



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

October 4, 2018

Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 183045

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-2018-0105: Union Gas, 2017 ESM & DVA

Please find enclosed herewith BOMA's Submission.

Yours truly,

FOGLER, RUBINOFF LLP

Thomas Brett

TB/dd

Encls.

cc: All Parties (*via email*)

ONTARIO ENERGY BOARD

Union Gas Limited

**Application for disposition and recovery of certain 2017 deferral account balances
and approval of the earnings sharing amount**

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

October 4, 2018

Tom Brett
Fogler, Rubinoff LLP
77 King Street West, Suite 3000
P.O. Box 95, TD Centre North Tower
Toronto, ON M5K 1G8

Counsel for BOMA

BOMA accepts Union's proposal for the disposition of its listed deferral accounts, except for the following accounts:

Parkway Obligation Rate Variance Account (Account No. 179-138) (Exhibit A, Tab 1, pp 41-43).

BOMA recommends that this account either be cleared on an interim basis or not cleared at this time. It agrees with the calculation of the credit to ratepayers of the \$0.121 million. However, there is substantial disagreement between some intervenors and Union over whether ratepayers may have overpaid and may still be overpaying for the capacity required to implement the Parkway Delivery Obligation, in light of the amount of turnback of capacity by shippers, and related factors. BOMA shares those intervenors' concerns.

The Board itself said it did not have sufficient evidence to decide the issue in its merger decision (EB-2017-0306/0307, p49), where it stated:

"The OEB has determined that there is insufficient evidence to determine whether, as a result of the implementation of the PDO, ratepayers are paying twice for the same capacity. The OEB requires Amalco to track actual costs and amounts recovered through rates related to the PDO during the deferred rebasing period. The OEB at the time of rebasing will review the costs and amounts recovered through rates to ensure that ratepayers are not paying twice for the required capacity and the legacy Union Gas is not enhancing earnings contrary to the intent of the PDO settlement agreement."

Given that the Board wishes to record costs and amounts recovered through rates for the deferred rebasing period, the Board logically should also apply its finding to the 2017 and 2018. The same issue arises in 2017 and 2018 as arises in the years 2019 to 2023. If customers are paying twice for the same capacity in 2019 and thereafter, which the Board considers possible, they are paying twice for capacity in 2018 and 2017, unless Union is able to provide a compelling reason

why that would not be the case. Therefore, BOMA is of the view that it would be appropriate for the Board, at rebasing, now postponed from 2019 to 2023, to include an assessment of the costs incurred against amounts recovered through rates in 2017 and 2018. Amalco should be required to track and provide the costs and amounts recovered in their rates related to the PDO during 2017 and 2018 as well. During that review, the Board may find rate relief should be ordered for some or all years of the period 2017 to 2023. BOMA does not want potential ratepayer relief for 2017 and 2018 to be blocked by the applicant's claim of retroactive ratemaking. To avoid this consequence, BOMA recommends the Board either not dispose of the account or dispose of it on an interim basis. In addition, in order to ensure that the issue of whether ratepayers have paid twice for Dawn-Trafalgar capacity due to the various steps taken to implement the PDO, combined with Union's build over the same period, BOMA suggests that the Board direct that Union provide evidence in its 2019 rates submission which demonstrates that Union's ratepayers have not been overcharged in rates over the period from the commencement of the PDO project until December 31, 2018.

BOMA believes it is important to deal with this very serious matter now, while personnel, including Board personnel, knowledgeable about the PDO initiative, are present and able to contribute their insights to a fair resolution of this issue.

OEB Cost Assessment Variance Account (Account No. 179-151)

In 2016, the Board changed the Board's Cost Assessment Model ("CAM") effective April 1, 2016. The Board also established a variance account to record material differences between the assessment, embedded in rates, and the assessment resulting from the new policy, effective April

1, 2016. The \$1.159 million balance in this deferral account represents the Actual OEB Cost Assessment for 2017 less the Board Approved Forecast of that assessment of \$2.5 million. It represents Union's share of the Board's Cost Assessment levy on all Ontario utilities on a well-established formulaic basis.

The variance account is to be used to record only material differences. Given the nature of the Board change in policy and its timing, BOMA believes it qualifies as a Z-factor, based on the EB-2013-0202 Settlement Agreement (p36). The materiality threshold for Z-factor treatment in that proceeding is \$4.0 million. Union could have applied for a Z-factor treatment but did not do so. BOMA, therefore, is of the view that the \$1.167 million balance in the account should not be recoverable from ratepayers.

Earnings Sharing

BOMA accepts the applicant's surplus earnings calculation on condition that by doing so, it does not give up the right to argue at a later date, no later than the rebasing hearing, that some of the actual 2017 expenses are not appropriate for inclusion in the determination of utility earnings for earnings sharing purposes, in particular, the integration expenses shown at Exhibit B.Staff.16, p 1 of 2, as \$56.4 million. In addition, Union's evidence is that the bulk of the 2017 OM&A increase relative to 2016 OM&A of \$15.6 million was due to resources and new hires related to the Enbridge/Spectra merger. BOMA is of the view that those costs should not be charged to Union's (or Enbridge's) ratepayers absent evidence about the assumptions behind, and detailed calculations underlying, those numbers, and should not, therefore, be used in the determination of utility earnings, for earnings sharing purposes. While excluding some of those costs would

not put Union into an earnings sharing mode in 2017, the issue of which types of expenses dealing with parent company projects and merger related integration costs, the savings from which will accrue to Union shareholders for five years, should be excluded/included in earnings sharing, should be addressed.

BOMA suggests the Board clarify what categories of "parent company costs" can be included, and what evidence needs to be filed in the future to support such claims.

Lobo D/Bright C/Dawn H-Compressor Project Costs Deferral Account

BOMA agrees with, and supports the Board Staff's proposal with respect to this deferral account (Board Staff 1 Submission, pp 2-4).

All of which is respectfully submitted, October 4, 2018.

A handwritten signature in black ink, appearing to read "Tom Brett", written over a horizontal line.

Tom Brett
Counsel for BOMA