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August 28, 2018

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Our File No. 180904

**VIA RESS, EMAIL AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

Attention: Kirsten Walli  
Board Secretary

Dear Ms. Walli:

**Re: EB-2017-0319: Enbridge Gas Distribution Inc., Application for Renewable Natural Gas Enabling Program and Geothermal Energy Service Program**

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Please find enclosed herewith BOMA's Final Argument.

Yours truly,

**FOGLER, RUBINOFF LLP**

Thomas Brett

TB/dd

Encls.

cc: All Parties (*by email*)

**ONTARIO ENERGY BOARD**

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

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an order or orders related to its Renewable Natural Gas Enabling Program and Geothermal Energy Service Program;

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an order or orders amending or varying the rates charged to customers for the sale, distribution, transmission, and storage of gas commencing as of January 1, 2018.

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**FINAL ARGUMENT OF  
BUILDING OWNERS AND MANAGERS ASSOCIATION, GREATER TORONTO  
("BOMA")**

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August 28, 2018

**Tom Brett**  
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**Counsel for BOMA**

BOMA will address each of the RNG-related issues in turn.

*1.1. Should the new business activity – RNG Enabling Program – be considered as part of the utility's regulated business?*

BOMA is of the view that the injection part of the new business activity is part of the utility's regulated gas distribution business. The utility must be responsible for ensuring that gas enters its distribution network at the correct pressures, locations, and free of impurities, and that the quantities are measured. It has performed that function in the past with respect to Ontario produced natural gas and at all of its interconnects with gas transmission pipelines and other gas distributors. The injection facilities for biomethane will be constructed at the producer's site. The injection facilities will need to include a short distribution line necessary to connect those injection facilities to the most appropriate entry point to the utility's distribution network. Injection service must be part of the utility's regulated business.

In BOMA's view, the upgrade of biogas into biomethane should also be considered as part of the overall activity of enabling and procuring a new stream of gas for certain of its customers that wish to purchase natural gas with a renewable aspect, as part of the utility's gas procurement function. Particularly in the case of municipal and institutional suppliers of biogas, it is more practical, and likely less costly, for the utility to provide that service, as the suppliers have neither the motivation, the inclination, nor the expertise to do so. Given that Enbridge must supply the injection service, allowing them to also provide the upgrade service, should result in more construction efficiencies and perhaps some economies of scope.

On the other hand, given that one of the benefits of introducing a stream of biomethane into the utility's gas supply is the reduction of GHG, allowing the producers of the biogas the option of doing the upgrade from biogas to biomethane as well, may help private sector developers to sponsor projects that might otherwise not get done, thereby further lowering GHG emissions.

Adding the stream of biomethane to Enbridge's gas supply reinforces Ontario's policy of providing a target, and a plan, for GHG reduction, as well as ministerial-appointed advisory panels (Bill 4, sections 3, 4, and 5 of The Cap and Trade Cancellation Act, 2018). Bill 4 received first reading in the Ontario legislature on July 25, 2018, and second reading on August 3, 2018. The Enbridge initiative also reflects the existing undertakings between Enbridge and Ontario, and existing ministerial directives to the gas utilities. In 2006 and 2009, the Undertakings between the Province and Enbridge were amended to enable, inter alia, Enbridge to provide services that would assist the Government of Ontario in achieving its goals in energy conservation including promoting cleaner, alternative and renewable energy sources. Enbridge submitted two separate proposals to fulfill these undertakings but both times withdrew them, sensing a lack of support among some intervenors. Directives to the OEB enhanced the messages underlying the change in Undertakings.

Both Enbridge proposals pre-dated the very detailed requirements under Ontario's Cap and Trade Program. However, the now absence of a Cap and Trade Program in no way reduces the need for Ontario to reduce its carbon footprint. As natural gas is a major source of carbon to heat buildings in Ontario, the absence of a Cap and Trade mechanism does not reduce the importance of this initiative. Cap and Trade was merely one option

in the fight against climate change and many jurisdictions in Canada and around the world have pursued renewable energy generally and renewable natural gas in particular.

Allowing the regulated utility to construct and own the enabling facilities will also reduce the utility's revenue requirement due to the additional income shield provided by the capital cost allowances for the upgrade equipment.

Having the service provided by the regulated utility is also consistent with the Ontario Energy Board Act. Section 2.1(j) defines gas to include "substitute gas" which should be read to include renewable natural gas. BOMA believes that the phrase "distribution of natural gas" should be given a broad and liberal meaning, one which will include biomethane.

Enbridge has proposed two important elements to support the market and supply of renewable natural gas:

1. The elegant and precedent-setting use of the fundamental, economic and financial principles of EB0-188 to save existing customers harmless from any cross subsidization of the addition of supplies of RNG to Ontario's gas supply.
2. The development of an enabling program to help create a market and supply of RNG related services while recognizing the differences between the true utility functions currently carried out with respect to safety and quality of all natural gas supplies, and only initiating a clearly competitive service in the face of market inertia with a stated willingness to exit the market when non-utility organizations and the market for RNG are sufficiently developed.

It is noteworthy that the British Columbia Utilities Commission ("BCUC"), in both its initial December 14, 2010 decision, which allowed Fortis, a regulated gas utility, to launch two biomethane pilot projects (G-194-10), and its December 11, 2013 (G-210-13) decision (pp 99-100), which approved a biomethane procurement program, permitted Fortis to upgrade the biogas to biomethane as part of its regulated utility business, in cases where the producers/vendors were institutions (eg. municipalities, hospitals, regional water authorities). The first two projects in BC were sponsored by institutions, and most of the early interest in biomethane in Ontario are municipalities with either landfills or water treatment facilities. In Quebec, the Regie declined to permit Gaz Met to provide upgrading service, mostly on the grounds that the existing ratepayers would be required to subsidize the proposed new entrants (D-2011-108; D-2015-107). However, it is worth noting that in both the BC and Quebec proceedings, unlike the one before the Board, the utilities and Gas Met were proposing to acquire the gas commodity as part of their own system gas supply.

However, in BOMA's view, the regulated utility should only be permitted to engage in this enabling/injection activity with respect to biomethane if it demonstrates that the existing ratepayers will not subsidize the enabling activity under any circumstances. To ensure that such circumstances do not exist, BOMA has examined the terms of the service contracts the utility proposes for both the injection and upgrading services in some detail. BOMA found some apparent gaps in the ratepayer protection and recommends several conditions to the Board's approval of the application (see below).

- 2.1. *Is the methodology to set services fees for the RNG Enabling Program – Upgrading Service reasonable and appropriate?*
- 2.2. *Is the methodology to set services fees for the RNG Enabling Program – Injection Service reasonable and appropriate?*

The utility has proposed that the fees for both the upgrading and the injection services be based on flat uniform annual payments over the contract period of an amount that will ensure that each project has a P/I ratio of 1.02, based on the OEB's approved EBO-188 methodology. Use of the EBO-188 methodology, with its requirement for a P/I ratio of at least 1.0 guarantees that over the contract term, the utility ratepayers will not subsidize either the biogas producers or the utility's RNG customers that purchase the commodity. The company's forecast shows a "ratepayer surplus" over the twenty year planned project period, with a few deficiency years in the early years. The deficiencies and sufficiencies for each year are proposed to be captured in a deferral account (see below). The utility proposes to offer its traditional direct purchase arrangements, for example, bundled transportation, to transport the biomethane in blended form with natural gas through its distribution network to the producers that wish to purchase biomethane. Those customers would need contracts with the producer of the biogas. The annual service fees, or rates, would be project-specific, and would not be based on actual annual biomethane production. The service fees would be based on the actual costs the utility incurs to construct that particular producer's upgrade/injection facility. The initial fee is based on a forecast of costs but the contract contained in the evidence provides a mechanism which requires the service fee to be adjusted for the project's actual costs.

BOMA believes that the methodology is appropriate, based as it is on the EBO-188 approach, originally designed to assess the viability of proposed gas infrastructure

expansions in several parts of the gas utility's franchise, and the fact that it is designed to recover all of the costs incurred by the utility to implement and operate either the injection system, or the enabling and injection systems.

The evidence suggests that Enbridge may procure biomethane for its own "system gas" supply (Exhibit B, Tab 1, Schedule 1, p 21). BOMA has not understood this to be the case, as such supply, absent a government subsidy, is grossly uneconomic, and the Board should not approve this option. Enbridge's role is to upgrade, inject, and transport the gas to the customer's site(s), which customer may also be the producer of the biogas. The Board should make it clear in their decision that Enbridge is not authorized to purchase biomethane for its system supply. The Board would need to separately approve a commodity purchase program if and when Ontario develops a biomethane subsidy policy or adopts the policy of the previous government.

Moreover, as noted earlier, the contracts must be structured so that the ratepayers are not exposed to any loss, including loss due to lack of supply of biomethane, lack of demand for biomethane from the utility's customers, the fact that the utility may not be able to accept the gas at an appropriate point on its system, or the bankruptcy or equivalent of a biomethane producer, and any judicial or arbitral decisions with respect to the contracts that result in Enbridge having to absorb certain costs. While financial failure of an institutional producer (eg. municipally-owned landfill sites) may not be likely, private sector developers may enter the market based on more leveraged capital structures, lower credit ratings, and higher risk profiles than the municipalities. In summary, any costs incurred by Enbridge as a result of the producer's failure to pay its monthly fee, capital costs in excess of budget of costs, or any other reason, are for the Enbridge shareholder,



not the ratepayers. The principle, and its corollary should be conditions of approval by the Board of the proposed RNG initiative.

For example, it will be critical that Enbridge have strong financial assurances in place, sufficient to cover the entire project costs.

The company's evidence is that the ratepayers will be held harmless by a combination of warranties which the company will seek from equipment suppliers and contractors, and financial assurances tailored to the individual product developer and project. However, the company declined to guarantee that the ratepayers would be held harmless on a one-for-one dollar basis (TC Tr., p 87). Moreover, Schedule F to the contract, which is to show the Financial Assurances in evidence, is blank. This general statement is insufficient for the ratepayers' protection. More details on the commitment by the shareholders to be responsible for any "gaps" is required. The Board and ratepayers should be able to examine the financial assurances/warranties package, to ensure they do not leave any gap, through which ratepayers might be held liable. Enbridge noted that for similar projects in the past, it has required letters of credit from customers.

Enbridge does not propose to have the individual contracts between the utility and the biogas producers approved by the Board. However, BOMA believes that at least two or three contracts, including the existing contract with the City of Toronto, which appears to have been signed before the Board approved the program, should be submitted to the Board to ensure that the Board is satisfied that ratepayers are properly protected from risk of cross-subsidy and loss.

3.1. *Is the proposal to include the annual sufficiency / deficiency of the RNG Enabling and Geothermal Energy Service Programs within the Cap and Trade Compliance Obligation Variance Accounts reasonable and appropriate?*

BOMA supports the idea of including the annual sufficiency/deficiency of the RNG Enabling and Injection investments within a variance account, but not the existing Cap and Trade Compliance Obligation Variance Accounts. BOMA suggests a new variance account be created, entitled "Annual RNG Enabling Sufficiency/Deficiency Deferral Account". A new account would avoid any potential misunderstandings, disruptions, mixing of funds. Moreover, the GHG/Cap and Trade variance account is likely to be abolished in the near future.

3.2. *Is the disposition methodology appropriate?*

BOMA believes the account, if in credit position (that is, ratepayers are owed money), should be cleared annually to the ratepayers. If the account is in a debit position at year end (the company's evidence suggests a debit would be a rare event), the account should not be cleared until results in succeeding years produce, as they will, a cumulative credit, at which point, the credit would be cleared to ratepayers. This practice would ensure that ratepayers are not subsidizing the initiative at any time.

*Conditions of Approval*

The Board should set the following conditions of approval to this application to ensure that ratepayers are not subsidizing the RNG participants:

- a biomethane tariff which includes the service fee should include a financial assurance package that totally protects the ratepayers in the event of cost overruns, contractual breaches, failure of the producer or upgrading company, and the like;
- the draft contract in the evidence at Exhibit 1.2.EGDI.Staff.6.Attachment should contain a provision (which it does not now include) that any stranded cost defined as the unamortized cost plus interest of the utility's injection and enabling infrastructure investments due to producer's failure to pay its fees in full over the contract year period for any reason whatsoever should be for the account of the utility shareholders, as well as a general statement that any incremental cost to Enbridge, arising out of the project, should be for the account of the shareholder;
- the draft contract should contain a dispute resolution provision, as there are several clauses in the current contract where parties are required to negotiate differences, including section 10.02, but no dispute resolution provision exists;
- the model contract, as a whole, amended to include the provisions outlined above, should be satisfactory to the Board;
- the contract with the City of Toronto, which was executed prior to Board approval of the program should be submitted to the Board for review, in a public proceeding, in the next ninety days.

In summary, BOMA supports Enbridge's proposed Renewable Natural Gas Enabling Program. BOMA's members have invested a great deal in their assets during the past decades with respect to energy conservation and achieving greenhouse gas emission reductions, and sustainability

generally. Now, more than ever, renewable natural gas must be added to our fuel supply. The costs of not doing so are substantial. The resilience of our economy and our cities are at stake.

All of which is respectfully submitted, August 28, 2018.

A handwritten signature in cursive script, appearing to read "Tom Brett".

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**Tom Brett**  
**Counsel for BOMA**