

ONTARIO ENERGY BOARD

**IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15 (Sched. B);**

**AND IN THE MATTER OF an Application by Enbridge
Gas Distribution Inc. and Union Gas Limited, pursuant
to section 43(1) of the *Ontario Energy Board Act*,
1998, for an order or orders granting leave to
amalgamate as of January 1, 2019.**

**UNIFOR
EB-2017-0306/07
CLOSING ARGUMENTS
ON MADDS APPLICATION**

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PART I - OVERVIEW

1. Unifor submits that Enbridge Gas Distribution Inc. and Union Gas Limited (collectively “the Applicants”) unequivocally failed to meet their onus to demonstrate that the “no harm” test has been met. Therefore, Unifor submits that the Board should not approve this transaction without specific terms requiring the Applicants to provide the Board and interested parties with financial forecasts containing verifiable information regarding ratepayer savings and the means by which they are to be achieved, in advance of approval.
2. The evidence provided by the Applicants in support of this transaction is based entirely on conjecture and assumptions. No detailed plan regarding the viability of these assumptions has been created. In light of the absence of such a plan, it is not reasonably possible for the Board to assess whether the transaction would be in the best interest of customers.

PART II – THE “NO HARM TEST”

3. The “no harm” test is outlined in the *Handbook to Electricity Distributor and Transmitter Consolidation* (“the Handbook”). Although the Handbook applies to electricity distributors, the Applicants have utilized it as a guideline in preparing their application. The Handbook outlines the “no harm” test as follows:

The “no harm” test assesses whether the proposed transaction will have an adverse effect on the attainment of the OEB’s statutory objectives. While the OEB has broad statutory objectives, in applying the “no harm” test, the OEB has primarily focused its review on impacts of the proposed transaction on price and quality of service to customers, and the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector.¹

4. Unifor’s submissions based on each of the factors considered in the “no harm” test are set out below.

PART III – SUBMISSIONS

Impact on Price, Economic Efficiency and Cost Effectiveness

5. Unifor submits that it is far from clear that the “no harm” test has been met based on the evidence and interrogatory responses provided by the Applicants.
6. The Handbook states the following:

To demonstrate “no harm”, applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve acquired customers following a consolidation will be

¹ *Handbook to Electricity Distributor and Transmitter Consolidation*, Ontario Energy Board, 2016, p. 6

no higher than they otherwise would have been. While the rate implications to all customers will be considered, for an acquisition, the primary consideration will be the expected impact on customers of the acquired utility.²

7. In their application, the Applicants estimate the cumulative benefit to customers at \$410 million over the deferred rebasing period.³ It is not clear based on the evidence exactly how this number is derived at. In fact, the Applicants have admitted that they have not undergone detailed planning:

The Company has not commenced any detailed planning on the integration of utility functions. The company will commence the detailed integration planning upon Management receiving approval of the amalgamation by the OEB, the EGD, Union and Enbridge Inc. Board of Directors.⁴

8. Unifor submits that any cost savings identified in the application materials should therefore be given no weight.
9. The Applicants have not demonstrated that there is a reasonable expectation that the costs to serve acquired customers will be no higher than they otherwise would have been. The above estimates are based entirely on conjecture and assumptions and not on a proper, detailed analysis of *actual* expected cost savings to customers.
10. During cross-examination, when asked about how the range of savings were determined, the Applicants' representatives on Panel 1 made very clear that the high and low figures were determined by a small group of senior management, described as being Senior Vice-Presidents and Vice-Presidents, who listed areas of potential savings and then, based on risk factors that were not written down anywhere, determined aggregate but not individual savings that could be made in those areas.⁵
11. Of course none of those on Panel 1 were involved in those "high level" meetings in 2017 and at no time did they then describe how these areas of potential savings, risk factors or final figures were imparted to those who wrote the reports to the Board of Directors or prepared the application to the Ontario Energy Board, or how they got into BOMA 16, since none of them were written down anywhere.⁶

² *Ibid*, p. 7

³ Application, Exhibit B, Tab 1, p. 4

⁴ Exhibit C.BOMA.16, p. 2

⁵ Transcript Panel 1 Cross-Examinations May 4, 2018, p. 57 to 58, 71 and Transcript Technical Conference March 28, p. 133 to 137

⁶ Transcript Panel 1 Cross-Examinations May 4, 2018, p. 57 to 58 and Transcript Technical Conference March 28, p. 84 to 86

12. Although the Applicants were emphatic about the experience of those on the Panel, thereby giving them the basis to pronounce on the veracity of the figures presented in their application and BOMA 16, they also made clear that this experience was in no way on the scale of what they are currently attempting through this amalgamation.⁷ This would, of course, reduce the reliance that the Board should put on these figures, particularly in light of the fact that there is no written record of how they were determined or where, specifically, the savings would be made.

13. In furtherance of this, at the Technical Conference it was obvious that the Applicants representatives had little substantive knowledge as to how individual savings leading to rate reductions would be achieved, which begs the question, how did the Applicants determine the potential amount of such savings:

MR. CHARLESON: No, what I indicated and I'm hoping I conveyed is we haven't identified how we are going to achieve those savings. There is a lot of work that has to be done in terms of planning. There's definitely savings that we expect to see come from systems and integration of those types of things. But then we do have to assess how the work is being done and are there opportunities that way. But we haven't done any planning at this time, and so we can't say one way or another, in terms of what component or what may or may not arise from, say, adjustments to the workforce.⁸

14. Moreover, the members on Panel 1 purportedly checked the validity of their potential savings in each of the cost reduction areas by looking at the potential dollar savings to rate payers and deciding that the \$4 savings number that came out of their savings calculation was achievable. There was no evidence whatsoever to support that \$4 savings amount, except the blind acceptance of the figures determined by the 5 or 6 Vice-Presidents and Senior Vice-Presidents in a meeting where nothing was written down.⁹

15. Given the above, it strains credulity to believe that the figures provided in the Application or BOMA 16, have a basis in fact, even if, as Mr. Rietdyk testified, he was very "comfortable" with the figures.¹⁰

16. It should further be noted that the Applicants' representatives testified that before the "estimates" ended up in the Applicants' report, no analysis was undertaken to assess the reasonableness of the ranges indicated.¹¹

⁷ Transcript Panel 1 Cross-Examinations May 4, 2018, p. 61

⁸ Transcript Technical Conference March 28, p. 194 – 195

⁹ Transcript Panel 1 Cross-Examinations May 4, 2018, p. 68 and Transcript Technical Conference March 28, p. 136

¹⁰ Transcript Panel 1 Cross-Examinations May 4, 2018, p. 61

¹¹ Transcript Technical Conference March 28, p. 63

17. Although admittedly in past decisions the Board has accepted estimates that are deemed sufficiently accurate, the estimates in the present matter are based on self-serving predictions without an iota of evidence to substantiate them.
18. Accepting the Applicants' estimates as sufficient, without more, would render the "no harm" test meaningless. The Applicants have failed to provide the Board with the evidentiary underpinnings necessary to properly review this application for consolidation.

Impact on Service Quality and Reliability

19. Unifor further submits that the application should be dismissed based on the insufficiency of evidence provided regarding the quality and reliability of service that Amalco would likely be able to maintain.
20. Mr. Rietdyk described the process of amalgamation as follows:

And I think the other thing that's worth noting is it's not just a single system or process that we're bringing together. We're talking about bringing together every system and process we have, our customer information systems, our work management systems, our ERP systems, and organizational level, the people, and the change management that has to go along with all that as well.

So I suppose that, you know, we are significantly informed to know that it's a lot of work with significant risk.¹²

21. This is a significant restructuring that will require considerable amount of time and resources to achieve. It is reasonable to expect that quality and reliability of service may be affected during this transition.
22. The Applicants have stated that many of the synergy opportunities are related to the elimination of 'duplicate systems and processes'.¹³ There are many potential issues with this broad statement that could affect the reliability and quality of services for customers.
23. The scale of the proposed efficiencies and synergies will inevitably result in the elimination of staff. The Applicants have provided no plan as to how they intend to maintain the reliability and quality of service in light of the staffing reductions.
24. The Applicants note that some existing services will be outsourced or will be optimized using third party contracts.¹⁴ Again, the Applicants provide no plan as to how they will maintain the quality and reliability of services with the services being contracted out. Outsourcing can have a significant impact on the quality of the service provided. In order to

¹² Transcript Technical Conference March 28, p. 126

¹³ Exhibit C.BOMA.16, p. 7

¹⁴ Exhibit C.BOMA.16, pp. 6-7

ensure that the quality and reliability of the services to customers is maintained following amalgamation, it is essential that processes for monitoring third party contractors be in place. There is a very real risk that contracting with third parties, that are removed from the regulation and oversight of the Board, will lead to a worsening of the quality and reliability of services.

25. The Applicants have failed to provide the Board with sufficient information to assess whether quality and reliability of services will be maintained throughout this amalgamation. As such, the requirements of the “no harm test” have not been satisfied and the application should therefore be dismissed.

PART IV – CONCLUSION

26. According to the Applicants, the amalgamation of the Applicants’ companies will create the fourth largest company in Canada.¹⁵ The Applicants have admitted that, despite the information being adduced in this application being based on their experience, they do not have experience dealing with amalgamations of this magnitude. This is more reason for the Board to exercise caution and not approve this transaction without being apprised of the necessary information to ensure that the Board’s statutory objectives are adhered to.
27. The onus was on the Applicants to provide the Board with sufficient information to satisfy the “no harm test”. The Board cannot reasonably make a determination on the application in the absence of an integration plan that contains detail and specificity. The information currently available is based entirely on assumptions and conjecture.
28. As the Union wrote in its Initial Position submissions:

Although in the context of rate setting, as opposed to amalgamation, the Board has expressed its expectation that applicants, including Enbridge, provide information about the use and cost of third party contractors if the use of such contractors has a material impact on an application:

Pursuant to section 36 of the Ontario Energy Board Act (“OEBA”), rates must be “just and reasonable” and the applicant bears the burden of proof. The Board’s focus is, and always has been, to ensure that costs are reasonable and prudently incurred before allowing recovery of those costs through rates. In the context of EGD’s outsourcing arrangements, the Board has stated its expectations that EGD will file evidence that will allow the Board to understand the basis for the cost of the outsourced services. The Board requires this evidence in order to decide whether to allow those costs to be recovered in rates. Ultimately, the burden of proof lies with EGD. If the Board is not satisfied that the rates applied for are just and reasonable, the Board may fix such other rates as it finds to be just and reasonable.

¹⁵ Application, Exhibit B, p. 3 of 44

Ontario Energy Board, Reasons for Decision on Motion, RP-2001-0032,
February 10, 2003

In the instant case, the Applicant's integration plan lacks sufficient detail and specificity to conclude that the adequacy, reliability and quality of the gas service will in fact be maintained despite the reduction in staffing levels. Although EGD and Union claim that 'it has not been feasible to develop an extensive and detailed integration plan' (EB-2017-0306, Exhibit B, Tab 1, page 26), it remains the case that unspecified staffing reductions underpin much of the cost savings estimates, but there is no coherent plan to ensure service levels are maintained. The Applicants have not provided sufficient information so that the Board can even estimate the head-count of the combined enterprise, nor to understand how the reduction in staffing by rationalizing services will affect the ability of Amalco to properly provide service delivery, nor how service quality or safety will be maintained for those functions that are outsourced to third-party contractors. In essence then, the Board is being asked to buy a pig in a poke, which does not lend itself to making a determination that ensures the adequacy, reliability and quality of gas service by Amalco to Ontarians.

29. In light of the foregoing, Unifor submits that the application should be dismissed, absent the Applicants providing the Board and interested parties with financial forecasts containing verifiable information regarding ratepayer savings and the means by which they are to be achieved, in advance of approval.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.