

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, as amended;

AND IN THE MATTER OF the application of Enbridge Gas Distribution Inc. and Union Gas Limited for approval to amalgamate Enbridge Gas Distribution Inc. and Union Gas Limited.

**SUBMISSIONS
OF THE MUNICIPALITY OF CHATHAM-KENT**

I Introduction and Overview

1. These are the submissions of the Municipality of Chatham-Kent (“CK”) in the application of Enbridge Gas Distribution Inc. and Union Gas Limited (“Union”, and collectively, “Union/Enbridge”) for approval of the amalgamation of the distribution utilities. The entity created by the amalgamation will be referred to below as the “Amalgamated Entity”.

2. These submissions address Issues 8, 9, and 10 under the topic “Impacts of the Merger” on the Issues List attached as Schedule A to Decision and Procedural Order No. 3, dated March 1, 2018.

3. For the reasons described below, CK supports the application for approval of the amalgamation subject to the inclusion, in the order approving the amalgamation, of the following conditions:

1. The Amalgamated Entity shall ensure that during the deferred rebasing period any employment impacts resulting from the amalgamation will be managed on an roughly proportionate basis between CK and the City of Toronto;
2. To the extent that Centres of Excellence are created in either CK or the City of the Toronto, the Centres of

Excellence shall reflect a range of skills and compensation levels, including leadership roles;

3. Employment within CK shall reflect a mixture of entry, middle and senior level roles; and
4. The Amalgamated Entity will commit to a process of regular communication and engagement with CK in respect of the amalgamation and its related impacts and opportunities.

4. Union/Enbridge have agreed to the inclusion of these Conditions in an order approving the amalgamation, as set out in the response to Board Staff interrogatory 12 (Exhibit C.Staff 12). The wording of the conditions was modified slightly in Undertaking response J 2.1, a copy of which is attached hereto as Appendix 1.

5. The conditions continue, albeit in modified terms, a long-standing recognition by the owners of Union and by the province of the importance of Union's head office to the economic health of CK. That recognition has been given effect by Undertakings which successive owners of Union have offered and which have been accepted by the province and the OEB.

6. The conditions are critical to the economic health of CK, a community that has suffered significant job losses as a result of, among other things, the erosion of its manufacturing sector. The conditions are one means by which CK can begin to reverse that erosion and continue to attract skilled employees to well-paying, responsible positions.

7. These submissions are in the following sections:

1. A review of the history of the Undertakings;
2. The economic significance of Union's head office to the CK economy;
3. The proposed conditions.

II The History of the Undertakings

8. The Undertakings have been given by successive owners of Union since the 1980s. The Undertakings were given to the Lieutenant Governor in Council ("LGIC") at a time

when, under the *Ontario Energy Board Act* (“OEBA”), the LGIC had the authority to approve changes in the ownership and control of gas distributors. The Undertakings were given on occasions and in circumstances where the nature of the transaction did not trigger the legislated need for LGIC approval. They were, in other words, volunteered.

9. The OEB provided a comprehensive review of the Undertakings in its report in E.B.R.L.G. 28. The circumstances were that Unicorp Canada Corporation (“Unicorp”) proposed to take over Union Enterprises Limited (“Union Enterprises”), a holding company owning Union.

10. As there was no direct change in the ownership of Union in that case, the approval of the LGIC was not required by the OEBA. Notwithstanding that, the LGIC, by Order in Council, referred the matter to the OEB for a report because, among other things, a number of municipalities had expressed “considerable concern and were seeking assurances” that their interests would not be prejudiced by the proposed transaction.¹ The LGIC directed the OEB to review the Undertakings offered by Unicorp and Union Enterprises.

11. The Undertakings reviewed by OEB in E.B.R.L.G. 28 required that “the head office of Union Gas and all appropriate head office operations will be maintained in the City of Chatham”.

12. In approving the wording of the Undertakings with respect to the location of the head office, the OEB made the following observation:

The location of the head office is a very important matter to the customers and to shareholders of Union Enterprises who live in the service area of Union Gas. The Board is of the view that the location of the head offices of any utility should not be changed without the approval of the Board... The head office of Union Gas should be situated in Chatham unless otherwise ordered by this Board.²

13. The Undertakings in substantially the same form were given by Westcoast when it purchased Union Energy in 1992. As was the case with the Unicorp transaction, the Westcoast transaction was not subject to review by the LGIC because it did not trigger the need for the

¹ Ontario Energy Board *Report of the Board*, E.B.R.L.G. 28, August 2, 1985, para. 1.7, p. 1/4.

² *Ibid*, paras 9.23, 9.24, p. 9/19

approval of the LGIC. This was, in other words, another circumstance where the Undertakings were volunteered.

14. The Undertakings were continued when Westcoast applied to the LGIC in 1997 for leave to amalgamate with Centra Gas Ontario Inc.

15. The OEB Act was amended in 1998. The OEB was substituted for the LGIC in approving changes in the control of gas distributors. Section 131 of the amended OEB Act provided that Undertakings made to the LGIC were to remain valid and binding.

16. In 2008, Westcoast applied to the OEB for the approval of the transfer of a controlling interest in Union to a limited partnership. Union and Westcoast confirmed that they would abide by the terms of the Undertakings.

17. CK submits that the Undertakings embody a nearly four decade long recognition, by Union, its various owners and the provincial government of the importance of Union's head office to the economic well-being of CK.

18. The Undertakings by their terms will expire with the amalgamation of Union and Enbridge. The conditions agreed to by Union/Enbridge replace the commitment made in the Undertakings, albeit recalibrated to reflect the economic and business realities flowing from the amalgamation.

III The Economic Importance of the Conditions to CK

19. Section 16 of the *Statutory Powers Procedure Act* permits a tribunal, in making its decision in any proceeding, to "take notice of facts which may be judicially noticed".³

20. The Supreme Court of Canada, in its decision in *R. V. Find*, described the scope of judicial notice as follows:

a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of and accurate

³ *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

demonstration by resort to readily accessible sources of indisputable accuracy.⁴

21. CK submits that the OEB is permitted to take notice of the economic circumstances of southwestern Ontario, including CK. Those circumstances include, among other things, long-term declines in employment and employment opportunities.

22. Employment in CK has been adversely affected by two phenomena in particular. One is the loss of large manufacturers, most recently the Navistar plant that at one point employed nearly 1,000 people. The other is urbanization. The impact of the recession that began in 2008 was a 10% drop in employment in CK, an impact from which CK has only partially recovered.

23. Union is the largest private sector employer in CK. Attachment 1 to Union/Enbridge's response to CK Interrogatory 1, a copy of which is attached hereto as Appendix 2, indicates that Union has approximately 900 employees in CK. It also shows that the Union employees in CK have a range of skills and levels of responsibility.

24. In addition to the direct and indirect impact of the loss of employment and income, the loss of jobs requiring skills and education would have the longer-term effect of limiting the ability of CK to attract and keep young, skilled employees. It is because of that that maintaining a range of head office functions in CK is so critical.

IV The Proposed Conditions

25. CK recognizes that one of the effects of any amalgamation will be the loss of some jobs. In an ideal world, the proposed conditions would require the Amalgamated Entity to maintain all of the head office functions in CK, and would include monitoring, reporting and penalty provisions. CK recognizes that that is not realistic. The conditions represent an attempt to mitigate the inevitable loss of some jobs in CK.

26. The terms of the conditions are linked to the duration of the re-basing period. The length of that re-basing period is critical because it allows CK time to adjust to the loss of

⁴ *R. v. Find*, 2001 SCC 32 at p 48.

employment by attracting other skilled employers and employees to the municipality. CK supports Union/Enbridge's request for a ten-year re-basing period.

27. A suggestion may be made that including the conditions in the approval of the amalgamation would require the OEB to engage in social planning. That is a suggestion that would be made by those for whom it would be merely an academic concern. It would be made, in other words, by those whose constituencies are not affected by the loss of employment.

28. CK submits that the conditions continue a decades-old commitment on the part of the government, the OEB and the owners of Union to protect the interests of CK. The OEB has the authority to continue that commitment.

29. CK asks that the OEB grant Union/Enbridge's application for approval of the amalgamation as requested, subject to the inclusion of the conditions set out in paragraph 3 above.

All of which is respectfully submitted.

Date: June 15, 2018

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APPENDIX 1

Filed: 2018-05-11
EB-2017-0306/EB-2017-0307
Exhibit J2.1
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ENBRIDGE GAS DISTRIBUTION INC. AND UNION GAS LIMITED

Undertaking of Mr. Kitchen To Mr. Shepherd

REF: Tr.2, p.18

To advise whether it would, in your view, be consistent with the understanding between Chatham-Kent and the company to impose conditions concerning Amalco's continued presence in Chatham-Kent, but only to the extent they do not create inefficiencies.

In the Applicants' view, the direction and decisions that Amalco will make during the deferred rebasing period will be based on delivering sustained efficiency improvements, which is the underlying premise supporting the amalgamation. As such, the Applicants do not believe that it is necessary to add conditions related to inefficiencies in respect of Amalco's continued presence in Chatham-Kent. The Applicants would not have contemplated any commitments that would in any way result in inefficiencies.

During the exchange that led up to this undertaking there was discussion with certain parties and the Board of the proposed condition of approval as shown in the response to Board Staff Interrogatory #12 found at Exhibit C.STAFF.12 containing the word "may", rather than "shall". The Applicants suggest the following updated wording for the condition listed as number 2 in the list below in order to address that concern (changes in bold):

1. Amalco shall ensure that during the deferred rebasing period that any employment impacts resulting from the amalgamation will be managed on an roughly proportionate basis between the Municipality of Chatham-Kent and the City of Toronto;
2. **To the extent that** Centres of Excellence **are** created in either the Municipality of Chatham-Kent or the City of the Toronto, the Centres of Excellence shall reflect a range of skills and compensation levels, including leadership roles;
3. Employment within the Municipality shall reflect a mixture of entry, middle and senior level roles; and
4. Amalco will commit to a process of regular communication and engagement with the Municipality of Chatham-Kent in respect of the amalgamation and its related impacts and opportunities.

APPENDIX 2

Filed: 2018-03-23
EB-2017-0306/EB-2017-0307
Exhibit C.MCK.1
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Plus Attachment

ENBRIDGE GAS DISTRIBUTION INC. AND UNION GAS LIMITED

Answer to Interrogatory from Municipality of Chatham Kent

MAADs Issues List – Issue No. 1

Reference:

Preamble:

Question:

For each of the categories of employment, listed below, located at the head office of Union in CK, please indicate how many employees are there in each category.

The categories of employment are:

- Corporate
- Human resources
- Regulatory affairs
- Procurement
- Legal
- Finance
- Information technology
- Asset management and engineering services
- Facilities (property)
- Logistics
- Fleet services
- Metering
- Customer service (call centre, billings, collections)
- Construction
- Trouble response
- Control room

If these categories of employment do not correspond to the categories used by Union, please substitute the categories used by Union and answer this interrogatory accordingly.

Response:

Attachment 1 summarizes the number of employees and contractors by major function for EGD and Union in Toronto and Chatham, respectively.



Confidential

March 8, 2018

Mayor Randy Hope
Municipality of Chatham-Kent
315 King Street West
Chatham, ON
N7M 5K8

Dear Mayor Hope:

As discussed in our meeting on March 7, 2018, attached are summaries which outline the current number of employees and contractors by major function in both the Chatham and Toronto location.

If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Baker".

Steve Baker

Attachments:

1. Summary of Chatham Based Employees at Union Gas Limited
2. Summary of Toronto Based Employees at Enbridge Gas Distribution

Chatham Based Employees – December 31, 2017



An Enbridge Company

Department	Regular	Temporary/ Contractor (*)	TOTAL
HR/Corporate Real Estate	44	6	50
TIS (IT)	137	18	155
Engineering/Construction	163	27	190
Business Development, Storage & Transmission	135	10	145
Regulatory, Lands, Municipal Affairs	62	3	65
Sales, Marketing, Customer Care	99	11	110
EH&S	2	3	5
Legal	4	1	5
Supply Chain	22	3	25
Finance/Audit/Tax	109	11	120
Executive	5		5
TOTAL	782	93	875
<i>Operations (Chatham only)</i>	76	4	80
TOTAL	858	97	955

* Temporary/Contractors will fluctuate through the year

Toronto Based Employees – February 1, 2018



Department	Regular	Temporary/ Contractor (*)	TOTAL
HR & REWS	33	6	39
TIS (IT)	119	130	249
Engineering & Asset Management	130	24	154
RDO	2	0	2
Market Development & Public Affairs	108	21	129
Energy Supply & Customer Care	86	7	93
Legal	17	1	18
Supply Chain	20	3	23
Finance	86	7	93
Executive	6		6
TOTAL	607	199	806
<i>Operations</i>	<i>411</i>	<i>13</i>	<i>424</i>
TOTAL	1018	212	1230

* Temporary/Contractors will fluctuate through the year