

April 27, 2018

Ms. Kirsten Walli
OEB Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Draft Report of the Board on Corporate Governance Guidance for OEB
Rate-Regulated Utilities dated March 28, 2018 (“Report”)**

Enbridge Gas Distribution Inc. and Union Gas Limited (the “Companies”) have reviewed the Draft Report of the Board on Corporate Governance Guidance for OEB Rate-Regulated Utilities dated March 28, 2018 (“Report”). The Companies and their mutual parent affiliate, Enbridge Inc. (“Enbridge”), appreciate the opportunity to provide the OEB with written comments on the guidance on best practices for utility governance and on the new mandatory reporting and record keeping requirements. As the OEB is aware, the Companies applied to the Board in late 2017 under docket number EB-2017-0306 to amalgamate effective January 1, 2019. The Companies have therefore chosen to make joint submissions on the Report.

Strong governance of OEB regulated utilities is a laudable goal. Enbridge and the Companies not only believe in the value of good governance, but have invested heavily for decades in establishing quality governance practices suited to a business of our scope and size.

Our approach focuses on substantive governance and encompasses a holistic view of governance and our stakeholders. We include safety, financial responsibility and performance, ethics, compliance, corporate social responsibility and sustainability in our definition of governance. As we say in Enbridge’s most recently filed Statement on Corporate Governance, sound governance means sound business.

While we support the goal of strengthening governance, there are some key elements of the Report that must be addressed. Broadly speaking, the Report does not currently reflect the right balance of substance over form, which is necessary and reasonable to accommodate the diverse characteristics and structures of the utilities regulated by the OEB.

Where regulated utilities are part of a publicly held company structure, the OEB should recognize and accept the operating, legal and governance structures that already apply, instead of imposing distinct but overlapping regulation to promote governance. Other regulated utilities in different circumstances will not be subject to the established and

robust governance requirements that apply to public companies and in those cases it may be justifiable for the OEB to prescribe expectations and reporting formats. We also urge the OEB to reconsider the notion, contemplated in the Report, of amending the *Affiliate Relationships Code for Gas Utilities* (“ARC”) to prescribe a majority of independent director appointments.

Operating, Legal and Governance Structures of Public Companies Must be Recognized

The Companies agree with the OEB’s approach to offer guidance rather than prescriptive measures on corporate governance. However, we are concerned with the strong implication of a “one size fits all” approach in the Guidance on Best Practices for Utility Governance section of the Report. The OEB should acknowledge that different models may be appropriate and effective in achieving the goal of good governance and strong reporting, depending upon the corporate structure.

In our case, the Companies are wholly-owned operating subsidiaries of a parent entity, Enbridge, that is a widely-held public company listed on both the TSX and the NYSE. The Companies themselves are also issuers of publicly held debt instruments. All of these features already bring with them a myriad of mandatory and voluntary best practices in governance structures and reporting including requirements for independent directors of Enbridge. They also influence our view that governance for the Companies is best achieved in an integrated way instead of on a stand-alone basis for each entity.

We recommend that the final Report recognize integrated corporate governance models such as ours as being appropriate for rate regulated utilities in Ontario. Ours is a model whereby certain governance functions that are common across our organization are overseen by the board of directors of Enbridge. The Companies enjoy significant benefits with respect to the governance of the Ontario utilities by having high-caliber, robust committees of the board operating at the parent level.

For example, the Companies are able to leverage: (a) the broad representation of independent board members at the parent level (11 of the 13 board members of Enbridge are independent); (b) the identification and implementation of governance best practices for an energy infrastructure business (which includes a rate regulated utility business); and (c) the benefits from the efficiencies of having a consistent application of corporate policies, standards and enterprise systems like our compliance program and Statement of Business Conduct, information technology standards and security and strong internal controls (COSO and SOX) environment. In sum, Enbridge has a comprehensive governance system that follows best practices and fully meets, and in many cases exceeds, the requirements of applicable laws, rules, regulations and standards.

Operating subsidiaries in such a corporate family should be encouraged to leverage these existing investments, which entail substantial cost and considerable effort. Requiring all of the governance functions to be replicated and carried out independently at the subsidiary level will result in unjustifiable duplication of effort, inefficiencies, loss of significant benefits and unnecessary additional costs at the Companies with no corresponding benefit.

Reporting of Public Companies Must be Recognized

The Companies agree with the OEB that mandatory reporting is an effective promoter and reinforcement of good governance. We believe, however, that businesses that are already subject to extensive mandatory and voluntary reporting structures should be entitled to rely on public reports to meet their reporting obligations under the OEB's mandatory reporting regime. We urge the OEB to make this an express exception to its final reporting requirements for companies subject to an existing governance reporting regime.

The Companies do not support the creation or filing of any additional disclosure documents on corporate governance. Canadian securities legislation already addresses corporate governance disclosure for public issuers, which is readily accessible to all of the operating subsidiary's stakeholders including the OEB. Enbridge on its own behalf and on behalf of the Companies also provides extensive voluntary public disclosure on governance-related topics in documents such as its CSR & Sustainability Report, available and updated on its website.

Creating similar but distinct mandatory reports for the OEB to cover overlapping subject matter would not add value, but would lead to duplication of effort and additional and unnecessary costs. Additional off-cycle public filings related to governance matters already addressed in securities filings also pose an audit risk to reporting issuers such as the Companies that public filings may be viewed as inconsistent depending upon timing of disclosure and may inadvertently require additional securities filings.

Finally, we do not support the requirement to map committee mandates to the key board functions identified by the OEB. Here, the OEB is imposing its views on what sorts of functions should be undertaken by a board of directors and how such functions should be undertaken. This is counter to the *Ontario Business Corporations Act* and common law jurisprudence which gives broad discretion to the board of directors to manage a corporation in the best interests of the corporation.

Neither Canadian securities laws nor corporate laws prescribe the key functions of a board or require a mapping of such functions to committee mandates. We satisfy our mandatory and voluntary explanation requirements through detailed descriptions of the board's function and role. Given our earlier comments about our approach to governance, a detailed mapping is not appropriate for corporations that own and oversee operations beyond the regulated utility business, over which the OEB does not have jurisdiction.

The OEB already has extensive control over certain business practices of rate-regulated entities through its powers to approve rates, to issue licenses and to make codes. We do not think it is necessary or appropriate to extend the OEB's jurisdiction to effectively direct the key functions of a board of directors of a utility. We recommend the OEB remove from the report its guidance on the key functions of a utility board and the requirement to map such functions to committee mandates.

Independence

Enbridge knows the value of independent and diverse thinking to good governance. We have long benefited from independent representation on Enbridge's board and again on the Companies' boards. However, a universal majority independence requirement for every OEB regulated utility is a step too far, with questionable benefit. The current ARC requirement that one-third of the utility board of directors be independent from any affiliate is consistent with corporate law principles and achieves an appropriate balancing of interests for wholly-owned subsidiaries of widely-held public corporations such as the Companies. The OEB ought not to be applying an independence definition or requirement different from or inconsistent with existing corporate law principles.

Unlike a municipally owned utility, corporate law applies from the Companies' own structure through to the top parent-level ownership of the utility business at Enbridge. Under corporate law, directors of a given corporation both have legal fiduciary duties to the corporation and have been given substantial deference by courts to manage or supervise the affairs of the corporation, in its best interests. These interests are now understood to extend well beyond simple economic interests of its shareholders; indeed, the directors cannot simply exercise their discretion when voting as a board member to effect the will of the shareholder that appointed them. The board of the Companies, and the board of the Companies' shareholders in appointing those boards, must have their discretion in these regards respected.

Yes, the best interests of the corporation are necessarily subject to the rules and objectives of regulation in the case of a utility. However, this does not require the regulator to impose its own decision on the governance design of an operating subsidiary utility, in place of that of its owner. This tool is neither core to the OEB's mandate nor required to achieve a benefit that could not accrue without it.

Moreover, establishing mandatory levels of board size and independence for utilities such as the Companies will have a direct impact on the cost and efficiency of governance at both the utility and parent levels. Each new director, meeting, committee and administrative support system comes at a cost and resource commitment. Where there is little benefit or harm demonstrated, this cost just can't be justified. The Companies operate in an environment where productivity and efficient allocation of resources is promoted. They need the latitude to accomplish good governance in alignment with these other goals.

Conclusion

Unlike municipally or privately owned utilities, Enbridge and the Companies have been subject for many years to extensive regulation and market expectations for governance. Our governance structures and reporting have grown and evolved within these frameworks. The OEB should not layer on incremental interpretations and requirements that come with real cost and illusory benefit.

Instead, the OEB should recognize these factors and seek to regulate where governance-oriented public company regulation does not already apply. Its guidance and rules should be flexible enough to accept structures and reporting that have been adapted to meet the

end goal of good governance under other rules like those already applicable to the Companies, while promoting that end goal as a principle and as a regulatory activity where the public company framework does not apply.

Yours truly,

Andrew Mandyam
Director, Regulatory Affairs
Enbridge Gas Distribution

Mark Kitchen
Director, Regulatory Affairs
Union Gas Limited