
and Union Gas Ltd. (“Union”)**

Rate Setting Mechanism Application
Issues List Submission

**SUBMISSIONS OF
CANADIAN MANUFACTURERS & EXPORTERS (“CME”)**

February 2, 2018

Emma Blanchard
Scott Pollock
Borden Ladner Gervais LLP
Barristers & Solicitors
100 Queen Street
Suite 1300
Ottawa, ON K1P 1J9

Counsel for CME

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I. INTRODUCTION

1. On November 23, 2017, the EGD and Union (collectively, the “Applicants”) filed an application seeking approval of the rate setting mechanism and associated parameters during the deferred rebasing period that the Applicants anticipate will be approved by the Board in EB-2017-0306, pursuant to Section 36 of the *Ontario Energy Board Act, 1998*.
2. At the same time, the Applicants also filed a draft issues list (the “Applicants’ Issues List”).
3. Pursuant to the Ontario Energy Board’s (“OEB” or the “Board”) Procedural Order #1 dated December 22, 2017, an Issues Conference was held among the parties on January 22, 2018, in order to determine if an agreement could be reached regarding the proper scope of the issues in this proceeding.
4. No agreement was reached with regard to the appropriate scope of the issues in this proceeding.
5. On January 23, 2018, the Board released Procedural Order #2, wherein the Board directed parties to provide written submissions regarding an appropriate issues list for the proceeding.
6. By letter dated January 23, 2018, the Industrial Gas Users Association (“IGUA”) wrote to the Board on behalf of a wide cross-section of intervenors (including CME) and provided an alternative proposed issues list (the “Intervenors’ Issues List”).
7. The Applicants filed their Argument-in-Chief on January 26, 2018. As part of their submission, the Applicants filed a revised draft issues list (the “Applicants’ Revised Issues List”).
8. CME submits that the Board should adopt the Intervenors’ Issues List on the basis that the Applicants’ Revised Issues List is inappropriately narrow and it assumes the answers to pivotal questions that should be before the Board.

II. THE PURPOSE OF AN ISSUES LIST

9. CME submits that the purpose of an issues list is to outline what questions need to be answered as part of the proceeding.
10. This makes a determination regarding the issues list different from determining the proceeding on the merits. Rather than attempting to answer the questions posed by an application, the Board's determination on the issues list will be more fundamental – it will determine what questions will be asked in the proceeding.
11. Accordingly, the Board should review the Applicants' Revised Issues List and the Intervenor's Issues List and inquire whether the questions posed by the issues lists are appropriate to ask as part of this proceeding.

III. RATE FRAMEWORK AND THE ELECTRICITY MAADs HANDBOOK

12. The Applicants' starting premise in this application is identical to the premise underpinning their application in EB-2017-0306 – namely that the Board's *Handbook to Electricity Distributor and Transmitter Consolidations* (the "Electricity MAADs Handbook") applies wholesale to their natural gas application.
13. CME disagrees with the Applicants' premise on the same grounds as it did in EB-2016-0306.
14. As a result of their starting premise, the Applicants' Revised Issues List does not contain any issues regarding what the appropriate rate setting framework will be during the deferral period. It simply assumes that the rate-setting will be based on a Price Cap IR since that is the framework set out in the Electricity MAADs Handbook.
15. Contrastingly, the Intervenor's Issues List at A1 and A3 include a number of questions that the Board would need to ask if the application of the Electricity MAADs Handbook is not assumed.
16. CME disagrees with the Applicants' approach on three bases:
- (a) the Electricity MAADs Handbook does not apply on its face;

- (b) the Electricity MAADs Handbook does not apply to this case on a principled basis;
and
- (c) even if the Electricity MAADs Handbook does apply in this case, the Intervenor's Issues List should be preferred.

The Electricity MAADs Handbook Does Not Apply on its Face

17. The Electricity MAADs Handbook states that it is applicable to "both" electricity distributors and transmitters.¹

18. As CME understands it, the Applicants contend that the Electricity MAADs Handbook applies to gas transactions because the Board's Handbook for Utility Rate Applications (the "Rate Handbook") applies to both electricity and gas entities, and references the Electricity MAADs Handbook in Appendix 3.

19. Appendix 3 of the Rate Handbook however, does not provide or suggest that the Electricity MAADs Handbook applies to natural gas distributors.

20. This ignores the Board's practice of informing parties when its policies apply to new stakeholders. For example, in the Rate Handbook, the Board states:

"This Handbook outlines how the RRFE will be applied to all regulated utilities going forward. The framework will be referred to as the Renewed Regulatory Framework (RRF) in this document and by the OEB going forward to reflect this transition."²

21. Similarly, when previous Board policies on consolidation only dealt with electricity distributors, their titles were indicative of that. This can be seen in policies such as "Report of the Board regarding Rate-making Policies Associated with Distributor Consolidation". When the Board's consolidation policy grew to include transmitters, the report's title was changed to indicate that, as evidenced by the title "Handbook to Electricity Distributor and Transmitter Consolidations".

¹ Ontario Energy Board, *Handbook to Electricity Distributor and Transmitter Consolidations*, January 19, 2016, p.2.

² Ontario Energy Board, *Handbook for Utility Rate Applications*, October 13, 2016, p.4.

22. In the past, the Board has been very clear what entities their policies apply to. Not only do they update the title of the policies to reflect the change in scope, but they also place corresponding information in other documents to indicate to stakeholders that the scope of the policy has changed.³

23. The Board has given no indication in this case, either through a change in the Electricity MAADs Handbook, or as supplementary information in other policies, that the scope of the Electricity MAADs Handbook's policy has changed. Accordingly, CME submits that it is appropriate that the question of whether or not the Electricity MAADs Handbook applies to in this case, and if so, on what basis.

The Electricity MAADs Handbook Does Not Apply to this Case on a Principled Basis

24. The Board explicitly set out that one of the primary reasons for incenting consolidation was the multiplicity of small electricity distributors that existed in Ontario at the time.⁴

25. The Applicants do not exist in the same market as the one described in the Electricity MAADs Handbook. The Applicants are two of the three gas distribution entities regulated by the Board, and they serve the vast majority of the natural gas consumers in Ontario.

26. Furthermore, they have no need for extra incentives to merge, as the parent companies are already amalgamated.

27. Under the circumstances, CME submits that it is appropriate for the issues list not to assume that the Electricity MAADs Handbook applies wholesale to natural gas distributors that inhabit a very different market that may not align with the context that underpins the Board's electricity consolidation policy.

³ Such as the reference in the Rate Handbook to why the RRFE had been changed to the RRF.

⁴ Ontario Energy Board, *Handbook to Electricity Distributor and Transmitter Consolidations*, January 19, 2016, p.12.

Even if the Electricity MAADs Handbook Applies, the Intervenor's Issues List Should Still be Preferred

28. In the Electricity MAADs Handbook, the Board notes that most of the OEB's policies and prior OEB decisions have related to electricity distributors. The OEB cautions that "Transmitters should consider the intent of the Handbook and make appropriate modifications as needed to reflect differences in transmitter consolidations".⁵

29. Even if the Electricity MAADs Handbook applies to natural gas entities, CME submits it is reasonable that the same caution should apply. In other words, if the Electricity MAADs Handbook applies, it would still be necessary for natural gas entities to consider the intent of the Handbook and make appropriate modifications as needed to reflect differences in natural gas consolidations.

30. If that were true, the Board would need to decide what modifications (if any) were appropriate in natural gas transactions. As part of the rate-setting mechanism proceeding, the Board would need to ask questions such as:

- (a) Is a price-cap the appropriate rate-making framework to apply to the Applicants during the deferral period;
- (b) If not, what rate making framework should be used to set rates during the deferral period?

31. CME submits that this would lead the Board to require the same or similar issues to the ones provided for in the Intervenor's Issues List. Accordingly, even if the Electricity MAADs Handbook applies to natural gas transactions, the Intervenor's Issues List should still be preferred.

⁵ Ontario Energy Board, *Handbook to Electricity Distributor and Transmitter Consolidations*, January 19, 2016, p.2.

IV. THE APPLICANTS' REVISED ISSUES LIST IS OTHERWISE UNDULY NARROW

32. In addition to the divergence of issues caused by the application of the Electricity MAADs Handbook, CME submits that the Intervenor's Issues List includes a number of other appropriate questions not included in the Applicants' Revised Issues List that should be before the Board in this proceeding.

Issues Referencing Important Rate-Making Objectives

33. Issue A2 (a)-(d) in the Intervenor's Issues List asks whether the framework to set rates during the deferral period meets the rate-setting objectives that the Board has outlined in the RRF, including customer engagement, operational effectiveness, public policy responsiveness, and financial performance (the "RRF Objectives").

34. The RRF outlines the centrality of the RRF Objectives:

"An important aspect of the RRFE is the evolution to an outcomes-based approach. The OEB "believes that emphasizing results rather than activities, will better respond to customer preferences, enhance distributor productivity and promote innovation." There are four categories of outcomes under the RRFE: customer focus, operational effectiveness, financial performance and public policy responsiveness..."

35. CME submits that the Board has made it clear that the RRF Objectives also need to be demonstrated by the Applicants as part of a rate related application.

36. In the Rate Handbook, in the section entitled "The OEB's Review of the Key Components of Rate Applications" the Board stated:

"The utility is expected to integrate its business challenges, and what its customers are saying, to create a compelling business plan that directly links to proposals included in the rate application and the four performance outcomes of customer focus, operational effectiveness, public policy responsiveness, and financial performance."⁶

⁶ Ontario Energy Board, *Handbook for Utility Rate Applications*, October 13, 2016, p.9.

37. CME submits that it is appropriate for the issues list to contain issues that explicitly reference the RRF Objectives and “key components” of rate applications in order for the Board to ensure that the Applicants’ rate-setting framework, whatever attributes it might have, furthers the RRF Objectives to the benefit of ratepayers.

38. Similarly, CME believes the Intervenor’s Issues List should be preferred because it includes issues that touch on several of the Board objectives as set out in the *Ontario Energy Board Act, 1998*, and repeated in the Rate Handbook.⁷ The Applicants should demonstrate to the Board that their application and rate-setting framework meet and further the Board’s statutory objectives for gas as a precondition of being approved by the Board.

Issues Referenced in the Application

39. CME has had the benefit of considering SEC submissions regarding issues A5 and A8 on the Intervenor’s Issues List and supports SEC’s position that they are appropriate issues before the Board in this proceeding.

40. The application references:

- (a) the possibility that Amalco may propose changes to a variety of things, such as regulated service offerings, cost allocation and rate design;⁸ and
- (b) a process to follow in order to adjust annual rates during the deferral period.⁹

41. In their Argument-in-Chief, the Applicants argue that these issues are either unnecessary or inappropriate for determination by the Board, or are not legitimate issues under the circumstances.¹⁰

42. CME disagrees.

⁷ Issue A2(e) in the Intervenor’s Issues List is referencing section 2 of the *Ontario Energy Board Act, 1998*, c. 15, Schedule B. These statutory objectives are repeated in Ontario Energy Board, *Handbook for Utility Rate Applications*, October 13, 2016, p.i.

⁸ EB-2017-0307, *Enbridge Gas Distribution Inc. and Union Gas Limited Rate Setting Mechanism Application and Evidence*, Exhibit B, Tab 1, page 29 of 31.

⁹ EB-2017-0307, *Enbridge Gas Distribution Inc. and Union Gas Limited Rate Setting Mechanism Application and Evidence*, Exhibit B, Tab 1, page 26 of 31.

¹⁰ EB-2017-0307, Argument-in-Chief on Draft Issues List, January 26, 2018, p.10.

43. The mechanism and procedures that the application propose are critically important to ratepayers. From the scope of regulated service and cost allocation, to the process and transparency required to establish yearly natural gas rates, these issues strongly engage stakeholder interests, are expressly part of the application and evidence, and, in CME's view, are appropriate issues which should be determined by the Board in this proceeding.

V. THE APPLICANTS' TIMING ISSUE

44. As CME understands it, the Applicants argue that the Board should not adopt the Intervenor's Issues List because engaging with the full scope of the issues in this application could jeopardize the Applicants' ability to have their desired 2019 rates in place by January 1, 2019.

45. CME submits that this is not the appropriate way to evaluate an issues list. The issues on the issues list should be accepted or rejected depending on if they are appropriately within the scope of the application, and deal with matters that the Board should consider in that application as part of its regulatory function. The Board should not abandon otherwise valid issues because the Applicants may not have provided enough time for the Board to appropriately examine all of the issues engaged by the application.

46. The timing of the application is fully within the Applicants' control. In CME's view, it is incumbent upon the applicants to provide enough time for the Board to review all of the issues appropriately within scope in the application and make a determination before the rates are required by the applicants.

47. Accordingly, CME submits that the Intervenor's Issues List, that contains all of the issues that the Board needs to consider as part of this application, should be preferred.

VI. CONCLUSION

48. Energy costs are one of the central inputs to manufacturers and exporters in the province. The ratemaking framework at issue in this proceeding will have a critical impact on natural gas rates for up to a decade, and may determine which businesses and industries can afford to stay competitive during that period.

49. Accordingly, CME believes that the Board should not unduly narrow the issues in this proceeding, and should adopt the Intervenor's Issues List.

50. The Applicants' Revised Issues List assumes the answers to some of the pivotal questions that are engaged by this proceeding, and should properly be before the Board.

51. The Applicants' Revised Issues List assumes that the Electricity MAADs Handbook applies wholesale to natural gas transactions. The automatic application of a Price Cap IR formula and the other adjustments such as the ICM flow from this assumption.

52. In CME's view, the application of the Electricity MAADs Handbook to natural gas transactions is far from clear. As a result, it would be inappropriate for the issues in this proceeding to assume that it does.

53. Furthermore, the Intervenor's Issues List more appropriately scopes the issues engaged by the application apart from the issues that flow from the Electricity MAADs Handbook. Issues such as: the Applicants' fulfillment of the RRF Objectives and the Board's objectives in regulating gas; the Applicants' proposal to be able to change regulated service or cost allocation; and the appropriate annual rate adjustment process are all dealt with more appropriately (or at all) in the Intervenor's Issues List.

54. Accordingly, CME submits that the Board should adopt the Intervenor's Issues List.

VII. COSTS

55. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of February, 2018.



Emma Blanchard
Scott Pollock
Counsel for CME