



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

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## **DECISION AND PROCEDURAL ORDER NO. 3 EB-2017-0306 AND EB-2017-0307**

### **ONTARIO ENERGY BOARD**

Enbridge Gas Distribution Inc. and Union Gas Limited Application for  
Amalgamation and Rate-Setting Mechanism

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**March 1, 2018**

## 1 INTRODUCTION AND SUMMARY

Enbridge Gas Distribution Inc. (Enbridge Gas) is a Canadian gas distribution, storage and transmission company serving over 2.1 million residential, commercial and industrial customers in 121 franchise areas. Its head office is in the City of Toronto and it has approximately 2,100 employees. Enbridge Gas currently operates under a five-year Custom Incentive Regulation (IR) framework<sup>1</sup> approved by the Ontario Energy Board (OEB) ending in 2018.

Union Gas Limited (Union Gas) is a natural gas storage, transmission and distribution company serving about 1.5 million residential, commercial and industrial customers in over 400 communities across northern, southwestern and eastern Ontario. Its head office is in the Municipality of Chatham-Kent and it has approximately 2,300 employees. Union Gas currently operates under a five-year price cap Incentive Ratemaking Mechanism<sup>2</sup> (IRM) approved by the OEB ending in 2018.

Enbridge Gas and Union Gas, jointly referred to as the applicants, filed an application dated November 2, 2017 with the OEB under section 43(1) of the *Ontario Energy Board Act, 1998* (OEB Act), for approval to effect the amalgamation of Enbridge Gas and Union Gas into a single company referred to as Amalco.

The applicants have been under common ownership since February 27, 2017 when Enbridge Inc. merged with Spectra Energy Corp. Both companies (Enbridge Gas and Union Gas) were expected to file rebasing applications for 2019 rates. However, the companies filed an application to amalgamate and defer rebasing to 2029.

In preparing the merger application,<sup>3</sup> the applicants have noted that they have been guided by the OEB's Handbook to Electricity Distributor and Transmitter Consolidations (MAADs Handbook), which provides guidance on applications for mergers, acquisitions, amalgamations and divestitures (MAADs). The applicants have further suggested that although the MAADs Handbook is directed to the electricity sector, the underlying principles are the same in the gas sector. Accordingly, the applicants have elected a deferred rebasing period of 10 years.<sup>4</sup>

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<sup>1</sup> EB-2012-0459

<sup>2</sup> EB-2013-0202

<sup>3</sup> EB-2017-0306

<sup>4</sup> Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, page 12 – consolidating distributor can chose a deferred rebasing period of 10 years with no supporting evidence.

On November 23, 2017, the applicants filed another application<sup>5</sup> with the OEB under section 36 of the OEB Act, for approval of a rate setting mechanism and associated parameters, effective January 1, 2019. In accordance with the MAADs framework, the applicants have requested a price cap IR adjustment mechanism beginning in 2019 for a 10-year period.

The applicants in their submission argued that it was evident from the *Handbook for Utility Rate Applications* (Rate Handbook)<sup>6</sup> and from the linkages among the MAADs Handbook, the Rate Handbook and the Gas Filing Requirements that the OEB's policies on MAADs provide guidance on consolidations for both electricity and natural gas distributors. The applicants had therefore prepared a draft issues list for the MAADs and the rate-setting applications on the basis of previous electricity MAADs proceedings and the OEB's recent decision approving the purchase of NRG's gas distribution business by EPCOR.<sup>7</sup> For both applications (MAADs and Rate-Setting Mechanism), the applicants filed a draft issues list for consideration of the OEB.

In the submissions on the issues lists, the intervenors and OEB staff essentially argued that the MAADs Handbook does not necessarily apply to natural gas and there is no mention of natural gas in the MAADs Handbook. The intervenors submitted that the OEB's guidelines in the MAADs Handbook were designed to promote consolidation within the electricity distribution business and the OEB must consider whether the guidance and policies should apply to the gas distribution sector, and whether they are appropriate in the context of this particular merger.

The OEB believes that the two applications (MAADs and Rate-Setting Mechanism) are interdependent and that it is procedurally more efficient to combine the two applications. This approach was suggested by some of the intervenors and supported by the Applicants as it will allow for a more efficient hearing, and will allow the OEB to address the interdependencies between the applications.

Pursuant to section 9.1 of the *Statutory Powers Procedure Act* and section 21(5) of the OEB Act, the OEB has therefore determined that it will combine the two applications. Intervenors that have been accepted and found cost eligible in either of the proceedings are approved as intervenors and eligible for costs in the combined proceeding. A combined intervenor list is attached as Schedule B to this Decision and Procedural Order.

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<sup>5</sup> EB-2017-0307

<sup>6</sup> Handbook for Utility Rate Applications, October 13, 2016

<sup>7</sup> NRG/EPCOR Decision, EB-2016-0351, August 3, 2017

The primary issue before the OEB with respect to determining an Issues List is whether the OEB's electricity MAADs policy framework as discussed in the MAADs Handbook applies to this application. The MAADs policy framework was established to encourage and incentivize consolidation within the electricity distribution sector. There is no such policy driver in the gas distribution business. There is no reference to natural gas in the MAADs Handbook. The OEB will therefore not restrict the ability of OEB staff and intervenors to question the applicability of the policies within the electricity MAADs policy framework. The OEB will however, continue to use the "no harm" test for assessing the amalgamation. The no harm test has been applied to both gas and electricity MAADs applications in the past, and pre-dates the MAADs Handbook.

The OEB-approved Issues List is attached as Schedule A to this Decision and Procedural Order.

## 2 THE PROCESS

The OEB issued a Notice of Hearing on December 1, 2017 for both applications. In Procedural Order No. 1 issued on December 22, 2017, the OEB approved a list of intervenors and scheduled an Issues Conference, Issues Day and a discovery process that included filing of intervenor evidence.

An Issues Conference was held on January 15, 2018 for the MAADs application and on January 22, 2018 for the rate-setting application, with the objective of developing a proposed issues list for presentation to the OEB. However, there was no consensus on the issues list proposed by the applicants. The parties did agree on the addition of three issues that were proposed by the Municipality of Chatham-Kent.

The OEB issued Procedural Order No. 2 on January 16 (EB-2017-0306) and January 23, 2018 (EB-2017-0307) cancelling the Issues Day for both proceedings and scheduled a written process for filing submissions on the draft issues list. The applicants filed their argument-in-chief on January 19 and 26, 2018 with respect to both applications.

Intervenors and OEB staff filed their submissions on January 26 (MAADs Application) and February 2, 2018 (Rate-setting Mechanism Application).

### 3 OEB DECISION

#### **MAADs Application Issues List**

##### Applicability of MAADs Handbook

The fundamental difference between the approach of the applicants and the intervenors is the applicability of the OEB's MAADs Handbook. The Industrial Gas Users Association (IGUA) submitted an alternative issues list on behalf of the intervenors prior to the issues conference. The submissions of intervenors and OEB staff focussed on a comparison between the applicants' proposed issues list and the alternative issues list. The applicants rejected a number of issues on the alternative issues list citing that guidance with respect to the issues in question (deferral period, no harm test, earnings sharing mechanism) has already been provided in the MAADs Handbook and therefore discussion about whether the elements are appropriate should not be permitted. Almost all intervenors and OEB staff supported the alternative issues list citing that the MAADs Handbook is focussed exclusively on the electricity sector and therefore a number of the parameters stated in the MAADs Handbook should be open to discussion and consideration in the current merger and rate-setting applications. The Consumers Council of Canada added that the merged utility will be the dominant provider of almost all of the distribution, storage and transportation of natural gas in the Province. The OEB should therefore not take an unnecessarily narrow approach in this proceeding.

The OEB does not agree with the arguments of the applicants and accepts the position of intervenors and OEB staff that all aspects of the MAADs Handbook do not automatically apply to natural gas. The MAADs Handbook does not specifically reference natural gas and there is no specific guidance in the Handbook as to how gas mergers should proceed. The OEB is of the view that issues such as the deferral period and earnings sharing mechanism are legitimate areas of inquiry and are not pre-determined in this case. The OEB may find that the MAADs Handbook applies in part or in whole, but this does not preclude parties from arguing for or against the applicability of specific elements of the MAADs Handbook, with the exception of the applicability of the no harm test.

##### No Harm Test

A number of intervenors submitted that it is appropriate to question whether the no harm test or a different test applies to this application. Some intervenors noted that regulators in the United States have applied varying degrees of the "public interest", "no harm" and

“net benefit” policy while considering mergers among large utilities and therefore intervenors should be able to evaluate the merger in the context of these policies.

The Canadian Manufacturers and Exporters (CME) argued that barring intervenors from exploring whether another test would be appropriate under the circumstances because the no harm test has been applied before, would be removing flexibility that lies at the heart of the administrative law regime in Canada, and applying *stare decisis* inappropriately. Other intervenors also support this view and have argued that even if the OEB were to determine that the no harm test should be applied, the issues list should not preclude anyone from arguing for a different approach or to propose alternatives.

As OEB staff pointed out in its submission, the gas MAADs cases since the 2005 Combined Proceeding Decision<sup>8</sup> have consistently applied the no harm test. Recently, the OEB considered the applicability of the no harm test in the NRG/EPCOR decision. The OEB noted:

In the assessment of consolidation transactions in the electricity sector, the OEB has consistently applied the “no harm” test since 2005. The no harm test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives; where a proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the application. The OEB has applied the no harm test in assessing the current application.<sup>9</sup>

The applicants in their argument-in-chief cite two other natural gas proceedings where the OEB has applied the no harm test. These proceedings pre-date the MAADs Handbook. First, the OEB applied the no harm test in a proceeding involving an acquisition of shares of a natural gas distributor.<sup>10</sup> Then, in 2009, the OEB applied the no harm test in respect of an application by Union Gas under section 43(1) of the OEB Act, for approval to sell distribution assets.<sup>11</sup> The OEB in its Decision referred to the 2005 Combined Proceeding Decision where it had adopted the no harm test (in the

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<sup>8</sup> RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257, Decision, August 31, 2005

<sup>9</sup> EB-2016-0351, Decision and Order, August 3, 2017, p. 3

<sup>10</sup> EB-2005-0445, Decision and Order, November 3, 2005 (application by the Wilsher Trust for approval to acquire more than 20% of the voting securities of NRG). Although the OEB did not use the term “no harm test”, it found that “the subject transaction has no adverse impact on the factors identified in the Board’s objectives as set out in section 2 of the Act.”

<sup>11</sup> EB-2008-0411 Decision and Order, November 27, 2009 (Union Gas application seeking approval to sell natural gas pipeline)

electricity context), and concluded that it did “not see any reason to depart from the no harm test.”<sup>12</sup>

The OEB has determined that it would not be appropriate to depart now from the no harm test, which has been consistently applied by the OEB in past MAADs proceedings for both the electricity and gas sectors since the test was recognized in the 2005 Combined Proceeding Decision. The OEB further notes that although hearing panels are not bound by previous decisions, they are guided by previous decisions, and all hearing panels since the 2005 Combined Proceeding Decision considered it appropriate to apply the no harm test. The OEB sees no compelling reason to depart from adopting the no harm test in this proceeding. Parties can however argue how the no harm test should be applied in this case and whether the applicants have met the test on this basis.

### Undertakings

The Municipality of Chatham-Kent proposed the addition of three issues related to the status of the Undertakings. All parties accepted the addition of these issues. OEB staff in its submission expressed concern about the wording of one of the issues (Should the Undertakings be replaced by a condition of the approval of the OEB?). OEB staff submitted that the Undertakings were from the utility to the Lieutenant Governor in Council. They are not Undertakings to the OEB, and in OEB staff’s view, the OEB has no power to unilaterally terminate these Undertakings. For greater clarity, OEB staff suggested that the issue be re-worded to state: *To the extent that the Undertakings are impacted by this application, should any of the provisions of the Undertakings be replaced by a condition of any OEB approval?*

The OEB agrees with OEB staff’s position and has accordingly added this issue to the approved issues list.

### **Rate-Setting Mechanism Issues List**

With respect to the rate-setting mechanism, IGUA submitted an alternative issues list, which is supported by almost all the intervenors. OEB staff offered alternate views on a number of issues, which were generally supported by the applicants in their reply argument. The applicants also submitted a revised issues list in their reply argument

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<sup>12</sup> EB-2008-0411, Decision and Order, November 27, 2009 (Union Gas application seeking approval to sell gas pipeline)

that reduced the number of contested issues. The OEB's findings will focus on the issues that remain disputed.

### Objectives

One contested issue was intervenor Issue #A.2 related to how the framework will ensure that the objectives within the Renewed Regulatory Framework (RRF) are achieved. The applicants argued that this was not required because it would re-open and re-examine the OEB's policies. In its reply submission, the applicants further submitted that this issue was not required with the addition of the issue proposed by OEB staff on the Price Cap IR mechanism.

The OEB agrees with intervenors that the objectives of the RRF need to be considered. The issues list does not need further details on those objectives, and therefore the issue proposed by the intervenors has been amended to the following:

*How should the framework address the four objectives in the Renewed Regulatory Framework of customer focus, operational effectiveness, public policy responsiveness and financial performance?*

The OEB will always take into consideration its statutory objectives, but does not need to add them onto an issues list. Therefore, the OEB will not add an issue with respect to its objectives 3 and 4 under section 2 of the OEB Act.

### Type of Rate-setting Framework

Another contested issue is the appropriate type of framework that should be used to set rates during the deferral period. The applicants in their proposed issues list assume that a Price Cap IR mechanism applies during the deferral period. OEB staff in their submissions provided some context around why this may be appropriate. OEB staff refer to the *Filing Requirements for Natural Gas Rate Applications*<sup>13</sup> (Natural Gas Filing Requirements) which state, "Going forward, there will be two rate-setting policies available for natural gas utilities: Price Cap Incentive Rate-setting (Price Cap IR) and Custom Incentive Rate-setting (Custom IR)." This discussion is in the context of a rate application in the normal course. In a merger situation where a deferral period has been approved, OEB staff noted that it would defeat the purpose of the deferral period if the utility is required to file a cost-based application before the end of the deferral period, subject to any approved off-ramps.

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<sup>13</sup> February 16, 2017

The OEB staff submission concluded that the Price Cap IR mechanism (or another comparable incentive rate-setting mechanism that does not involve a full review of costs) is the one that should apply if the OEB approves a deferral period in the MAADs proceeding. The applicants accepted the position of OEB staff and the associated wording of the issue. However, the applicants opposed a sub-issue proposed by OEB staff that seeks to examine other incentive rate-making options. The applicants argued that the broad issue proposed by OEB staff about some other incentive rate-setting approach would be a complete departure from OEB policy outlined in the RRF and Natural Gas Filing Requirements. The applicants take the position that the only rate-setting framework available to consolidating distributors during a deferral period is Price Cap IR.

In the Rate Handbook, the OEB has stated that the rate-setting options open to gas distributors are the Custom IR and the Price Cap IR. The Rate Handbook characterized the Custom IR option as a rebasing application, given its consideration of costs. The OEB agrees with OEB staff that the only option available to the gas utilities if a deferred rebasing is approved is Price Cap IR. The features and parameters of the Price Cap IR framework are open for discussion.

#### Components of Rate-setting framework

There was general consensus that the different parameters of the rate-setting framework such as the inflation factor, productivity factor and other criteria are valid issues in the proceeding. The OEB has amended some wording with respect to how certain parameters are described. In particular, the OEB does not want to restrict its review of the lost revenue adjustment mechanism (LRAM) to contract customers only since it will also be reviewing the normalized average consumption/average use adjustment.

The only disagreement related to the ability of the applicants to use an Incremental Capital Module (ICM). Intervenors submitted that whether the applicants could apply for an ICM was open for discussion. OEB staff disagreed with the intervenors and noted that an ICM was available to all utilities during an incentive regulation period as per the Rate Handbook. The issue in the case of an ICM would be the construct for such matters as the materiality threshold and the criteria that are adopted to qualify for recovery of capital investments. Accordingly, OEB staff proposed new wording for the issue, which was accepted by the applicants.

The OEB agrees with OEB staff that an incremental capital module is available to utilities under the Price Cap IR framework. What is at issue are the parameters for a capital module. OEB staff included two sub-issues to address certain variances proposed by the applicants. The OEB has determined that these proposals are already

a consideration within the issue and do not need to be specifically added to the issues list. The new issue is as follows:

*Is the proposal for calculating the cost recovery treatment for qualifying capital investments consistent with the OEB's policy for incremental capital modules, and if not, are any deviations appropriate?*

The issue proposed by intervenors related to interdependencies between the two applications and how they should be addressed is not required, as the OEB has decided to combine the two applications.

#### Intervenor Issues A.5, A.6 and A.7

- A.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?*
- A.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?*
- A.7. *What are the implications of the merger for gas supply planning and costing and how will those impact cost allocation and rates?*

With respect to intervenor Issue A.6, the Federation of Rental Housing Providers of Ontario (FRPO) submitted that the existing transportation arrangements between Enbridge Gas and Union Gas and their status post-merger are important issues that need to be considered in this proceeding. FRPO also raised concerns about natural gas storage, including contractual arrangements between Enbridge Gas and Union Gas, and whether there is sufficient competition for storage. FRPO submitted that these issues could impact rates for delivery, storage, transportation and commodity in the event that an amalgamation between the two utilities is approved.

OEB staff disagreed with the addition of Issue A.7 and noted that the OEB had initiated a process to establish a framework for the assessment of the gas supply plans of Enbridge Gas and Union Gas.<sup>14</sup> It is a separate initiative that will also address the level and type of process that will be used to review the plans.

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<sup>14</sup> EB-2017-0129

With respect to cost allocation, OEB staff noted that cost allocation and rate design were already captured in intervenor Issue A.5. The applicants in their reply argued that intervenor Issues A.6 and A.7 are not required if intervenor Issue A.5 is accepted.

The OEB agrees that intervenor Issue A.5 is fairly broad and will allow parties to address cost allocation, rates and rate design issues. This issue has therefore been added to the issues list. The reference to the rate plan period in this issue has been revised to be the deferred rebasing period as proposed by the applicants.

The OEB has initiated a separate process to consider the framework for the review and assessment of gas supply plans.

The OEB recognizes that there may be issues with respect to business and contracting arrangements between Enbridge Gas and Union Gas post-merger. However, the OEB has determined that they are not within scope of the OEB's determination of the rate framework proposed by the applicants, other than to the extent captured by Issue A.5. The OEB will therefore not add intervenor Issues A.6 and A.7 to the issues list for this proceeding.

#### Intervenor Issues B.1 and B.2

Intervenors expressed concern that the OEB may be required to determine an approach to set 2019 rates in the event that the current applications and a future rates application of the amalgamated utility are not reviewed in time to set rates effective January 1, 2019. Accordingly, the intervenors proposed to add Issue B.1 to address this concern.

The OEB will not add this issue. Whether any determination is required on this matter is dependent on the timing of the Decision in this proceeding and on when an application is filed resulting from that Decision. The OEB will consider this matter at a later date if required.

The intervenors also proposed Issue B.2 related to the appropriate adjustments in setting 2019 rates. The OEB finds this issue to be too general. The OEB adopts the specific adjustment issues proposed by the applicants as follows.

*Is the proposed adjustment to reflect the full amortization of Union Gas' accumulated deferred tax balance at the end of 2018 appropriate?*

*Is the proposed adjustment to unwind smoothing of costs related to Enbridge Gas' Customer Information System and customer care forecast costs appropriate?*

*Is the proposed adjustment to Enbridge Gas' Pension and OPEB costs appropriate?*

*Is the proposed adjustment to reflect the removal of Enbridge Gas' tax deduction associated with the discontinued SRC refund appropriate?*

**Harmonization**

The last contentious issue is whether rates and/or conditions of service should be harmonized and if so, when and how. Intervenors noted that the conditions of service are different for Union Gas and Enbridge Gas customers. London Property Management Association expressed concern that potential changes to conditions of service may negatively impact existing Union Gas customers. The School Energy Coalition noted that the OEB may have to determine whether its general approach to harmonization is appropriate in the case of this merger and whether any kind of harmonization with respect to rates or conditions of service is required. The applicants pointed to the MAADs Handbook which notes that harmonization plans are expected at the time of the next rebasing application.

The OEB has not yet determined the applicability of the MAADs Handbook to the gas sector and in this proceeding. For this reason, the OEB will add the following issue to the issues list.

*Are the provisions of the MAADs Handbook related to harmonization applicable?*

## 4 ORDER

As the OEB has determined that it will combine the two proceedings, the schedule has been revised.

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Issues List attached as Schedule A to this Decision and Procedural Order No. 3 is approved.
2. OEB staff and intervenors that require information and material from the applicants that is in addition to the evidence filed, and that is relevant to the hearing, shall request it by written interrogatories filed with the OEB and delivered to the applicants and all intervenors by **March 9, 2018**. Parties are asked to group their interrogatories under the appropriate issues.
3. The applicants shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors by **March 23, 2018**.
4. OEB staff or any party that wishes to file evidence shall, as soon as possible and no later than **March 27, 2018**, inform the OEB by letter of their plans to file expert evidence in this proceeding, the estimated costs including assumptions regarding the participation of the expert in the proceeding and incremental time that will be spent by counsel or any other consultant(s) in relation to the expert evidence.
5. A transcribed technical conference will be held in the OEB's hearing room at 2300 Yonge Street, 25<sup>th</sup> Floor, Toronto, on **March 28, 2018**, at 9:30 a.m.
6. Any technical conference undertakings shall be filed with the OEB and served on all intervenors by **April 4, 2018**.
7. If the OEB has approved the filing of evidence by OEB staff or any intervenor, that evidence shall be filed with the OEB, and copied to the applicants and other intervenors, by **April 11, 2018**.
8. If any party is seeking information and material with respect to any evidence filed by OEB staff or any intervenor that is in addition to the evidence filed with the OEB, and that is relevant to this proceeding, that information shall be requested by written interrogatories filed with the OEB, and copied to the applicants and other intervenors, by **April 18, 2018**.

9. Any party that receives interrogatories on its evidence shall file with the OEB complete responses to the interrogatories and copy the responses to the applicants and other intervenors by **April 27, 2018**.
10. An oral hearing will be held on **May 1, 3 and 4, 2018** starting at 9:30 a.m. in the OEB's Hearing Room at 2300 Yonge Street, Toronto. To allow for an efficient use of the OEB's time, parties with aligned interests are expected to coordinate their respective cross-examinations.

All filings to the OEB must quote the file numbers, **EB-2017-0306 and EB-2017-0307** and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available, parties may email their documents to the address below.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Khalil Viraney at [Khalil.Viraney@oeb.ca](mailto:Khalil.Viraney@oeb.ca) and OEB Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca) and Ian Richler at [Ian.Richler@oeb.ca](mailto:Ian.Richler@oeb.ca).

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**DATED** at Toronto, March 1, 2018

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**SCHEDULE A**  
**ISSUES LIST**  
**DECISION AND PROCEDURAL ORDER NO. 3**  
**ONTARIO ENERGY BOARD**  
**EB-2017-0306 AND EB-2017-0307**  
**MARCH 1, 2018**

**ISSUES LIST**  
**COMBINED PROCEEDING – EB-2017-0306 AND EB-2017-0307**

**MAADs APPLICATION ISSUES LIST**

**“NO HARM” TEST**

1. Have the applicants appropriately applied the ‘No Harm’ test in this case, including in consideration of the OEB’s statutory objectives in relation to natural gas?
2. Have the applicants met the test?

**REBASING DEFERRAL**

3. Is deferral of rebasing appropriate in the context of this application?
4. If so:
  - (a) What is the appropriate deferral period?
  - (b) Is an earnings sharing mechanism (ESM) appropriate and if so, what should that mechanism be and when should it apply?
  - (c) What additional considerations and requirements are appropriate to protect the interests of customers pending rebasing?
5. What commitments to future action have the utilities made during their respective 2013-2018 rate plan terms, what other rate setting issues merit attention now(including cost allocation issues), and when and how are these commitments and issues to be addressed?

**IMPACTS OF THE MERGER**

6. Would the proposed merger impact any other OEB policies, rules or orders (e.g. regulation of new storage, Storage and Transmission Access Rule (STAR)? If so, what are those impacts and how should the OEB address them?

7. If leave is granted, what conditions should be attached?
8. What is the status of the Undertakings to the Lieutenant Governor in Council of Ontario?
9. To the extent that the Undertakings are impacted by this application, should any of the provisions of the Undertakings be replaced by a condition of any OEB approval?
10. If so, what should the content of the condition be?

## **RATE-SETTING MECHANISM ISSUES LIST**

### **RATE FRAMEWORK:**

1. If the OEB grants the Applicants' request for approval of the amalgamation and deferral of rebasing, what should be the features of a Price Cap IR mechanism during the deferral period, including:
  - a. What is the appropriate inflation factor [I]?
  - b. What is the appropriate productivity factor [X]?
  - c. Should a stretch factor apply and if so, what is the appropriate stretch factor?
  - d. Should there be pass through (Y factor) treatment for costs such as:
    - i. Gas commodity and upstream transportation costs?
    - ii. Demand side management (DSM) costs?
    - iii. A lost revenue adjustment mechanism (LRAM)?
    - iv. Cap-and-trade costs?
    - v. Changes to normalized average consumption/average use?

- e. Should there be a Z factor, and if so what are the appropriate parameters and materiality threshold?
  - f. Should there be an earnings sharing mechanism and if so what are the appropriate parameters?
  - g. Is the proposal for calculating the cost recovery treatment of qualifying capital investments consistent with the OEB's policy for Incremental Capital Modules, and if not are any deviations appropriate?
2. How should the framework address the four objectives in the Renewed Regulatory Framework of customer focus, operational effectiveness, public policy responsiveness and financial performance?
  3. What changes to rates, regulated services, cost allocation or rate design should be permitted or required during the deferred rebasing period and what process should be required for such changes to be made?
  4. What should the annual rate adjustment process be?
  5. What deferral and variance accounts should continue?
  6. What deferral and variance accounts should not continue?
  7. What additional deferral and variance accounts are appropriate?
  8. Is the proposed adjustment to reflect the full amortization of Union Gas' accumulated deferred tax balance at the end of 2018 appropriate?
  9. Is the proposed adjustment to unwind smoothing of costs related to Enbridge Gas' Customer Information System and customer care forecast costs appropriate?
  10. Is the proposed adjustment to Enbridge Gas' Pension and OPEB costs appropriate?
  11. Is the proposed adjustment to reflect the removal of Enbridge Gas' tax deduction associated with the discontinued SRC refund appropriate?

**OTHER:**

12. Are the provisions of the MAADs Handbook related to harmonization applicable?
13. How should past OEB directives and utility commitments be addressed?
14. Is the proposed scorecard appropriate?
15. What reporting should be required during the deferred rebasing period?
16. What stakeholder engagement should be required during the deferred rebasing period?

**SCHEDULE B**  
**ONTARIO ENERGY BOARD**  
**APPLICANTS AND LIST OF INTERVENORS**  
**EB-2017-0306 AND EB-2017-0307**  
**MARCH 1, 2018**

**Union Gas Limited  
EB-2017-0306 & EB-2017-0307**

**APPLICANT & LIST OF INTERVENORS**

March 01, 2018

**APPLICANT                                  Rep. and Address for Service**

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**Union Gas Limited  
EB-2017-0307**

**APPLICANT & LIST OF INTERVENORS**

March 01, 2018

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**EB-2017-0307**

**APPLICANT & LIST OF INTERVENORS**

**March 01, 2018**

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**EB-2017-0307**

**APPLICANT & LIST OF INTERVENORS**

March 01, 2018

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