MICHAEL R. BUONAGURO
Barrister and Solicitor

24 HUMBER TRAIL
TORONTO, ONTARIO, M6S 4C1
P: (416) 767-1666
F: (416) 767-1666
EMAIL: mrb@mrb-law.com

June 15, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

DELIVERED BY EMAIL

Dear Ms. Walli,

RE: Board File No. EB-2017-0306 and Board File No. EB-2017-0307
Application by Union Gas Ltd. and Enbridge Gas Distribution Inc. for leave to merge

Please find enclosed the submissions of the Ontario Greenhouse Vegetable Growers in the above noted proceeding.

Yours very truly,

Michael R. Buonaguro

CC: All Parties

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;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. and Union Gas Limited, pursuant to section 36 of the Ontario Energy Board Act, 1998, for an order or orders approving a rate setting mechanism and associated parameters during the deferred rebasing period, effective January 1, 2019.

SUBMISSIONS ON BEHALF OF THE ONTARIO GREENHOUSE VEGETABLE GROWERS

OVERVIEW

These are the submissions of the Ontario Greenhouse Vegetable Growers (OGVG) with respect to the request by Union Gas Ltd. ("Union") and Enbridge Gas Inc. ("EGD") to

a) merge into a single regulated entity referred to in the applications as Amalco,

b) defer any rebasing for Amalco for a period of 10 years, and

c) establish a rate setting mechanism for both Union and EGD to be used during the deferral period.

By way of context, OGVG's members are largely contract customers served by Union, such that OGVG has not, historically, intervened in rate proceedings related solely to EGD. Accordingly OGVG's interest is specifically from the perspective of customers currently being served by Union in terms of whether the proposed merger meets the "no harm" test and, assuming the merger is approved, what constitutes an appropriate deferral period and rate setting mechanism during the deferral period.

On its face this is one of the most significant applications to have ever come before the Board; if approved it will facilitate the creation of one of the largest regulated gas distributors in Canada and one of the 3 largest in North America, a utility that will provide distribution service to the vast majority of natural gas customers in Ontario.[1]

At the same time the natures of the applications are, relatively speaking, uncomplicated. There is no request for a cost of service examination of either of the subject utilities or the merged entity, either as a precursor to a price cap mechanism or as a component of a multi year custom IR application, nor is there the breadth of evidence that would necessarily have to be filed with the Board in order to support such an examination.

The first application asks for permission to merge two companies that are already owned by a single corporate entity, on the basis that in doing so the results of the merger meet the Board's "no harm" test.

The second application seeks to establish a common rate setting mechanism for the two subject companies during a deferral period.

[1] Transcript Volume 2, page 22.

In the normal course, absent a merger application, both Union and EGD are scheduled to file cost of service applications for the 2019 test year. Absent the proposed merger, both Union and EGD assert they would file 5-year custom IR applications.[2] For Union, the 2019 custom IR application would have followed a 5 year period of price cap regulation using a customized price cap mechanism that was approved as filed pursuant a settlement agreement involving a number of intervenors[3]. For EGD the 2019 custom IR application would have followed a Board approved 5 year custom IR term that was determined after a full hearing with all the related issues being determined by way of Board decision.[4]

By virtue of the proposed merger application and proposed deferral period no such custom IR plans will be filed, with the result that ratepayers will be denied the opportunity to have the relationship between the costs incurred by their natural gas distributor and the rates charged by the natural gas distributor examined to ensure that they continue to produce just and reasonable results. Instead, rates over the deferral period, however long that period may be, will be decoupled from costs, with the only check on the reasonableness of the revenue collected from customers being through an *ex post facto* examination of actual earnings against an allowed ROE. To the extent that the actual earnings against the allowed ROE are persistently excessive as compared to what has been forecast, the only *ex post facto* protection available to ratepayers would be any approved earnings sharing mechanism ("ESM").

The threat to just and reasonable rates is exacerbated by the lack of any benchmarking evidence to support a Board decision with respect to the relative efficiency of either Union or EGD.[5] This is particularly concerning in the context of the proposed zero X factor for both utilities, which implicitly presumes that neither company is capable of material cost savings during whatever deferral period is approved by the Board, and that no part of the significant merger related savings forecast by the applicants should directly accrue to the benefit of ratepayers until after any approved deferral period.

The applicants have put forward what is ostensibly a forecast of their 10 year revenue requirements based on the filing of successive custom IR applications by both companies as a way to try and satisfy the Board that there will be no harm to ratepayers and, more

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[2] Transcript Volume 2, pages 121-122.
[3] EB-2013-0202, Decision and Order dated October 7, 2013.
[4] EB-2012-0459, Decision dated July 17, 2014.
[5] Transcript Volume 4, pages 24-26.

specifically, that ratepayers will actually benefit from the merger over the course of the proposed 10 year deferral period despite their proposed rate setting mechanism, which does not include any explicit productivity or related stretch factors in its formulation.

OGVG respectfully submits that it would be wholly inappropriate for the Board to judge the appropriateness of the rate mechanism to be imposed during an approved deferral period relative to the forecast custom IR outcomes. As the applicants freely admit and as is plainly obvious from the filings, the evidence that is required to support a Board review of a single custom IR application, let alone 4 custom IR applications, has not and will not be filed, either as part of this proceeding or, if the merger and related deferred rebasing period is approved, ever. There will only be, some time in the future, a first cost of service application for the merged entity.[6]

The applicants propose a rate setting mechanism premised on the notion that ratepayers directly benefit from the deferral period as a result of the deferment of consecutive custom IR applications by EGD and Union on a stand alone basis, experiencing (lower) rates under the proposed price cap mechanism instead. OGVG respectfully submits that that differential, estimated by the applicants at approximately $410M[7], is a fiction, in that the "avoided" rates are not only unsubstantiated by any attempt to file evidence that would be required to support a custom IR plan (let alone 4 custom IR plans spanning dual 10 year periods), but are also dependent on the assumption that the Board would approve the 4 separate custom IR applications without applying any of the principles in the Board's custom IR guidelines that are intended to protect customers.

Under the Board's guidelines for custom IR filings there is an expectation that applicants will include several elements designed to provide protection to customers and help justify the proposed rates, elements that Union and EGD's customers would be deprived of if the Board approves a deferral period and the proposed rate setting mechanism.

The Board's custom IR filing requirements for both natural gas and electricity distributors specifically require the filing of benchmarking evidence to support their custom rate proposals:

[6] Transcript, Volume 2, pages 138-139.
[7] EB-2017-0306, Exhibit B, Tab 1, page 20 Table 3.

> Benchmarking is a fundamental requirement of a Custom IR application, both internal benchmarking to demonstrate continuous improvement and external benchmarking as identified in Section 5. A Custom IR application without benchmarking will be considered incomplete.[8]

Neither EGD nor Union has filed such benchmarking in this case, which not only highlights the problem with suggesting that the Board can rely on their "forecast" revenues from custom IR plans that have not been filed, let alone processed and considered by the Board, but also highlights a fundamental flaw in their proposed price cap mechanisms, discussed in more detail below, which propose a zero stretch factor despite the lack of benchmarking evidence.

Most obviously missing from the "stand alone" scenario is the inclusion of any specific stretch factor as anticipated and required by the Board's custom IR guidelines, a stretch factor that the Board's custom IR guidelines expects to be higher, and certainly no lower, then the stretch factor that would otherwise apply in the Board's price Cap incentive regulation for electricity distributors:

> It is insufficient to simply adopt the stretch factor that the OEB has established for electricity distribution IRM applications. Given a utility's ability to customize the approach to rate-setting to meet its specific circumstances, the OEB would generally expect the custom index to be higher, and certainly no lower, than the OEB-approved X factor for Price Cap IR (productivity and stretch factors) that is used for electricity distributors.[9]

The Board's guidelines specifically require explicit stretch factors to be included in any custom IR plan; the applicants, in their forecast "stand alone" scenarios, provide for no explicit stretch factors at all.

The applicants confirmed that applying a .3% stretch factor to their status quo proposal, which would effectively assume that both Union and EGD were average performers from a benchmarking perspective[10], without making any other of the changes that might be

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[8] Handbook to Utility Rate Applications, October 16, 2016, page 26.
[9] Handbook to Utility Rate Applications, October 16, 2016, page 26.
[10] .3% is the median stretch factor within the Board's range of stretch factors in use for electricity distributors under the 4th Generation IR mechanism, which establishes a stretch

imposed on the utilities throughout the course of the theoretical custom IR applications, has the effect of reducing the revenue from their status quo proposal by $389M, all but eliminating the notion that there is $410M in ratepayer benefit in the differential between the status quo scenario and the rate setting mechanism that forms the basis of the applicants' proposals.[11]

OGVG notes that the instant application for merger approval is relatively unique, in that the subject distributors are already owned by the same entity. Even without merger approval there is, intuitively, opportunities for cost savings as a result of shared ownership, opportunities that would be captured even if the companies continued to be regulated separately, although the applicants assert they have not looked at such savings in the context of less than a fully approved merger.[12] This aggravates the concern that the "status quo" scenario is very likely materially overstated, and that it cannot be an appropriate point of reference against which a suitable rate setting mechanism during an approved deferral period can be evaluated.

Considering the possibility that:

a) the stretch factor imposed by the Board for the theoretical custom IR plan may be higher then average, particularly in the absence of suitable benchmarking evidence,

b) the Board may make base rate adjustments for a variety of reasons at the outset of the theoretical custom IR proposals, including the recognition of persistent overearnings in previous years as evidence of persistent efficiencies that should be built into rates[13], and

c) the potential disallowance of certain outstanding adjustments on rebasing[14],

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factor of .6% for the worst benchmarking performers and a stretch factor of 0% for the best benchmarking performers. It is of note that the effect of the Board's range of stretch factors is to enforce a stretch factor for all but the very best benchmarking performers.

[11] Exhibit J4.1

[12] Exhibit C.OGVG.9

[13] Exhibit C.LPMA.18

[14] Exhibit JT3.22 illustrates the revenue requirement associate with the overrun on the GTA Project undertaken by EGD.

it becomes clear, OGVG respectfully submits, that evaluating the proposed rate setting mechanisms against the applicants' proposed "status quo" scenarios would be inappropriate. In OGVG's view the Board should view the proposed rate setting mechanisms against the current state of the two applicants and their current rate setting mechanisms in view of the request to avoid rebasing applications in 2019 and in view of the anticipated merger related savings during any approved deferral period. It is this perspective that underpins OGVG's submissions with respect to the specific issues raised in the two applications.

What follows are OGVG's submissions with respect to the various issues identified in the Board's Issues List decision. Please note that OGVG has not made submissions on every issue in the list; OGVG respectfully requests that where OGVG has not made a submission on an identified issue it be assumed OGVG has not taken a position on this issue.

"NO HARM" TEST

Have the applicants appropriately applied the 'No Harm" test in this case, including in consideration of the OEB's statutory objectives in relation to natural gas?

Have the applicants met the test?

It is important to recognize that the 2 applications before the Board are voluntary requests by the applicants to merge their operations and defer their respective obligations to file cost of service applications for the 2019 test year until 2029, with the effect that the rates will have been effectively decoupled from costs for a full 15 years. In other words, if the permission sought by the applicants is granted, the vast majority of natural gas customers in the Province of Ontario will be paying delivery rates over a 15 year period without a detailed review of the cost structure that underpins those rates, whether for the separate operations of the two applicants or for the merged entity.

It is in this context that the issue as to whether the proposed merger meets the "no harm" test must be considered.

OGVG accepts that, ultimately, the result of merging Union and EGD will likely result in no long-term harm to ratepayers in view of the sustainable cost savings that the merged company should be able to achieve directly as a result of the ability to combine their

operations. OGVG notes that the applicants' preliminary forecasted sustainably O&M savings resulting from the merger is approximately $85M per year;[15] compared to the assumed combined 2018 revenue requirement for the applicants of $2142M (not including certain adjustments and pass through amounts) this represents an approximate reduction of 4% in the total revenue requirement.[16] Put another way, if the merged company were able to instantly implement the projected savings from the merger, the result would be an immediate rate reduction in the order of 4%, subject to allocation between former companies and customer classes and the offsetting capital costs required to implement the savings.

Of course, the applicants do not forecast being able to instantly achieve significant merger related savings; their forecast is to achieve those savings over time, with the majority of the sustainable savings being realized 6 years after the merger, in 2024.[17]

Accordingly, in order to ensure no harm to ratepayers in the near term, it would appear that there needs to be protection in place to ensure ratepayers are not harmed by having to pay rates higher then they would pay outside of a merger during the period when the merged entity is expending capital in order to achieve sustainable merger related savings.

To that end, while OGVG agrees that the proposed merger is capable of meeting the no harm test as it relates to protecting the customers of Union and EGD, whether the proposed merger in fact causes "no harm" depends on the implementation of an appropriate rate setting proposal during any approved deferral period during which the merged company is expected to achieve sustainable savings.

REBASING DEFERRAL

Is deferral of rebasing appropriate in the context of this application?

If so:

. ***(a) What is the appropriate deferral period?***

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[15] Exhibit B Tab 1 Attachment 12.
[16] Exhibit K2.4 Spreadsheet; OGVG compared the 2018 forecast revenue requirements for both EGD and Union against the forecast $85M in annual merger related savings to calculate the approximate 4% reduction.
[17] Exhibit B Tab 1 Attachment 12, the applicants indicate that the peak savings of $85M are achieved and stable beginning in year 6.

. ***(b) Is an earnings sharing mechanism (ESM) appropriate and if so, what should that mechanism be and when should it apply?***

. ***(c) What additional considerations and requirements are appropriate to protect the interests of customers pending rebasing?***

OGVG supports a period of deferred rebasing in the context of this application, during which customers will continue to pay pre-merger company specific rates as escalated by the Board under an approved price cap incentive mechanism. OGVG's support, however, relies on the implementation of a rate-setting mechanism and a earnings sharing mechanism that, together, appropriately protect customers from any harm as a result of a) the merger and b) the deferral of rebasing, not only in terms of deferring the rebasing of the merged utility, but also the obviation of rebasing for both Union and EGD in 2019.

OGVG notes that if the Board does not authorize a deferral period the applicants would be faced with essentially two prospects:

a) the applicants would have to perform a full cost of service evaluation for the merged utility for 2019 (or as soon after as the Board may allow given the timing of this application), including a full cost allocation and related rate design, even though the merged utility has not operated on a consolidated basis, and even though the merger related savings that, in large part, should make it possible to harmonize the different rates being charged to the different customers of the two existing entities have not been realized and are not projected to be realized fully until approximately 6 years into the future, or

b) the applicants would have to perform separate cost of service applications for the two existing utilities for 2019 (or as soon after as the Board may allow given the timing of this application) even though, upon merger, those entities will cease to exist, and the costs and related cost allocation and rate design that the separate cost services would underpin would almost immediately cease to relate directly to the actual operation of the merged utility, particularly as the merged utility begins to implement measures that produce merger related savings as a result of the ability to operate on a consolidated basis.

In order to avoid these two prospects in the context of an approved merger OGVG generally supports the notion of a deferral period of some length in order to allow

merging utilities an appropriate period of time to transform into a merged utility that has captured the bulk of the available and sustainable merger related savings and therefore whose costs are stable enough to warrant a cost of service analysis.

As noted applicants do not forecast being able to instantly achieve significant merger related savings; their forecast is to achieve those savings over time, with the majority of the savings being realized and sustainable 6 years after the merger, in 2024. After this period, it appears to OGVG, it appears that the applicants are forecasting the merged utility to have settled into a stable mode of operation that, it would seem, would lend itself to a useful cost of service analysis.[18]

Accordingly OGVG submits that a deferral period of 6 years would be appropriate as a measure to ensure that the merged entity has appropriate time to achieve sustainable merger related savings prior to rebasing. In this way the applicants are not faced with having to file a rebasing application for a new company that is in transition, while ratepayers, assuming an appropriate interim rate setting proposal, will continue to experience rates based on their existing (separate) utility rate structures until the net consequences of the merger are suitably established such that a plan for rebasing the merged utility and, to the appropriate extent, the harmonization of rates can be considered and implemented.

OGVG believes that an ESM is of critical importance in order to ensure that ratepayers are not harmed as a result of paying unreasonably high rates relative to the merged entity's actual costs during the deferral period, particularly in light of the pattern of overearnings experienced by both companies during their recent histories and extended period during which rates will be decoupled from costs. The specifics of OGVG's ESM proposal are discussed below in the context of the appropriate rate setting mechanism during the deferral period, on the premise that the ESM should begin from year 1.

What commitments to future action have the utilities made during their respective 2013-2018 rate plan terms, what other rate setting issues merit attention now (including cost allocation issues), and when and how are these commitments and issues to be addressed?

With respect to this issue OGVG has comments specific to proposals involving the

[18] Exhibit B Tab 1 Attachment 12, forecast merger savings stabilized at $85M in year 6.

advancement of cost allocation issues outside of a full cost of service application and short of a full cost allocation study.

OGVG notes in particular that Union has said that it would bring forward, for example, a specific cost allocation proposal for the Panhandle Reinforcement Project in its 2019 rate setting application outside of a full cost of service study and short of looking at the full allocation of its costs.[19] OGVG respectfully submits that the Board has consistently rejected the notion that such a re-allocation would be appropriate outside of a rebasing application.

In EB-2016-0186 the Board, during the course of application by Union for leave to construct the Panhandle Reinforcement Project, rejected the proposed revision to the cost allocation methodology for the project on the basis that it would be inappropriate to consider and change the cost allocation methodology for one project in isolation without undertaking a comprehensive review in the context of a cost of service or custom IR application:

> The OEB will not approve Union's proposals for a 20-year depreciation period and a revised cost allocation methodology. The OEB finds that both proposals should be deferred to Union's next cost of service or custom IR application. It would be inconsistent to change the depreciation term and cost recovery for one project, while Union's other assets are depreciated and recovered on different bases. A comprehensive review is required for parties to test, and the OEB to assess, the merits and implications of these two proposals and this should be at Union's next cost of service or custom IR application.
>
> While these proposals may have merit, they cannot be adequately considered during the IRM term, for one project in isolation. A leave-to-construct application requesting a capital pass-through mechanism for cost recovery over 14 months is not the appropriate forum to consider deviations from principles embedded in current OEB-approved rates.
>
> A proper review of these issues will need to include the full range of possible amortization periods, and the impacts on all customer classes of a

[19] Exhibit C.LPMA.14

> change to the cost allocation methodology.[20]

The issue of the allocation of the Panhandle Reinforcement Project costs was raised again in the context of Union's 2018 rate setting application, wherein the Board affirmed its view that it would be inappropriate to consider a change in allocation methodology for one project in isolation and confirming that changes in cost allocation methodology should be considered in the context of a full study that considers all changes across all facilities and customer classes:

> The OEB is of the view that any change to the existing cost allocation model should be done with the assistance of a comprehensive system-wide full cost allocation study. Cost allocation is a zero sum exercise. A full study ensures that all changes to facilities, operations and use in the transmission system since the development of the previous cost allocation model are recognized across all customer classes. This form of study provides that positive and negative changes in costs throughout the system are accounted for. A finding that current rates are inequitable because of the underlying allocation of costs for one project could introduce other inequalities by an incomplete analysis of the changing cost impacts on customers. Equitable cost causality is only possible with a full study. The OEB will not vary the Panhandle leave to construct decision that declined to change the cost allocation methodology for Panhandle Project costs and directed that any change should be considered in the next Union rates proceeding. Consistency in OEB decisions is important to regulatory clarity and predictability.[21]

OGVG respectfully submits that the Board has repeatedly and consistently rejected the notion that the cost allocation methodology for isolated projects should be revised or changed outside of a comprehensive system-wide full cost allocation study performed within the context of a full cost of service or custom IR application, and with good reason. Changing the allocation of incremental costs without at the same time updating the allocation of costs embedded in base rates would be *prima facie* inappropriate, since the justification for re-allocating incremental costs would necessarily be also applicable to the costs embedded in rates; in addition, the actual costs underpinning existing rates

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[20] EB-2016-0186, Decision and Order dated February 23, 2017, pages 10-11.
[21] EB-2017-0087, Decision and Rate Order dated January 18, 2018, page 8.

will have changed over time, which certain assets becoming fully depreciated while other new assets going into service, the impacts of which can only be captured in a comprehensive cost of service and cost allocation study. Only updating incremental costs without updating embedded costs could, as the Board determined, introduce further inequities.

In the context of this merger application it is further noted by OGVG that the actual underlying allocation of costs will fundamentally change and be in transition throughout the deferral period as the two subject companies cease to exist and the merged entity combines their resources to serve its customers. Requiring the merged company to either perform a fictional cost of service and cost allocation study analysis for companies that won't exist in 2019, or prematurely perform a cost of service and cost allocation study analysis for the new company on the eve of the merger would in both cases undermine the reason why a deferral period post merger is generally justified in the first instance.

For these reasons OGVG does not believe it would be appropriate to allow parties to engage in the consideration of changes to the allocation methodologies either embedded in base rates or for new incremental projects prior to a full rebasing application during which all costs would be updated and allocation of all the costs to all customers for the merged utility would be considered at the same time.

RATE FRAMEWORK:

If the OEB grants the Applicants' request for approval of the amalgamation and deferral of rebasing, what should be the features of a Price Cap IR mechanism during the deferral period, including?

OGVG notes that in the normal course under the MAADs policy which the applicants insists governs their application, rates are set for subject utilities that are currently on a price cap mechanism during the deferral period based on their existing price cap mechanism.[22] If this principle were applied to Union this would mean extending its current price cap mechanism, including most importantly the use of an I minus X formula wherein X is equal to 60% of inflation, an earnings sharing mechanism and a capital pass through mechanism that is similar to the Board's Incremental Capital Module.[23] Accordingly, certainly from the point of view of the customers of Union, it is questionable as to why there should be any different treatment for Union during a deferral period.

OGVG notes and is concerned that rates charged to its members would be escalating faster as a result of the proposed price cap mechanism then they are under Union's current price cap mechanism, even though, as a result of failing to file a cost of service application for 2019, there is no evidence to support material changes to the current price cap mechanism. Under the current price cap mechanism Union's rates escalate at a rate based on inflation – 60% of inflation, whereas under the applicants' proposal Union's rates would escalate at a rate of inflation without any adjustment.[24] The applicants make this proposal notwithstanding persistent overearnings during the previous 5-year period.[25] The concern is heightened given the proposal to only include an ESM in the last 5 years of the deferral period at a threshold of 300 basis points[26], notwithstanding the consistent use of ESMs with thresholds well below 300 basis points over the last 10 years.[27]

Union's proposal to deviate from its current Price Cap Mechanism absent an intervening cost of service application, actual financial results that trigger an off ramp, benchmarking

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[22] Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, pages 13-15.
[23] EB-2013-0202, Application, page 2.
[24] EB-2017-0307, Exhibit A, Tab 2, page 2.
[25] Exhibit C.LPMA.18
[26] EB-2017-0306 Exhibit B, Tab 1, page 42.
[27] Exhibit J1.3 Attachment 1

results that underpin a request to adjust the combined escalator, or some other specific reason why the current Price Cap Mechanism no longer produces rates sufficient to appropriately sustain Union's operations begs the question as to why a change in mechanism is necessary or appropriate. Union was specifically scheduled for rebasing in 2019, with a commitment to prepare a full cost of service filing for 2019 regardless of whether Union applied for rates on a cost of service basis for 2019.[28] It is arguable, OGVG respectfully submits, that by voluntarily engaging in a merger application and seeking permission to defer rebasing for itself and for the merged company, there is no justification to change the current price cap mechanism except in response to further protect ratepayers; certainly there is no obvious reason why the mechanism should be specifically adjusted to eliminate the stretch factor entirely to the benefit of Union and the detriment of customers, fundamentally change the characteristics of the ESM to the benefit of Union and to the detriment of customers, and change the mechanism for the pass through of incremental capital investments to the benefit of Union and to the detriment of customers.

Presumably Union would say that the merger, and the pursuit of merger related savings justify a change in the rate setting mechanism. In response OGVG notes that the availability of merger related savings will actually serve to reduce the operating costs for Union beyond which it could achieve without a merger, which suggests that, if anything, the current rate mechanism should be strengthened in favour of customers in order to capture some, if not all, of the net savings during the deferral period.

Accordingly OGVG respectfully submits that it would be entirely appropriate for the Board to continue along, particularly with respect to Union, with Union's existing price cap mechanism pending a rebasing application for the merged entity. Having said that, OGVG makes the following submissions with respect to the specific elements of the applicants' proposed Price Cap Mechanism in the event the Board is convinced that a new mechanism should be crafted for the use of the two existing distributors during any approved deferral period.

What is the appropriate inflation factor [I]?

In OGVG's view it would be appropriate for the inflation factor for the Price Cap IR mechanism to be based on the same 2-factor IPI methodology established universally for

[28] EB-2013-0202 Exhibit A, Tab 1, page 44.

all the electricity distributors setting rates annually under a price cap mechanism, assuming the Board does not simply extend Union's existing price cap mechanism during the deferral period.[29] In OGVG's view no compelling justification for establishing an inflation factor using differing methodologies for natural gas utilities and electricity utilities has been put forward, particularly in the context of a price cap mechanism that is intended to be used in lieu of scheduled rebasing applications and throughout a period of deferred rebasing.

OGVG supports the notion that it would be appropriate to, in view of the potentially different emphasis on capital vs. labour within natural gas operations as opposed to electricity operations, customize the ratio of capital vs. labour in the 2-factor IPI factor to reflect the actual underlying split within Union and EGD between labour and capital, as opposed to using the default split utilized for electricity distributors (currently set at 30% labour and 70% for non-labour) or the customized split for OPG (currently set at 12% labour 88% and non-labour).[30]

What is the appropriate productivity factor [X]?

OGVG has no objection to use of a zero productivity factor as proposed by the applicants and as is the case for electricity distributors. OGVG wants to be clear, however, that it believes a positive stretch factor remains appropriate, as detailed below.

Should a stretch factor apply and if so, what is the appropriate stretch factor?

In OGVG's view the MAADs Framework for Electricity is premised largely on the notion that rate-setting during the deferral period produces just and reasonable rates that protect the interests of customers as a result of the operation of the Board's incentive rate setting mechanism as supported by the Board approved benchmarking of Ontario electricity distributors.

The MAADs policy provides for several scenarios for rate setting for entities during a deferral period.[31] What is common to all the scenarios is that the rate-setting associated

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[29] EB-2010-0379 Report of the Board: Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors, as corrected to December 4, 2013, pages 5-11.
[30] Exhibit C.STAFF.16
[31] Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, pages 13-15.

with any of the pre-merger entities during the deferral period will, on the expiration of any pre-merger custom IR plan, be determined using either the Board's price cap mechanism or the Board's annual IR mechanism. For a company that ends up on annual IR a stretch factor of .6% is imposed regardless of the company's performance; in other words, companies that end up on annual IR are treated as though they are in the most inefficient cohort in Ontario unless and until they rebase. All other companies continue along under the price cap mechanism using the stretch factor, from .6% to 0.0%, that is associated with their cohort using the Board approved benchmarking model results.

In this way the MAADs policy, in determining rates outside of existing custom IR plans that will not conclude until sometime during the deferral period (which is not the case for either Union or EGD) relies entirely on the benchmarking results for each utility to determine the applicable stretch factor to be applied against inflation. In order to qualify for a zero stretch factor during a deferral period, a company would have to establish benchmarking results that would place them with the most efficient cohort, with actual costs that fall well below their predicted costs.

Both Union and EGD are seeking to establish rates during the deferral period using a zero stretch factor, despite the complete lack of benchmarking data to establish that both companies are superior from a benchmarking perspective such that their price escalation does not require a positive stretch factor.

The lack of relevant benchmarking analysis is all the more notable when one considers, as previously discussed, how central benchmarking is to the custom IR plans that the applicants' suggest they will file in lieu of an approved merger, benchmarking that ratepayers will likely be denied the benefit of until the merged company files its own cost of service application at the expiration of any approved deferral period.

Board Staff, in its initial positions submission, has suggested that it may propose a stretch factor of .3% for both Union and EGD, presumably on the basis that in the absence of suitable benchmarking analysis .3%, the median stretch factor available to electricity distributors, may be appropriate.[32]

In OGVG's view a .3% stretch factor should be, under the circumstances, the minimum positive stretch factor imposed on Union and EGD, with a higher stretch factor being

[32] Ontario Energy Board Staff Initial Position Paper, April 30, 2018, page 2.

likely more appropriate.

As noted Union's current stretch factor is equal to 60% of inflation; that is in almost all circumstances a stretch factor well in excess of .6%, higher then the highest stretch factor imposed by the Board on electricity distributors. Similarly, for EGD, the Board limited non pass through OMA increases during its custom IR Plan to an increase of 1% per annum, again, in most cases and in particular in relation to the assumed 1.73% inflation factor assumed by the applicants in their "status quo" scenarios an effective stretch factor above .6%.[33]

Absent a specific finding by the Board that neither Union nor EGD is capable of producing appropriately robust benchmarking analysis for the purpose of establishing their relative efficiency rankings amongst a properly assembled cohort, OGVG submits that the consequences of the failure of the companies to provide such supporting benchmarking should be an assignment of a .6% stretch factor.

OGVG would note that a comparison of the impact of a stretch factor of .6% on the combined revenues generated by Union and EGD under their proposed price cap scenario against the forecast net merger savings to the end of a 6-year deferral period is a net amount of $49M without accounting for the revenue requirement associated with the merger related capital investments.[34] Even when including the 6 year revenue requirement impacts of the merger related capital, OGVG respectfully submits that a .6% stretch factor would, at most, offset the net merger savings, allowing the merged entity to retain any merger savings beyond their current forecast, including any early realization of forecast savings, and in addition retain the impact of any non-merger related savings that the companies have already achieved or are able to achieve during that period.[35] As

[33] EB-2012-0459, Decision dated July 17, 2014, page 49.
[34] Exhibit K2.4, applying a .6% reduction to the assumed inflation factors produces a reduction to the 6 year revenue requirement under the applicants' proposal of $291M, compared to the 6 year cumulative savings at EB-2017-0306 Exhibit B Tab 1 Attachment 12 of $340M.
[35] Exhibit C.OGVG.7 shows the forecast of the 10-year revenue requirement for the merger related capital investments of $151M. EB-2017-0306 Exhibit B Tab 1 Attachment 12 shows spread of merger related capital costs across the deferral period. OGVG assumes that since the bulk of the merger related capital spending is not finished until years 3 and 4 that the revenue requirement for that capital spending by year 6 is approximately 50% or less of the 10 year revenue requirement of $151M, given that the bulk of the cost will be depreciation which is on a straight-line basis; OGVG also notes

noted throughout the application, there are opportunities for merger related savings that have not been quantified, which OGVG expects will give the merged company ample opportunity to earn an enhanced return during a 6-year deferral period.

OGVG notes that on being asked about the role of enhanced returns in the application, the applicants have repeatedly stressed that enhanced returns are not the primary driver for the merger, citing instead customer related benefits, and stressing that the target return above the allowed ROE is an average annual amount of only 20 basis points.[36] In OGVG's view, assuming the Board does not simply extend the existing Price Cap Mechanism for Union and apply that same mechanism to EGD rather then try to craft a new mechanism in a framework as proposed by the applicants, a .6% stretch factor over a 6 year term provides an appropriate escalation of rates in view of the circumstances of both EGD and Union as they enter into the proposed deferral period and the potential for merger and non merger related savings going forward.

OGVG would respectfully note that whether under the existing or proposed Price Cap Mechanism the applicants are essentially entitled to recover 100% of the revenue requirement associated with their (prudently incurred) capital spending regardless of the term of the deferral period or the level of stretch factor imposed on their escalator as a result of either the Capital Pass Through Mechanism or the Incremental Capital Module, subject only to temporary adjustments related to use of an embedded cost of capital and the operation of the ICM related threshold.[37] Given that only approximately 35% of the total revenue for the merged entity related to OMA, with almost the entire remaining 65% being capital related, OGVG would respectfully submit that there is little risk of material under-recovery by the applicants during the deferral period, particularly during the proposed shorter period of 6 years.[38]

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that its assumes the impact of any short term CCA deductions in the deferral period would further lower the 6 year revenue requirement.

[36] Exhibit C.FRPO.1, Attachment 1, Page 9.

[38] Exhibit K2.4 provides information throughout concerning the approximate ratio of OMA to capital costs for both Union and EGD.

Should there be pass through (Y factor) treatment for costs such as:

Gas commodity and upstream transportation costs? Demand side management (DSM) costs? A lost revenue adjustment mechanism (LRAM)? Cap-and-trade costs?

OGVG does not object to the continued Y factor treatment of

a) Gas commodity and upstream transportation costs,
b) Demand Side Management costs,
c) A lost revenue adjustment mechanism (LRAM) for non general service classes (as it currently the case), and
d) Cap and Trade costs.

Changes to normalized average consumption/average use?

OGVG's members are not currently subject to Y factor treatment for changes in normalized average consumption/average use, instead being subject to an LRAM. It is OGVG's understanding that neither applicant is proposing to extend the scope of Y factor treatment for changes in normalized average consumption/average use to customers outside of the general service classes, such that OGVG does not take a position on the suitability of continuing such treatment for general service classes.

Should there be a Z factor, and if so what are the appropriate parameters and materiality threshold?

OGVG agrees that Z factor relief should be available, and that generally the Z factor parameters applicable under the 4th Generation IR Mechanism is appropriate.

With respect to the materiality threshold, OGVG respectfully submits that a threshold that properly reflects the size of the merged entity, and therefore its ability to absorb the impact of Z factor events (which, in OGVG's view, is the justification for imposing a materiality threshold in the first instance). In OGVG's view a materiality threshold of $10M, representing less then .5% of the total revenue requirement for the merged entity, would be appropriate, and is in line with the general materiality threshold guidelines that establish materiality thresholds for most distributors based on .5% of their total revenue requirement.[39] Union's current materiality threshold is $4M for Z factors[40]; in OGVG's

[39] Ontario Energy Board Filing Requirements for Natural Gas Rate Applications, page 38.

view the proposal by the applicants that the materiality threshold should go down to $1M despite the increase in the total size of the regulated entity and therefore the increase in the ability of the entity to absorb the ramifications of Z factor events is inappropriate.

There is some suggestion in the application that certain specific issues that have not traditionally been identified as Z factor eligible events may be brought forward in future years; by way of example, the applicants raise the notion that changes in interest rates over the deferral period may appropriately trigger a Z-factor application.

OGVG respectfully submits that it is inappropriate and unnecessary for the Board to specify future possible Z-factor treatment of events that a) have not yet and may not occur, and b) may not exceed the established materiality threshold in any event. OGVG would, however, like to express specific concern about the notion that changes in interest rates might qualify for Z-factor treatment, particularly in light of Union's evidence that it took advantage of declining interest rates during the past Price Cap period to generate excess earnings.[41]

While it is true that to the degree that those excess earnings exceeded (or helped Union to exceed) the ESM thresholds some of the benefit of those declining interest rates would have been shared with ratepayers, recognizing the decline of interest rates during the Price Cap period as a Z factor would have entitled ratepayers to the full benefit of declining interest rates, subject only to the materiality threshold. However changes in interest rates and the happenstance of when a utility happens to have to renew or issue new debt and the prevailing interest rates when those issuances occur have always been treated as factors within the scope of management's control. Again, OGVG does not believe it is necessary to prejudge the appropriateness of future theoretical Z-factor claims; OGVG only makes these comments as support for the notion that unless and until an event occurs that a party wishes to advance as a Z-Factor event, the Board should be wary about opining on theoretical examples such as increasing interest rates.

Should there be an earnings sharing mechanism and if so what are the appropriate parameters?

OGVG respectfully submits that ESMs have been an essential element of the regulatory frameworks for both utilities for the entire period from 2008 to 2018, the only exception

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[40] Ontario Energy Board Filing Requirements for Natural Gas Rate Applications, page 39.
[41] Transcript Volume 6, page 68.

being in rebasing years. The threshold for sharing has ranged from a high of 200 basis points over the ROE to no threshold at all (i.e. sharing from the first dollar over the allowed ROE), the split of sharing has ranged from a high of 90% for ratepayers beyond the threshold to a low of 50% for ratepayers.[42]

OGVG fails to understand why it would be that earnings sharing of the nature and scope that is currently in place for both Union and EGD would suddenly cease to be appropriate in the absence of a intervening cost of service or custom IR plan that would properly contextualize the utilities in terms of their underlying cost structures, particularly through the use of benchmarking analysis. In OGVG's view abandoning the existing ESMs would only be appropriate if there was sufficient evidence establishing the appropriateness of overearning as a benefit that should strictly accrue to the distributor because it has been created in the face of already achieved superior benchmarking performance, as opposed to being created as a byproduct of base rates that were set too high or a rate mechanism that is escalating rates too generously. In OGVG's view no evidence has been proffered in the instant case to justify abandoning the existing ratepayer protections by, as proposed by the applicants, deferring the operation of an ESM to year 6 of a 10-year deferral period and increasing the threshold for sharing to 300 basis points.

Accordingly, at a minimum, OGVG respectfully submits that the Board should maintain the current ESMs; of particular concern to OGVG is the Union ESM, which is currently set at a threshold of 100 basis points with sharing 50/50 beyond the threshold and 90/10 sharing in favour of ratepayers beyond a second, 200 basis points threshold. OGVG makes this submission subject to two adjustments. First, OGVG would accept that in the context of a deferral period pursuant to a merger, it may be appropriate to calculate the ESM over the entire approved term rather then annually, in order that the applicants would be able to offset periods of under earning, ostensibly caused by merger related investments, against periods of overearning. Second, OGVG would suggest that it may be appropriate to change Union's ESM from being calculated on an actual basis to being calculated on a weather normalized basis, in order that the company would bear the risk of weather in relation to earnings sharing, consistent with the current EGD ESM.

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[42] Exhibit C.OGVG.11

Is the proposal for calculating the cost recovery treatment of qualifying capital investments consistent with the OEB's policy for Incremental Capital Modules, and if not are any deviations appropriate?

OGVG notes its prior suggestion that it may be appropriate to simply have Union and possibly EGD to continue into and throughout an approved deferral period under Union's current price cap mechanism, which would include the use of the capital pass through mechanism rather then the Board's Incremental Capital Module ("ICM"), in which case the proposal to access the Board's ICM would become moot.

In the event the Board instead decides to allow the applicants' to access ICM relief, it is OGVG's understanding that the applicants' proposal is consistent with the OEB's policy with respect to Incremental Capital Modules ("ICMs'") save one aspect; the applicants' propose to apply the incremental cost of capital in calculating the revenue requirement recovered through the ICM, whereas the Board's ICM requires applicants to use their embedded cost of capital parameters when applying for ICM relief.[43]

In OGVG's view there is no compelling reason to treat the applicants' in this case any differently from any other regulated utility in Ontario when it comes to accessing ICM relief in the context of a price cap mechanism. OGVG is unaware of any factor that distinguishes the applicants, as gas distributors, from electricity distributors with respect to changes in their cost of capital over time relative to their embedded costs of capital such that one group, gas distributors, should be allowed to constantly update the cost of capital used for the purposes of ICM projects, whereas the other group, in this case electricity distributors, should not. To the extent the Board is interested in allowing such a change to the operation of the ICM, OGVG respectfully submits that that change should be considered universally as a component of the Board's ICM framework and applicable to all distributors relying on that framework.

What changes to rates, regulated services, cost allocation or rate design should be permitted or required during the deferred rebasing period and what process should be required for such changes to be made?

OGVG notes its previous submissions with respect to the inappropriateness of changing cost allocation methodologies outside of a full cost of service analysis.

[43] Exhibit C.STAFF.5, Exhibit C.STAFF.14.

OGVG notes that the applicants propose to not seek advance approval from the Board for accounting changes made during the course of a deferral period.[44] In OGVG's view it would be inappropriate to permit the applicants to unilaterally change their accounting methodology without allowing the Board and stakeholders to consider the impacts of such changes from a regulatory perspective and, as necessary, capture the impacts of such changes either directly in rates or in a deferral or variance account as appropriate. It may not be the case that the Board ultimately decides on the appropriateness of a particular accounting change, particularly if the change is imposed on the applicants in some fashion, but it will always, in OGVG's submission, be appropriate for the Board to review the impacts of accounting changes relative to the accounting assumptions underpinning rates.

What deferral and variance accounts should continue?

OGVG does not object to the proposed continuance of certain deferral and variance accounts as proposed, with the exception that OGVG doe not take a position on accounts related to Normalized Average Consumption or Normalized Average Use as such accounts are only applicable to general service customers.

What deferral and variance accounts should not continue?

OGVG does not object to the proposed discontinuance of certain deferral and variance accounts as proposed, with the exception that OGVG doe not take a position on accounts related to Normalized Average Consumption or Normalized Average Use as such accounts are only applicable to general service customers.

Is the proposed adjustment to reflect the full amortization of Union Gas' accumulated deferred tax balance at the end of 2018 appropriate?

OGVG has no objection to the proposed adjustment.

Is the proposed adjustment to unwind smoothing of costs related to Enbridge Gas' Customer Information System and customer care forecast costs appropriate?

OGVG takes no position on EGD specific adjustments that only affect the EGD rate

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[44] Exhibit C.SEC.44

proposal during any approved deferral period.

Is the proposed adjustment to Enbridge Gas' Pension and OPEB costs appropriate?

OGVG takes no position on EGD specific adjustments that only affect the EGD rate proposal during any approved deferral period.

Is the proposed adjustment to reflect the removal of Enbridge Gas' tax deduction associated with the discontinued SRC refund appropriate?

OGVG takes no position on EGD specific adjustments that only affect the EGD rate proposal during any approved deferral period.

OTHER:

Are the provisions of the MAADs Handbook related to harmonization applicable?

OGVG agrees with the position of the applicants insofar as they intend to propose rate structures and rate harmonization plans upon the initial rebasing application for the merged company subsequent to any approved deferral period.[45] OGVG notes that even now Union maintains separate rate zones in order to maintain an appropriate rate structure that reflects the different costs to serve its customers in different areas of the province; OGVG expects that even with harmonization it is likely that multiple rate zones may continue to be appropriate, and that that issue will be canvassed in detail within the context of a full cost of service analysis and cost allocation study that addresses the cost to serve all the different customers of the merged utility.

[45] Exhibit C.LPMA.42

COSTS

OGVG respectfully submits that it has acted responsibly and efficiently during the course of its intervention in this proceeding, as accordingly asks that it be permitted 100% of its costs of participation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF JUNE, 2018