



EB-2017-0306
EB-2017-0307

**Enbridge Gas Distribution Inc. and Union Gas
Limited**

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

PROCEDURAL ORDER NO. 5

April 16, 2018

Enbridge Gas Distribution Inc. (Enbridge Gas) and Union Gas Limited (Union Gas), jointly referred to as the applicants, filed an application dated November 2, 2017 with the Ontario Energy Board (OEB) under section 43(1) of the *Ontario Energy Board Act, 1998*, for approval to effect the amalgamation of Enbridge Gas and Union Gas into a single company referred to as Amalco. On November 23, 2017, the applicants filed another application with the OEB under section 36 of the *Ontario Energy Board Act, 1998* for approval of a rate setting mechanism and associated parameters, effective January 1, 2019.

The OEB issued a Notice of Hearing on December 1, 2017 for both applications. In Decision and Procedural Order No. 3 issued on March 1, 2018, the OEB combined the two proceedings and approved an issues list for the combined proceeding. The OEB also set dates for other procedural matters in the proceeding including an oral hearing which has been scheduled for May 1, 3 and 4, 2018.

Initial Positions

In order to have a focused and efficient oral hearing, the OEB requires parties that plan to cross examine witnesses at the oral hearing to file in writing by April 30, 2018 their initial positions on certain key matters in advance of the oral hearing. This is intended to be a statement of initial positions only, which can be amended in the final submissions to be filed by parties.

1. Do you plan on supporting approval of the merger?
2. If you plan to support the merger what, if any, conditions of approval will you propose?
3. Do you support the 10-year deferred rebasing period?
4. Are there elements of the proposed rate setting framework that you oppose?
5. Are there elements missing from the proposed rate setting framework?

The OEB expects parties to file initial positions that are brief and concise. Parties are also reminded that questions asked and answered at the Technical Conference can be relied upon in submissions. There is no need to repeat these questions at the oral hearing for the benefit of the OEB panel. A full transcript of the Technical Conference is available for reference.

Confidentiality

In responding to an undertaking at the Technical Conference, the applicants filed a document titled 2017 Strategic Plan, Board of Directors Planning Session (the Strategic Plan), following the process set out in the OEB's Practice Direction on Confidential Filings (the Practice Direction).

The applicants have requested that the Strategic Plan be treated as confidential. Furthermore, the applicants requested that representatives of its actual or potential competitors not be permitted access to the Strategic Plan. The applicants named the City of Kitchener, National Grid Gas Delivery Companies, Rover Pipeline LLP, the Six Nations Natural Gas Company Limited and TransCanada PipeLines Limited as intervenors in this proceeding who are actual or potential competitors.

The OEB has reviewed the Strategic Plan and accepts that it is relevant to this proceeding.

For the time being, the OEB will treat the Strategic Plan as confidential. Intervenors not identified as actual or potential competitors may access this document by executing a Declaration and Undertaking.

Parties are reminded of their obligations under the Practice Direction with respect to access to, and the handling of confidential material.

School Energy Coalition Notice of Motion

The School Energy Coalition (SEC) filed a motion on April 12, 2018, seeking an order requiring full and adequate responses to several interrogatory, technical conference and undertaking responses. Specifically, the Applicants were requested to provide:

- 1) a list of all documents provided to the Competition Bureau regarding the Ontario distribution transmission and storage market, and
- 2) all information, reports, analysis or similar documents related to the effect of the merger on competition in the Ontario gas storage market.

The OEB will hear the motion in part. The OEB will not hear the first request. The OEB does not believe it would be helpful to receive a list of as many as 600,000 documents that Union and Enbridge provided to the federal Competition Bureau through the course of the Competition Bureau's review of the (then) proposed merger of Enbridge Inc. (Enbridge's parent company) and Spectra Energy (then Union's parent company). The Competition Bureau was reviewing the merger between Enbridge Inc. and Spectra Energy, not the proposed amalgamation between Enbridge and Union. The mandates of the Competition Bureau and the OEB are also different. The OEB is charged, through its objectives, with (amongst other things) protecting the interests of consumers. The OEB also has the power to consider some competition issues through section 29 of the *Ontario Energy Board Act, 1998*, however this current case is not a section 29 proceeding.

It is not clear to what extent the Competition Bureau review considered storage issues that would be relevant to the current proceeding. All the OEB has is a "no action" letter. Regardless, the OEB will be considering storage issues within the

context of issue 6 of the Issues List: “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?” The Applicants can argue for whatever relevance they wish with respect to the Competition Bureau’s review, but ultimately the OEB will be making its own determination with respect to the issues in this case. The OEB would not be assisted by a lengthy list of documents that were presented to the Competition Bureau in conducting this review.

The OEB will hear submissions on a modified version of the SEC’s second request. The OEB agrees that materials relating to the impacts of the merger on Ontario’s gas storage market could be relevant to this proceeding, in particular with regard to issue 6. The OEB finds the request, however, to be overbroad. The OEB will hear the motion on the following, narrower request: all reports or analysis related to the effect of the amalgamation of Enbridge and Union on the storage market in Ontario.

IT IS THEREFORE ORDERED THAT:

1. Parties must file their initial positions as instructed earlier in this Procedural Order on or before **April 30, 2018**.
2. The applicants have filed the Strategic Plan in confidence. Any objections to the request for confidential treatment must be filed by **April 20, 2018**.
3. The applicants may file a reply to any objections to the request for confidential treatment by **April 27, 2018**.
4. The applicants may file submissions on the SEC motion on or before **April 19, 2018**.
5. SEC may file a reply on the applicants’ submission on or before **April 23, 2018**.

All filings to the OEB must quote the file number, **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 and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca and Ian Richler at Ian.Richler@oeb.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, April 16, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary