June 15, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

RE: EB-2017-0307/0306 – Final Argument of the Consumers Council of Canada – Applications by Union Gas Limited and Enbridge Gas Distribution Inc. for Approval to Amalgamate and for a Rate-Setting Mechanism

Please find, attached, the Final Argument of the Consumers Council of Canada in the above-referenced proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC:
All Parties

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

EB-2017-0306/0307

APPLICATIONS BY UNION GAS LIMITED AND ENBRIDGE GAS DISTRIBUTION INC. TO AMALGAMATE AND FOR APPROVAL OF A RATE-SETTING PLAN

I. INTRODUCTION:

On November 2, 2017, Union Gas Limited (Union) and Enbridge Gas Distribution Inc. (EGD) applied to the Ontario Energy Board (OEB or Board) pursuant to section 43(1) of the *OEB Act* for an order or orders granting leave to amalgamate. On November 23, 2017, Union and EGD applied to the OEB pursuant to section 36 of the OEB Act for an order approving a rate setting mechanism an associated parameters for a deferred rebasing period effective January 1, 2019.

Although the OEB had intended to hear the Applications in separate proceedings, it determined, following the filing of submissions by all parties on the respective issues list for each proceeding, that the two Applications were interdependent and it would be more efficient to combine them.

These are the submissions of the Consumers Council of Canada (Council) regarding the Applications for approval to amalgamate and set rates for the period beginning January 1, 2019. The Council has worked collaboratively with other intervenors throughout this proceeding, both with respect to the hearing process and with respect to the development of written argument.

II. GENERAL COMMENTS:

The Council underscores the importance of this proceeding and the ultimate decision of the OEB regarding the Applications:

- If Union and EGD obtain approval to merge they will be creating the third largest regulated utility in North America with a combined rate base of approximately $11.9 billion and a combined revenue requirement of approximately $2.5 billion;

- The new entity will be providing natural gas transmission, storage and distribution services to more than 3.6 million natural gas customers;

- The impact of the Board's decision in this proceeding will have a significant impact on almost all of the natural gas customers in Ontario, for years to come; and

- To accept the Applications as filed will result in a substantial risk that Ontario natural gas ratepayers will not benefit from the merger at all.

In both the pre-filed evidence and during the course of the hearing the Applicants highlight the primary objectives of the merger:

- The primary objectives of the merger are to deliver benefits and value to customers and the Amalco while continuing to provide safe and reliable service.[1]

- The amalgamation of EGD and Union will provide significant and sustainable benefits to current and future ratepayers in Ontario.[2]

- Amalgamation allows for greater operating efficiencies, including potential economies of scale as well as continuous improvement through best practices. These efficiencies provide direct and enduring benefits for both customers Amalco.[3]

- As we move through the deferred rebasing period, any savings that we are able to achieve as a result of the amalgamation ultimately flow to ratepayers and they also get the savings through the interface of systems and to the extent there are other savings, they will get those too, eventually.[4]

- The evidence is that the amalgamation will provide greater benefits to customers than continued stand-alone operations of Enbridge and Union. A comparison of the annual revenue requirement for Enbridge and Union, were they to continue as stand-alone entities, to the revenue Amalco operating as an amalgamated entity under the proposed price cap mechanism over the deferred rebasing period shows a cumulative benefit to customers of $410 million.[5]

- At the end of the ten-year term the ratepayers get an additional $120 million put back into rates. It is a win-win situation.[6]

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[1] Ex. C.CCC.1
[2] Ex. B/T1/p. 2 (EB-2017-0306)
[3] Ex. B/T1/p. 3 (EB-2017-0306)
[4] TC Tr. Vol. 1, p. 34
[5] Argument in Chief, p. 6
[6] Tr. Vol. 1, p. 26

The problem with these claims made by the Applicants is that they are not legitimate claims. As set out throughout these submissions, the Applicants' proposals, if accepted by the OEB, create a significant imbalance between the interests of the ratepayers and the shareholder.

From the Council's perspective these Applications are not about delivering "significant and sustainable" benefits to the ratepayers. Ratepayers are not being afforded the benefits associated with the sustainable efficiencies created during the previous incentive regulation (IR) plans (which was promised by both utilities as part of their previous plans) as the utilities are not rebasing. There is no guarantee that when rates are rebased in 2029, as proposed by EGD and Union, ratepayers will see "significant and sustainable" savings.

Furthermore, the Applicants are not advancing any proposals that allow for ratepayers to share in benefits prior to 2029 either through an upfront adjustment to base rates, a stretch factor, a productivity factor or through earnings sharing. The elements of the previous IR plans that have been in place for years (productivity factors, stretch factors, and ESMs) that were at one point acceptable to the Applicants, are no longer acceptable to them.

In the previous plans despite the fact there were upfront benefits provided to customers in terms of adjustments to base rates and productivity factors, the utilities have consistently over-earned every year since 2008.[7]

This Application is about enhancing the returns of Enbridge Inc. at the expense of Ontario ratepayers.

The Applicants rely heavily on their forecast of a cumulative benefit to customers of $410 million as the primary justification for approval of the merger. The $410 million is a number that is the difference between two hypothetical scenarios - the revenue requirement that would result over the next ten years, assuming Union and EGD operate as completely stand-alone utilities (which is no longer a relevant analysis as the two companies are under common ownership and are already sharing services and employees) and a high level estimate of the revenue requirement under their proposed rate-setting mechanism.

The stand-alone proposals are not based on evidence that would be required when considering a Custom IR Plan. And, in that respect they should not be relied on.
The $410 million is a completely misleading number and based on assumptions that are simply wrong. The stand-alone scenario assumes that the utilities would effectively be operating in silos, achieving no savings over the next ten years. This

[7] Ex. JT1.3

will not happen and that fact completely undermines the credibility of the $410 million benefit to customers. The Board should reject the analysis provided by the Applicants – the analysis that the rate plan proposed will deliver $410 million in savings to customers over the next ten years. The potential savings are much less for ratepayers, if they exist at all, and much greater for the shareholders.

The Board in this case cannot take a narrow perspective with respect to the "no-harm" test. That would mean that as long as the revenue requirement produced through the rate plan is $1 less than the revenue requirement set through four stand-alone Custom IR applications for EGD and Union, there is no harm to ratepayers. From the Council's perspective the Board must consider what is the best way to appropriately balance the interests of the utility ratepayers. There is clearly an imbalance embedded in the current proposals that adversely impact the ratepayers. This creates harm. The Board has a statutory obligation to set just and reasonable rates. We are of the view that the current rate plan, as proposed will not result in just and reasonable rates.

The Council is not opposed to the merger. We believe that merging these two utilities will legitimately result in savings. The estimated Operating and Maintenance (O&M) cost savings potential (not including capital savings) is, at a high level, in the range of $350 million to $750 million.[8] We know, however, that this is based on "high level" estimates prepared by senior management. Savings are already being generated today as the two utilities are currently rationalizing services and reducing their respective workforces and other redundant costs. Savings, for example, are expected in the following areas:

- Corporate Costs;
- Demand Side Management
- Cap and Trade
- Shared Services
- Customer Care
- Gas Supply and Transportation
- Distribution Work Management[9]

The Council is, however, opposed to the rate plan primarily on the basis that it is possible that ratepayers will never benefit from these merger savings. The 10-year deferral period, the lack of any appropriate ratepayer protection mechanisms including the absence of a balanced earnings' sharing mechanism (ESM), are the most troubling issues for the Council. The rate plan should not be approved as filed.

The Council has organized its submissions into the following sections:

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[8] Ex. B/T1/p. 26 (EB-2017-0306)
[9] BOMA - 16

1. Approval to Amalgamate
2. The Proposed Rate Plan
3. Recommendations and Conclusions

III. SUBMISSIONS ON THE ISSUES

1. APPROVAL TO AMALGAMATE:

The Applicants are seeking OEB approval to amalgamate under section 43(1) of the OEB Act. The Application was prepared assuming that the Board's Handbook to Electricity Distributor and Transmitter and Consolidations and the underlying policy contained in that Handbook related to electricity mergers, acquisitions, amalgamations and divestitures (MADDs policy) was equally applicable to the natural gas sector. Following a round of submissions by the Applicants and the intervenors OEB determined that the MADDs Handbook does not automatically apply to the natural gas transactions:

> 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 MADDs Handbook do not automatically apply to natural gas. The MADDs 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 MADDs 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 MADDs Handbook, with the exception of the no-harm test.[10]

The OEB has already determined that the MADDs policy does not automatically apply. In their Argument-in-Chief (AIC) the Applicants continue to rely on the MADDs policy as the justification for their application, and the relief sought. They have simply restated all of the arguments they made to the Board earlier in this process, arguments that were not accepted by the Board. It is the position of the Council that the MADDs policy does not, and should not, apply to the Ontario natural gas sector. It should not be the basis on which this transaction is assessed for the following reasons:

- The policy was specifically developed to encourage consolidation in the Ontario electricity sector. The MADDs Handbook explicitly states that, "To encourage consolidation, the OEB has introduced policies that provide consolidating distributors with an opportunity to offset transaction costs with any achieved savings".[11]

[10] EB-2017-0306/0307 Decision and Procedural Order No. 3, March 1, 2018
[11] Handbook to Electricity Distribution and Transmission Consolidation, dated January 19, 2016, p. 15

- EGD and Union have not needed an incentive to merge. They are merging because their parent companies have merged. The Applicants have admitted that when the corporate merger took place, there was no discussion about finding savings and efficiencies in the gas distribution businesses.[12] In addition, they have indicated that their transaction costs are not significant;

- There is no specific policy regarding MADDs applicable to the Ontario natural gas sector. The OEB has never stated that the MADDs policy applies to gas. It is simply wrong and disingenuous for the Applicants to state that, "An analysis of the interrelationships among the rate policies and MADDs policies supports the conclusion that the MADDs policies are intended to apply to gas"[13];

- The Applicants argue that the MADDs Handbook should apply because the Board applied the policies when it approved the acquisition of Great Lakes Power by Hydro One. Inc. This, from their perspective is a further argument as to why the policy should be applied to gas. The Council disagrees. The Great Lakes Power acquisition has no relationship to the EGD and Union merger;

- The Applicants claim that, "the evidence has established that the proposed amalgamation will not have any adverse impact on the attainment of the Board's statutory objectives for gas and further, that no serious challenge was made to the Applicant's evidence on the no harm test through the course of interrogatories and many days of the Technical Conference and hearing"[14]. The Council disagrees. During the entire evidentiary phase of the proceeding parties were taking issue as to whether the Applicants' evidence, including the rate plan proposals, met the no harm test.

- The Applicants are simply attempting to "piggyback" onto a policy, and all of the elements of that policy, that was established for Ontario electricity distributors in an entirely different context. This is not appropriate.

As noted above, the Council is not opposed to the merger. We <u>do not</u> accept, however, that if the rate plan, as proposed by the Applicants, is accepted by the Board, that the no-harm test has been met.

2. THE RATE PLAN:

The Applicants' Proposal:

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[12] Tr. Vol. 1, p. 29
[13] AIC, p. 11
[14] AIC, p. 10

The Applicants have designed their rate plan in large measure using the Board's MADDs policy. The Council's position, as outlined above, is that the policy is not applicable in this case and the OEB should approve a plan that better aligns the interests of utility ratepayers and shareholders.

The proposed rate plan has the following components:

- Rates will not be rebased. Existing rates will be the basis of rates going forward with two adjustments. This includes an adjustment to increase Union's 2018 Board approved revenue requirement to reflect the full amortization of the accumulated deferred tax balance at the end of 2018. It also includes an adjustment of $4.9 million to decrease EGD's Board approved revenue reflecting smoothing of costs related to EGD's Customer Information System and customer care forecast costs. [15]

- Rates will be set on an annual basis using a price cap index. The price cap is based on an inflation factor (GDP IPI FDD) with a <u>productivity factor of zero and no stretch factor</u>.

- There will be Y-factors (pass-throughs) including Cost of Gas and Upstream Transportation, Demand Side Management Costs, a Lost Revenue Adjustment Mechanism (LRAM) for the contract market, Normalized Average Consumption/Average Use adjustments, Cap and Trade and capital investments that qualify under an Incremental Capital Module (ICM);

- The ICM will include a cost of capital that will reflect the latest forecast cost of debt, incremental long-term debt requirement and the allowed ROE at the time of the application (which is inconsistent with the OEB's current ICM policy);[16]

- There is a proposal for a Z-factor mechanism with a materiality threshold of $1 million for the combined entity;

- The "customer protection measures" proposed are limited to a performance Scorecard;[17]

- Most of the current deferral and variance accounts for both EGD and Union will be continued;

[15] Ex. B/T1/p. 5 (EB-2017-0307)
[16] Ex. B/T1/pp. 15-16 (EB-2017-0307)
[17] Ex. B/T1/pp. 201-21 (EB-2017-0307)

- There will be an annual adjustment application to set rates and there will be a continuation of the quarterly rate adjustment mechanism (QRAM) to adjust commodity and upstream transportation costs;

- There will be a stakeholder meeting every two years;

- There will be selective adjustments to cost allocation related to the Panhandle Reinforcement project. Otherwise, the underlying cost allocations amongst rate classes embedded in base rates will not be adjusted until 2029.

CCC Submissions:

<u>A 10 –Year Rebasing Proposal is Not Appropriate</u>:

The Council has a fundamental issue with the proposal for a deferred rebasing plan of 10 years. In fact, the Council submits that Amalco should be required to rebase as soon as possible. The evidence at the hearing was that a full cost of service study could be completed for rates effective January 1, 2021. The Council's reasons for rejecting the 10-year deferral period and requiring Amalco to rebase as soon as possible are as follows:

- In a cost of service rate determination, rates are set on the basis of forecast costs and revenues, which include an allowed rate of return. The idea is that rates should be set on the basis of the costs to serve the customers. With incentive regulation rates are set initially on a cost of service basis and then subject to a formula that is based on inflation, a productivity factor and a stretch factor. At some point those rates need to be rebased to ensure there is a relationship between the rates and the actual costs to serve the customers, both on an overall basis and on a class basis;

- The rates that are currently in place now are based on cost of service studies that were completed years ago. In fact, Union's rates were set on the basis of forecasts that were completed in 2011.[18] If rates are not going to be rebased until 2029, there will be a significant disconnect between rates and costs. In our view there is absolutely no reason for the OEB not to consider the underlying costs of a utility and the relationship between those costs and th rates for <u>18 years</u>. This is unprecedented. The evidence provided by Energy Probe demonstrated that in other jurisdictions, rebasing within a few years of consolidation was common practice. From the Council's perspective if the OEB waits until 2029 to look at the underlying cost structure of Amalco, it would not be adhering to its mandate to set just and reasonable rates.

[18] C.CCC.23

- The natural gas industry in Ontario has changed considerably over the last several years and will continue to change. The OEB has an obligation to consider how those changes may impact rates going forward. From the Council's perspective 10 years is simply too long. This is particularly relevant in the context of recent climate change initiatives set out in the Ontario Government's Climate Change Action Plan. There is uncertainty regarding Cap and Trade policies, natural gas system expansion, and the role of the gas utilities with respect to conservation and fuel switching.

- The Council has a concern that under a 10-year plan ratepayers would be precluded from raising issues relevant to the rate-making process (cost allocation inequities, problems with rate structures etc.) However, if the plan was not going well for Amalco, we know that they would be coming back to the OEB for relief.

- Several parties though the years have pointed to the inequities embedded in rates regarding cost allocation. Although Union, for example, has agreed to make changes regarding the allocation of costs related to the Panhandle Reinforcement project, there are other inequities that should be corrected. There may be some assets being paid for by one class or classes of customers that are either fully depreciated or not currently used to serve those customers. To make selected adjustments now and wait until 2029 before making other adjustments would not be fair to the overall customer base. To "cherry pick" cost allocation changes is not appropriate. It is also questionable how selected cost allocation can be done in the absence of a full cost of service study.

- Both EGD and Union have over-earned consistently throughout the previous IRM terms. In fact, EGD over-earned by $47.1 million in 2017.[19] Deferred rebasing in the absence of an ESM (we do not see earnings ever being shared under the Applicants' proposed ESM structure) would ensure that Enbridge Inc. would continue to reap those benefits and ratepayers would not.

- The Rates should be set, going forward, on the basis of a consolidated System Plan/Asset Management Plan. We cannot pretend that Union and EGD will be operating in silos, especially with respect to capital planning and work execution. As affiliated companies they are likely already looking at prioritizing capital programs within a combined entity, given they have the same parent. When they merge, capital prioritization will have to be undertaken on a company-wide basis. The engineers at Union will not be sitting in a separate room from the engineers at EGD.

[19] Ex. JT1.3

- Union and EGD made commitments to file full cost of service information for 2019 and should be held to those commitments.

- The Applicants have throughout this proceeding stated that they have not undertaken any detailed plans regarding areas where efficiencies could be achieved. As Mr. Reitdyk stated:

  > We developed a high-level business plan, a high level plan that would provide benefits to ratepayers based on a MADDs policy. That's what we are doing. We are not in the proceeding and we're waiting for the Board decision before we start to actually do the detailed planning, because that will happen, as we've said in our evidence, and in presentations to our Board. Once we have the Board's decision and we decide to proceed, we will set up a project management office and we will embark on the detailed planning, execution and the implementation to bring those savings to customers.[20]

  The problem for intervenors and the Board is that we have no idea what the range of expected savings are, or what the actual savings might be. There is definitely information asymmetry existing with respect to the Applicants and the rest of us on this point. Without a clear understanding of that potential range, there are uncertainties. The savings may ultimately be much higher than the high-level estimates. Those uncertainties are one of the primary reasons for ratepayer protection mechanisms to be a part of any rate plan going forward. Those uncertainties are also a good reason for the Board to reject the 10-year deferral period.

For all of these reasons the Council urges the Board to reject the 10-year deferred rebasing proposal and require the combined entity to rebase as soon as possible. From a practical perspective this may not be possible prior to the 2021 rate year.

In the interim period, rates should be set by using the currently approved Union Price Cap plan. Union has demonstrated that under that plan it has consistently achieved and exceeded its allowed return on equity (ROE). Amalco should be required to submit an application for 2019 rates based on the Union model.

<u>If the OEB Accepts that a Deferred Rebasing Period is Warranted</u>:

If the OEB determines that deferred rebasing is warranted the Council submits that that it should not be longer than 5 years. The Council has cited, in the sections above, all of the reasons why a 10-year deferral period is not appropriate. The evidence is clear that a 10-year deferral period benefits Amalco's shareholder at the

[20] Tr. Vol. 1, p. 40

expense of is ratepayers. The Council is of the view that Amalco should rebase as soon as possible in order to ensure that rates reflect the underlying costs to serve the customers and to allow for those customers to benefit from past and future efficiencies.

The Council submits that if the OEB accepts a deferred rebasing period the rate plan should have the following components:

Base Rate Adjustments:

The Council accepts Union's proposal to increase the Board approved revenue to reflect the full amortization of the accumulated deferred tax balance at the end of 2018 of $12.8 million after-tax.[21] In addition, the Council accepts EGD's proposal to decrease the Board-approved revenue by $4.9 million to recognize the approved CIS customer cost level of $126.2 million.[22]

In addition, the Council submits that in order to ensure that the ratepayers receive the savings associated with the efficiencies created during the current IRM plans an adjustment should be made to base rates equivalent to their 2018 overearnings. One of the fundamental principles of IRM is that ratepayers benefit from the savings achieved during the plan term upon rebasing. That was the expectation when intervenors negotiated the last Settlement Agreement with Union and when the Board approved EGD's last rate plan.

EGD's overearnings in 2017 were $47.1 million[23]. Union's estimated overearnings for 2018 are $16.9 million[24]. Both Union and EGD should be required to reduce their respective revenue requirements to reflect their overearnings. When setting the 2019 rates an estimate of the 2018 overearnings can be used as a placeholder subject to truing up the actual amounts once they are known. Customers deserve to benefit from the savings derived during the IRM and an adjustment to the base rates would accomplish this given rates are not being rebased. The Council notes that Union agreed in the last Settlement Agreement to a $4.5 million reduction to base rates to reflect the prior period overearnings.[25]

Price Cap Formula:

In the context of a deferred rebasing period the price cap formula should be the same as the one in currently in place for Union. That formula adjusts rates by a factor that is 60% of inflation. The model has been in place over the last five years,

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[21] Ex. B/T1/p. 5 (EB-2017-0307)
[22] Ex. B/T1/p. 18 (EB-2017-0307)
[23] Ex. JT 1.3/ J2.1
[24] SEC-18-Attachment 2
[25] Ex. K1.5 p. 12 (CCC Compendium)

and each of those years Union was able to drive out efficiencies and earn above its allowed rate of return.

The Board may decide to impose a stretch factor as part of the formula. The Council urges the Board to reject the evidence of Dr. Makholm when considering the use of a stretch factor. His analysis concludes that a stretch factor is not appropriate for two reasons. The first is that a stretch is only necessary when transitioning from a cost of service regime to incentive regulation.[26]

This is contrary to OEB practice which, in each and every version of its incentive regulation policies, it mandates the use of a stretch factor. In addition, other jurisdictions that determine rates through IRM regulation continue to use stretch factors. This includes British Columbia.

Dr. Makholm is also opposed to the application of a stretch factor in the context of negative productivity. The Council is of the view that the negative productivity argument should also be rejected. Union and EGD are amalgamating, so historical productivity, based on an econometric model is no longer an appropriate indication of future performance. A stretch factor is simply a way to give an upfront benefit to customers going into an IRM plan.

The Council supports the continued use of an inflation factor of GDP IPI FDD.

Earnings Sharing:

Union and EGD presented their rate plan to their Board of Directors concluding that their expectation was that they would earn, in each year 20 basis points above the allowed rate of return.[27] The Board accepted the rate plan on that basis.

Union's current ESM has a dead band of 100 basis points. There is 50:50 sharing between 101 and 200 basis points and 90:10 sharing to the benefit of the ratepayers beyond 200 basis points.[28]

EGD's current ESM has 50:50 sharing between ratepayers and shareholders and no dead band. In the Board's Decision in EB-2012-0459 it noted, "A 100 point dead band provides insufficient protection for ratepayers, and therefore the Board finds that the dead band should be eliminated." [29]

Despite the inclusion of an ESM in each of their plans Union and EGD both earned above their allowed ROEs in each year of the plan. The Council does not believe that ESMs inhibit productivity.

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[26] Tr. Vol. 4, pp. 16-20
[27] Tr. Vol. 1, p. 27
[28] Ex. K1.5, p. 14
[29] EB-2012-0459 Decision and Order dated July 17, 2014

The Council submits that under deferred rebasing all earnings that exceed 20 basis points over the allowed ROE should be shared on a 50:50 basis. The ESM should be asymmetrical.

The Applicants' ESM, as proposed in their rate plan is not an ESM. It is a "non-ESM" as it will never be triggered. 300 basis points is typically the threshold for off-ramps. It effectively denies ratepayers any benefits of the merger for 6 years. And, with a 300 basis point dead band, the savings will never accrue to ratepayers. To adopt this proposal simply because it is part of a policy, that is not applicable in this case, demonstrates that the Applicants' are not giving any consideration to their customers, and are focused on maximizing the interests of their shareholders at the expense of their ratepayers.

Z-Factors:

Under the current plans EGD has a materiality threshold with respect to Z-factors of $1.5 million. Union's materiality threshold is $4 million. The current proposal for a threshold under a deferred rebasing period is $1 million. The only reason given for the reduced threshold is that it is consistent with the policy for electricity distributors.[30]

Amalco will be a utility with a ratebase of approximately $11.6 billion and a combined revenue requirement of approximately $2.5 billion. The materiality threshold for the combined utility, which is lower than the current combined threshold of $5.5 million is again an element of this proposal that is completely unfair to ratepayers. Union was willing to live with a $4 million threshold and now that is somehow unacceptable. They are simply attempting to get more money from their customers on the basis that, "It's the policy" – a policy that has nothing to do with this transaction. . The Council is of the view that the materiality threshold for the combined entity should be $10 million. On a revenue requirement of $2.5 billion, this is appropriate and will eliminate an effort to seek recovery of items that are in the grand scheme of things, de minimis.

Treatment of Capital:

The Council supports the on-going use of the Union Capital pass-through mechanism rather than the implementation of an Incremental Capital Module (ICM). This mechanism has worked well over the last rate plan period, is straightforward and ensures that, on a timely basis, the actual revenue requirement associated with projects are recovered from ratepayers on a timely basis.

Deferral and Variance Accounts:

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[30] Ex. B/T1/p. 12 (EB-2017-0307)

The Council is generally supportive of eliminating the accounts proposed by EGD and Union in their Application.

With respect to the two average use variance accounts, the Council is of the view that these accounts should be reviewed upon rebasing, but until that time discontinued. The Applicants, through these accounts are continually shielded from declines in average use, without any corresponding reductions in their cost of capital. This is not appropriate. There as an expectation that these accounts would be revisited upon rebasing in 2019. If there is no proposal to rebase, the accounts should be discontinued.

Monitoring and Reporting:

Depending upon the ultimate rate plan approved by the OEB, EGD and Union should be required to work collaboratively with Board Staff and intervenors to develop a plan for reporting and monitoring throughout the term of the approved plan.

Storage and Transportation Issues:

EGD is currently a transportation and storage customer of Union Gas. EGD and Union currently compete in the gas supply markets. The current proposal is that EGD will continue to buy market-based storage from Union. Union and EGD will no longer exist if the merger is approved. Under a merged scenario the Council struggles to understand how those arrangements can survive and how Almalco can best serve its customers. Accordingly, the Council submits that the OEB should order an independent review of how gas supply, storage and transportation activities can be rationalized under a merged scenario.

3. RECOMMENDATIONS AND CONCLUSIONS:

As stated earlier in these submissions:

This Application is about enhancing the returns of Enbridge Inc. at the expense of Ontario ratepayers.

In summary, the Council makes the following final submissions:

- The Council is not opposed to the merger. The evidence is that the merger will result in significant costs savings for Amalco. Two large companies such as EGD and Union have lots of opportunities to rationalize their operations and reduce their overall cost structures. The evidence in this case is that, "This is an opportunity to drive out even further synergies and savings by amalgamating";[31]

[31] AIC, p. 3

- The Council does not support the proposed rate plan which is based on a 10-year deferred rebasing period, because if that rate plan is approved, there is absolutely no guarantee that the 3.4 million natural gas ratepayers in Ontario will see any benefits arising from the merger, including the expected savings. Under the proposed rate plan all of the savings will accrue to Enbridge Inc.;

- The MADDs policy, which was developed in an entirely different context does not, and should not apply to this transaction. The Applicants have attempted to "piggyback onto a policy that has nothing to do with them;

- The merged entity should be required to rebase as soon as possible. This will ensure that going forward the rates appropriately reflect the costs to serve the customers. A full cost of service study and a cost allocation study will be required. Rebasing will eliminate the current disconnect between cost causality and rates that result from cost of service studies that were completed in 2011;

- If the OEB accepts that a deferred rebasing period is warranted, it should be limited to five years. As elaborated on throughout this submission, a 10 year rebasing period (which in the case of Union is much longer given its last cost of service study was completed in 2011) in a dynamic industry is simply too long. The risks that what customers are charged are not based on the costs to serve those customers is significant the longer the utilities go without rebasing;

- The fact that EGD and Union have not undertaken any detailed analysis regarding potential efficiencies across the combined entity is the most important reason to require ratepayer protection mechanisms such as adjustments to base rates and an ESM;

- An independent, comprehensive review of how transportation, storage and gas supply can best be rationalized in Ontario should be ordered by the OEB.

COSTS:

The Council requests that it be awarded 100% of its reasonably incurred costs associate with its participation in this proceeding. The Council collaborated throughout this proceeding with other intervenors to avoid duplication and ensuring the record was complete.

All of which is respectfully submitted.