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Our File No. 184946

November 14, 2018

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: EB-2018-0164: Motion by Building Owners and Managers Association ("BOMA") to Vary Decision and Order on Cost Awards EB-2016-0296/0300/0330

Pursuant to the Board's Notice of Hearing and Procedural Order No. 1, please find enclosed herewith BOMA's Additional Material in Support of its Motion.

Yours truly,

FOGLER, RUBINOFF LLP

Thomas Brett
TB/dd
Encls.
cc: Laurie Klein, OEB
Ljuba Djurdjevic, OEB
All Parties of Record in the
EB-2016-0296/0300/0330 proceeding
(via email)

EB-2018-0164

Ontario Energy Board

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

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc., Union Gas Limited and EPCOR Natural Gas Limited Partnership for approval of the forecast costs arising from their Cap and Trade Compliance Plans for the January 1 - December 31, 2017 time period;

AND IN THE MATTER OF a motion by the Building Owners and Managers Association pursuant to Rule 42 of the Ontario Energy Board's Rules of Practice and Procedure for an order or orders to vary the Decision and Order on Cost Awards EB-2016-0296/0300/0330.

BOMA's Additional Material in Support of its Motion

November 14, 2018

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1. Introduction

As the Board is aware, on April 17, 2018, BOMA filed a Motion to Review and Vary the Ontario Energy Board's (the "Board") panel's decision on costs in proceeding EB-2016-0296/0300/0330 dated March 28, 2018. The Board acknowledged receipt of the Motion on October 15, 2018, after BOMA had made inquiries with the Board Secretary in early October. BOMA appreciated the Board's apology for the delay. The Board assigned Board number EB-2018-0164 to this matter. The Board issued a Notice of Hearing and Procedural Order No. 1 on October 25, 2018.

In Procedural Order No. 1, the Board indicated that it would address both the threshold question and the merits of the Motion in this proceeding, and that BOMA should file any further material in support of its Motion by November 15, 2018. This filing constitutes BOMA's additional material, and addresses both the threshold question and the merits of the Motion in the following pages.

For convenience, BOMA has filed, as Attachments 1 through 7 to this submission, the following documents:

Attachment 1	BOMA's Arguments in EB-2016-0296/0300/0330
Attachment 2	BOMA's Cost Claim
Attachment 3	Comments of Union and EGD on Cost Claims
Attachment 4	BOMA's letter of December 7, 2017
Attachment 5	Board Cost Decision of March 28, 2018

Attachment 6 BOMA's Notice of Motion dated April 17, 2018

Attachment 7 Board's letter of October 18, 2018

2. Grounds for the Motion

As the Board is well aware, Rule 42.01 of the Rules of Practice and Procedure state that a Notice of Motion to review must:

> *"set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include (our emphasis):*
>
> *(i) error in fact*
>
> *(ii) change in circumstances*
>
> *(iii) new facts that have arisen*
>
> *(iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time".*

And, as the Board has noted on several occasions, it has broad discretion under the Ontario Energy Board Act in awarding costs. It may find a Motion is well grounded, whether under the circumstances listed in (i) to (iv) above, or otherwise.

In a recent case, the Board stated that:

> *"The Board has broad discretion to determine when it will review a decision. The four delineated grounds for review under Rule 42.01 of the Board's Rules of Practice and Procedure are not exhaustive, and the Board may where it chooses to do so, review a decision even if it is not persuaded that the grounds fall squarely within the four enumerated grounds set out in Rule 42.01. The Board has chosen to do so in this case" (EB-2015-0122, October 22, 2016).*

BOMA is of the view that the Board's Decision and Order was incorrect, in that it contained errors of fact and law, and was contrary to the Board's Direction on Costs and

its historic policy on costs. All of these points are elaborated in the submissions that follow.

3. The Board's Decision

In the 2017 Cap and Trade Compliance Plan Proceeding, BOMA submitted a cost claim of $80,914.45. While EGD and EPCOR had no comments on BOMA's claim, Union objected to BOMA's cost claim on the basis that it was substantially higher than the next highest cost claim. BOMA wrote to the Board with its comments on Union's objection. The Board awarded BOMA costs of $22,000.00, or approximately twenty-five percent (25%) of the amount BOMA requested (Decision and Order on Cost Awards – EB-2016-0296/EB-2016-0300/EB-2016-0330 dated March 28, 2018).

All the other nine (9) intervenors' cost claims were approved as submitted, except for OSEA, whose cost claim of $28,275.00 was approved for $22,000.00.

In the above Decision, the Board made the following comments with respect to BOMA's cost claim:

> *"BOMA has defended its claim on the basis that it had to complete extensive research and analysis on the regulatory framework in Ontario and on the broader anticipated cap and trade market. The OEB finds that the level of BOMA's effort with respect to gaining its understanding of the broad cap and trade framework is not fully eligible for reimbursement. As per the OEB's Report of the Board – Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities, the OEB's role is not to approve the Compliance Plans but to assess these plans for cost-effectiveness and reasonableness. The OEB does not consider BOMA's efforts to be commensurate with what would be required to assess the reasonableness of the cost consequences of the proposed plans." (our emphasis) (p7)*

These comments, and other comments in the Decision, raise several issues, including errors of fact and law, and inconsistency with the Board's policy and Direction on cost awards.

4. The Breadth and Depth of BOMA's Arguments in the Proceeding

First, the Board concluded that BOMA's claim was unreasonable both because it was much higher than the mean claim amount of the nine (9) other intervenors, which amounts the Board considered reasonable. However, in making this finding, it did not take into account the breadth and depth of BOMA's submissions relative to those of the other nine (9) intervenors.

BOMA made separate arguments for each of Union and EGD, which were thirty (30) pages and twenty-eight (28) pages in length, respectively, not including a substantial Appendix on the recent California legislation, which addressed proposed substantial changes to the California cap and trade regime, and introduced conditions for linkages with other jurisdictions. The submissions of the other intervenors averaged six (6) or seven (7) pages. Most of their submissions covered both Union and EGD. BOMA also asked a relatively large number of interrogatories, forty-seven (47) of Union, and forty-six (46) of EGD. Many of those interrogatories were necessary because the utilities' evidence was heavily redacted on the grounds of market confidentiality. Unlike under the Board's general confidentiality policy, the unredacted evidence deemed to be "market sensitive" was not made available to intervenors' counsel.

The reason for the greater length and depth of BOMA's submissions was that BOMA took a different approach than the other intervenors.

Some intervenors considered only some of the issues on the issues list. BOMA addressed all of the issues. Some intervenors took the approach that given that almost all of the applicants' evidence on the content of their compliance plans was redacted, it was not possible for them to determine whether the compliance plans were reasonable, cost-effective, and optimized (see, for example, submissions of CCC, Schools, and FRPO). BOMA respects the approach these intervenors took. Intervenors were placed in a difficult position in the proceeding, as they were asked to opine on the cost-effectiveness and reasonableness of the compliance plans without knowing the content of these plans.

However, BOMA took a different approach. BOMA decided to do an in-depth analysis of the context and the circumstances in which the utilities formulated their plans, including the Ontario cap and trade legislation and Ontario Regulation 144, the Ontario government's policy framework, as well as the Board's own cap and trade policy, as stated in the Report of the Board – Regulatory Framework for Assessment of Costs of Natural Gas Utilities Cap and Trade Activities (the "Report"), the condition of the cap and trade secondary markets, the status of related Ontario government initiatives, such as the Green Investment Fund, draft offset regulations, the MOEE's analysis of the economics of cap and trade, including the likely impacts on allowance prices of the linked and unlinked markets, ICF studies, and other studies done for the Board and EGD, and cap and trade experience to date in both Quebec and California. From this analysis, BOMA was able to infer the broad contours of the utilities' compliance plans, and hence to determine their overall reasonableness and cost-effectiveness. BOMA also examined, in detail, the relationship between the utilities' CDM programs and their proposed compliance plans and the position the utilities took on DSM-as-abatement projects, both

in the cap and trade proceeding, and in their earlier submissions to the DSM mid-term review.

In particular, BOMA's submissions included:

- an extensive analysis of prudency as it applies to assessing the reasonableness and cost-effectiveness of the applicants' compliance plan (BOMA's submissions, pp 7-13 (the "Submissions")), including when prudency is to be determined, and what costs are the subject of the prudency review;
- allocation of risks, including execution risk, and program termination risk (the latter of which has since materialized), between ratepayers and shareholders, including how that allocation affects the reasonableness and cost-effectiveness of the plan (pp 13-21 of the Submissions);
- an analysis of the desirability of enhanced DSM as abatement projects (pp 4-7 of the Submissions). The Board itself had suggested in its Report there were parallels with respect to DSM, which BOMA noted in its interrogatories, cross-examination and arguments. BOMA contends that the interrelationship between DSM and cap and trade must be considered, that these matters cannot be treated as silos and it is critical to consider how synergies can be achieved for the sake of all customers, including commercial buildings, which account for such a large proportion of greenhouse gas emissions. Customers do not have the luxury of compartmentalizing these two (2) critical policies and fully understanding the similarities and differences underpinning the current duality of the policy and regulatory frameworks is critical;

- a discussion of, and recommendation for, desirable reporting requirements for each compliance plan (pp 21-23);
- an assessment of applicants' longer term investment proposals and proposed new business activities, insofar as they relate to the reasonableness and cost-effectiveness of the 2017 plan and plans in later years;
- facilities-related emissions and abatement initiatives;
- BOMA also made several suggestions to the Board on actions the utilities might take to increase the reasonableness and cost-effectiveness of future compliance plans and the importance of greater transparency in future cap and trade cost proceedings in order to more fully assess the reasonableness and cost-effectiveness of the plans.

It became clear, from BOMA's detailed analysis, that the utilities' 2017 compliance plans would consist entirely, or almost entirely, of allowance purchases at auction (BOMA had also examined the first Ontario government's reports of auction results, held in early 2017) with perhaps some modest purchases in the Ontario secondary market in Ontario, if one developed, with no DSM-enhancements-as-abatement projects. BOMA was thus able to make substantive comment on the cost-effectiveness and reasonableness of the 2017 compliance plans, and suggestions as to how those plans might be improved in 2018 and thereafter.

In the underlined portion of the excerpt from the Board's cost decision on page 4 of this submission, the Board implied that BOMA's analysis was directed at the approval of the plan itself rather than the assessment of the plans for cost-effectiveness and

reasonableness. But that is not the case. The statement is factually incorrect. While no one disputes that, under the Board's cap and trade policy, the Board's role is not to approve the compliance plans, in order for the intervenors to determine whether the compliance plans are reasonable and cost-effective, they must understand the substance of the plans, the options that were available to the utilities, of those options, which were pursued, and those that were not pursued, and why, and the context in which the plans are being formulated, as well as the risks to ratepayers posed by the choices that were made. Only then can intervenors and the Board determine whether in all the circumstances, the plans are cost-effective and reasonable. It is, after all, the ratepayers, and not the companies, that are the ultimate payers of the levies, and the ratepayers who bear the risks engendered by the plans. The levies and other potential charges are passed through to the ratepayers. Moreover, the costs of the compliance plans, the reasonableness and cost-effectiveness of which were being examined in the cap and trade proceeding, are for the most part, the costs of the measures that make up the compliance plans. The costs to administer the plans are a very small part of the overall costs.

BOMA notes that one of the other intervenors, with BOMA's consent, used some of BOMA's research and analysis in its own cross-examination. At least one other intervenor commented favourably to BOMA on the quality of its arguments.

In BOMA's view, the Board should have placed more importance than it did on the unique scope, breadth, and depth of BOMA's participation and arguments in the case in awarding BOMA its costs.

5. The Board's Use of Average Cost Claims in Reducing BOMA's Cost Claim

The Board panel set BOMA's $22,000.00 cost award at approximately the mean of the claims of the remaining intervenors on the basis that it deemed the claims of the remaining intervenors reasonable (except for OSEA). The Board stated:

> *"BOMA and OSEA are each awarded $22,000.00 which is the mid point between the approximate average of all other intervenor claims ($19,000) and $25,000.00 which is the approximate claim of the highest four of the other nine intervenors." (p7)*

BOMA submits that to disallow seventy-five percent (75%) of a cost claim that substantially exceeded the average or mean cost claim is not consistent with the Board's policy on costs, namely that eligible intervenors are to receive their reasonably incurred costs of participating in the proceeding. The policy does not contemplate each intervenor claiming or receiving the same amount. A decision to deny a claim in whole or in part because of the fact that that claim was substantially in excess of the average claim, is not correct, is discriminatory, and likely an error of law. Intervenor submissions are individual in nature, reflect the intervenors' priorities, and need to be assessed on an individual basis. Intervenors have greater or lesser interests in the various cases. For example, BOMA, because of its interest and support of DSM generally, has a special interest on how enhanced-DSM-as-abatement might be integrated into the cap and trade regime. Furthermore, some intervenors typically put in issue-specific submissions. For these submissions, their cost claims are relatively small. If these smaller claims are part of the determination of the mean or average cost claims and a claim was judged unreasonable only because it substantially exceeded the average claim determined in that manner, the party with the larger claim would be denied its reasonably-incurred costs of participation, and would be treated unfairly. Moreover, the Board's costs policy, as set

out at pp 5-6 of its Direction, does not speak of average or mean costs. The Board in many previous cases, including the most recent Hydro One Transmission case (EB-2016-0160), approved a wide range of cost claim amounts from different intervenors, based, at least in part, on the depth and breadth of their participation in the proceeding. As far as BOMA is aware, the Board has seldom disallowed a very large percentage of a party's claim because it exceeded the average claim amount.

6. The Magnitude of the Reduction

The Board awarded BOMA costs of $22,000.00, a reduction of just under seventy-five percent (75%) from BOMA's claim of $80,914.45. While BOMA has not reviewed the hundreds of cost claims and awards over the last thirty (30) years, the period during which its counsel has been appearing before the Board, a reduction of this magnitude is virtually unheard of, especially with respect to the claim submitted by an experienced and respected practitioner, with more than thirty (30) years of practice experience before the Board. BOMA views a reduction of this magnitude as excessive and punitive, in the circumstances of this case.

The Board justified its decision by stating, in a passage reproduced at page 4 of this submission that:

> "*...the level of BOMA's effort with respect to gaining its understanding of the broad cap and trade framework is not fully eligible for reimbursement*" (our emphasis).

Even if one agreed with that proposition, it does not justify a reduction of seventy-five percent (75%) of BOMA's claim. That seventy-five percent (75%) reduction is tantamount to asserting that virtually none of the time spent in determining the statutory, policy, regulatory, context for the creation of the plans, and the assessment of their cost-

effectiveness and reasonableness, is not reimbursable, which cannot be correct. How else could BOMA provide the analysis and draw the conclusions that it did without substantial work on the context in which the applicants justified their compliance plans. The Board's seventy-five percent (75%) reduction amounted to a virtual dismissal of BOMA's claim, and made a mockery of the Board's policy and practice that eligible intervenors are entitled to receive their reasonably incurred costs of participating in a proceeding.

Moreover, the Board's decision to reduce BOMA's claim by seventy-five percent (75%), to reduce it to the mean of the claims of the other intervenors, is at odds with the principles enunciated of the Board's Practice Direction on Cost Awards (the "Direction")). Section 5.01 of the Direction states as follows:

> *"In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:*
>
> *(a) participated responsibly in the process;*
>
> *(b) contributed to a better understanding by the Board of one or more of the issues in the process;*
>
> *(c) complied with the Board's orders, rules, codes, guidelines, filing requirements and section 3.03.1 of this Practice Direction with respect to frequent intervenors, and any directions of the Board;*
>
> *(d) made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties;*
>
> *(e) made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues;*
>
> *(f) engaged in any conduct that tended to lengthen the process unnecessarily; or*
>
> *(g) engaged in any conduct which the Board considers inappropriate or irresponsible."*

While the list is not determinative, it is important, as it is the only indication in the Direction of the kinds of conduct and effort that the Board will take into account in determining the amount of a cost award to a party (our emphasis). The Board has not found BOMA wanting under any of subsections (a) through (g). Moreover, had the Board wanted to include the concept of a mean cost claim, or average cost claim, or caps on costs as a matter to be considered in determining cost awards it would have likely done so. It did not, nor did the Board place a cap on the amount of costs that could be recovered in this proceeding.

The Board's disallowance of the seventy-five percent (75%) of BOMA's claim, a reduction of $58,000.00 on a claim of $80,000.00 was excessive, unfair, and punitive, and, so far as BOMA can determine, unprecedented. While BOMA accepts that some reduction in its cost may be reasonable, a reduction of seventy-five percent (75%) of the claim is not reasonable.

7. Conclusion

In conclusion, BOMA accepts that it may have underestimated the effort required to understand the genesis of, and context for, the utilities' compliance plans, in order to determine the reasonableness and cost-effectiveness of such plans and their related activities, and that some reduction of its initial cost claim may be reasonable.

Accordingly, BOMA requests that if the Board decides not to restore BOMA's original cost claim, the Board reduce BOMA's claim by not more than twenty-five percent (25%). Such a reduction would result in an amount which could be said to be commensurate with

BOMA's overall participation in the case, including the scope, breadth and depth of its research, analysis, interrogatories, cross-examinations, and its arguments.

All of which is respectfully submitted, November 14, 2018.

Tom Brett
Counsel for BOMA

ATTACHMENT 1

EB-2016-0296
EB-2016-0300
EB-2016-0330

ONTARIO ENERGY BOARD

Union Gas Limited
Enbridge Gas Distribution Inc.
Natural Resource Gas Limited

Applications for approval of the cost consequences of cap and trade compliance plans

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SUBMISSION OF

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

WITH RESPECT TO EGD

May 18, 2017

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Submission on EB-2016-0296/0300/0330 with respect to EGD

Introduction

This proceeding deals with EGD's 2017 Compliance Plan. 2017 is year one of a four-year compliance period, which will end on December 31, 2020.

The government has set an emission reduction target for the province's GHG emissions in section 6 of Climate Change Mitigation and Low-Carbon Economy Act, 2016 (the "Act"), as follows:

> **"6.** (1) The following targets are established for reducing the amount of greenhouse gas emissions from the amount of emissions in Ontario calculated for 1990:
>
> 1. A reduction of 15 per cent by the end of 2020.
> 2. A reduction of 37 per cent by the end of 2030.
> 3. A reduction of 80 per cent by the end of 2050."

As BOMA, and its counsel, has access to only that part of the evidence that the Board deemed to be public, which included a heavily redacted version of the Compliance Plan, its assumptions and conclusions can be based only on the truncated plans.

Issue 1

> *"Cost Consequences - Are the requested cost consequences of the Gas Utilities' Compliance Plans reasonable and appropriate?"*

In order to assess whether the requested cost consequences of EGD's 2017 Compliance Plan are reasonable and appropriate, it is first necessary to assess whether the proposed Compliance Plan itself is reasonable and appropriate.

The Ontario Energy Board sets out the test on page one of its Report of the Board: Regulatory Framework for the Assessment of Costs of Natural Gas Utilities Cap and Trade Activities, EB-2015-0363 (the "Framework"), as follows:

> *"The OEB will assess the Utilities' Compliance Plans for cost-effectiveness, reasonableness and optimization, and ultimately to determine whether to approve the associated cap and trade costs for recovery from customers."*

The test is similar to the test the Board uses to set rates in a forward test year regime. Its ultimate objective, in both cases, is to establish just and reasonable rates. To do so, it judges, inter alia, the reasonableness of the forecast OM&A and capital expenditures. It requires utilities to evaluate alternative approaches, for example, additional maintenance versus asset replacement, and benchmark its proposals to those of similar entities. It requires utilities to optimize their capital expenditure portfolios. And, of course, after the year is over, before capital expenditures are allowed into rates, or if forecast funds remain unspent, in the course of clearing deferral and variance accounts, or otherwise, it tests for prudency.

EGD's 2017 plan contemplates the purchase of allowances at the Ontario government's auctions, and perhaps through secondary market transactions as well. EGD states that it may or may not utilize one or more derivative contracts to acquire allowances in the secondary market. However, EGD's evidence is that it will not employ any consumer abatement activities (DSM program enhancements or new DSM programs) in 2017. EGD is implementing the Ontario government's Green Fund home energy retrofit program in 2017, but will not include the forecast emissions savings in their 2017 Compliance Plan. EGD views the 2017 savings from the Green Fund Project as immaterial. They have stated they will not have any savings from long-term investments in 2017, as they are only now developing proposals for such investments. It is also virtually certain that EGD's 2017 plan will not include any savings from offset projects, given

that the offset regulation has not yet been completed, and the offset protocols remain under development by a contractor to MOECC, with deliveries forecast over a series of months in the latter part of 2017. Moreover, offset projects are mostly larger, complex, physical projects, that take many months, if not years, to develop, construct, implement, and verify. Regulations for verified credits have not yet been enacted. Finally, the fact that Ontario Regulation 144/16 does not permit capped participants to purchase offset credits from other jurisdictions, eg. California and Quebec (Transcript, Volume 3, p11, lines 11-14) means that EGD cannot purchase an off-the-shelf offset in 2017.

In other words, EGD's 2017 Compliance Plan will consist almost entirely, if not entirely, of allowance purchases, at auction, from the government, and possibly, and to a much lesser extent, in the Ontario secondary market, to the extent that one develops in 2017. Auction purchases will be purchased at the auction clearing price. Purchases in the secondary market, including bilateral deals, will be by spot purchases, or one or more financial instruments, for example, forwards and futures options, or swaps.

The plan does not request any extra funding for emission abatement measures from existing DSM programs, or funding for new DSM programs, even if either set of DSM measures had a lower cost per ton of emission reductions than the forecast 2017 allowance costs.

EGD's evidence is that it did not request additional funding for existing DSM programs or new DSM program because it did not have sufficient time to prepare the request, given that the Board published its Framework in September 2016, and EGD was required to file its Compliance Plan by November 15, 2016. However, EGD was aware from the publication of the Ontario government's GHG Policy in mid-2015, from analyses it received from ICF in July and

November 2015 (EB-2016-0004, Exhibit S3.EGDI.OGA.3, Attachment), from the fact that the draft cap and trade regulations were introduced on February 24, 2016, and the fact that the Climate Change legislation received Royal Assent on May 18, 2016, Ontario Regulation 144/16 (the "Cap and Trade Regulation") was approved on May 19, 2016, and the Climate Change Action Plan was released in June 2016, that additional DSM would need to be a significant part of the GHG emissions reduction plan, as enhanced and/or additional DSM investments were the most cost-effective form of consumer/utility cost abatement activity. EGD's evidence is that business readiness for the Cap and Trade Program has been a top priority for EGD since early 2016 (Exhibit C, Tab 11, Schedule 11, p15). In short, BOMA believes that EGD had time to explore, plan and optimize proposed new DSM programs, or enhancements or additional funding for existing DSM programs. Moreover, the likely short- to medium-term price trajectory of allowances in both California and Quebec was public knowledge in 2015.

EGD's evidence is that it has not yet done the quantitative analysis necessary to compare the cost-effectiveness of DSM abatement measures relative to the actual and forecast Ontario allowance costs. It should have already done this analysis.

While the MAC and prior forecast are not yet available, EGD is well aware of the least cost to highest cost per m^3 range of its array of existing DSM programs. In other words, it has enough information to make cost comparisons between allowances and DSM abatement measures.

Finally, while EGD relies on the Framework to justify its failure to include the Framework does not prevent EGD from launching additional DSM enhancements or new DSM program, any more than it prevents them from implementing the Green Fund House Retrofit program. It does not require the utilities to wait until the DSM mid-term review to commence such measures.

BOMA suggests that the principal reason EGD has not commenced additional DSM programs is that the Board has not yet clarified the extent to which LRAM and DSM performance bonuses will be available for additional DSM projects beyond those in the existing 2015-2020 DSM framework.

If EGD waits for the completion of the mid-term review, currently scheduled for June 2018 to expand its DSM programs, it will forego the use of additional DSM abatement measures for 2018 and probably 2019 as well. EGD appears to be waiting to confirm whether it can earn additional profits via a higher bonus (DSM bonus), and have LRAM coverage if they increase their DSM spending, which yields additional savings commensurate with existing programs. The Board should clarify the regulatory status of additional DSM measures in its decision in this proceeding. The utilities have not provided any evidence that they lack the capacity to spend more money than budgeted in 2017 if they were to receive additional ratepayer funds. Ratepayers would be better off to the extent that enhanced DSM costs were less than the 2017 actual and forecasted allowance prices. It is not too late in the year to fund additional 2017 DSM projects. There is also a clear need to fund more DSM abatement projects for the remaining three years of the first compliance period.

BOMA is of the view that, while simply purchasing the total value of allowances required to match forecast 2017 emissions may be the lowest risk option for the EGD shareholders, it not demonstrably the best option for EGD's ratepayers. Moreover, as the amount of allowance will decrease going forward by approximately four percent per year, and the program design requires auction floor prices to increase each year, allowance prices will increase, if only modestly (provided linkage occurs and EGD can purchase California allowances) in 2018, 2019, and 2020.

It is important that EGD gain early experience with as large an array of cost-effective, low risk options to continued auction purchases.

Based on EGD's failure to compare enhanced DSM program spending with allowance purchases, BOMA does not see how the Board is able to conclude that the proposed Compliance Plan, taken as a whole is cost-effective, reasonable, and optimized.

However, given the fact that we are midway through 2017, and the fact that EGD must now focus on its 2018 through 2020 plan, as a high priority, BOMA suggests that, on the terms and conditions suggested in the balance of this submission, and subject to after-the-fact prudency review, the Board allow EGD to recover its 2017 Compliance Plan-related expenditures in rates.

The Prudency Issue

In BOMA's view, EGD has agreed that a prudency review is required of the actual costs of implementing EGD's 2017 compliance costs after the end of the Compliance Plan term. The Board should not determine the prudency of plan expenditures in this proceeding.

EGD has agreed that a prudence review of the 2017 Plan is necessary once the 2017 expenditures have been made (Exhibit I.1.EGDI.BOMA.12; Exhibit I.1.EGD.BOMA.35). Their counsel stated the Company's legal position very clearly, including the fact that the prudency test applies to the total Compliance Plan expenditures, not just any additional funds required to clear a GGEIDA debit, based on a variance in emission volumes, allowance prices, or administrative costs, relative to forecasts (Volume 1, p116).

Unfortunately, EGD, while agreeing with the principle, outlined above, in some of their evidence, knowingly or otherwise, confused matters, by conflating the need to assess the

prudency of the plan expenditures, as a whole, with the prudency of the adjustments for price and volume variances captured in the deferral account, and by requesting that the Board declare the costs prudent in this proceeding. Prudency issues could arise from the Compliance Plan expenditures in several ways. For example, total purchased allowance costs may be higher than forecast due to improper or unwise use of a derivative(s). They could also result from the poor execution by EGD of a Compliance Plan (see above), which, in itself, was found to be reasonable and cost-effective, for example, the execution was not sufficiently flexible to deal with changing circumstances. The need for flexibility is demonstrated by the example, posed by Mr. Pollock, in his cross-examination of the first EGD panel:

> *"Q: If you were to execute the approved plan in different circumstances, that would mean the difference between it being reasonable and unreasonable.*
>
> *A: I guess so, yes.*
>
> *Q: I'll give you an example, if helps. If I were to want to go and buy a vacuum cleaner for $100, that might be reasonable. But if I am going to the store and I see my neighbour who offers to sell me a brand new one, still in the package for $30, going out to the store and buying it for a hundred may no longer be reasonable. Is that fair as an example?*
>
> *A: Yes."* (Transcript, Volume 1, p73)

BOMA would only add that the example also shows how the expenditures resulting from the plan, if not modified to take into account the better opportunity, would be imprudent.

Finally, in its summary presentation, EGD asked the Board for:

- *"A determination that the Compliance Plan is reasonable and consistent with the Framework"*
- *"A determination that the resulting costs are appropriate and <u>prudent</u>"* (our emphasis) [K1.1, p16].

EGD's request that the Board determine that the costs of implementing the plan are prudent is inappropriate. The Board should not, and probably cannot, make such a finding in this case. Prudency is an after-the-fact examination of actual expenditures, after those expenditures were made.

The Board's Framework makes this clear, in its Guiding Principles, when it states:

> "Cost Recovery: prudently incurred costs related to cap and trade activities are recovered from customers as a cost pass-through." (p7) (our emphasis)

The Board can only determine whether costs were prudently incurred after they have been incurred.

At p23 of the Framework, the Board states:

> *"The OEB must assess the cost effectiveness of the Utilities' compliance activities in meeting their emission reduction obligations for customers and their own facilities. That assessment will include a consideration of objective and independent analysis of Utilities' Compliance Plan implementation performance and costs."* (our emphasis)

The rationale for prudency review of cap and trade activity is further enhanced by the Board's statement, at p27, when discussing the treatment of longer term investments.

> *"The actual forecasts of planned capital expenditures related to any investments will, however, be dealt with in a Utility's regular rate application and/or any leave to construct cases".*

Prudency reviews are a component of rates cases and leaves to construct cases.

The Board should not allow the fact that the 2017 plan may necessarily be a "stripped-down" plan because of some of the compliance tools are not yet available, to diminish the importance of the prudency review.

Nor should the Board's determination of the reasonableness, cost-effectiveness, and optimization of the plan, let alone the prudency of the resulting expenditures, be influenced by EGD's contention that it has a statutory obligation to file a Compliance Plan in respect of its ratepayers' gas consumption and GHG emissions.

It is EGD's ratepayers (not EGD) who are paying ninety-nine percent or more of the estimated $274 million of allowances that EGD will purchase at auctions, or in the secondary market in 2017. The MOECC recently reported that the March 15th auction raised $472 million. A substantial portion of that amount would have come from utility ratepayers.

The Board recognized this fact in its Framework when it required that EGD demonstrate that its plan was, inter alia, cost-effective, in addition to being compliant with the Act.

EGD also has a statutory mandate to have its proposals to increase rates approved by the OEB (both of which are subject to prudency review), and to implement only those large capital expenditure projects that are found to be in the public interest, pursuant to leave to construct proceedings. There is nothing special about the statutory obligation with respect to cap and trade programs cited by EGD (and Union).

Moreover, the fact that much of the evidence in this proceeding is characterized by the Board as strictly confidential, means that ratepayers' representatives and their counsel may not have, even after the end of 2017, all the information necessary to raise all appropriate prudency issues. In these circumstances, it will be up to the Board and Board staff to ensure that prudency issues are closely scrutinized, otherwise, the ratepayers will be disadvantaged. This can be avoided only if the Board staff and the Board act as vigorous advocates for the ratepayers on the Compliance Plan in general and the prudency issue, in particular.

Finally, EGD's counsel commented during the hearing that a Board finding in the proceeding that the Compliance Plan is reasonable and appropriate, has the effect of placing the onus on intervenors to demonstrate imprudence (Transcript, Volume 1, p116). EGD's assertion is not correct, or appropriate in this case. The onus, related to prudency matters in this case, is clearly on the utility to demonstrate to the ratepayers, the Board, and Board staff (to the extent that the underlying facts are on the public record, and to the Board and the Board staff to the extent that the underlying facts are characterized as "strictly confidential", and not available to even the intervenors' counsel. Once a party raises a prudency issue, the Board must decide if the utility has been imprudent, and if so, what the consequences will be, eg. the Company must hold ratepayers whole, or is not allowed to put the expenditures in rate base or another remedy.

Issue 1.7

> *"Has the gas utility reasonably and appropriately presented and conducted its Compliance Plan risk management processes and analysis?"*

The Framework states:

> *"At a minimum, the OEB believes that risk identification should address the following categories of risks inherent in Cap and Trade:*
>
> - *Volume variability;*
> - *Allowance price variability (including foreign exchange risk);*
> - *Emissions unit availability (i.e., allowances and offset credits);*
> - *Market risk;*
> - *Non-compliance; and,*
> - *Any other risks identified by the Utilities"* (our emphasis).

BOMA would add to that list:

- Improper disclosure risk by EGD or government employees;
- Program termination risk; and,
- The risk of pursuing too few cost-effective Ontario abatement opportunities and being required to purchase too many allowances in California, increasing the cost of the program, achieving less than optimum rate predictability, not to mention having reduced the economic and employment benefits to Ontario and Canada.

Risk Allocation

EGD's position is ratepayers bear the risk of any plan expenditures greater than forecast. EGD has made it clear that all risks inherent in cap and trade activity that actually materialize and cause losses, are losses to be borne by the ratepayers, regardless of the cause of the loss (Transcript, Volume 1, p78). That would include cases where the loss was caused by the breach by an EGD employee of confidential information which resulted in ratepayer loss.

Other risks include program termination risk (a market risk) after money has been collected from ratepayers.

For example, this risk could materialize in the event that linkage with California proved impracticable for either California or Ontario. While the California Court of Appeal has recently upheld the California cap and trade program, the Supreme Court of California might revise the Court of Appeal's decision or overturn it, in which case, the State of California would likely appeal the matter to the Supreme Court of the United States. In the event that the California Supreme Court decided the plan was illegal in 2017, the future of the Ontario Plan would be in

serious doubt. Moreover, even if linkage occurred in 2018, as described in BOMA's Compendium #3 (State Constitutional Limitations on the Future of California's Carbon Market, Energy Law Journal, Vol. 37, No. 2, 2016), there is a substantial risk that the California Cap and Trade Legislation will not last in its present form beyond December 31, 2020 because of the requirement for new legislation.

Moreover, Bill SB 775, California Global Warming Solution Act of 2006: Market-Based Compliance Mechanism (the "Bill"), has just been introduced in California legislature. The Bill proposes a radical redesign of the 2006 legislation, to be effective January 1, 2021; it appears to have wide support among the various cap and trade constituencies in the state. The Bill would present a "fresh start" in 2021, which would eliminate the large pool of excess allowances from the current program, which have been depressing allowance prices in California (and Quebec) over the last few years. It would eliminate free allowances, and establish a price "collar" for allowances and offsets. It establishes a price "collar" which establishes a floor and a ceiling. The price floor is set at $20 in 2020, while the price ceiling starts at $30. The price floor rises at $5.00 per year plus inflation; the price ceiling rises at $10.00 per year plus inflation. The price ceiling would hit $100.00 (US) by 2030. The program would operate in perpetuity. There would be a border tax pursuant to an Economic Competitiveness Assurance Program to ensure the greenhouse gas emissions-intensive products, imported from jurisdictions that have no equivalent GHG charge, obtain no unfair advantage over products produced in state. The proceeds from allowance auctions will be divided into three pools; a dividend pool (a "dividend" for each California resident), an infrastructure pool, and a clean energy R&D pool. On linkage, the Bill provides that starting in 2021, the new system will not link to any other jurisdiction

(including Quebec) unless it has a minimum carbon price that is equal to or greater than California, and meets other criteria. A copy of the Bill 775 is attached (Attachment 1).

Whatever the cause, in the event the Ontario Cap and Trade program were abandoned, utilities would be holding allowances in the CITISI account that might then be worthless. In such a case, ratepayers should not bear all of that loss, in the event the government were to refuse to return the amounts collected from previous allowance sales to the ratepayers. It is not clear that EGD has thought through these issues; nor do they appear to have reached any agreements with the Ontario government on the need to return cash to ratepayers, in such an eventuality.

Without the ability to access "excess allowances and credits" from California, it is clear from analysis done by EnviroEconomics for the Ontario government that, without the pool of cheap California allowances to mitigate price impacts, allowance costs in Ontario would rise from four to nine times current levels (BOMA Compendium Item 1 – Impact Modelling and Analysis of Ontario Cap and Trade Program, May 5, 2016, EnviroEconomics/Navis Research/Dillon Consulting, pp2-6). Such an increase would clearly be unsustainable and would lead to termination or radical modification of the Ontario program.

A further risk, which if realized, could lead to large ratepayer losses, would be the improper or unwise use of various derivatives in connection with allowance purchases in the secondary markets. This is hedging risk, a form of execution risk.

The Framework states:

> *"While the OEB is not requiring a Utility to undertake hedging activities, Utilities will not be prevented from doing so. If a Utility decides that hedging is a cost-effective and optimal strategy to pursue in its Compliance Plan, the Utility should describe its hedging strategy, identify any potential risks and outline a plan that describes how these risks*

> *would be mitigated. The OEB will review the Utility's proposed hedging plans for cost-effectiveness, in accordance with the principles set out in the Regulatory Framework."* (p26)

The OEB states that it will "review the utility's proposed hedging plans for cost-effectiveness", but the issue may not be cost-effectiveness as much as the additional risks that the use of the particular instrument may create.

It is noteworthy that EGD and Union, in their respective submissions on the OEB Staff plan, stated they preferred not to use hedges. Moreover, BOMA is not convinced that EGD has the expertise to utilize the derivative in the allowance and credit markets, in part, because EGD has not used the instruments in the natural gas market since 2006, and, in part, because the cap and trade market is very new, and very different from the natural gas market (see below for a discussion of the differences in the two markets). BOMA would prefer that EGD not use derivatives in 2017 to allow their personnel to gain a better understanding of the secondary market. In the event the use of derivatives causes a ratepayer to pay more for allowances than they would have paid without the derivatives, the responsibility for that loss should be with EGD.

Finally, since compliance with the Cap and Trade statute, regulation, and Director's decisions are EGD's responsibility, EGD should be responsible for losses or penalties resulting from its failure to comply ("compliance risk"). It would be wrong to pass through to ratepayers the amount of any fees, penalties, fines, compliance agreements, increased allowance requirements (including those set out in section 14 of the Act), or other consequences, of EGD's non-compliance.

Further Execution Risk

Another important risk is execution risk. In BOMA's view, the best way to minimize this risk is to have the right people and processes in place in EGD to plan, design and execute the Compliance Plan properly over the Compliance Period.

EGD's Cap and Trade organization consists of a Carbon Procurement Governance Group ("CPGG") and a carbon team of approximately seven people. The CPGG has replaced the Carbon Strategy Steering Committee in early 2017. The latter group consisted of Vice-Presidents of Law, Market Development, Public and Government Affairs, Finance, Energy Supply, and Customer Care (Exhibit I.1.EGDI.Staff.13). The CPGG has representatives from similar parts of the Company, sometimes at a lower level of management, as voting members. As well, it contains a number of more junior people, as non-voting members, including the Manager of the carbon strategy team, and four members of the Gas Supply Group. It has fourteen members in all (Exhibit C, Tab 1, Schedule 1, p7).

The evidence does not disclose who holds the position of Chairman of the CPGG, nor the frequency of its meetings. BOMA believes that the Chairman should be a very senior official of the Company, at the senior or executive vice-presidential level, at least for the first few years of the Cap and Trade. Cap and Trade is a brand new activity for EGD, imposed by statute rather than developed organically, and on a timetable that requires the Company, the Board and the intervenors to react very quickly. Many program features are still under development by the government or the Board, including the offset regulation and offset protocols, monetary penalties for non-compliance, the carbon price forecast, the MAC curve potential linkage with California and Quebec plans. These features could change quickly in the future. The amounts of money

that ratepayers are being asked to contribute are very material, many billions between now and 2030, several hundred million in 2017 alone. The government raised $472 million from its initial March 15th auction, much of which is likely in the order of fifty percent, came from utility ratepayers. It is important that the program be well managed.

EGD has stated that "it will leverage its vast expertise in the natural gas market to ensure the successful implementation of the Company's Cap and Trade Compliance Plan."

However, BOMA believes, and EGD agrees, as does Union, that the carbon market and gas market are two different markets (Transcript, Volume 3, p32). The Ontario Cap and Trade market is brand new, has very few, if any, truly successful precedents, was created by government and relies on detailed statutory and regulatory guidelines, and substantial administrative discretion, on the part of the government in the form of MOECC. The Program Director is a senior official appointed by the Minister and responsible directly to the Minister. There is a large government enforcement staff, including inspectors, agents, and a vast array of penalties, fines, prison terms, compliance orders, etc. to deal with offenders. In fact, the Compliance and Enforcement provision constitutes much of the Act. Little, if any, of this infrastructure is present in the natural gas market. In addition, section 6(2) of the Act provides that emission reduction targets can be increased by the Lieutenant Governor in Council (the "Cabinet"). The scheme relies not only on allowance purchases but abatement investments across a wide spectrum of sectors, does not yet have liquid secondary allowance and offset markets, and is not reliant on the gas supply infrastructure. In many respects, cap and trade is not a market at all, but an administrative construct to raise money to fund government green energy programs. On the other hand, the gas market is broad and deep, has existed in Ontario since the late 1980s, operates with minimal government interference, does not rely on abatement

capital expenditures, has a very liquid (Dawn) trading hub in Ontario, and other hubs throughout North America, and a deep and liquid gas futures market in New York, which supports extensive derivative trading.

BOMA believes that while some of the Company's activities necessary to operate the market are similar to those deployed in the gas market, such as cost benefit analysis, procurement, trading, contracting, the substance of the two markets in which these tools are used, are very different (our emphasis).

BOMA believes that EGD overstates the leverage available from its natural gas experience to successfully implement its Cap and Trade Compliance Plans.

BOMA is encouraged by the fact the manager of the cap and trade team was previously responsible for the Company's successful DSM program, because it believes that an optimized compliance plan will require substantial increases in DSM.

That said, BOMA is concerned that EGD's carbon team may not yet have sufficient expertise in Cap and Trade to successfully implement Cap and Trade over the medium to longer term. For example, the manager seemed unaware of the impact of Ontario securities legislation on the Cap and Trade market (Transcript, Volume 3, p16). 2017 is a somewhat atypical year, due to the lack of compliance options; compliance for 2017 is pretty much a matter of buying an appropriate number of allowances.

EGD's evidence is that none of the carbon team have been hired from the carbon industry. Rather, the members were transferred into their positions from elsewhere in the Company. The Company's personnel have used consultants, and attendance at conferences, to learn about Cap

and Trade. While these are useful tools, they are not sufficient. Its evidence (Exhibit 1.5.EGDI.BOMA.38) is that in 2016, it was difficult to hire Cap and Trade specialists because of the demand and most of them worked for consultants. BOMA would urge EGD to hire additional personnel from consultants or elsewhere who have direct experience in either cap and trade or carbon tax programs in place, such as Quebec, British Columbia, California, or the European Union.

Issue 2

> *"Monitoring and Reporting – Are the proposed monitoring and reporting processes reasonable and appropriate?"*

BOMA contends that, in order for its proposed monitoring and reporting processes to be judged reasonable and appropriate, EGD needs to disclose in those reports sufficient information about the costs of its abatement activities and offsets to allow the Board and intervenors to compare the cost of abatement activities relative to that year's allowance auction prices, which will be publicly available from MOECC reports on quarterly auction results, to judge prudency and whether changes are necessary to support continued cost recovery.

In its reply to BOMA.22, EGD stated that:

> *"(a) Enbridge is of the view that the annual monitoring reports may be a mixture of confidential information and commercially sensitive information which may be available to intervenors that are not market participants, through the Board's Practice Direction and Rules in respect of Confidential filings. For example, the Transaction Logs should remain auction confidential as per the Climate Change Act. However, the average weighted cost per compliance instrument may be an item that could be produced subject to confidential treatment by the Board under its Rules and Practice Direction given the commercial sensitivity of such information. As experience in the market grows, what should and should not be confidential at varying levels, may be better understood."*

BOMA is encouraged by the above comment that some effort will be made to provide at least some useful information to intervenors. The fact that the reporting stage is occurring after the end of the year being reported upon should mitigate adverse market consequences of the release of the weighted average cost of the various compliance instruments. BOMA also notes that the fact that the costs of DSM expenditures, including incremental or enhanced DSM expenditures, are in the public domain, and with some adjustment and analysis, can be compared with same year allowance costs. Given that, at least from the first compliance period, it is likely that the bulk of EGD's allowance purchases will be at auction, the average costs of the small amount of secondary market purchases could also be disclosed without material harm to ratepayers. Given the heavily redacted compliance plans, due to the Board's confidentiality policy, it is especially important to have some disclosure in the monitoring reports. It also would be helpful if the Ministry would release the reports for the Green Investment Fund, and other GHG emission reduction programs, for the years 2017 and 2018, as soon as possible after the end of the year in which the projects were executed.

BOMA assumes that the MOECC will provide the reports it receives from the utilities on the Green Fund Home Retrofit Program results public.

Longer Term Investments

BOMA distinguishes long-term investments from enhanced DSM, which, given EGD's successful experience with its DSM program, represent an abatement option which can be implemented very soon to produce almost immediate results, and should be viewed as a short-term to medium-term customer abatement option, as well as a longer term option. EGD's evidence is that longer term initiatives, including long-term investment projects, will not produce

emission reduction in 2017. The initiatives are largely at the pilot or demonstration plan stage. EGD's evidence sets out a number of these initiatives (for example, I.1.EGDI.Staff.12).

BOMA also supports EGD's proposal to advance the coordination of existing DSM initiatives among gas utilities, electric utilities, and the IESO, and to integrate DSM and cap and trade abatement. This is required to facilitate the enhanced and additional DSM measures as a cost-effective emission reduction tool, and to accelerate the deployment of these DSM projects.

The Company's evidence is that prior to committing to long-term investments, the Company will need to clarify the regulatory treatment of such investments, including how it will earn a return on its capital expenditures.

BOMA is particularly supportive of EGD's ground source heat pump joint pilot project with the Ontario Geothermal Association, as it believes increased use of ground source heat pumps may represent a win/win for customers, gas utilities, and reduced $C0^2$ emissions. EGD should spell out in its next application what commitments it requires from the Board on cost recovery, rate base treatment to implement heat pump take-up, and how the heat pump would operate, relative to existing gas supply buildings.

EGD has raised the issue of the need to clarify the methodology for cost recovery of longer term projects (B.Staff.14). BOMA suggests that EGD make proposals on this matter in its 2018 Compliance Plan submission, including the nature of the projects, the financing of such projects, whether by ratepayers or government funding under the Greenhouse Gas Action Plan, whether EGD will manage and deliver these investments, and how the utility should be compensated for its efforts.

New Business Activities

This issue is closely related to the topic of proposed longer term investments. EGD's evidence about the extent to which its Cap and Trade Compliance Plan may involve new business activities, was limited for much the same reasons its evidence on long-term projects was limited. EGD's evidence is that the longer term initiatives may not require any change to Order in Council 1540-2009, which provides an exception to the earlier blanket undertaking, which restricted the scope of utility activities. In the Framework, the OEB has stated that it is prepared to consider applications for approval to undertake new business activities on a case-by-case basis, which Order in Council 1540-2009 permits.

In BOMA's view, EGD should make a concerted effort to accelerate the development of those new business activities, because, like enhanced or new DSM, they are vital to enhance Cap and Trade-driven economic activity in the province, as opposed to simply purchasing allowances from another jurisdiction. Purchasers of large amounts of currently "excess" allowances from California will not produce economic activity in Ontario. This issue has already been raised in a recent review of Quebec's cap and trade program by the Sustainable Energy Commission and the Auditor General of Quebec, an excerpt from which is attached as Attachment 2. The Board should, as soon as possible, in future compliance plan proceedings, or otherwise, require submissions and decide on the appropriate decision about the cost recovery mechanism, including funding through rates or government programs akin to Green Fund Home Energy Program and other programs funded under the GHG Action Plan, in respect of each proposed new business activity. The conversation needs to occur sooner rather than later.

Unaccounted for Gas ("UFG"); Forecasts; Facilities Related Emissions

EGD's evidence is that there are limited opportunities for facilities-related abatement initiatives, given its recent initiatives (I.1.EGDI.Staff.20).

However, EGD's evidence also states that EGDI's UFG represents more than eighty percent of facility-related emissions (Exhibit B, Tab 2, Schedule 1, p6), and that ninety percent of UFG is driven by different meters in use and variability in meter readings between EGD and its gas suppliers (I.1.EGDI.FRPO.3). However, the UFG is almost always a positive number, which appears to be inconsistent with that conclusion. UFG is, of course, a part of rate base. EGD provides no evidence for its assertions. It should do so.

Finally, EGD's evidence is that over the period 2010 to 2013, UFG as a percentage of gas send-out has been 0.7%, compared to an average of 0.8% among the American Gas Association's 172 North American gas distribution members (I.1.EGDI.FRPO.2).

EGD's performance is slightly better than average, which is presumably some distance above the ratios obtained by those utilities using best practices among its peers. BOMA urges the Board to require EGD to investigate the practices utilized by those utilities that have the lowest ratios, with a view to driving its UFG ratio down to a lower percentage (the most recent detailed study of UFG in evidence is an AGA study done in 2004, over ten years ago [EB-2011-0354, D2, T6, Sch 1, p11]). As a leading world class gas utility, EGD should not be satisfied with being slightly better than average performers. In addition, the Ontario utilities should attempt to standardize their future meter makes in future procurements, and persuade TCLP to do the same.

Cost Recovery

> *"5.2 Are the tariffs just and reasonable and have the customer-related and facility-related charges been presented separately in the tariffs?"*

BOMA suggests the Board not make a finding as to whether EGD's tariffs are just and reasonable, for several reasons. The Ontario Energy Board Act (the "Act") requires the Board to determine whether rates, not tariffs, are just and reasonable. Tariff is not a defined term in the Act and exactly what it includes is not entirely clear. For example, TransCanada has a Tariff Book, which includes a number of items other than the rates themselves, for example, pro forma contracts for each type of service.

EGD's evidence was that it likely referred to EGD's Rate Handbook, but was not definitive. EGD had requested wording related to the reasonableness of tariffs (Procedural Order No. 2, p3). EGD's witness was not sure why the issue had been requested by EGD.

If EGD's reason for this section is to ensure that the level of the Cap and Trade "adder" is determined to be a just and reasonable rate, the Board already does that if and when it finds the delivery rates that include the "adder" to be just and reasonable.

Finally, a determination that the tariffs are just and reasonable is likely to cause confusion in the future.

Issue 4; Issue 5.1

> *"Deferral and Variance Accounts – Are the proposed deferral and variance accounts reasonable and appropriate? Is the disposition methodology appropriate?"*
>
> *"Is the proposed manner to recover costs reasonable and appropriate?"*

EGD proposes to record its 2017 Cap and Trade-related administrative costs within its EB-2016-0215 approved 2017 Greenhouse Gas Emission Impact Deferral Account ("GGEIDA"), and plans to seek recovery of its 2016 cap and trade-related administrative costs in the 2016 ESM and Deferral and Variance Accounts Clearance Proceeding later this spring (I.4.EGDI.Staff.24). BOMA agrees with this approach.

EGD proposes to establish a new variance account, entitled the Greenhouse Gas Emissions Customer and Facility Cost Variance Account ("GGECFCVA") to track any over or under recovery between actual and forecast customer and facility-related emission obligation costs incurred in 2017.

EGD seeks to dispose of its 2017 balances in both the GGEIDA and the GGECFCVA balance as part of its 2018 true-up filing which would occur as part of the 2019 Compliance Plan filing in August 2018 (1.4.EGDI.Staff.24). BOMA also agrees with this approach.

EGD proposes, in respect of the new GGECFCVA account, to allocate the credit or debit to customers, based on that customer's responsibility for customer- and facility-related costs, determined on the basis of each customer's 2017 actual volumes. EGD proposes to clear the 2017 balances in both deferral accounts, as a one-time credit or debit, as a one-time billing adjustment, as a separate line item on the customer's bill, or if one-time billing adjustment is considered too large to be collected in a single installment, the Company would propose to clear

the balance over several installment payments. While BOMA agrees with the allocation method, it urges the Board to not decide whether the account should be cleared as a one-time charge, or over a period of months until the August 2018 proceeding, when the size of the deferral account balance will be known. Commercial landlords have difficulty dealing with billing large billing adjustments with a retrospective affect, and prefer that any outstanding balance owed the utility be collected in a series of more modest future installments.

As noted above, the cost amounts to be charged to ratepayers will be subject to a prudency review, along with, and as part of the broader prudency review of 2017 Compliance Plan-related costs.

Issue 6 (see also Issue 5.1 – Cost Recovery)

> *"Implementation – What is the implementation date of the final rates and how will the final rates be implemented?"*

The Board-approved interim cap and trade charge effective January 1, 2017 (Early Determination EB-2015-0363).

In the Early Determination, the Board also directed that "charges related to the recovery of Cap and Trade program costs will be included in the Delivery Charge on the bill".

For rate-making purposes, EGD (and Union) did not include any administration or financing costs in the derivation of the Cap and Trade, and that such costs will be resourced through the GGEIDA account.

Board Directives

While BOMA appreciates the Board's efforts to focus this proceeding on the 2017 plan, given the fact that the 2017 Cap and Trade program is already underway, and the utilities did not have the time to address parts of the Framework in any depth, BOMA suggests the Board include in its decision in this proceeding, whatever guidance it can for the utilities' August 2018 filings, including specific matters that it would like the utilities to address. There are still three months remaining before the 2018 filings are due, and doubtless EGD has been working on their 2018 plans over the previous few months. Such guidance could include:

- their proposed regulatory treatment of enhanced DSM as an abatement measure in 2018, 2019, and 2020, and the amount of their allowed enhancements for 2018;
- the need for the utilities to produce analysis of DSM abatement costs relative to forecast allowance costs;
- the utilities' analysis of the impact of the linkage with California and Quebec on January 1, 2018, and the impact of a decision not to link, or delay linkage, for the Compliance Plan, for the remainder of the first compliance period, including the likely impact of no linkage on allowance prices;
- the utilities proposed regulatory treatment they require to advance other abatement projects, in particular the increased use of heat pumps;
- have EGD and Union propose and provide a detailed rationale for their preferred regulatory treatment of the long-term investments and OM&A activities to reduce GHG emissions that they have been considering, including whether such activities (long-term investments, OM&A, or new business activities) should be part of the regulated utility, in

a separate legal entity, or in the unregulated part of the utility, and how EGD should be involved in the government's GHG reduction programs.

All of which is respectfully submitted, this 18th day of May, 2017.

Tom Brett,
Counsel for BOMA

ATTACHMENT 1

AMENDED IN SENATE MAY 1, 2017

SENATE BILL **No. 775**

Introduced by Senator Wieckowski

February 17, 2017

~~An act to amend Section 38564 of the Health and Safety Code, relating to greenhouse gases.~~ *An act to amend Section 12894 of, and to add Section 16428.87 to, the Government Code, and to amend Section 38505 of, to add Section 38574.5 to, and to add Part 5.5 (commencing with Section 38575) and Part 5.6 (commencing with Section 38577) to Division 25.5 of, the Health and Safety Code, relating to greenhouse gases, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 775, as amended, Wieckowski. ~~California Global Warming Solutions Act of 2006: greenhouse gas emissions reduction.~~ *California Global Warming Solutions Act of 2006: market-based compliance mechanisms.*

(1) The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act authorizes the state board to include use of market-based compliance mechanisms. Existing law prohibits a state agency from linking a market-based compliance mechanism with any other state, province, or country unless the state agency notifies the Governor. Existing law requires the Governor to issue specified findings within 45 days of receiving that notice from a state agency and to provide those findings to the Legislature.

This bill would add to the findings required to be issued by the Governor and provided to the Legislature in those circumstances.

(2) The California Global Warming Solutions Act of 2006 requires the state board to approve a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020 and to ensure that statewide greenhouse gas emissions are reduced to at least 40% below the 1990 level by 2030.

This bill would require the state board to adopt a regulation establishing as a market-based compliance mechanism a market-based program of emissions limits, applicable on and after January 1, 2021, for covered entities, as defined. The bill would require the program to set an initial minimum reserve price of $20 per allowance, as defined, and an initial auction offer price of $30 per allowance when auctioning allowances. The bill would require the program to increase the minimum reserve price each quarter by $1.25 plus any increase in the Consumer Price Index, and the auction offer price each quarter by $2.50 plus any increase in the Consumer Price Index, as specified. The bill would authorize the state board to revise the definition of a covered entity, as specified.

The bill would establish the Economic Competitive Assurance Program, to be administered by the state board, to ensure that importers that sell, supply, or offer for sale in the state a greenhouse gas emission intensive product have economically fair and competitive conditions and to maintain economic parity between producers that are subject to the market-based program of emissions limits and those who sell like goods instate that are not subject to that program, as specified.

This bill would establish the California Climate Infrastructure Fund, the California Climate Dividend Fund, and the California Climate and Clean Energy Research Fund in the State Treasury. The bill would require the Franchise Tax Board, in consultation with the Climate Dividend Access Board, which the bill would establish, to develop and implement a program to deliver quarterly per capita dividends to all residents of the state that would maximize the ease with which residents of the state may enroll in the program, as specified.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act requires the state board to consult with other states, the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control~~

~~programs, and facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.~~

~~This bill would require the state board also to consult with local agencies for these purposes.~~

Vote: ~~majority~~ 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12894 of the Government Code is amended to read:

12894. (a) (1) The Legislature finds and declares that the establishment of nongovernmental entities, such as the Western Climate Initiative, Incorporated, and linkages with other states and countries by the State Air Resources Board or other state agencies for the purposes of implementing ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code,~~ *Code)* should be done transparently and should be independently reviewed by the Attorney General for consistency with all applicable laws.

(2) The purpose of this section is to establish new oversight and transparency over any such linkages and related activities undertaken in relation to ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* by the executive agencies ~~in order~~ to ensure consistency with applicable laws.

(b) (1) The California membership of the board of directors of the Western Climate Initiative, Incorporated, shall be modified as follows:

(A) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Senate Committee on Rules.

(B) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Speaker of the Assembly.

(C) The ~~Chairperson~~ *Chair* of the State Air Resources Board or her or his designee.

(D) The Secretary for Environmental Protection or his or her designee.

(2) ~~Sections 11120 through 11132 do~~ *The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1) does* not apply to the Western Climate Initiative, Incorporated, or to appointees specified in subparagraphs (C) and (D) of paragraph (1) when performing their duties under this section.

(c) The State Air Resources Board shall provide notice to the Joint Legislative Budget Committee, consistent with that required for Department of Finance augmentation or reduction authorizations pursuant to subdivision (e) of Section 28.00 of the annual Budget Act, of any funds over one hundred fifty thousand dollars ($150,000) provided to the Western Climate Initiative, Incorporated, or its derivatives or subcontractors no later than 30 days prior to transfer or expenditure of these funds.

(d) The ~~Chairperson~~ *Chair* of the State Air Resources Board and the Secretary for Environmental Protection, as the California voting representatives on the Western Climate Initiative, Incorporated, shall report every six months to the Joint Legislative Budget Committee on any actions proposed by the Western Climate Initiative, Incorporated, that affect California state government or entities located within the state.

(e) For purposes of this section, "link," "linkage," or "linking" means an action taken by the State Air Resources Board or any other state agency that will result in acceptance by the State of California of compliance instruments issued by any other governmental agency, including any state, province, or country, for purposes of demonstrating compliance with the market-based compliance mechanism established pursuant to ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations.

(f) A state agency, including, but not limited to, the State Air Resources Board, shall not link a market-based compliance mechanism established pursuant to ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations with any other state, province, or country unless the state agency notifies the Governor that the agency

intends to take such action and the Governor, acting in his or her independent capacity, makes all of the following findings:

(1) The jurisdiction with which the state agency proposes to link has adopted program requirements for greenhouse gas reductions, including, but not limited to, requirements for offsets, that are equivalent to or stricter than those required by ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code.~~ *Code).*

(2) Under the proposed linkage, the State of California is able to enforce ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* and related statutes, against any entity subject to regulation under those statutes, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and California Constitutions.

(3) The proposed linkage provides for enforcement of applicable laws by the state agency or by the linking jurisdiction of program requirements that are equivalent to or stricter than those required by ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code.~~ *Code).*

(4) The proposed linkage and any related participation of the State of California in Western Climate Initiative, Incorporated, shall not impose any significant liability on the state or any state agency for any failure associated with the linkage.

(5) The jurisdiction with which the state agency proposes to link has adopted legally binding program requirements for greenhouse gases that include minimum carbon prices, including auction reserve prices, that are equivalent to or greater than those required by the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(6) The prospective link does not threaten the uninterrupted performance and purpose of the California Climate Dividend Program, established by Part 5.6 (commencing with Section 38577) of Division 25.5 of the Health and Safety Code, with a finding made in consultation with the Franchise Tax Board.

(g) The Governor shall issue findings pursuant to subdivision (f) within 45 days of receiving a notice from a state agency, and

shall provide those findings to the Legislature. The findings shall consider the advice of the Attorney General. The findings to be submitted to the Legislature shall not be unreasonably withheld. The findings shall not be subject to judicial review.

SEC. 2. Section 16428.87 is added to the Government Code, to read:

16428.87. (a) The California Climate Infrastructure Fund is hereby created in the State Treasury.

(b) The California Climate Dividend Fund is hereby created in the State Treasury. Moneys in the fund shall be allocated, upon appropriation, pursuant to Part 5.6 (commencing with Section 38577) of Division 25.5 of the Health and Safety Code.

(c) The California Climate and Clean Energy Research Fund is hereby created in the State Treasury.

SEC. 3. Section 38505 of the Health and Safety Code is amended to read:

38505. For ~~the~~ purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) *(1)* "Carbon dioxide equivalent" means the amount of carbon dioxide by ~~weight~~ *mass* that would produce the same global warming impact as a given ~~weight~~ *mass* of another greenhouse ~~gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.~~ *gas over a specified time horizon.*

(2) In calculating the carbon dioxide equivalent of any greenhouse gas emission pursuant to this subdivision, the state board shall use the best available scientific information, including the most recent findings from the Intergovernmental Panel on Climate Change. Where other jurisdictions use different methods for calculating the carbon dioxide equivalent of any greenhouse gas emissions, the state board may in parallel report carbon

dioxide equivalents using these alternative methods, but the state board shall not use the existence of alternative methods in other jurisdictions as a basis for selecting methods other than the best available scientific information, including the most recent findings from the Intergovernmental Panel on Climate Change, for regulations developed pursuant to this division. The state board shall select consistent methods in calculating carbon dioxide equivalents across all regulations developed pursuant to this division.

(d) "Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) "Direct emission reduction" means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) "Emissions reduction measure" means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(g) "Greenhouse gas" or "greenhouse gases" includes all of the following gases:

(1) Carbon dioxide.

(2) Methane.

(3) Nitrous oxide.

(4) Hydrofluorocarbons.

(5) Perfluorocarbons.

(6) Sulfur hexafluoride.

(7) Nitrogen trifluoride.

(h) "Greenhouse gas emissions limit" means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) "Greenhouse gas emission source" or "source" means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) "Market-based compliance mechanism" means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or ~~emission~~ *emissions* reduction measure adopted by the state board pursuant to this division.

(*l*) "State board" means the State Air Resources Board.

(m) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38550).

SEC. 4. Section 38574.5 is added to the Health and Safety Code, to read:

38574.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Allowance" means a tradeable compliance instrument that is equal to one metric ton of carbon dioxide equivalent and is issued by the state board as part of the regulation adopted pursuant to this section or is issued by the appropriate governing body of an external market-based compliance mechanism to which the program established pursuant to this section has been linked pursuant to Section 12894 of the Government Code.

(2) "Annual compliance event" means an annual process to demonstrate compliance with the program established pursuant to this section in which covered entities submit allowances to the

state board equal to a minimum specified proportion of their verified emissions of greenhouse gases for the prior year, as reported to the state board pursuant to Section 38530.

(3) "Carbon offset credits" means credits awarded to projects or programs for voluntary greenhouse gas emissions reductions that occur outside of the scope of covered entities' greenhouse gas emissions, including all credits issued by the state board pursuant to Section 38562.

(4) "Consumer Price Index" means the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations.

(5) "Covered entity" means a source of emissions of greenhouse gases that is within a source category that is subject to compliance obligations pursuant to subdivision (c) of Section 38562 as of January 1, 2017. For a new source of emissions of greenhouse gases commencing operation after January 1, 2017, "covered entity" means a source that would have been within a source category subject to compliance obligations under subdivision (c) of Section 38562 if it had began emitting greenhouse gases on or before January 1, 2017. If, after January 1, 2018, the state board determines that a future adjustment to the definition of "covered entity" is warranted, the adjustment shall result in at least an equal percentage of statewide greenhouse gas emissions remaining subject to the program established pursuant to this section as if the initial definition of "covered entity" developed under this subdivision were to apply.

(6) "Covered imported product" has the some meaning as in Section 38575.

(b) The state board shall adopt a regulation establishing as a compliance mechanism program of market-based emissions limits, applicable on and after January 1, 2021, to covered entities. The regulation shall do all of the following:

(1) Set annual aggregate emissions limits for greenhouse gas emissions from covered entities that the state board determines in conjunction with other policies applicable to statewide greenhouse gas emissions are sufficient to ensure the emissions target specified in Section 38566.

(2) Require, beginning January 1, 2021, the state board to conduct quarterly allowance auctions that are open to participation from covered entities, importers or sellers of covered imported

products, and any other participants who register with the state board for the purposes of participating in quarterly allowance auctions.

(3) Offer at each auction a number of allowances equal to the auction's quarterly share of the annual aggregate emissions limit established in paragraph (1).

(4) Require a covered entity to submit allowances equal to at least 90 percent of its annual carbon dioxide equivalent emissions at each annual compliance event, with the option to submit additional allowances without penalty to account for the remainder of its annual emissions, if any, at the subsequent year's annual compliance event. The state board shall determine the timing of the annual compliance event taking into account the availability of covered entities' verified emissions data as reported to the state board pursuant to Section 38530.

(5) Require that all allowances created pursuant to this section be offered for sale at auction and not allocated to covered entities either for free or for consignment sale, unless subsequent events trigger the creation of a free allowance allocation program pursuant to Section 38575.

(6) Require an initial minimum auction reserve price equal to twenty dollars ($20) per allowance. The state board shall not auction allowances to bidders at a price less than the currently applicable auction reserve price.

(7) Require an initial auction offer price equal to thirty dollars ($30) per allowance. At each auction, the state board shall make an unlimited number of allowances available at the currently applicable auction offer price.

(8) Require, beginning April 1, 2022, a quarterly increase in the auction reserve price on April 1, July 1, October 1, and January 1 of each year equal to one dollar and twenty-five cents ($1.25) plus a quarterly share of the percentage, if any, by which the Consumer Price Index increased for the preceding calendar year.

(9) Require, beginning April 1, 2021, a quarterly increase in the auction offer price on April 1, July 1, October 1, and January 1 of each year equal to two dollars and fifty cents ($2.50) plus a quarterly share of the percentage, if any, by which the Consumer Price Index increased for the preceding calendar year.

(10) Require allowances to be valid for compliance purposes only in the calendar year in which they are introduced into

circulation by the state board or for covering any remaining compliance obligations from the prior year pursuant to paragraph (4).

(11) Prohibit carbon offset credits from being used to meet a covered entity's compliance obligation required pursuant to paragraph (4).

(12) Prohibit an allowance or any other compliance instrument issued pursuant to a regulation adopted pursuant to Section 38562 from being used to meet a covered entity's compliance obligation required pursuant to paragraph (4).

(13) Prohibit compliance instruments issued by external market-based compliance mechanisms that have been linked pursuant to Section 12894 of the Government Code to a regulation adopted pursuant to Section 38562 from being used to meet a covered entity's compliance obligation required pursuant to paragraph (4).

(14) Allow for the use of compliance instruments issued by external market-based compliance mechanisms that have been linked pursuant to Section 12894 of the Government Code to the program established pursuant to this section to satisfy a covered entity's compliance obligation required pursuant to paragraph (4).

(c) All moneys collected pursuant to this section shall be deposited in the California Climate Dividend Fund, the California Climate and Clean Energy Research Fund, and the California Climate Infrastructure Fund, which are all created pursuant to Section 16428.87 of the Government Code, as follows:

(1) The first ____ per year shall be deposited into the California Climate and Clean Energy Research Fund.

(2) The next ____ per year shall be deposited into the California Climate Dividend Fund.

(3) All other remaining moneys shall be deposited into the California Climate Infrastructure Fund.

(d) On a quarterly and annual basis, the state board shall determine the net amount of moneys collected from covered entities pursuant to this section and Part 5.5 (commencing with Section 38575).

(e) (1) The state board, in consultation with the Franchise Tax Board, shall prepare an annual report summarizing the collection and disposition of all moneys collected pursuant to this section

and Part 5.5 (commencing with Section 38575). The state board shall make the report publicly available by posting the report on its Internet Web site.

(2) In addition to any other reporting requested by the Joint Legislative Committee on Climate Change Policies, the state board shall provide quarterly summary statistics of the moneys collected pursuant to this section and Part 5.5 (commencing with Section 38575) and make that summary publicly available by posting the summary on its Internet Web site.

(f) The state board, in consultation with the Franchise Tax Board, shall project and analyze the expected emissions of greenhouse gases and future revenue collection, taking into account uncertainty over future economic growth, energy consumption, and other relevant factors that affect the emissions of greenhouse gases. The projections shall include at least one-year and five-year emissions of greenhouse gases and revenue outlooks and shall be included in the annual report required pursuant to paragraph (1) of subdivision (e).

(g) In administering the collection and disposition of the moneys collected pursuant to this section and Part 5.5 (commencing with Section 38575), the state board and the Franchise Tax Board shall use conservative accounting management practices to maintain sufficient reserves in each of the funds established pursuant to Section 16428.87 of the Government Code. The appropriate accounting management practices may include reasonable projections determined on an annual basis of expected revenue collection to achieve the money collection and disposition requirements of this section, Part 5.5 (commencing with Section 38575), and Part 5.6 (commencing with Section 38577).

SEC. 5. Part 5.5 (commencing with Section 38575) is added to Division 25.5 of the Health and Safety Code, to read:

PART 5.5. ECONOMIC COMPETITIVENESS ASSURANCE PROGRAM

38575. (a) For purposes of this part, the following terms have the following meanings:

(1) "Allowance" has the same meaning as set forth in Section 38574.5.

(2) "Annual compliance event" has the same meaning as set forth in Section 38574.5.

(3) "Covered entity" has the same meaning as set forth in Section 38574.5.

(4) "Covered imported product" means a product or category of imported product that the state board has determined, after an evaluation of relevant market prices and associated lifecycle greenhouse gas emissions to exhibit a material price difference.

(5) (A) "Material price difference" means a substantial difference in the price of a covered imported product or prospective covered imported product that arises solely as a result of whether or not a substantial component of the product's lifecycle greenhouse gas emissions is not subject to the program established pursuant to Section 38574.5.

(B) In determining whether a material price difference exists, the state board shall consider only the economic consequences of the program established pursuant to Section 38574.5 and not other factors that are merely coincident with the program. The state board, at its discretion and based upon the availability of sufficient data, may evaluate whether a material price difference exists with respect to the retail or wholesale prices of the product.

(b) The Economic Competitiveness Assurance Program is hereby established, to be administered by the state board to ensure that importers that sell, supply, or offer for sale in the state a greenhouse gas emission intensive product have economically fair and competitive conditions. The purpose of the Economic Competitiveness Assurance Program is to maintain economic parity between producers, the prices of whose goods are materially impacted by the implementation of the program established pursuant to Section 38574.5, and those who sell like goods instate that are not subject to the program established pursuant to Section 38574.5. The state board shall adopt a regulation implementing this part that does all of the following:

(1) Applies to all covered imported products.

(2) Establishes a process for evaluating the prices and greenhouse gas emission intensities of major categories of products manufactured, sold, or consumed in the state. The state board shall use its expert discretion, emissions inventory data, state economic and trade data, and any other supplemental data sources necessary

to conduct a thorough analysis of the flow of greenhouse gas emission intensive products through the state economy.

(3) Establishes, and periodically updates, a list, based on analysis conducted pursuant to paragraph (2), of covered imported products and their associated greenhouse gas emissions intensities. The list shall include estimates of the lifecycle greenhouse gas emissions of covered imported products that the state board calculates by product type, production process, or any other aggregated category that the state board deems relevant, with lifecycle greenhouse gas emissions reported on a per product unit basis at the aggregated category level for each covered imported product.

(4) Creates a process for private parties involved in the sale of greenhouse gas emission intensive products manufactured instate to petition the state board to have a product listed as a covered imported product as a result of a material price difference. The state board shall evaluate private party petitions using consistent criteria for establishing the presence of a material price difference. The state board may prioritize the order in which it addresses the petitions according to reasonable factors, including the relative quantity of potentially affected greenhouse gas emissions and the relative impact of any economic disparities petitioners claim are created by the program established pursuant to Section 38574.5. To the maximum extent practicable, the state board shall be consistent across the evaluation of private party petitions and between the evaluation of private petitions and the state board's own determinations of covered imported products pursuant to paragraph (3).

(5) Creates a process for removing a covered imported product from the list of covered imported products created pursuant to paragraph (3) if at any time the state board concludes the program adopted pursuant to Section 38574.5 does not result in a material price difference for a listed product or covered imported product.

(6) Imposes an obligation on any person who sells, supplies, or offers for sale instate a covered imported product to surrender allowances equal to the lifecycle greenhouse gas emissions associated with each covered imported product sold or supplied for consumption in the state and that would have been subject to the program established pursuant to Section 38574.5 if the product had been manufactured instate. The person shall submit to the

state board allowances equal to at least 70 percent of the annual lifecycle greenhouse gas emissions obligated under this paragraph at the time of the annual compliance event established pursuant to Section 38574.5, with an option to submit additional allowances without penalty to account for the remainder, if any, at the subsequent year's annual compliance event. The obligation to surrender allowances established by this paragraph does not apply to individual products for which covered entities face compliance obligations for all substantial components of the covered imported product's lifecycle greenhouse gas emissions. If one or more covered entities are subject to compliance obligations for one or more substantial components, but not all substantial components, of the covered imported product's lifecycle greenhouse gas emissions, the state board, to the maximum extent practicable, shall reduce the obligation imposed by this paragraph on importers of those covered imported products to account only for the proportion of total lifecycle greenhouse gas emissions for which covered entities do not already face compliance obligations.

(7) Develops, to the maximum extent practicable, a process to exempt covered entities from the obligation to surrender allowances pursuant to Section 38574.5 for the production of covered imported products for which a covered entity faces a compliance obligation for a substantial component of the lifecycle greenhouse gas emissions of a covered imported product that is exported for final sale outside of the state or, at the state board's discretion, to instead develop a process for returning or issuing to covered entities the same number of valid allowances that the covered entity submitted to the state board to account for a substantial component of the lifecycle greenhouse gas emissions from covered imported products that are exported for final sale outside the state.

(8) Reduces, to the maximum extent practicable, the obligation to surrender allowances at the annual compliance event pursuant to paragraph (6) to account for any legally binding carbon pricing policies that apply in the place of origin of a covered imported product. For the purposes of this paragraph, carbon pricing policies may include carbon fees, carbon taxes, emissions limits programs, and other market-based compliance mechanisms that impose an explicit cost on greenhouse gas emissions. If a carbon pricing policy exists in the place or places of origin of a covered

imported product, but that policy does not impose carbon prices that are equivalent to those resulting from the program established pursuant to Section 38574.5, the state board shall use reasonable methods to account for the adjustments specified in this paragraph on a partial basis that reflect the difference between carbon pricing policies across applicable jurisdictions to the lifecycle greenhouse gas emissions of the covered imported product.

(9) Creates a process for a manufacturer or importer of a covered imported product to petition for an entity-specific lifecycle greenhouse gas emissions factor if it can provide credible documentation supporting the claim.

(10) Creates, if at any time a judicial opinion, settlement, or other legally binding decision reduces or eliminates the state board's authority to implement the Economic Competitiveness Assurance Program, a system that freely allocates allowances to the manufacturers subject to Section 38574.5 whose products the state board is no longer able to include as covered imported products in the Economic Competitiveness Assurance Program. The free allowance program is subject to all of the following:

(A) The purpose of a free allowance allocation pursuant to this paragraph is to maintain economic parity between producers of greenhouse gas intensive goods that are subject to Section 38574.5 and those who produce or sell similar products that are not.

(B) The state board shall design, to the extent feasible and subject to other conditions in this paragraph, a free allowance allocation program to treat manufacturers of greenhouse gas intensive goods that are subject to Section 38574.5 on an equal basis with respect to producers and sellers of similar goods that are not.

(C) The state board shall allocate any free allowances to covered entities according to a formula that accounts for the volumetric output of greenhouse gas intensive products produced, the greenhouse gas intensity of the product, the lifecycle greenhouse gas emissions of the average and best performing manufacturers instate, the impact of free allocation on the dividend distributed pursuant to subdivision (c) of Section 38577.2, and any other factors the state board finds appropriate.

(D) The state board, subject to the limited authority to allocate free allowances pursuant to this paragraph, shall require that the process for considering and prioritizing the eligibility of product

categories to receive free allowances be governed by the decisionmaking criteria and process provisions of this section.

(c) All moneys collected pursuant to this part shall be deposited in the California Climate Dividend Fund, created pursuant to Section 16428.87 of the Government Code.

SEC. 6. Part 5.6 (commencing with Section 38577) is added to Division 25.5 of the Health and Safety Code, to read:

PART 5.6. FUNDS

38577. For purposes of this part, "covered entity" has the same meaning as set forth in Section 38574.5.

38577.2. (a) The California Climate Dividend Program is hereby established to be administered by the Franchise Tax Board for allocation of the moneys in the California Climate Dividend Fund, created pursuant to Section 16428.87 of the Government Code, in the form dividends to all residents of the state on a per capita basis pursuant to subdivision (c) for the public purpose of mitigating the costs of transitioning to a low-carbon economy.

(b) (1) The Climate Dividend Access Board is hereby established and shall consist of six representatives with at least one member from each of the following groups:

(A) Nonprofit organizations working in the area of environmental justice.

(B) Nonprofit organizations working in the area of immigration reform.

(C) Nonprofit or government organizations providing direct social services to low-income or homeless communities.

(D) Organizations providing financial services and assistance to unbanked and underbanked communities.

(2) (A) The Senate Committee on Rules shall appoint two members.

(B) The Speaker of the Assembly shall appoint two members.

(C) The Governor shall appoint two members.

(3) The Climate Dividend Access Board shall conduct periodic public workshops and make recommendations to the Franchise Tax Board on how to effectively and safely distribute climate dividends to residents of communities in the state that are difficult to reach, including, but not limited to, homeless, unbanked, underbanked, and undocumented residents.

(4) The Climate Dividend Access Board, in making recommendations to the Franchise Tax Board pursuant to paragraph (3), shall consider methods to minimize the cost both to the state and to residents of alternative climate dividend distribution methods, with the goal of maximizing the degree to which climate dividend moneys benefit residents.

(c) (1) The Franchise Tax Board, in consultation with the Climate Dividend Access Board convened pursuant to subdivision (b), shall develop and implement a program to deliver quarterly per capita dividends to all residents and shall maximize the ease with which residents may enroll in the program. The program may include the automatic enrollment of residents who have filed a state income tax return in the prior year. The program shall provide per capita dividends on a quarterly basis unless the Franchise Tax Board, in consultation with the Climate Dividend Access Board, makes a finding that a quarterly dividend is impracticable for any particular category of residents. The Franchise Tax Board may determine an appropriate frequency of dividends provided to a category of residents of not less than at least once per year.

(2) If the Franchise Tax Board determines, after consultation with the Climate Dividend Access Board, that it cannot create a workable mechanism to distribute dividends to categories of residents, the Franchise Tax Board, in consultation with the Climate Access Dividend Board, may allocate dividends for those residents to nonprofit organizations providing direct services to those residents.

(3) In determining the per capita refund amount, the Franchise Tax Board shall employ reasonable estimates of expected carbon revenue collection and the projected number of residents, setting aside reasonable reserve margins from period to period to ensure that the per capita refund does not deplete available moneys in the California Climate Dividend Fund.

38577.4. All revenues generated pursuant to Section 38574.5 and Part 5.5 (commencing with Section 38575) constitute state funds for the purposes of the False Claims Act (Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

38577.6. This part does not affect the implementation of any other requirements of this division, including regulations developed pursuant to Part 5 (commencing with Section 38570).

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary to provide for the reauthorization, extension, and reform of the state's cap and trade program implemented pursuant to Part 5 (commencing with Section 38570) of Division 25.5 of the Health and Safety Code to provide certainty in the marketplace and to reduce the emissions of greenhouse gases in furtherance of achieving the statewide greenhouse gas emission target specified in Section 38566 of the Health and Safety Code at the earliest possible date.

~~SECTION 1. Section 38564 of the Health and Safety Code is amended to read:~~

~~38564. The state board shall consult with local agencies, other states, the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.~~

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EB-2016-0330

ONTARIO ENERGY BOARD

Union Gas Limited
Enbridge Gas Distribution Inc.
Natural Resource Gas Limited

Applications for approval of the cost consequences of cap and trade compliance plans

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SUBMISSION OF

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

WITH RESPECT TO UNION GAS

May 18, 2017

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Submission on EB-2016-0296/0300/0330 with respect to Union Gas

Introduction

This proceeding deals with Union's 2017 Compliance Plan. 2017 is year one of a four-year compliance period, which will end on December 31, 2020.

The government has set an emission reduction target for the province's GHG emissions in section 6 of Climate Change Mitigation and Low-Carbon Economy Act, 2016 (the "Act"), as follows:

> **"6.** (1) The following targets are established for reducing the amount of greenhouse gas emissions from the amount of emissions in Ontario calculated for 1990:
>
> 1. A reduction of 15 per cent by the end of 2020.
> 2. A reduction of 37 per cent by the end of 2030.
> 3. A reduction of 80 per cent by the end of 2050."

As BOMA, and its counsel, has access to only that part of the evidence that the Board deemed to be public, which included a heavily redacted version of the Compliance Plan, its assumptions and conclusions can only be based on the truncated plans.

Issue 1

> *"Cost Consequences - Are the requested cost consequences of the Gas Utilities' Compliance Plans reasonable and appropriate?"*

In order to assess whether the requested cost consequences of Union's 2017 Compliance Plan are reasonable and appropriate, it is first necessary to assess whether the proposed Compliance Plan itself is reasonable and appropriate.

The Ontario Energy Board sets out the test on page one of its Report of the Board: Regulatory Framework for the Assessment of Costs of Natural Gas Utilities Cap and Trade Activities, EB-2015-0363 (the "Framework"), as follows:

> *"The OEB will assess the Utilities' Compliance Plans for cost-effectiveness, reasonableness and optimization, and ultimately to determine whether to approve the associated cap and trade costs for recovery from customers."*

The test is similar to the test the Board uses to set rates in a forward test year regime. Its ultimate objective, in both cases, is to establish just and reasonable rates. To do so, it judges, inter alia, the reasonableness of the forecast OM&A and capital expenditures. It requires utilities to evaluate alternative approaches, for example, additional maintenance versus asset replacement, and benchmark its proposals to those of similar entities. It requires utilities to optimize their capital expenditure portfolios. And, of course, after the year is over, before capital expenditures are allowed into rates, or if forecast funds remain unspent, in the course of clearing deferral and variance accounts, or otherwise, it tests for prudency.

Union's 2017 plan contemplates the purchase of allowances at the Ontario government's auctions, and perhaps through secondary market transactions as well. Union states that it may or may not utilize one or more derivative contracts to acquire allowances in the secondary market. However, Union's evidence is that it will not employ any consumer abatement activities (DSM program enhancements or new DSM programs) in 2017, other than the Ontario government's Green Fund home energy retrofit program. Union has included a forecast of emissions savings from that abatement program, incremental to DSM, in their 2017 Compliance Plan (Exhibit 1, p3 of 12). The 2017 forecast amount of compliance obligation provided by the program is forecast to be 7,000 tonnes out of a total compliance obligation of 15,500,000 tonnes (Exhibit 2, Schedule 1). Union has also stated they will not have any savings from long-term investments in 2017, as

they have not yet made any substantial analysis around such investments. It is also virtually certain that Union's 2017 plan will not include any savings from offset projects, given that the offset regulation has not yet been completed, and the offset protocols remain under development by a contractor to MOECC, with deliveries forecast over a series of months in the latter part of 2017. Moreover, offset projects are mostly larger, complex, physical projects, that take many months, if not years, to develop, construct, implement, and verify. Regulations for verified credits have not yet been enacted. Finally, the fact that Ontario Regulation 144/16 does not permit capped participants to purchase offset credits from other jurisdictions, eg. California and Quebec (Transcript, Volume 3, p11, lines 11-14) means that Union cannot purchase an off-the-shelf offset in 2017.

In other words, Union's 2017 Compliance Plan will consist almost entirely, if not entirely, of allowance purchases, at auction, from the government, and possibly, and to a much lesser extent, in the Ontario secondary market, to the extent that one develops in 2017. Auction purchase will be purchased at the auction clearing price. Purchases in the secondary market, including bilateral deals, will be by spot purchases, or purchases using one or more financial instruments, for example, forward contracts, futures, options, or swaps.

The plan does not include any extra funding for emission abatement measures from existing DSM programs, or funding for new DSM programs, even if either set of DSM measures had a lower cost per ton of emission reductions than the forecast 2017 allowance costs.

Union's evidence is that it did not request additional funding for existing DSM programs or new DSM programs for two reasons. First, because it did not have sufficient time to prepare the request, given that the Board published its Framework in September 2016, and Union was

required to file its Compliance Plan by November 15, 2016. However, Union was aware from the publication of the Ontario government's GHG Policy in mid-2015, from analyses it received from ICF in November 2015 (EB-2016-0004, Exhibit S3.EGDI.OGA.3, Attachment), the fact that the draft cap and trade regulations were introduced on February 24, 2016, and the Climate Change legislation and final regulations (Ontario Regulation 144/16) were given Royal Assent and approval respectively on May 18, 2016 and May 19, 2016, and the Climate Change Action Plan was released in June 2016, that additional DSM would need to be a significant part of any GHG emission reduction plan, as enhanced and/or additional DSM investments were the most cost-effective form of consumer/utility cost abatement activity. In short, BOMA believes that Union had time to explore, plan and optimize proposed new DSM programs, or enhancements or additional funding for existing DSM programs. Moreover, the likely short-term price trajectory of allowances in both California and Quebec was public knowledge in 2015. Union's second reason for not requesting additional DSM funds was that there were too many uncertainties around cap and trade, including the absence of the Marginal Abatement Cost ("MAC") curve, and the Board's ten year carbon price forecast, the absence of detail on the government's Cap and Trade Action Plan, and the comparative costs of various long-term emission abatement investment projects, such as Renewable Natural Gas.

Union's evidence is that it has not yet done the quantitative analysis necessary to compare the cost-effectiveness of DSM abatement measures relative to the actual and forecast Ontario allowance costs. It should have already done this analysis. Moreover, it was able to calculate the abatement unit cost for the Green Fund Home Retrofit Program.

While the MAC and prior forecast are not yet available, Union is well aware of the least cost to highest cost per m^3 of its array of existing DSM programs. In other words, it has enough

information to make cost comparisons between allowance purchases and DSM abatement measures. It is, or should be, well aware that DSM measures are the most cost-effective abatement measures available (and, unlike long-term investment projects, they do not require extensive analysis). Union has managed a successful DSM program for many years. So BOMA regards the "uncertainties" argument as spurious in this context, in that it clearly does not apply to DSM measures. Moreover, many of the other uncertainties alleged, such as whether linkage with California and Quebec will occur, apply not to 2017 in particular, but more generally. Finally, there will always be uncertainties going forward, as the government's overall GHG program is unveiled a step at a time over the next several years.

BOMA suggests that the principal reason Union has not commenced additional DSM programs is that the Board has not yet clarified the extent to which LRAM and DSM performance bonuses will be available for additional DSM projects beyond those in the existing 2015-2020 DSM framework.

If Union waits for the completion of the mid-term review, currently scheduled for June 2018 to expand its DSM programs, it will forego the use of additional DSM abatement measures for 2018 and probably 2019 as well. Union appears to be waiting to confirm whether it can earn additional profits via a higher bonus (DSM bonus), and have LRAM coverage if they increase their DSM spending, which yields additional savings commensurate with existing programs. The Board should clarify the regulatory status of additional DSM measures in its decision in this proceeding. The utilities have not provided any evidence that they lack the capacity to spend more money than budgeted in 2017 if they were to receive additional ratepayer funds. Ratepayers would be better off to the extent that enhanced DSM costs were less than the 2017 actual and forecasted allowance prices. It is not too late in the year to fund additional 2017 DSM

projects. There is also a clear need to fund more DSM abatement projects for the remaining three years of the first compliance period.

BOMA is of the view that, while simply purchasing the total value of allowances required to match forecast 2017 emissions may be the lowest risk option for the Union shareholders, it not demonstrably the best option for Union's ratepayers. Moreover, as the amount of allowance will decrease going forward by approximately four percent per year, and the program design mandates auction floor price increases each year, allowance prices will increase. It is important that Union gain early experience with an array of cost-effective, low risk options to continued auction purchases.

Based on Union's failure to compare enhanced DSM program spending with allowance purchases, BOMA does not see how the Board is able to conclude that the proposed Compliance Plan, taken as a whole is cost-effective, reasonable, and optimized.

However, given the fact that we are midway through 2017, and the fact that Union must now focus on its 2018 through 2020 plan, as a high priority, BOMA suggests that, on the terms and conditions suggested later in this submission, and subject to after-the-fact prudency review, the Board allow Union to recover its 2017 Compliance Plan-related expenditures from rates.

The Prudency Issue

BOMA notes that EGD has agreed that a prudency review of the 2017 Plan expenditures is necessary once the 2017 expenditures have been made (Exhibit I.1.EGDI.BOMA.12; Exhibit I.1.EGD.BOMA.35). Their counsel stated the Company's legal position very clearly, including the fact that the prudency test applies to the total Compliance Plan expenditures, not just any

additional funds required to clear a GGEIDA debit, based on a variance in emission volumes, allowance prices, or administrative costs, relative to forecasts (Volume 1, p116).

In BOMA's view, Union agreed in its evidence that a prudency review is required of the actual costs of implementing Union's 2017 compliance costs after the end of the Compliance Plan term. However, it is not clear from Union's evidence whether Union, particularly in its Argument-in-Chief, is asking that Board decide in advance, that is, in this proceeding, whether expenditures not yet made are prudent.

At one point, the Company states, when speaking about cost recovery:

> *"So our view is that this is a compliance obligation that we have, and all prudently incurred costs will be subject to cost pass-through."* (our emphasis) (Transcript, Volume 3, p18)

The Board will not know whether the costs were prudently incurred until they are examined after the end of 2017.

As an aside, the witness, Ms. Byng, also used the word "prudency" to mean "with care" in the context of describing Union's safeguards against improper disclosure of information. That is not the "prudency" that we are talking about here.

However, Ms. Byng also stated at Transcript, Volume 2, pp127-128:

> *"Quite simply, the framework identifies that cost recovery through prudency is one of the guiding principles. So when we bring our compliance plan forward and the cost consequences resulting, then it will be up to the Board to evaluate what methods we used or did not use, and whether they were prudent as a result."* (our emphasis)

In this sentence, Union appears to recognize that prudency can only be assessed after the plan has been implemented.

However, in its Argument-in-Chief, Union takes a more ambiguous position.

For example, at p2, Union states that:

> *"The purpose of Union's application was to present a prudent compliance plan for 2017 that complies with applicable regulations, and outlines how Union will meet its obligations..."* (our emphasis).

But, as stated earlier in this submission, the OEB has stated that it will assess Union's Compliance Plan for "cost-effectiveness, reasonableness, and optimization". Prudence is not a criteria used to evaluate the plan. Plans are not prudent. Expenditures made to implement the plan can be prudent or imprudent, and that decision can only be made after those expenditures have been made, and the plan year is over.

At p7 of its Argument-in-Chief, paragraph 14, Union states:

> *"The reasonability of the cost consequences associated with Union's 2017 Compliance Plan will be the subject of future proceedings (see Issues 1.4 and 4 below)."*

However, Issue 1.4 deals only with the reasonableness of the Compliance Plan and the forecast costs to implement the plan. It does not deal with a subsequent proceeding, as stated in paragraph 14.

Issue 4, on the other hand, deals with the structure of the proposed deferral accounts, and the costs captured by each of them.

Neither section provides any information about the "subsequent proceedings" that Union refers to, other than the proceedings to clear the deferral accounts.

Union repeats the statement in paragraph 40 that the focus of the Compliance Plan review is compliance and prudency. But it is not. The Board has clearly stated that compliance is only a

part of what it expects, and as stated earlier, prudency is not the criteria by which the Board assesses the plan. Rather, the criteria are "reasonableness, cost-effectiveness, and optimization". Another way of looking at it is to say that a plan could be reasonable, appropriate, and optimized, but could be implemented in an imprudent fashion. Some examples are provided below.

Finally, Union states, at paragraph 40:

> *"(...Compliance Plan review, deferral disposition), metrics and monitoring forms provide sufficient oversight to assess performance and overall prudency."*

They do not.

In BOMA's view, so long as the Board makes it clear that what Union calls "overall prudency" can be dealt with in the proceeding which deals with the clearance of deferral accounts, or at some other time, the extract above would be correct. Otherwise, the three items listed do not provide sufficient oversight because parties would not have the opportunity to raise the prudency issue and examine the utility with respect to the prudency of its expenditures incurred to implement the plan.

The Board's Framework makes this fundamental point clear, in its Guiding Principles, when it states:

> *"Cost Recovery: <u>prudently incurred costs</u> related to cap and trade activities are recovered from customers as a cost pass-through."* (p7) (our emphasis)

The Board can only determine whether costs were prudently incurred after they have been incurred.

At p23 of the Framework, the Board adds:

> *"The OEB must assess the cost effectiveness of the Utilities' compliance activities in meeting their emission reduction obligations for customers and their own facilities. That assessment will include a consideration of objective and independent analysis of Utilities' Compliance Plan implementation performance and costs."* (our emphasis)

The rationale for prudency review of cap and trade activity is further enhanced by the Board's decision, at p27, when discussing the treatment of longer term investments.

> *"The actual forecasts of planned capital expenditures related to any investments will, however, be dealt with in a Utility's regular rate application and/or any leave to construct cases".*

Prudency reviews are a component of rates cases and leave to construct cases.

Had the Board intended to depart from the long established regulatory principle that expenditures can be recovered in rates once made only if they are judged to be prudent, it would have said so explicitly in the Framework. It did not do that.

Prudency issues could arise in connection with expenditures to implement the Compliance Plan in several ways. For example, total purchased allowance costs may be higher than forecast due to improper or unwise use of a derivative(s). They could also result from the poor execution by Union of a Compliance Plan (see above), which, in itself, was found to be reasonable and cost-effective, for example, the execution was not sufficiently flexible to deal with changing circumstances. The need for flexibility is demonstrated by the example, posed by Mr. Pollock, in his cross-examination of the first EGD panel:

> *"Q: If you were to execute the approved plan in different circumstances, that would mean the difference between it being reasonable and unreasonable.*
>
> *A: I guess so, yes.*
>
> *Q: I'll give you an example, if helps. If I were to want to go and buy a vacuum cleaner for $100, that might be reasonable. But if I am going to the store and I see my neighbour who offers to sell me a brand new one, still in the package for*

> *$30, going out to the store and buying it for a hundred may no longer be reasonable. Is that fair as an example?*
>
> *A: Yes."* (Transcript, Volume 1, p73)

BOMA would only add that the example also shows how the expenditures resulting from the plan, if not modified to take into account the better opportunity, would be imprudent.

The Board should not allow the fact that the 2017 plan may necessarily be a "stripped-down" plan because of some of the compliance tools are not yet available, to diminish the importance of the prudency review.

Nor should the Board's determination of the reasonableness, cost-effectiveness, and optimization of the plan, let alone the prudency of the expenditures to implement the plan, be influenced by Union's contention that it has a statutory obligation to file a Compliance Plan in respect of its ratepayers' gas consumption and GHG emissions.

It is Union's ratepayers, not Union's shareholders, who are paying ninety-nine percent or more of the $274 million of allowances forecast to be purchased by Union at auctions, or in the secondary market in 2017. The MOECC recently reported that the March auction has raised $472 million. A substantial portion of that amount would have come from Union.

The Board recognized this fact in its Framework when it required that Union demonstrate that its plan was, inter alia, cost-effective, in addition to being compliant with the Act.

Moreover, Union also has a statutory mandate to have its proposals to increase rates approved by the OEB, and to implement only those capital expenditure projects that are found to be in the public interest, pursuant to leave to construct proceedings (both of which are subject to prudency

review). There is nothing special about the statutory obligation with respect to cap and trade programs cited by Union (and EGD).

Moreover, the fact that much of the evidence in this proceeding is characterized by the Board as strictly confidential, means that ratepayers' representatives and their counsel will not have, even after the end of 2017, all the information necessary to raise all appropriate prudency issues. In these circumstances, it will be up to the Board and Board staff to ensure that prudency issues are closely scrutinized, otherwise, the ratepayers will be disadvantaged. This can be avoided only if the Board staff and the Board act as vigorous advocates for the ratepayers in examining the Compliance Plan in general and the prudency issue, in particular.

This application is in essence an application to set final rates for 2017, effective January 1, 2017, which will recover the costs of implementing the utilities' cap and trade programs for 2017. It is, in effect, the finalization of interim rates for 2017 that were established in 2016.

Prudency review is an essential part of the ratemaking process.

Issue 1.7

> *"Has the gas utility reasonably and appropriately presented and conducted its Compliance Plan risk management processes and analysis?"*

The Framework states:

> *"At a minimum, the OEB believes that risk identification should address the following categories of risks inherent in Cap and Trade:*
>
> • *Volume variability;*
>
> • *Allowance price variability (including foreign exchange risk);*
>
> • *Emissions unit availability (i.e., allowances and offset credits);*

- *Market risk;*
- *Non-compliance; and,*
- *Any other risks identified by the Utilities"* (our emphasis).

BOMA would add to that list:

- Improper disclosure risk by Union or government employees;
- Program termination risk; and,
- The risk of pursuing too few cost-effective Ontario abatement opportunities and being required to purchase too many allowances in California, increasing the cost of the program, achieving less than optimum rate predictability, not to mention having reduced the economic and employment benefits to Ontario and Canada.

Risk Allocation

Union's position is that ratepayers bear all the risks noted above. Union has made it clear that all risks inherent in cap and trade activity that actually materialize and cause losses, are losses to be borne by the ratepayers, regardless of the cause of the loss. That would include cases where the loss was caused by the release by a Union employee of confidential information which resulted in ratepayer loss. Union did not answer that question. It did not state that it would be liable for any loss arising from such improper disclosure (Transcript, Volume 3, p19).

Other risks include program termination risk (a market risk) after money has been collected from ratepayers.

For example, this risk could materialize in the event that linkage with California proved impracticable for either California or Ontario. While the California Court of Appeal has recently

upheld the California cap and trade program, the Supreme Court of California might revise the Court of Appeal's decision or overturn it. In the event that the California Supreme Court decided the plan was illegal in 2017, the future of the Ontario Plan would be in serious doubt. Moreover, even if the Courts continued to sustain the current law, as described in a recent law review article in BOMA's Compendium #3 (State Constitutional Limitations on the Future of California's Carbon Market, Energy Law Journal, Vol. 37, No. 2, 2016), there is a substantial risk that the California Cap and Trade Legislation will not last in its present form beyond December 31, 2020 because the current law expires at that time.

Moreover, Bill SB 775, California Global Warming Solution Act of 2006: Market-Based Compliance Mechanism (the "Bill"), has just been introduced in California legislature. The Bill proposes a radical redesign of the 2006 legislation, to be effective January 1, 2021; it appears to have wide support among the various cap and trade constituencies in the state. The Bill would present a "fresh start" in 2021, which would eliminate the large pool of excess allowances from the current program, which have been depressing allowance prices in California (and Quebec) over the last few years. It would eliminate free allowances, and establish a price "collar" for allowances and offsets. It establishes a price "collar" which establishes a floor and a ceiling. The price floor is set at $20 in 2020, while the price ceiling starts at $30. The price floor rises at $5.00 per year plus inflation; the price ceiling rises at $10.00 per year plus inflation. The price ceiling would hit $100.00 (US) by 2030. The program would operate in perpetuity. There would be a border tax pursuant to an Economic Competitiveness Assurance Program to ensure the greenhouse gas emissions-intensive products, imported from jurisdictions that have no equivalent GHG charge, obtain no unfair advantage over products produced in state. The proceeds from allowance auctions will be divided into three pools; a dividend pool (a "dividend"

for each California resident), an infrastructure pool, and a clean energy R&D pool. On linkage, the Bill provides that starting in 2021, the new system will not link to any other jurisdiction (including Quebec) unless it has a minimum carbon price that is equal to or greater than California's, and meets other criteria. A copy of the Bill 775 is attached (Attachment 1).

Whatever the cause, in the event the Ontario Cap and Trade program were abandoned, utilities would be holding allowances in their CITISI account that might then be worthless. In such a case, ratepayers should not bear all of that loss, in the event the government were to refuse to return the amounts collected from previous allowance sales to the ratepayers. It is not clear that Union has thought through these issues; nor do they appear to have reached any agreements with the Ontario government on the need to return cash to ratepayers, in such an eventuality.

Without the ability to access "excess allowances and credits" from California, it is clear from analysis done by EnviroEconomics for the Ontario government that, without the pool of cheap California allowances to mitigate price impacts, allowance costs in Ontario would rise from four to nine times current levels (BOMA Compendium Item 1 – Impact Modelling and Analysis of Ontario Cap and Trade Program, May 5, 2016, EnviroEconomics/Navis Research/Dillon Consulting, pp2-6). Such an increase would clearly be unsustainable and would lead to termination or radical modification of the Ontario program.

A further risk, which if realized, could lead to large ratepayer losses, would be the improper or unwise use of various derivatives in connection with allowance purchases in the secondary markets. This is hedging risk, a form of execution risk.

The Framework states:

> *"While the OEB is not requiring a Utility to undertake hedging activities, Utilities will not be prevented from doing so. If a Utility decides that hedging is a cost-effective and optimal strategy to pursue in its Compliance Plan, the Utility should describe its hedging strategy, identify any potential risks and outline a plan that describes how these risks would be mitigated. The OEB will review the Utility's proposed hedging plans for cost-effectiveness, in accordance with the principles set out in the Regulatory Framework."* (p26)

The OEB states that it will "review the utility's proposed hedging plans for cost-effectiveness", but the issue may not be cost-effectiveness as much as the additional risks that the use of the particular instrument may create.

It is noteworthy that EGD and Union, in their respective submissions on the OEB Staff plan, stated they preferred not to use hedges. Moreover, BOMA is not convinced that Union has the expertise to utilize derivatives in the allowance and credit markets, in part, because Union has not used the instruments in the natural gas market since 2006, and, in part, because the cap and trade market is very new, and very different from the natural gas market (see below for a discussion of the differences in the two markets). BOMA would prefer that Union not use derivatives in 2017 to allow their personnel to gain a better understanding of the secondary market. In the event the use of derivatives causes a ratepayer to pay more for allowances than they would have paid without the derivatives, the responsibility for that loss should be with Union.

Finally, since compliance with the Cap and Trade statute, regulation, and Director's decisions are Union's responsibility, Union should be responsible for losses or penalties resulting from its failure to comply with the Act ("compliance risk"), including the leak of confidential information. It would be wrong to pass through to ratepayers the amount of any fees, penalties, fines, compliance agreements, increased allowance requirements (including those set out in section 14 of the Act), or other consequences, of Union's non-compliance.

Further Execution Risk

Another important risk is execution risk. In BOMA's view, the best way to minimize this risk is to have the right people and processes in place in Union to plan, design and execute the Compliance Plan properly over the Compliance Period.

Union established a steering committee to guide the development of its cap and trade program.

Union's cap and trade organization has a Cap and Trade group, which consists of three people (B.BOMA.20;B.SEC.3), including the Manager of the group. However, Union has asked for thirteen and a half FTEs (12.5 plus the Manager) to manage the program; only two of the 12.5 FTEs report to the Manager of Cap and Trade. None of the three team members have had direct experience in a cap and trade regime. The remaining FTEs, while dedicated entirely to cap and trade-related work, are members of other departments, and have no reporting relationship to the Manager of the Cap and Trade group. The Director of Gas Supply has 25% of her time devoted to cap and trade.

Union's evidence is that the accountability for the Cap and Trade program will reside in Union's Gas Supply Department (Exhibit 3, p4). Union has essentially trained a group of its gas supply department employees in the cap and trade market through training consultants, and sending the employees to conferences. It has not hired any personnel directly from the cap and trade industry. It has made liberal use of consultants in the development of its Compliance Plan.

Union has requested substantial additional personnel (about twice the number of EGD), which seems excessive. Many of the 13.5 roles, set out at B.SEC.3, must have existed for some time, well before the development of the cap and trade program. Examples include at least some of

the 3.0 roles identified in Environment Health and Safety, Technologies and Innovation (personnel already in those roles in DSM, people responsible for existing work on RNG and gas in transport, and in Distribution Business Development. For example, Union must have people working on RNG as there was an OEB hearing on this subject two years ago. The staffing for the program includes six to seven people, two in each of Health and Safety, Distribution System, and Technology. On the other hand, Union should probably acquire two people with specific cap and trade expertise. It is not clear why Union requires twice the FTE complement and nearly twice the budget of EGD to do the same job.

Unlike EGD's submission, there is no discussion of how the steering committee will operate, merely a reference to three other committees dealing with risk.

In BOMA's view, Union lacks depth in its cap and trade department; it will be dependent on cooperation from many other departments, including persons with expertise in DSM, the most cost-effective customer abatement option.

Union has stated that it will leverage its natural gas procurement, storage, and trading expertise to ensure successful implementation of the Company's Cap and Trade Compliance Plan.

However, BOMA believes, and Union agrees, as does EGD, that the carbon market and gas market are two different markets (Transcript, Volume 3, p32). The Ontario Cap and Trade market is brand new, has very few, if any, truly successful precedents, was created by government relies on detailed statutory and regulatory guidelines, and includes substantial administrative discretion, on the part of the government in the form of MOECC, especially by the Director, a senior official appointed by the Minister and responsible directly to the Minister. There is a large government enforcement staff (inspectors, agents, and a vast array of penalties,

fines, prison terms, compliance orders, etc. to deal with offenders. In fact, the Compliance and Enforcement provisions constitute much of the Act. None of this is present in the natural gas wholesale market. In addition, section 6(2) of the Act provides that emission reduction targets can be increased by the Lieutenant Governor in Council (the "Cabinet"). The cap and trade scheme relies not only on allowance purchases but abatement investments across a wide spectrum of sectors, does not yet have a liquid secondary market for allowances or offsets, and is not reliant on the gas supply infrastructure. In many respects, at least in the view of some experts, cap and trade, both in Ontario and in California, is not a market at all, but a policy construct to raise money to fund government green programs (EGD Evidence: Exhibit C, Schedule 1, Appendix A, p5 of 54). On the other hand, the gas market is a broad and deep market, has existed in Ontario since the late 1980s, operates with minimal government interference, does not rely on abatement capital expenditures, has a very liquid (Dawn) trading hub in Ontario, and other hubs throughout North America, and a deep and liquid gas futures market in New York, which supports extensive derivative trading.

BOMA believes that while some of the Company's activities necessary to operate the market are similar to those deployed in the gas market, such as cost benefit analysis, procurement, trading, contracting, the substance of the two markets in which these tools are used, are very different (our emphasis).

BOMA, therefore, believes that Union overstates the leverage available from its natural gas experience to successfully implement its Cap and Trade Compliance Plans.

Unlike EGD, where the manager of the cap and trade team was previously responsible for the Company's successful DSM program, the manager of Union's cap and trade team has no recent

background in either cap and trade or DSM. For example, the manager seemed unaware of the impact of Ontario securities legislation on the Cap and Trade market (Transcript, Volume 3, p16).

BOMA is concerned that Union's carbon team may not yet have sufficient expertise in Cap and Trade to successfully implement Cap and Trade over the medium to longer term. 2017 is a somewhat atypical year, due to the lack of compliance options; compliance for 2017 is pretty much a matter of buying an appropriate number of allowances.

Issue 2

> *"Monitoring and Reporting – Are the proposed monitoring and reporting processes reasonable and appropriate?"*

BOMA contends that, in order for its proposed monitoring and reporting processes to be judged reasonable and appropriate, Union needs to disclose in those reports sufficient information about the costs of its abatement activities and offsets to allow the Board and intervenors to compare the cost of abatement activities relative to that year's allowance auction prices, which will be publicly available from MOECC reports on quarterly auction results, to judge prudency and whether changes are necessary to support continued cost recovery.

In its reply to BOMA.22, EGD stated that:

> *"(a) Enbridge is of the view that the annual monitoring reports may be a mixture of confidential information and commercially sensitive information which may be available to intervenors that are not market participants, through the Board's Practice Direction and Rules in respect of Confidential filings. For example, the Transaction Logs should remain auction confidential as per the Climate Change Act. However, the average weighted cost per compliance instrument may be an item that could be produced subject to confidential treatment by the Board under its Rules and Practice Direction given the commercial sensitivity of such*

> *information. As experience in the market grows, what should and should not be confidential at varying levels, may be better understood."*

BOMA is encouraged by the above comment that some effort will be made to provide at least some useful information to intervenors. The fact that the reporting stage is occurring after the end of the year being reported upon should mitigate adverse market consequences of the release of the weighted average cost of the various compliance instruments. BOMA also notes that the fact that the costs of DSM expenditures, including incremental or enhanced DSM expenditures, are in the public domain, and with some adjustment and analysis, can be compared with same year allowance costs. Given that, at least for the first compliance period, it is likely that the bulk of Union's allowance purchases will be at auction, the average costs of the small amount of secondary market purchases could also be disclosed without material harm to ratepayers. Given the heavily redacted compliance plans, due to the Board's confidentiality policy, it is especially important to have some disclosure in the monitoring reports. It also would be helpful if the Ministry would release the reports for the Green Investment Fund, and other GHG emission reduction programs, each year 2017 and 2018, as soon as possible after the end of the year in which the projects were executed.

BOMA asked Union whether it agreed with the EGD approach, but did not get a positive answer. BOMA concluded that Union was reluctant to support EGD's approach. In general, BOMA's conclusion from reading the two companies' applications, IR Responses and answers to cross-examination questions was that Union was more inclined to use the Board's confidentiality regime to shield its cap and trade activities from ratepayers' scrutiny, while EGD appeared to make a more genuine effort to achieve at least a modicum of transparency. BOMA would request Union to be more forthcoming in its 2018 submission. An example of Union's approach is found at B.BOMA.39(a) and (b). In both questions, BOMA was seeking a high level generic

response to explain what Union meant by execution risk and liquidity risk. Union could have easily answered the questions without compromising its negotiating positions, but simply brushed them off, with boilerplate language that stated "Climate Change Act outlines prohibition on the disclosure of certain information". It does, but the Act's prohibitions did not include the information that was asked for in the two questions.

BOMA assumes that the MOECC will provide the reports it receives from the utilities on the Green Fund Home Retrofit Program results public.

Longer Term Investments

BOMA distinguishes long-term investments from enhanced DSM, which, given Union's successful experience with its DSM program, represent an abatement option which can be implemented very soon to produce almost immediate results, and should be viewed as short-term to medium-term customer abatement options, as well as a longer term option. Union's evidence is that longer term initiatives, including long-term investment projects, will not produce emission reductions in 2017.

BOMA also supports Union's recognition of the need for better coordination of existing DSM initiatives among gas utilities, electric utilities, and the IESO, and to integrate DSM and cap and trade abatement. This is required to facilitate the enhanced and additional DSM measures as a cost-effective emission reduction tool, and to accelerate the deployment of these DSM projects. Union should commence work on that integration immediately. Union should outline the regulatory treatment it expects for enhanced and additional DSM work in its 2018 submission.

The Company's evidence is that prior to committing to long-term investments, the Company will need to clarify the regulatory treatment of such investments, including how it will earn a return on its capital expenditures.

Union has raised the issue of the need to clarify the methodology for cost recovery of longer term projects (B.Staff.14). BOMA suggests that Union make proposals on this matter in its 2018 Compliance Plan submission, including the nature of the projects, the financing of such projects, whether by ratepayers or government funding under the Greenhouse Gas Action Plan, whether Union will manage and deliver these investments, and how the utility should be compensated for its efforts.

New Business Activities

This issue is closely related to the topic of proposed longer term investments. Union's evidence about the extent to which its Cap and Trade Compliance Plan may involve new business activities, was limited for much the same reasons its evidence on long-term projects were limited. It said there were too many uncertainties. Union's evidence states adding new business activities will require an amendment to Order in Council 1540-2009, which provides an exception to the government's earlier blanket undertaking, which restricted the scope of utility activities. That evidence differs from EGD's evidence on the same point. BOMA supports EGD's view that the regulation permits the OEB to make exception to the regulation one activity at a time.

Moreover, in the Framework, the OEB has stated that it is prepared to consider applications for approval to undertake new business activities on a case-by-case basis, which is consistent with EGD's position.

In BOMA's view, Union should make a concerted effort to accelerate the development of those new business activities, because, like enhanced or new DSM, they are vital to enhance Cap and Trade-driven economic activity in the province, as opposed to simply purchasing allowance from another jurisdiction and over the medium to longer term, may well be more cost-effective than allowance prices as they inexorably increase. Purchasers of large amounts of currently "excess" allowances from California will not produce economic activity in Ontario, nor diversify the Compliance Plan and reduce the risk of a substantial increase in allowance prices driven by, inter alia, new legislation in California, or the absence of linkage. The abatement/allowance issue has already been raised in a jointly-prepared report on Quebec's cap and trade program by the Quebec Sustainable Development Commissioner and the Auditor General of Quebec – Carbon Market: Description and Issues, Spring 2016. The report was tabled in the National Assembly. The Board should, as soon as possible, in future compliance plan proceedings, or otherwise, receive submissions and make decision about the cost recovery mechanisms, including funding through rates or government programs akin to the Green Fund Home Energy Program, and other programs funded under the GHG Action Plan, in respect of each new proposed new business activity. The conversation needs to occur sooner rather than later.

Unaccounted for Gas ("UFG"); Forecasts; Facilities Related Emissions

Union's evidence is that it currently has a study underway to identify opportunities for facilities-related abatement initiatives. It should file the study when it becomes available.

However, Union's evidence also states that Union's UFG and Compressor Fuel Volume taken together comprise virtually all its facility emissions (Exhibit 2, p8 of 10; Table 1). BOMA assumes that, like EGD, ninety percent of Union UFG (like EGD's) is driven by different meters

in use and variability in meter readings between Union and its gas suppliers and EGD (I.1.EGDI.FRPO.3). However, Union's UFG is almost always a positive number, which appears to be inconsistent with that conclusion. UFG is, of course, a part of rate base. Union provides no evidence for its assertions. It should do so.

Finally, EGD's evidence is that over the period 2010 to 2013, UFG as a percentage of gas send-out has been 0.7%, compared to an average of 0.8% among the American Gas Association's 172 North American gas distribution members (I.1.EGDI.FRPO.2).

Union should provide its percentage of UFG of throughput, as EGD did. BOMA urges the Board to require Union to investigate the practices utilized by those utilities that have the lowest ratios, with a view to driving its UFG ratio down to a lower percentage (the most recent detailed study of UFG in evidence is an AGA study done in 2004, over ten years ago [EB-2011-0354, D2, T6, Sch 1, p11]). As a leading world class gas utility, Union should not be satisfied with being slightly better than average performers. In addition, the Ontario utilities should attempt to standardize their future meter makes in future procurements, and persuade TCLP to do the same.

Union has not proposed any measure to reduce its compressor fuel use. BOMA assumes compressor fuel efficiency will be covered in Union's study, and reported on in its 2018 filing.

Cost Recovery

> *"5.2 Are the tariffs just and reasonable and have the customer-related and facility-related charges been presented separately in the tariffs?"*

BOMA suggests the Board not make a finding as to whether Union's tariffs are just and reasonable, for several reasons. The Ontario Energy Board Act (the "Act") requires the Board to determine whether rates, not tariffs, are just and reasonable. Tariff is not a defined term in the

Ontario Energy Board Act and exactly what it includes is not entirely clear. For example, TransCanada has a Tariff Book, which includes a number of items other than the rates themselves, for example, pro forma contracts for each type of service.

EGD's evidence was that it likely referred to EGD's Rate Handbook, but was not definitive. EGD had requested the wording related to the reasonableness of tariffs be added to the draft issues list (Procedural Order No. 2). EGD's witness was not sure why the issue had been requested by EGD.

If EGD's reason for this section were to ensure that the level of the Cap and Trade "adder" is determined to be a just and reasonable rate, the Board already does that if and when it finds the delivery rates that include the "adder" to be just and reasonable.

BOMA did not examine Union witnesses on this matter.

Finally, a determination that the tariffs are just and reasonable is likely to cause confusion in the future.

Issue 4; Issue 5.1

> *"Deferral and Variance Accounts – Are the proposed deferral and variance accounts reasonable and appropriate? Is the disposition methodology appropriate?"*
>
> *"Is the proposed manner to recover costs reasonable and appropriate?"*

Union's proposals for its cap and trade deferral accounts are set out at Exhibit 6, pp1-2. Subject to Union's amendment of its evidence, provided at Transcript, Volume 2, p109, BOMA supports the timing of the clearance of the three new and existing cap and trade-related deferral variance accounts.

However, BOMA does not agree with the Union proposal to clear all contract rate customers through a one-time charge, regardless of the amount in the two deferral accounts, in particular, the customer-driven emissions unit deferral account. The Board should direct Union to wait until the 2017 yearend balance in the account is known before deciding whether to clear the account through a one-time charge or over a six month period. Commercial landlords have difficulty dealing with billing large billing adjustments with a retrospective affect, and prefer that any outstanding balance owed the utility be collected in a series of more modest future installments.

As noted above, the cost amounts to be charged to ratepayers will be subject to a prudency review, along with, and as part of the broader prudency review of 2017 Compliance Plan-related costs.

Issue 6 (see also Issue 5.1 – Cost Recovery)

> *"Implementation – What is the implementation date of the final rates and how will the final rates be implemented?"*

The Board-approved interim cap and trade charges effective January 1, 2017 (Early Determination EB-2015-0363).

In the Early Determination, the Board also directed that "charges related to the recovery of Cap and Trade program costs will be included in the Delivery Charge on the bill".

For rate-making purposes, Union did not include any administration or financing costs in the derivation of the Cap and Trade rates, and stated that such costs will be recovered through Union's new deferral accounts.

As noted above, the costs to be charged to ratepayers will be subject to a prudency review, along with and as part of the broader prudency review of 2017 Compliance Plan costs.

Board Directives

While BOMA appreciates the Board's efforts to focus the proceeding on the 2017 plan, given the fact that the 2017 Cap and Trade program is already underway, and the utilities did not have the time to address parts of the Framework in any depth, BOMA suggests the Board include in its decision in this proceeding, whatever guidance it can for the utilities' August 2018 filings, including specific matters that it would like the utilities to address. There are still three months remaining before the 2018 filing is due, and doubtless Union has been working on their 2018 plan over the previous few months. Such guidance could include:

- their proposed regulatory treatment of enhanced DSM as an abatement measure in 2018, 2019, and 2020, and the amount of their enhancements for 2018;
- the need for the utilities to produce analysis of DSM abatement costs relative to forecast allowance costs;
- the utilities' analysis of the impact of the linkage with California and Quebec on January 1, 2018, and the impact of a decision not to link, or delay linkage, for the Compliance Plan, for the remainder of the first compliance period, including the likely impact of no linkage on allowance prices;
- have the utilities spell out the regulatory treatment they require to advance other abatement projects, in particular the increased use of heat pumps;
- have Union and EGD propose and provide a detailed rationale for their preferred regulatory treatment of the long-term investments and OM&A activities to reduce GHG

emissions that they have been considering, including whether such activities (long-term investments, OM&A, or new business activities) should be part of the regulated utility, in a separate legal entity, or in the unregulated part of the utility, and how Union should be involved in the government's GHG reduction programs.

All of which is respectfully submitted, this 18th day of May, 2017.

Tom Brett,
Counsel for BOMA

ATTACHMENT 1

AMENDED IN SENATE MAY 1, 2017

SENATE BILL **No. 775**

Introduced by Senator Wieckowski

February 17, 2017

~~An act to amend Section 38564 of the Health and Safety Code, relating to greenhouse gases.~~ *An act to amend Section 12894 of, and to add Section 16428.87 to, the Government Code, and to amend Section 38505 of, to add Section 38574.5 to, and to add Part 5.5 (commencing with Section 38575) and Part 5.6 (commencing with Section 38577) to Division 25.5 of, the Health and Safety Code, relating to greenhouse gases, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 775, as amended, Wieckowski. ~~California Global Warming Solutions Act of 2006: greenhouse gas emissions reduction.~~ *California Global Warming Solutions Act of 2006: market-based compliance mechanisms.*

(1) The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act authorizes the state board to include use of market-based compliance mechanisms. Existing law prohibits a state agency from linking a market-based compliance mechanism with any other state, province, or country unless the state agency notifies the Governor. Existing law requires the Governor to issue specified findings within 45 days of receiving that notice from a state agency and to provide those findings to the Legislature.

This bill would add to the findings required to be issued by the Governor and provided to the Legislature in those circumstances.

(2) The California Global Warming Solutions Act of 2006 requires the state board to approve a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020 and to ensure that statewide greenhouse gas emissions are reduced to at least 40% below the 1990 level by 2030.

This bill would require the state board to adopt a regulation establishing as a market-based compliance mechanism a market-based program of emissions limits, applicable on and after January 1, 2021, for covered entities, as defined. The bill would require the program to set an initial minimum reserve price of $20 per allowance, as defined, and an initial auction offer price of $30 per allowance when auctioning allowances. The bill would require the program to increase the minimum reserve price each quarter by $1.25 plus any increase in the Consumer Price Index, and the auction offer price each quarter by $2.50 plus any increase in the Consumer Price Index, as specified. The bill would authorize the state board to revise the definition of a covered entity, as specified.

The bill would establish the Economic Competitive Assurance Program, to be administered by the state board, to ensure that importers that sell, supply, or offer for sale in the state a greenhouse gas emission intensive product have economically fair and competitive conditions and to maintain economic parity between producers that are subject to the market-based program of emissions limits and those who sell like goods instate that are not subject to that program, as specified.

This bill would establish the California Climate Infrastructure Fund, the California Climate Dividend Fund, and the California Climate and Clean Energy Research Fund in the State Treasury. The bill would require the Franchise Tax Board, in consultation with the Climate Dividend Access Board, which the bill would establish, to develop and implement a program to deliver quarterly per capita dividends to all residents of the state that would maximize the ease with which residents of the state may enroll in the program, as specified.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act requires the state board to consult with other states, the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control~~

~~programs, and facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.~~

~~*This bill would require the state board also to consult with local agencies for these purposes.*~~

Vote: ~~majority~~ ~~2/3~~. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12894 of the Government Code is amended to read:

12894. (a) (1) The Legislature finds and declares that the establishment of nongovernmental entities, such as the Western Climate Initiative, Incorporated, and linkages with other states and countries by the State Air Resources Board or other state agencies for the purposes of implementing ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code,~~ *Code)* should be done transparently and should be independently reviewed by the Attorney General for consistency with all applicable laws.

(2) The purpose of this section is to establish new oversight and transparency over any such linkages and related activities undertaken in relation to ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* by the executive agencies ~~in order~~ to ensure consistency with applicable laws.

(b) (1) The California membership of the board of directors of the Western Climate Initiative, Incorporated, shall be modified as follows:

(A) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Senate Committee on Rules.

(B) One appointee or his or her designee who shall serve as an ex officio nonvoting member shall be appointed by the Speaker of the Assembly.

(C) The ~~Chairperson~~ *Chair* of the State Air Resources Board or her or his designee.

(D) The Secretary for Environmental Protection or his or her designee.

(2) ~~Sections 11120 through 11132 do~~ *The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1) does* not apply to the Western Climate Initiative, Incorporated, or to appointees specified in subparagraphs (C) and (D) of paragraph (1) when performing their duties under this section.

(c) The State Air Resources Board shall provide notice to the Joint Legislative Budget Committee, consistent with that required for Department of Finance augmentation or reduction authorizations pursuant to subdivision (e) of Section 28.00 of the annual Budget Act, of any funds over one hundred fifty thousand dollars ($150,000) provided to the Western Climate Initiative, Incorporated, or its derivatives or subcontractors no later than 30 days prior to transfer or expenditure of these funds.

(d) The ~~Chairperson~~ *Chair* of the State Air Resources Board and the Secretary for Environmental Protection, as the California voting representatives on the Western Climate Initiative, Incorporated, shall report every six months to the Joint Legislative Budget Committee on any actions proposed by the Western Climate Initiative, Incorporated, that affect California state government or entities located within the state.

(e) For purposes of this section, "link," "linkage," or "linking" means an action taken by the State Air Resources Board or any other state agency that will result in acceptance by the State of California of compliance instruments issued by any other governmental agency, including any state, province, or country, for purposes of demonstrating compliance with the market-based compliance mechanism established pursuant to ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations.

(f) A state agency, including, but not limited to, the State Air Resources Board, shall not link a market-based compliance mechanism established pursuant to ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* and specified in Sections 95801 to 96022, inclusive, of Title 17 of the California Code of Regulations with any other state, province, or country unless the state agency notifies the Governor that the agency

intends to take such action and the Governor, acting in his or her independent capacity, makes all of the following findings:

(1) The jurisdiction with which the state agency proposes to link has adopted program requirements for greenhouse gas reductions, including, but not limited to, requirements for offsets, that are equivalent to or stricter than those required by ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code.~~ *Code).*

(2) Under the proposed linkage, the State of California is able to enforce ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code~~ *Code)* and related statutes, against any entity subject to regulation under those statutes, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and California Constitutions.

(3) The proposed linkage provides for enforcement of applicable laws by the state agency or by the linking jurisdiction of program requirements that are equivalent to or stricter than those required by ~~Division~~ *the California Global Warming Solutions Act of 2006 (Division* 25.5 (commencing with Section 38500) of the Health and Safety ~~Code.~~ *Code).*

(4) The proposed linkage and any related participation of the State of California in Western Climate Initiative, Incorporated, shall not impose any significant liability on the state or any state agency for any failure associated with the linkage.

(5) The jurisdiction with which the state agency proposes to link has adopted legally binding program requirements for greenhouse gases that include minimum carbon prices, including auction reserve prices, that are equivalent to or greater than those required by the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(6) The prospective link does not threaten the uninterrupted performance and purpose of the California Climate Dividend Program, established by Part 5.6 (commencing with Section 38577) of Division 25.5 of the Health and Safety Code, with a finding made in consultation with the Franchise Tax Board.

(g) The Governor shall issue findings pursuant to subdivision (f) within 45 days of receiving a notice from a state agency, and

shall provide those findings to the Legislature. The findings shall consider the advice of the Attorney General. The findings to be submitted to the Legislature shall not be unreasonably withheld. The findings shall not be subject to judicial review.

SEC. 2. Section 16428.87 is added to the Government Code, to read:

16428.87. (a) The California Climate Infrastructure Fund is hereby created in the State Treasury.

(b) The California Climate Dividend Fund is hereby created in the State Treasury. Moneys in the fund shall be allocated, upon appropriation, pursuant to Part 5.6 (commencing with Section 38577) of Division 25.5 of the Health and Safety Code.

(c) The California Climate and Clean Energy Research Fund is hereby created in the State Treasury.

SEC. 3. Section 38505 of the Health and Safety Code is amended to read:

38505. For ~~the~~ purposes of this division, the following terms have the following meanings:

(a) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. "Alternative compliance mechanism" includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) *(1)* "Carbon dioxide equivalent" means the amount of carbon dioxide by ~~weight~~ *mass* that would produce the same global warming impact as a given ~~weight~~ *mass* of another greenhouse ~~gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.~~ *gas over a specified time horizon.*

(2) In calculating the carbon dioxide equivalent of any greenhouse gas emission pursuant to this subdivision, the state board shall use the best available scientific information, including the most recent findings from the Intergovernmental Panel on Climate Change. Where other jurisdictions use different methods for calculating the carbon dioxide equivalent of any greenhouse gas emissions, the state board may in parallel report carbon

dioxide equivalents using these alternative methods, but the state board shall not use the existence of alternative methods in other jurisdictions as a basis for selecting methods other than the best available scientific information, including the most recent findings from the Intergovernmental Panel on Climate Change, for regulations developed pursuant to this division. The state board shall select consistent methods in calculating carbon dioxide equivalents across all regulations developed pursuant to this division.

(d) "Cost-effective" or "cost-effectiveness" means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) "Direct emission reduction" means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(f) "Emissions reduction measure" means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(g) "Greenhouse gas" or "greenhouse gases" includes all of the following gases:

(1) Carbon dioxide.

(2) Methane.

(3) Nitrous oxide.

(4) Hydrofluorocarbons.

(5) Perfluorocarbons.

(6) Sulfur hexafluoride.

(7) Nitrogen trifluoride.

(h) "Greenhouse gas emissions limit" means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(i) "Greenhouse gas emission source" or "source" means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) "Market-based compliance mechanism" means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or ~~emission~~ *emissions* reduction measure adopted by the state board pursuant to this division.

(*l*) "State board" means the State Air Resources Board.

(m) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38550).

SEC. 4. Section 38574.5 is added to the Health and Safety Code, to read:

38574.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Allowance" means a tradeable compliance instrument that is equal to one metric ton of carbon dioxide equivalent and is issued by the state board as part of the regulation adopted pursuant to this section or is issued by the appropriate governing body of an external market-based compliance mechanism to which the program established pursuant to this section has been linked pursuant to Section 12894 of the Government Code.

(2) "Annual compliance event" means an annual process to demonstrate compliance with the program established pursuant to this section in which covered entities submit allowances to the

state board equal to a minimum specified proportion of their verified emissions of greenhouse gases for the prior year, as reported to the state board pursuant to Section 38530.

(3) "Carbon offset credits" means credits awarded to projects or programs for voluntary greenhouse gas emissions reductions that occur outside of the scope of covered entities' greenhouse gas emissions, including all credits issued by the state board pursuant to Section 38562.

(4) "Consumer Price Index" means the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations.

(5) "Covered entity" means a source of emissions of greenhouse gases that is within a source category that is subject to compliance obligations pursuant to subdivision (c) of Section 38562 as of January 1, 2017. For a new source of emissions of greenhouse gases commencing operation after January 1, 2017, "covered entity" means a source that would have been within a source category subject to compliance obligations under subdivision (c) of Section 38562 if it had began emitting greenhouse gases on or before January 1, 2017. If, after January 1, 2018, the state board determines that a future adjustment to the definition of "covered entity" is warranted, the adjustment shall result in at least an equal percentage of statewide greenhouse gas emissions remaining subject to the program established pursuant to this section as if the initial definition of "covered entity" developed under this subdivision were to apply.

(6) "Covered imported product" has the some meaning as in Section 38575.

(b) The state board shall adopt a regulation establishing as a compliance mechanism program of market-based emissions limits, applicable on and after January 1, 2021, to covered entities. The regulation shall do all of the following:

(1) Set annual aggregate emissions limits for greenhouse gas emissions from covered entities that the state board determines in conjunction with other policies applicable to statewide greenhouse gas emissions are sufficient to ensure the emissions target specified in Section 38566.

(2) Require, beginning January 1, 2021, the state board to conduct quarterly allowance auctions that are open to participation from covered entities, importers or sellers of covered imported

products, and any other participants who register with the state board for the purposes of participating in quarterly allowance auctions.

(3) Offer at each auction a number of allowances equal to the auction's quarterly share of the annual aggregate emissions limit established in paragraph (1).

(4) Require a covered entity to submit allowances equal to at least 90 percent of its annual carbon dioxide equivalent emissions at each annual compliance event, with the option to submit additional allowances without penalty to account for the remainder of its annual emissions, if any, at the subsequent year's annual compliance event. The state board shall determine the timing of the annual compliance event taking into account the availability of covered entities' verified emissions data as reported to the state board pursuant to Section 38530.

(5) Require that all allowances created pursuant to this section be offered for sale at auction and not allocated to covered entities either for free or for consignment sale, unless subsequent events trigger the creation of a free allowance allocation program pursuant to Section 38575.

(6) Require an initial minimum auction reserve price equal to twenty dollars ($20) per allowance. The state board shall not auction allowances to bidders at a price less than the currently applicable auction reserve price.

(7) Require an initial auction offer price equal to thirty dollars ($30) per allowance. At each auction, the state board shall make an unlimited number of allowances available at the currently applicable auction offer price.

(8) Require, beginning April 1, 2022, a quarterly increase in the auction reserve price on April 1, July 1, October 1, and January 1 of each year equal to one dollar and twenty-five cents ($1.25) plus a quarterly share of the percentage, if any, by which the Consumer Price Index increased for the preceding calendar year.

(9) Require, beginning April 1, 2021, a quarterly increase in the auction offer price on April 1, July 1, October 1, and January 1 of each year equal to two dollars and fifty cents ($2.50) plus a quarterly share of the percentage, if any, by which the Consumer Price Index increased for the preceding calendar year.

(10) Require allowances to be valid for compliance purposes only in the calendar year in which they are introduced into

circulation by the state board or for covering any remaining compliance obligations from the prior year pursuant to paragraph (4).

(11) Prohibit carbon offset credits from being used to meet a covered entity's compliance obligation required pursuant to paragraph (4).

(12) Prohibit an allowance or any other compliance instrument issued pursuant to a regulation adopted pursuant to Section 38562 from being used to meet a covered entity's compliance obligation required pursuant to paragraph (4).

(13) Prohibit compliance instruments issued by external market-based compliance mechanisms that have been linked pursuant to Section 12894 of the Government Code to a regulation adopted pursuant to Section 38562 from being used to meet a covered entity's compliance obligation required pursuant to paragraph (4).

(14) Allow for the use of compliance instruments issued by external market-based compliance mechanisms that have been linked pursuant to Section 12894 of the Government Code to the program established pursuant to this section to satisfy a covered entity's compliance obligation required pursuant to paragraph (4).

(c) All moneys collected pursuant to this section shall be deposited in the California Climate Dividend Fund, the California Climate and Clean Energy Research Fund, and the California Climate Infrastructure Fund, which are all created pursuant to Section 16428.87 of the Government Code, as follows:

(1) The first ____ per year shall be deposited into the California Climate and Clean Energy Research Fund.

(2) The next ____ per year shall be deposited into the California Climate Dividend Fund.

(3) All other remaining moneys shall be deposited into the California Climate Infrastructure Fund.

(d) On a quarterly and annual basis, the state board shall determine the net amount of moneys collected from covered entities pursuant to this section and Part 5.5 (commencing with Section 38575).

(e) (1) The state board, in consultation with the Franchise Tax Board, shall prepare an annual report summarizing the collection and disposition of all moneys collected pursuant to this section

and Part 5.5 (commencing with Section 38575). The state board shall make the report publicly available by posting the report on its Internet Web site.

(2) In addition to any other reporting requested by the Joint Legislative Committee on Climate Change Policies, the state board shall provide quarterly summary statistics of the moneys collected pursuant to this section and Part 5.5 (commencing with Section 38575) and make that summary publicly available by posting the summary on its Internet Web site.

(f) The state board, in consultation with the Franchise Tax Board, shall project and analyze the expected emissions of greenhouse gases and future revenue collection, taking into account uncertainty over future economic growth, energy consumption, and other relevant factors that affect the emissions of greenhouse gases. The projections shall include at least one-year and five-year emissions of greenhouse gases and revenue outlooks and shall be included in the annual report required pursuant to paragraph (1) of subdivision (e).

(g) In administering the collection and disposition of the moneys collected pursuant to this section and Part 5.5 (commencing with Section 38575), the state board and the Franchise Tax Board shall use conservative accounting management practices to maintain sufficient reserves in each of the funds established pursuant to Section 16428.87 of the Government Code. The appropriate accounting management practices may include reasonable projections determined on an annual basis of expected revenue collection to achieve the money collection and disposition requirements of this section, Part 5.5 (commencing with Section 38575), and Part 5.6 (commencing with Section 38577).

SEC. 5. Part 5.5 (commencing with Section 38575) is added to Division 25.5 of the Health and Safety Code, to read:

PART 5.5. ECONOMIC COMPETITIVENESS ASSURANCE PROGRAM

38575. (a) For purposes of this part, the following terms have the following meanings:

(1) "Allowance" has the same meaning as set forth in Section 38574.5.

(2) "Annual compliance event" has the same meaning as set forth in Section 38574.5.

(3) "Covered entity" has the same meaning as set forth in Section 38574.5.

(4) "Covered imported product" means a product or category of imported product that the state board has determined, after an evaluation of relevant market prices and associated lifecycle greenhouse gas emissions to exhibit a material price difference.

(5) (A) "Material price difference" means a substantial difference in the price of a covered imported product or prospective covered imported product that arises solely as a result of whether or not a substantial component of the product's lifecycle greenhouse gas emissions is not subject to the program established pursuant to Section 38574.5.

(B) In determining whether a material price difference exists, the state board shall consider only the economic consequences of the program established pursuant to Section 38574.5 and not other factors that are merely coincident with the program. The state board, at its discretion and based upon the availability of sufficient data, may evaluate whether a material price difference exists with respect to the retail or wholesale prices of the product.

(b) The Economic Competitiveness Assurance Program is hereby established, to be administered by the state board to ensure that importers that sell, supply, or offer for sale in the state a greenhouse gas emission intensive product have economically fair and competitive conditions. The purpose of the Economic Competitiveness Assurance Program is to maintain economic parity between producers, the prices of whose goods are materially impacted by the implementation of the program established pursuant to Section 38574.5, and those who sell like goods instate that are not subject to the program established pursuant to Section 38574.5. The state board shall adopt a regulation implementing this part that does all of the following:

(1) Applies to all covered imported products.

(2) Establishes a process for evaluating the prices and greenhouse gas emission intensities of major categories of products manufactured, sold, or consumed in the state. The state board shall use its expert discretion, emissions inventory data, state economic and trade data, and any other supplemental data sources necessary

to conduct a thorough analysis of the flow of greenhouse gas emission intensive products through the state economy.

(3) Establishes, and periodically updates, a list, based on analysis conducted pursuant to paragraph (2), of covered imported products and their associated greenhouse gas emissions intensities. The list shall include estimates of the lifecycle greenhouse gas emissions of covered imported products that the state board calculates by product type, production process, or any other aggregated category that the state board deems relevant, with lifecycle greenhouse gas emissions reported on a per product unit basis at the aggregated category level for each covered imported product.

(4) Creates a process for private parties involved in the sale of greenhouse gas emission intensive products manufactured instate to petition the state board to have a product listed as a covered imported product as a result of a material price difference. The state board shall evaluate private party petitions using consistent criteria for establishing the presence of a material price difference. The state board may prioritize the order in which it addresses the petitions according to reasonable factors, including the relative quantity of potentially affected greenhouse gas emissions and the relative impact of any economic disparities petitioners claim are created by the program established pursuant to Section 38574.5. To the maximum extent practicable, the state board shall be consistent across the evaluation of private party petitions and between the evaluation of private petitions and the state board's own determinations of covered imported products pursuant to paragraph (3).

(5) Creates a process for removing a covered imported product from the list of covered imported products created pursuant to paragraph (3) if at any time the state board concludes the program adopted pursuant to Section 38574.5 does not result in a material price difference for a listed product or covered imported product.

(6) Imposes an obligation on any person who sells, supplies, or offers for sale instate a covered imported product to surrender allowances equal to the lifecycle greenhouse gas emissions associated with each covered imported product sold or supplied for consumption in the state and that would have been subject to the program established pursuant to Section 38574.5 if the product had been manufactured instate. The person shall submit to the

state board allowances equal to at least 70 percent of the annual lifecycle greenhouse gas emissions obligated under this paragraph at the time of the annual compliance event established pursuant to Section 38574.5, with an option to submit additional allowances without penalty to account for the remainder, if any, at the subsequent year's annual compliance event. The obligation to surrender allowances established by this paragraph does not apply to individual products for which covered entities face compliance obligations for all substantial components of the covered imported product's lifecycle greenhouse gas emissions. If one or more covered entities are subject to compliance obligations for one or more substantial components, but not all substantial components, of the covered imported product's lifecycle greenhouse gas emissions, the state board, to the maximum extent practicable, shall reduce the obligation imposed by this paragraph on importers of those covered imported products to account only for the proportion of total lifecycle greenhouse gas emissions for which covered entities do not already face compliance obligations.

(7) Develops, to the maximum extent practicable, a process to exempt covered entities from the obligation to surrender allowances pursuant to Section 38574.5 for the production of covered imported products for which a covered entity faces a compliance obligation for a substantial component of the lifecycle greenhouse gas emissions of a covered imported product that is exported for final sale outside of the state or, at the state board's discretion, to instead develop a process for returning or issuing to covered entities the same number of valid allowances that the covered entity submitted to the state board to account for a substantial component of the lifecycle greenhouse gas emissions from covered imported products that are exported for final sale outside the state.

(8) Reduces, to the maximum extent practicable, the obligation to surrender allowances at the annual compliance event pursuant to paragraph (6) to account for any legally binding carbon pricing policies that apply in the place of origin of a covered imported product. For the purposes of this paragraph, carbon pricing policies may include carbon fees, carbon taxes, emissions limits programs, and other market-based compliance mechanisms that impose an explicit cost on greenhouse gas emissions. If a carbon pricing policy exists in the place or places of origin of a covered

imported product, but that policy does not impose carbon prices that are equivalent to those resulting from the program established pursuant to Section 38574.5, the state board shall use reasonable methods to account for the adjustments specified in this paragraph on a partial basis that reflect the difference between carbon pricing policies across applicable jurisdictions to the lifecycle greenhouse gas emissions of the covered imported product.

(9) Creates a process for a manufacturer or importer of a covered imported product to petition for an entity-specific lifecycle greenhouse gas emissions factor if it can provide credible documentation supporting the claim.

(10) Creates, if at any time a judicial opinion, settlement, or other legally binding decision reduces or eliminates the state board's authority to implement the Economic Competitiveness Assurance Program, a system that freely allocates allowances to the manufacturers subject to Section 38574.5 whose products the state board is no longer able to include as covered imported products in the Economic Competitiveness Assurance Program. The free allowance program is subject to all of the following:

(A) The purpose of a free allowance allocation pursuant to this paragraph is to maintain economic parity between producers of greenhouse gas intensive goods that are subject to Section 38574.5 and those who produce or sell similar products that are not.

(B) The state board shall design, to the extent feasible and subject to other conditions in this paragraph, a free allowance allocation program to treat manufacturers of greenhouse gas intensive goods that are subject to Section 38574.5 on an equal basis with respect to producers and sellers of similar goods that are not.

(C) The state board shall allocate any free allowances to covered entities according to a formula that accounts for the volumetric output of greenhouse gas intensive products produced, the greenhouse gas intensity of the product, the lifecycle greenhouse gas emissions of the average and best performing manufacturers instate, the impact of free allocation on the dividend distributed pursuant to subdivision (c) of Section 38577.2, and any other factors the state board finds appropriate.

(D) The state board, subject to the limited authority to allocate free allowances pursuant to this paragraph, shall require that the process for considering and prioritizing the eligibility of product

categories to receive free allowances be governed by the decisionmaking criteria and process provisions of this section.

(c) All moneys collected pursuant to this part shall be deposited in the California Climate Dividend Fund, created pursuant to Section 16428.87 of the Government Code.

SEC. 6. Part 5.6 (commencing with Section 38577) is added to Division 25.5 of the Health and Safety Code, to read:

PART 5.6. FUNDS

38577. For purposes of this part, "covered entity" has the same meaning as set forth in Section 38574.5.

38577.2. (a) The California Climate Dividend Program is hereby established to be administered by the Franchise Tax Board for allocation of the moneys in the California Climate Dividend Fund, created pursuant to Section 16428.87 of the Government Code, in the form dividends to all residents of the state on a per capita basis pursuant to subdivision (c) for the public purpose of mitigating the costs of transitioning to a low-carbon economy.

(b) (1) The Climate Dividend Access Board is hereby established and shall consist of six representatives with at least one member from each of the following groups:

(A) Nonprofit organizations working in the area of environmental justice.

(B) Nonprofit organizations working in the area of immigration reform.

(C) Nonprofit or government organizations providing direct social services to low-income or homeless communities.

(D) Organizations providing financial services and assistance to unbanked and underbanked communities.

(2) (A) The Senate Committee on Rules shall appoint two members.

(B) The Speaker of the Assembly shall appoint two members.

(C) The Governor shall appoint two members.

(3) The Climate Dividend Access Board shall conduct periodic public workshops and make recommendations to the Franchise Tax Board on how to effectively and safely distribute climate dividends to residents of communities in the state that are difficult to reach, including, but not limited to, homeless, unbanked, underbanked, and undocumented residents.

(4) The Climate Dividend Access Board, in making recommendations to the Franchise Tax Board pursuant to paragraph (3), shall consider methods to minimize the cost both to the state and to residents of alternative climate dividend distribution methods, with the goal of maximizing the degree to which climate dividend moneys benefit residents.

(c) (1) The Franchise Tax Board, in consultation with the Climate Dividend Access Board convened pursuant to subdivision (b), shall develop and implement a program to deliver quarterly per capita dividends to all residents and shall maximize the ease with which residents may enroll in the program. The program may include the automatic enrollment of residents who have filed a state income tax return in the prior year. The program shall provide per capita dividends on a quarterly basis unless the Franchise Tax Board, in consultation with the Climate Dividend Access Board, makes a finding that a quarterly dividend is impracticable for any particular category of residents. The Franchise Tax Board may determine an appropriate frequency of dividends provided to a category of residents of not less than at least once per year.

(2) If the Franchise Tax Board determines, after consultation with the Climate Dividend Access Board, that it cannot create a workable mechanism to distribute dividends to categories of residents, the Franchise Tax Board, in consultation with the Climate Access Dividend Board, may allocate dividends for those residents to nonprofit organizations providing direct services to those residents.

(3) In determining the per capita refund amount, the Franchise Tax Board shall employ reasonable estimates of expected carbon revenue collection and the projected number of residents, setting aside reasonable reserve margins from period to period to ensure that the per capita refund does not deplete available moneys in the California Climate Dividend Fund.

38577.4. All revenues generated pursuant to Section 38574.5 and Part 5.5 (commencing with Section 38575) constitute state funds for the purposes of the False Claims Act (Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

38577.6. This part does not affect the implementation of any other requirements of this division, including regulations developed pursuant to Part 5 (commencing with Section 38570).

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary to provide for the reauthorization, extension, and reform of the state's cap and trade program implemented pursuant to Part 5 (commencing with Section 38570) of Division 25.5 of the Health and Safety Code to provide certainty in the marketplace and to reduce the emissions of greenhouse gases in furtherance of achieving the statewide greenhouse gas emission target specified in Section 38566 of the Health and Safety Code at the earliest possible date.

~~SECTION 1. Section 38564 of the Health and Safety Code is amended to read:~~

~~38564. The state board shall consult with local agencies, other states, the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.~~

O

ATTACHMENT 2

Ontario Energy Board
COST CLAIM FOR HEARINGS
Affidavit and Summary of Fees and Disbursements

This form should be used by a party to a hearing before the Board to identify the fees and disbursements that form the party's cost claim. Paper and electronic copies of this form and itemized receipts must be filed with the Board and served on one or more other parties as directed by the Board in the applicable Board order. Please ensure all required (yellow-shaded) fields are filled in and the Affidavit portion is signed and sworn or affirmed.

Instructions

- Required data input is indicated by yellow-shaded fields. Formulas are embedded in the form to assist with calculations.
- All claims must be in Canadian dollars. If applicable, state exchange rate and country of initial currency.
  Rate: _____ Country: _____
- A separate "Detail of Fees and Disbursements Being Claimed" (comprising a "Statement of Fees Being Claimed" and a "Statement of Disbursements Being Claimed") is required for each lawyer, analyst/consultant and articling student/paralegal.
  However, only one "Summary of Fees and Disbursements" covering the whole of the party's cost claim should be provided.
- The cost claim must be supported by a completed Affidavit signed by a representative of the party.
- A CV for each consultant/analyst must be attached unless provided to the Board as prescribed on the Cost Award Tariff.

Except as provided in section 7.03 of the Practice Direction on Cost Awards, itemized receipts must be provided.

File # EB-	2016-0296/0300/0330	Process:	Cap and Trade Compliance Plans (Union, EGD, NRG)
Party:	BOMA	**Affiant's Name:**	Tom Brett
HST Number:	R119420859	**HST Rate Ontario:**	13.00%
Full Registrant	☑	Qualifying Non-Profit	☐
Unregistered	☐	Tax Exempt	☐
Other	☐		

Affidavit

I, **Tom Brett**, of the City/Town of Toronto
in the Province/State of Ontario, swear or affirm that:

1. I am a representative of the above-noted party (the "Party") and as such have knowledge of the matters attested to herein.
2. I have examined all of the documentation in support of this cost claim, including the attached "Summary of Fees and Disbursements Being Claimed", "Statement(s) of Fees Being Claimed" and "Statement(s) of Disbursements Being Claimed".
3. The attached "Summary of Fees and Disbursements Being Claimed", "Statement(s) of Fees Being Claimed" and "Statement(s) of Disbursements Being Claimed" include only costs incurred and time spent directly for the purposes of the Party's participation in the Ontario Energy Board process referred to above.
4. This cost claim does not include any costs for work done, or time spent, by a person that is an employee or officer of the Party as described in sections 6.05 and 6.09 of the Board's Practice Direction on Cost Awards.

_____
Signature of Affiant

Sworn or affirmed before me at the City/Town of Toronto,
in the Province/State of Ontario, on Nov. 16/17
(date)

_____
Commissioner for taking Affidavits

Ontario Energy Board
COST CLAIM FOR HEARINGS
Affidavit and Summary of Fees and Disbursements

File # EB- 2016-0296/0300/0330 Process: Cap and Trade Compliance Plans (Union, EGD, NRG)

Party: BOMA

Summary of Fees and Disbursements Being Claimed

Legal/consultant/other fees	$	71,544.00
Disbursements	$	61.71
HST	$	9,308.74
Total Cost Claim	**$**	**80,914.45**

Payment Information

Make cheque payable to: Fogler, Rubinoff LLP

Send payment to this address: Attn: Debbie Dey
77 King Street West, Suite 3000
PO Box 95, TD Centre
Toronto, ON M5K 1G8

Ontario Energy Board
COST CLAIM FOR HEARINGS
Detail of Fees and Disbursements Being Claimed

File # EB- *2016-0296/0300/0330* **Process:** *Cap and Trade Compliance Plans (Union, EGD, NRG)*

Party: *BOMA* **Service Provider Name:** Tom Brett

SERVICE PROVIDER TYPE	(check one)	Year Called to Bar	Completed Years Practising/Years of Relevant Experience
Legal Counsel	☑	1971	36
Articling Student/Paralegal	☐		
Consultant	☐		Hourly Rate: $330
Analyst	☐		

For Consultant/Analyst: ☐ CV attached **HST Rate Charged** (*enter %*): 13.0%

☑ CV provided within previous 24 months

Statement of Fees Being Claimed

	Hours	Hourly Rate	Subtotal	HST	Total
Pre-hearing Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Technical Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Interrogatories					
Preparation	50.40	$ 330.00	$ 16,632.00	$ 2,162.16	$ 18,794.16
Responses		$ 330.00	$ -	$ -	$ -
Issues Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
ADR - Settlement Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Proposal Preparation		$ 330.00	$ -	$ -	$ -
Argument					
Preparation	60.50	$ 330.00	$ 19,965.00	$ 2,595.45	$ 22,560.45
Oral Hearing					
Preparation	60.00	$ 330.00	$ 19,800.00	$ 2,574.00	$ 22,374.00
Attendance	17.00	$ 330.00	$ 5,610.00	$ 729.30	$ 6,339.30
Other Conferences					
Preparation	2.90	$ 330.00	$ 957.00	$ 124.41	$ 1,081.41
Attendance		$ 330.00	$ -	$ -	$ -
Case Management		$ 170.00	$ -	$ -	$ -
TOTAL SERVICE PROVIDER FEES			$ 62,964.00	$ 8,185.32	**$ 71,149.32**

Ontario Energy Board
COST CLAIM FOR HEARINGS
Detail of Fees and Disbursements Being Claimed

File # EB- *2016-0296/0300/0330* **Process:** *Cap and Trade Compliance Plans (Union, EGD, NRG)*

Party: *BOMA* **Service Provider Name:** *Tom Brett*

Statement of Disbursements Being Claimed				
		Net Cost	HST	Total
Scanning/Photocopy			$ -	$ -
Printing			$ -	$ -
Courier		$ 61.71	$ 8.02	$ 69.73
Telephone/Fax			$ -	$ -
Transcripts			$ -	$ -
Travel: Air			$ -	$ -
Travel: Car			$ -	$ -
Travel: Rail			$ -	$ -
Travel (Other):			$ -	$ -
Parking			$ -	$ -
Taxi			$ -	$ -
Accommodation			$ -	$ -
Meals			$ -	$ -
Other:			$ -	$ -
Other:			$ -	$ -
Other:			$ -	$ -
TOTAL DISBURSEMENTS:		$ 61.71	$ 8.02	$ 69.73

Ontario Energy Board
COST CLAIM FOR HEARINGS
Detail of Fees and Disbursements Being Claimed

File # EB- *2016-0296/0300/0330* **Process:** *Cap and Trade Compliance Plans (Union, EGD, NRG)*

Party: *BOMA* **Service Provider Name:** Marion Fraser

SERVICE PROVIDER TYPE	(check one)	Year Called to Bar	Completed Years Practising/Years of Relevant Experience
Legal Counsel	☐		36
Articling Student/Paralegal	☐		
Consultant	☑		Hourly Rate: $330
Analyst	☐		

For Consultant/Analyst: ☐ CV attached — HST Rate Charged (*enter %*): 13.0%

☑ CV provided within previous 24 months

Statement of Fees Being Claimed

	Hours	Hourly Rate	Subtotal	HST	Total
Pre-hearing Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Technical Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Interrogatories					
Preparation	22.00	$ 330.00	$ 7,260.00	$ 943.80	$ 8,203.80
Responses		$ 330.00	$ -	$ -	$ -
Issues Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
ADR - Settlement Conference					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Proposal Preparation		$ 330.00	$ -	$ -	$ -
Argument					
Preparation	4.00	$ 330.00	$ 1,320.00	$ 171.60	$ 1,491.60
Oral Hearing					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Other Conferences					
Preparation		$ 330.00	$ -	$ -	$ -
Attendance		$ 330.00	$ -	$ -	$ -
Case Management		$ 170.00	$ -	$ -	$ -
TOTAL SERVICE PROVIDER FEES			$ 8,580.00	$ 1,115.40	$ 9,695.40

Ontario Energy Board
COST CLAIM FOR HEARINGS
Detail of Fees and Disbursements Being Claimed

File # EB- *2016-0296/0300/0330* **Process:** *Cap and Trade Compliance Plans (Union, EGD, NRG)*

Party: *BOMA* **Service Provider Name:** *Marion Fraser*

Statement of Disbursements Being Claimed			
	Net Cost	HST	Total
Scanning/Photocopy		$ -	$ -
Printing		$ -	$ -
Courier		$ -	$ -
Telephone/Fax		$ -	$ -
Transcripts		$ -	$ -
Travel: Air		$ -	$ -
Travel: Car		$ -	$ -
Travel: Rail		$ -	$ -
Travel (Other):		$ -	$ -
Parking		$ -	$ -
Taxi		$ -	$ -
Accommodation		$ -	$ -
Meals		$ -	$ -
Other:		$ -	$ -
Other:		$ -	$ -
Other:		$ -	$ -
TOTAL DISBURSEMENTS:	$ -	$ -	$ -

Prebill # 949474 **Session: 548249** **Bill to: 08/Nov/17**

FOGLER, RUBINOFF LLP

Client: F1588
Fraser & Company

Matter: 168193
BOMA - Cap and Trade Compliance Plans (Combined Proceeding): Enbridge Gas Distribution Inc. (EB-2016-0300), Union Gas Limited (EB-2016-0296) and Natural Resource Gas Limited (EB-2016-0330)

CLIENT LAWYER: Brett, Thomas
MATTER_LAWYER: Brett, Thomas
LAWYER ON BILL: Brett, Thomas
LAST BILL DATE: NONE

PAYOR NAME & ADDRESS
Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON
M4P 1E4
Canada
Attn: Kirsten Walli

PAYOR: O5619 MAIN
BILL: O5619 MAIN

ACCOUNT APPROVAL

Thomas Brett

[ ] FINAL BILL: MATTER WILL BE MADE INACTIVE

UNBILLED TIME

LAST ENTRY	TIMEKEEPER	HOURS	AMOUNT		FEE CREDIT ALLOCATION [ ] AS DOCKETED	CODE	INIT
18/Oct/17	Thomas Brett	190.80	62,964.00			415	TB
13/Apr/17	Max Reedijk - student	10.35	0.00			S508	MRS
	TOTAL UNBILLED FEES	201.15	62,964.00	[ ] WRITE OFF			
	PREMIUM (WRITE DOWN)						
	TOTAL FEES THIS BILL						

UNBILLED DISBURSEMENTS

LAST ENTRY	CODE	DISB. TYPE	GST	AMOUNT	UNBILLED W/O	ANTICIPATED	TOTAL THIS BILL
19/Oct/17	7	Courier & Delivery	Y	67.94			
		TOTAL UNBILLED DISB		67.94	[ ] WRITE OFF		
		TOTAL ADJUSTMENTS					
		TOTAL DISB THIS BILL					

TRUST SUMMARY – A Trust was not opened on this Matter

Payor/Matter: O5619/**168193**
Ontario Energy Board
BOMA - Cap and Trade Compliance Plans (Combined Proceeding): Enbridge Gas Distribution Inc. (EB-2016-0300), Union Gas Limited (EB-2016-0296) and Natural Resource Gas Limited (EB-2016-0330)
Prebill No.: 949474
Session ID: 548249

LAST BILL DATE: NONE
LAST BILLED TO DATE: NONE

FILE LAWYER: Brett, Thomas
ASSIGNED LAWYER: Brett, Thomas

BILL ADDRESS
Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4
CANADA

PAYOR DEFAULT ADDRESS
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON
M4P 1E4

Walli, Kirsten

DETAIL OF UNBILLED TIME

DATE	TIME ID	TIMEKEEPER		HOURS	RATE	AMOUNT	DESCRIPTION
10/Feb/17	2939345	415	TB	3.00	330.00	990.00	Reviewing evidence; Preparing IRs
11/Feb/17	2939346	415	TB	2.20	330.00	726.00	Reviewing evidence; Preparing IRs
12/Feb/17	2939348	415	TB	2.00	330.00	660.00	Reviewing evidence; Preparing IRs
13/Feb/17	2942988	415	TB	4.10	330.00	1,353.00	Reviewing evidence; Preparing IRs
14/Feb/17	2942989	415	TB	5.50	330.00	1,815.00	Reviewing evidence; Preparing IRs
15/Feb/17	2942992	415	TB	5.60	330.00	1,848.00	Reviewing evidence; Preparing IRs
16/Feb/17	2942994	415	TB	5.00	330.00	1,650.00	Reviewing evidence; Preparing IRs
17/Feb/17	2947796	415	TB	5.00	330.00	1,650.00	Reviewing evidence; Preparing IRs
21/Feb/17	2947798	415	TB	5.00	330.00	1,650.00	Reviewing evidence; Preparing IRs
23/Feb/17	2947801	415	TB	8.50	330.00	2,805.00	Preparation of and filing IRs
24/Feb/17	2947803	415	TB	4.50	330.00	1,485.00	Reviewing evidence and IRs; Drafting correction to IRs and updating references
27/Feb/17	2951720	415	TB	0.50	330.00	165.00	Reviewing evidence and policies; Preparing for Hearing
28/Feb/17	2951727	415	TB	3.00	330.00	990.00	Reviewing evidence; Preparing for Hearing
01/Mar/17	2951732	415	TB	1.50	330.00	495.00	Reviewing evidence; Preparing for Hearing
02/Mar/17	2951734	415	TB	2.00	330.00	660.00	Reviewing evidence; Preparing for Hearing
06/Mar/17	2957260	415	TB	1.50	330.00	495.00	Reviewing evidence; Preparing for Hearing
07/Mar/17	2957268	415	TB	2.50	330.00	825.00	Reviewing evidence; Preparing for Hearing
08/Mar/17	2957276	415	TB	2.00	330.00	660.00	Reviewing evidence; Preparing for Hearing
10/Mar/17	2957283	415	TB	1.00	330.00	330.00	Reviewing evidence; Preparing for Hearing
13/Mar/17	2970788	415	TB	0.50	330.00	165.00	Reviewing evidence; Preparing for Hearing
14/Mar/17	2970795	415	TB	3.00	330.00	990.00	Reviewing evidence; Preparing for Hearing
15/Mar/17	2968822	S508	MRS	3.50	0.00	0.00	Cap and Trade Research - re Ontario policy documents, Quebec and California policy documents, evolution of policy, compliance monitoring, etc.
17/Mar/17	2968829	S508	MRS	3.20	0.00	0.00	Cap and Trade research re: Quebec, California, and Ontario, reviewed evolution of policy documents, created memo with links to relevant information
02/Apr/17	2976516	415	TB	1.50	330.00	495.00	Reviewing IRRs; Preparing for Hearing
04/Apr/17	2976529	415	TB	2.00	330.00	660.00	Reviewing IRRs; Preparing for Hearing
05/Apr/17	2976534	415	TB	2.00	330.00	660.00	Reviewing IRRs; Preparing for Hearing
06/Apr/17	2976552	415	TB	4.50	330.00	1,485.00	Reviewing IRRs; Preparing for Hearing
07/Apr/17	2978092	415	TB	5.00	330.00	1,650.00	Reviewing IRRs; Preparing for Hearing
10/Apr/17	2978098	415	TB	1.00	330.00	330.00	Reviewing California/Quebec Cap and Trade issues
10/Apr/17	2981355	S508	MRS	0.50	0.00	0.00	Meeting with Tom Brett re Cap and Trade research
12/Apr/17	2978113	415	TB	2.00	330.00	660.00	Preparation for Hearing
12/Apr/17	2981525	S508	MRS	0.90	0.00	0.00	Compiling Cap and Trade research into binder for Tom Brett
13/Apr/17	2978122	415	TB	6.50	330.00	2,145.00	Reviewing IRRs; Preparing for Hearing
13/Apr/17	2981534	S508	MRS	2.25	0.00	0.00	Compiled Cap and Trade research into binder for Tom Brett; meeting with Tom Brett to discuss research

Payor/Matter: O5619/**168193**
Ontario Energy Board
BOMA - Cap and Trade Compliance Plans (Combined Proceeding): Enbridge Gas Distribution Inc. (EB-2016-0300), Union Gas Limited (EB-2016-0296) and Natural Resource Gas Limited (EB-2016-0330)
Prebill No.: 949474
Session ID: 548249

LAST BILL DATE: NONE
LAST BILLED TO DATE: NONE

FILE LAWYER: Brett, Thomas
ASSIGNED LAWYER: Brett, Thomas

BILL ADDRESS
Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4
CANADA

PAYOR DEFAULT ADDRESS
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON
M4P 1E4

Walli, Kirsten

DATE	TIME ID	TIMEKEEPER		HOURS	RATE	AMOUNT	DESCRIPTION
14/Apr/17	2978125	415	TB	3.00	330.00	990.00	Preparation for Hearing
15/Apr/17	2978128	415	TB	2.50	330.00	825.00	Preparation for Hearing
16/Apr/17	2978130	415	TB	1.50	330.00	495.00	Reviewing evidence; Preparing for Hearing
18/Apr/17	2982737	415	TB	1.25	330.00	412.50	Preparation for Hearing
18/Apr/17	2982738	415	TB	7.25	330.00	2,392.50	Attending Hearing
19/Apr/17	2982740	415	TB	6.50	330.00	2,145.00	Preparation for Hearing
20/Apr/17	2982956	415	TB	9.50	330.00	3,135.00	Preparation for and attending Hearing
21/Apr/17	2982957	415	TB	1.50	330.00	495.00	Preparation for Hearing
21/Apr/17	2982959	415	TB	2.00	330.00	660.00	Attending Hearing
23/Apr/17	2982960	415	TB	2.00	330.00	660.00	Preparation of Argument
24/Apr/17	2984922	415	TB	5.20	330.00	1,716.00	Preparation of Argument
25/Apr/17	2984925	415	TB	4.40	330.00	1,452.00	Preparation of Argument
26/Apr/17	2984927	415	TB	7.00	330.00	2,310.00	Preparation of Argument
27/Apr/17	2984928	415	TB	1.80	330.00	594.00	Preparation of Argument
01/May/17	2991647	415	TB	5.00	330.00	1,650.00	Drafting Argument
02/May/17	2991649	415	TB	6.30	330.00	2,079.00	Drafting Argument
03/May/17	2991650	415	TB	2.50	330.00	825.00	Drafting Argument
03/May/17	2991653	415	TB	3.50	330.00	1,155.00	Drafting Argument
04/May/17	2991656	415	TB	7.00	330.00	2,310.00	Drafting Arguments
15/May/17	2995422	415	TB	6.00	330.00	1,980.00	Drafting Arguments
16/May/17	2995424	415	TB	6.50	330.00	2,145.00	Drafting Arguments
17/May/17	2995425	415	TB	2.30	330.00	759.00	Reviewing and revising Arguments
18/May/17	2997119	415	TB	1.00	330.00	330.00	Finalizing BOMA's Written Submission (Argument) for Union
27/Sep/17	3070846	415	TB	0.70	330.00	231.00	Reviewing Decision and Order
18/Oct/17	3079889	415	TB	2.20	330.00	726.00	Reviewing Rate Order and Accounting Orders and preparing Comments
			TOTAL TIME	201.15		62,964.00	

DETAIL OF UNBILLED DISBURSEMENTS

DATE	DISB ID	CODE		QUAN	AMOUNT	DESCRIPTION
30/Nov/16	6967804	7	Courier & Delivery		11.99	16:11 TB Courier: Blizzard# 7527381 ONTARIO ENERGY-2300 Yonge St-Julie M.
24/Feb/17	7106614	7	Courier & Delivery		19.98	09:02 TB Courier: Blizzard# 7560670 ONTARIO ENERGY-2300 Yonge St-sarah s
27/Feb/17	7106666	7	Courier & Delivery		11.99	11:02 TB Courier: Blizzard# 7561470 Ontario Energy Baord-2300 Yonge St-Pat P.
18/May/17	7233661	7	Courier & Delivery		11.99	10:05 TB Courier: Blizzard# 7596553 ONT ENERGY BOARD-2300 Yonge St-Fatima
19/Oct/17	7502312	7	Courier & Delivery		11.99	11:10 TB Courier: Blizzard# 7655669 ONTARIO ENERGY BOARD-2300 Yonge St-Fatima
			TOTAL DISB		67.94	

Payor/Matter: O5619/**168193**
Ontario Energy Board
BOMA - Cap and Trade Compliance Plans (Combined Proceeding): Enbridge Gas Distribution Inc. (EB-2016-0300), Union Gas Limited (EB-2016-0296) and Natural Resource Gas Limited (EB-2016-0330)
Prebill No.: 949474
Session ID: 548249

LAST BILL DATE: NONE
LAST BILLED TO DATE: NONE

FILE LAWYER: Brett, Thomas
ASSIGNED LAWYER: Brett, Thomas

BILL ADDRESS
Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4
CANADA

PAYOR DEFAULT ADDRESS
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON
M4P 1E4

Walli, Kirsten

MARION FRASER DOCKET

EB-2016-0296 Union Gas Cap and Trade	BOMA
Board File Number	Party Name

Fraser & Company

Date	Explanation	Consultant	Preparation	Attendance TC	Attendance SC	Attendance OH	Argument	Total
7-Feb-17	Review of Application	MEF	4					0
21-Feb-17	Drafting Irs	MEF	6	0				0
20-Mar-17	Review of IRRs	MEF	2	0				2
5-May-17	Meeting re Argument	MEF	1					
Total			13	0	0	0	0	13

MARION FRASER DOCKET

EB-2016-0300 Enbridge Cap and Trade	BOMA
Board File Number	Party Name

Fraser & Company

Date	Explanation	Consultant	Preparation	Attendance TC	Attendance SC	Attendance OH	Argument	Total
7-Feb-17	Review of Application	MEF	4					4
21-Feb-17	drafting Irs	MEF	4	0				4
20-Mar-17	Review of IRRs	MEF	2	0				2
5-May-17	Meeting to discuss Argument	MEF	1					1
	Review of draft argument		2					2
								0
								0
Total			13	0	0	0	0	13

						21	1130 16:31			
44	752-7277	1 Ret	1130 15:22	Fogler Rubinoff 77 King St. West	INDUSTRY CANADA 151 Yonge St	CZS - 153929	received parvin 1130 16:16	12.10	Q
45	752-7292	3 (nd)	1130 15:29	Fogler Rubinoff 77 King St. West	CBV COLLECTION SERVICES 100 Sheppard Ave E (Nort)	RMR - 165438	Vanee 1201 08:40	14.85	I
46	752-7296	3 (nd)	1130 15:32	Fogler Rubinoff 77 King St. West	GERALD BRUNT 128 Byron St N (Whit)	RM - 165438	Karen 1201 08:06	41.26	+44
47	752-7303	3 (nd)	1130 15:36	Fogler Rubinoff 77 King St. West	HMOEQUITY BANK 1881 Yonge St	RMR - 167019	Tina Osborne 1201 08:34	9.08	K
48	752-7307	3 (nd)	1130 15:38	Fogler Rubinoff 77 King St. West	JOHNSTON MONTGOMERY 201 Byron St S (Whit)	JMJ - 061753	Erin 1201 08:06	41.26	+44
49	752-7317	4	1130 15:40	Fogler Rubinoff 77 King St. West	Canadian Imperial Bank of Comm 1 City Centre Dr (Miss)	DFH - 095610	Nick V 1201 11:40	10.89	17
50	752-7322	3 (nd)	1130 15:42	Fogler Rubinoff 77 King St. West	Trinity Development Group Inc, 3250 Bloor St W (Etob)	SAC - 155193	Leah 1201 11:28	13.20	17
51	752-7341	1 (nd)	1130 15:56	Fogler Rubinoff 77 King St. West	SAX LAWYERS 1255 Bay St	BEF - 002814	gail/gail 1130 17:15	11.00	666
52	752-7346	4	1130 15:58	Fogler Rubinoff 77 King St. West	DIMAURO LAW PROFESSIONAL 155 Rexdale Blvd (Etob)	BR - 167029	Marrisa 1201 11:07	10.89	17
53	752-7364	0 Ret	1130 16:10	Fogler Rubinoff 77 King St. West	TD BANK 55 King St W	ACC - 999999	Bary 1130 17:06	15.00	B
54	752-7381	4	1130 16:25	Fogler Rubinoff 77 King St. West	ONTARIO ENERGY 2300 Yonge St	TB - 168193	Julie M. 1201 07:46	10.89	K
55	752-7403	0 Ret	1130 16:53	Fogler Rubinoff 77 King St. West	ROYAL BANK 200 Bay St	GM - 146576	Barry 1130 17:19	15.00	B
							SubTotal	1018.04	
							HST	132.34	
DownLoad report for this date range							**Total**	**1150.38**	

Fogler Rubinoff

Blizzard Courier Orders

2017.02.24

Created: 20170302 14:43:40 ver: 2.9.27

#	Waybill	Srv Type	Order Time	Pickup Address	DropOff Address	Reff	Received By	$	Agent
1	756-0561	0	0224 08:10	CANADA POST 222 Bay St	Fogler Rubinoff 77 King St. West	MLR - 999999	parvin 0224 08:33	9.02	B
2	756-0566	0	0224 08:18	Fogler Rubinoff 77 King St. West	HIRSH LUXURY DEVELOPMENTS INC 200 Russell Hill Rd	ADL - 155495	richard 0224 09:33	19.80	69
3	756-0567	0	0224 08:19	Fogler Rubinoff 77 King St. West	DLA PIPER CANADA 100 King St W	JBG - 167812	Angelia 0224 08:45	9.02	B
4	756-0569	1	0224 08:24	Fogler Rubinoff 77 King St. West	CITY OF TORONTO FIRE SERVICES 77 Elizabeth St	DS - 162283	vicky 0224 09:08	6.05	666
5	756-0570	1	0224 08:26	Fogler Rubinoff 77 King St. West	college of physician & surgeon 80 College St	CRD - 032020	carl 0224 09:27	6.05	666
6	756-0655	1	0224 09:50	Fogler Rubinoff 77 King St. West	Garfinkle Biderman LLP 1 Adelaide St E	BR - 166911	Lisa 0224 10:55	6.05	B
7	756-0659	0	0224 09:53	Fogler Rubinoff 77 King St. West	the city of vaughan 2141 Major Mackenzie Dr (Vaug)	GM - 165215	malila 0224 11:33	68.48	26
8	756-0663	1	0224 09:56	Fogler Rubinoff 77 King St. West	heathwood homes 245 Yorkland Blvd (Nort)	GM - 165209	Teresa 0224 11:46	29.15	+87
9	756-0668	1	0224 09:58	Fogler Rubinoff 77 King St. West	BBS SECURITIES INC 4100 Yonge St (Nort)	RMH - 123385	alice tsai 0224 11:58	22.00	Y
10	756-0670	1	0224 09:59	Fogler Rubinoff 77 King St. West	ONTARIO ENERGY 2300 Yonge St	TB - 168193	sarah s 0224 11:19	18.15	Y
11	756-0673	0	0224 10:02	Fogler Rubinoff 77 King St. West	GOLDMAN SLOAN 480 University Ave	RMR - 167886	Jodi 0224 10:46	9.02	555
12	756-0678	0	0224 10:04	Fogler Rubinoff 77 King St. West	SUPERIOR COURT 330 University Ave	TJA - 164127	Ross 0224 10:42	9.02	555
13	756-0681	1	0224 10:05	Fogler Rubinoff 77 King St. West	MACKIE RESEARCH 199 Bay St	RM - 167782	Kay 0224 10:24	6.05	B
14	756-0693	0 Ret	0224 10:11	Fogler Rubinoff 77 King St. West	TD BANK 55 King St W	AT - 164707	parvin 0224 10:41	15.00	B
15	756-0695	0 Ret	0224 10:12	Fogler Rubinoff 77 King St. West	TD BANK 55 King St W	AT - 164707	Danell-parvin 0224 10:42	15.00	B
16	756-0698	1	0224 10:15	Fogler Rubinoff 77 King St. West	Rubenstein Siegel 1200 Sheppard Ave E (Nort)	JBS - 168316	Bernadette 0224 12:19	29.15	49
17	756-0702	4	0224 10:17	Fogler Rubinoff 77 King St. West	TORONTO SMALL COURT 47 Sheppard Ave E (Nort)	JSP - 166617	Lubna 0227 09:25	10.89	I
18	756-0752	4	0224 10:58	Fogler Rubinoff 77 King St. West	BOTNICK & BOTNICK 2300 Finch Ave W (Nort)	GM - 165262	emily 0227 12:58	10.89	69
19	756-0754	4	0224 11:01	Fogler Rubinoff 77 King St. West	SASITHARAN LAW PROFESSIONA COR 10 Milner Business Crt (Scar)	GM - 165263	Hend 0227 13:55	10.89	55
20	756-0759	4	0224 11:03	Fogler Rubinoff 77 King St. West	L PETER CLYNE 1595 16th Ave (Rich)	JBG - 164485	Mila 0227 09:44	16.78	22
21	756-0765	4	0224 11:04	Fogler Rubinoff 77 King St. West	THE CASTLE LAWYERS 2355 Derry Rd E (Miss)	GM - 165213	L__Lyn 0227 11:55	10.89	17
22	756-0833	1	0224 11:28	Fogler Rubinoff 77 King St. West	Bennett Gold LLP 150 Ferrand Dr (Nort)	ved - 132756	joyce 0224 13:05	22.00	35
23	756-0877	3 (nd)	0224 12:07	Fogler Rubinoff 77 King St. West	CANADIAN PROCESS SERVING INC 1300 King St E (Osha)	IPK - 168197	Gail 0227 12:14	48.13	55
	756-		0224	Fogler Rubinoff 77	DOUGLAS STRELSHIK	DKM -	Dianna		

Fogler Rubinoff

Blizzard Courier Orders

2017.02.27

Created: 20170302 14:44:07 ver: 2.9.27

#	Waybill	Srv Type	Order Time	Pickup Address	DropOff Address	Reff	Received By	$	Agent
1	756-1230	0	0227 08:04	CANADA POST 222 Bay St	Fogler Rubinoff 77 King St. West	MLR - 999999 Lbs: 25 $3.75	parvin 0227 08:52	12.77	B
2	756-1249	1	0227 08:22	Fogler Rubinoff 77 King St. West	BANK OF MONTREAL 100 King St W	VW - 124395	winsom 0227 08:51	6.05	B
3	756-1251	2	0227 08:24	Fogler Rubinoff 77 King St. West	OSLER HOSKIN 100 King St W	KWM - 141933	Lo yola 0227 08:57	4.51	B
4	756-1346	0	0227 09:50	Fogler Rubinoff 77 King St. West	community trust company 2350 Matheson Blvd E (Miss)	br - 168446	Linda 0227 11:40	54.45	56
5	756-1377	3	0227 10:14	Fogler Rubinoff 77 King St. West	Harinder Singh Gahir 373 Steeles Ave W (Bram)	GM - 162613	Menjot 0227 16:28	33.28	38
6	756-1379	1	0227 10:15	Fogler Rubinoff 77 King St. West	Oncorp Direct 1033 Bay St	ACC - 999999	Vivian 0227 11:54	6.05	555
7	756-1420	3	0227 10:47	Fogler Rubinoff 77 King St. West	JACK F S LEE 4168 Finch Ave E (Scar)	GM - 146374	Vicky 0227 15:38	18.15	37
8	756-1466	1	0227 11:18	Fogler Rubinoff 77 King St. West	LAW SOCIETY OF UPPER CANA 130 Queen St W	ACC - 999999	Ellie 0227 12:31	6.05	B
9	756-1470	4	0227 11:25	Fogler Rubinoff 77 King St. West	Ontario Energy Baord 2300 Yonge St	TB - 168193	Pat P. 0227 15:07	10.89	K
10	756-1560	1	0227 12:12	Fogler Rubinoff 77 King St. West	Ontario Motor Vechicle Industr 65 Overlea Blvd	JMJ - 164294	Yoel 0227 14:54	18.15	37
11	756-1562	4	0227 12:14	Fogler Rubinoff 77 King St. West	ROBERT ROSE LAW OFFICE 414 North Service Rd E (Oakv)	GM - 162582	Liz___F/Liz___F 0228 09:20	18.70	17
12	756-1571	4	0227 12:23	Fogler Rubinoff 77 King St. West	compugen inc 100 Via Renzo Dr (Rich)	CRD - 071044	Debbie 0228 08:42	16.78	22
13	756-1574	4	0227 12:25	Fogler Rubinoff 77 King St. West	Town of Richmond Hill 225 East Beaver Creek Rd (Rich)	BR - 171706 Pieces: 3 Extra Charge: $5.00	Domenic 0228 09:44	21.78	22
14	756-1590	0	0227 12:46	Fogler Rubinoff 77 King St. West	INTER WIDE INVESTMENTS LIMITED 170 Brockport Dr (Etob)	MLM - 131247	Foroula 0227 15:07	54.45	38
15	756-1602	0	0227 13:09	Fogler Rubinoff 77 King St. West	CANADIAN SHAREOWNER INVESTMENT 862 Richmond St W	LKS - 999999	Jason G 0227 13:43	14.85	45
16	756-1607	0	0227 13:12	Fogler Rubinoff 77 King St. West	TD CANADA TRUST 4880 Tahoe Blvd (Miss)	AP - 168618	T Dorjee 0227 14:32	54.45	45
17	756-1636	4	0227 13:50	Fogler Rubinoff 77 King St. West	LISA M BOLTON PROFESSIONAL COR 1276 Cleaver Dr (Oakv)	CRD - 168720	Mail B(ap(Par (9: 0228 19:42	18.70	17
18	756-1643	4	0227 13:59	Fogler Rubinoff 77 King St. West	BILL AND YVETTE MOORE 60 Ken Laushway Ave (Stou)	JMJ - 171948	Yvette M 0228 09:06	22.00	29
19	756-1651	0	0227 14:07	Fogler Rubinoff 77 King St. West	DLA PIPER 100 King St W	JBG - 167812	Scott 0227 14:17	9.02	B
20	756-1653	4	0227 14:09	Fogler Rubinoff 77 King St. West	LANDLORD AND TENANT BOARD 79 St Clair Ave E	SDC - 155860	Erica 0228 08:55	8.53	K
21	756-1676	0 Ret	0227 14:30	Fogler Rubinoff 77 King St. West	BMO 100 King St W	ACC - 999999	kathelyn-Barry 0227 16:07	15.00	B

Fogler Rubinoff

Blizzard Courier Orders

2017.05.18

Created: 20170523 15:17:31 ver: 2.9.27

#	Waybill	Srv Type	Order Time	Pickup Address	DropOff Address	Reff	Received By	$	Agent
1	759-6441	0	0518 07:37	canada post 222 Bay St	Fogler Rubinoff 77 King St. West	mlr - 999999 Pieces: 2 Lbs: 30 $4.50	Barry8:30 0518 08:52	13.52	B
2	759-6473	1 Ret	0518 08:59	Fogler Rubinoff 77 King St. West	COLLIERS INT 1 Queen St E	CRD - 171041	Barry 0518 10:23	12.10	B
3	759-6485	1	0518 09:12	Fogler Rubinoff 77 King St. West	COLLIERS INT 1140 Bay St	RBM - 144402	Lauren 0518 10:12	6.05	K
4	759-6487	0 Ret	0518 09:13	Fogler Rubinoff 77 King St. West	ROYAL BANK 200 Bay St	LC - 164516	All-Barry 0518 09:50	15.00	B
5	759-6490	3	0518 09:15	Fogler Rubinoff 77 King St. West	HEATHWOOD HOMES 245 Yorkland Blvd (Nort)	LC - 164516	Teresa 0518 11:40	14.58	+87
6	759-6503	1	0518 09:35	Fogler Rubinoff 77 King St. West	WESTMOUNT GUARABTEE SER 600 Cochrane Dr (Mark)	LN - 122822	Aisha 0518 11:40	45.38	+87
7	759-6553	4	0518 10:28	Fogler Rubinoff 77 King St. West	ONT ENERGY BOARD 2300 Yonge St	TB - 168193	Fatima 0518 13:18	10.89	Z
8	759-6574	2	0518 10:45	Fogler Rubinoff 77 King St. West	CIBC WORLD MARKETS 150 Bloor St W	JBG - 002820	Molly/Molly 0518 15:27	4.51	Z
9	759-6580	1	0518 10:51	Fogler Rubinoff 77 King St. West	TORONTO PARKING AUTHORITY 33 Queen St E	RM - 102156	Tess 0518 11:56	6.05	B
10	759-6584	1	0518 10:56	Fogler Rubinoff 77 King St. West	FUSE MARKETING 379 Adelaide St W	SRH - 086002	Beth 0518 12:47	6.05	555
11	759-6586	1	0518 10:58	Fogler Rubinoff 77 King St. West	COLLIERS INT 181 Bay St	CRD - 171041	Mary 0518 11:42	6.05	B
12	759-6643	4	0518 11:43	Fogler Rubinoff 77 King St. West	CITY OF VAUGHAN 2141 Major Mackenzie Dr (Vaug)	GM - 134013	Maliha 0519 11:25	16.78	29
13	759-6683	4	0518 12:12	Fogler Rubinoff 77 King St. West	PALLET VALO 77 City Centre Dr (Miss)	SRH - 084677 Lbs: 20 $3.00	MaryAnn 0519 11:05	13.89	17
14	759-6721	3 (nd)	0518 12:44	Fogler Rubinoff 77 King St. West	GOTTARDO GROUP 277 Pennsylvania Ave (Conc)	JW - 157429	Carmela 0519 10:50	33.28	29
15	759-6723	4	0518 12:48	Fogler Rubinoff 77 King St. West	SHELDON RAKOWSKY 1183 Finch Ave W (Nort)	HDR - 999999	joanne 0519 10:49	10.89	69
16	759-6785	0 Ret	0518 14:13	Fogler Rubinoff 77 King St. West	BNS 40 King St W	MDR - 171361	Elenna-Barry 0518 15:33	15.00	B
17	759-6794	0 Ret	0518 14:24	Fogler Rubinoff 77 King St. West	BMO 100 King St W	ACC - 999999	Justin-Barry 0518 15:33	15.00	B
18	759-6797	0 Ret	0518 14:25	Fogler Rubinoff 77 King St. West	HSBC 70 York St	ACC - 999999	Mostafa-Barry 0518 16:44	15.00	B
19	759-6844	0 Ret	0518 15:01	Fogler Rubinoff 77 King St. West	TD BANK 55 King St W	BR - 171706	Janel-Barry 0518 16:45	15.00	B
20	759-6846	1 Ret	0518 15:03	Fogler Rubinoff 77 King St. West	INDUSTRY CANADA 151 Yonge St	CSZ - 156965	Sarah-Barry 0518 16:53	12.10	B
21	759-6856	4	0518 15:13	Fogler Rubinoff 77 King St. West	TRINITY DEVELOPMNT 3250 Bloor St W (Etob)	MSW - 112168	Pat B 0519 11:26	10.89	17
22	759-6857	1	0518 15:15	Fogler Rubinoff 77 King St. West	DALE LESSMAN 181 University Ave	AP - 173048	Loltza 0518 15:32	6.05	B
23	759-6860	4	0518 15:17	Fogler Rubinoff 77 King St. West	SECOND DIMENSION 175 Galaxy Blvd (Etob)	MBN - 173385	Karen C 0519 11:00	10.89	17

Fogler Rubinoff

Blizzard Courier Orders

2017.10.19

Created: 20171025 12:30:48 ver: 2.9.27

#	Waybill	Srv Type	Order Time	Pickup Address	DropOff Address	Reff	Received By	$	Agent
1	765-5486	0	1019 07:39	canada post 222 Bay St	Fogler Rubinoff 77 King St. West	mlr - 999999 Pieces: 2 Lbs: 30 $4.50	parvin 1019 08:44	12.00	B
2	765-5509	2	1019 08:21	Fogler Rubinoff 77 King St. West	LAURENTIAN BANK OF CANADA 130 Adelaide St W	dfh - 173476	christopher 1019 09:10	4.51	B
3	765-5538	0 Ret	1019 09:17	Fogler Rubinoff 77 King St. West	Garfinkle Biderman LLP 1 Adelaide St E	CRD - 054115	lisa-Barry 1019 10:49	18.04	B
4	765-5542	0 Ret	1019 09:20	Fogler Rubinoff 77 King St. West	ROYAL BANK 200 Bay St	GM - 164453 Pieces: 2	Barry 1019 10:49	15.00	B
5	765-5544	1	1019 09:21	Fogler Rubinoff 77 King St. West	MATTHEW HARRIS 100 Sheppard Ave W (Nort)	MAD - 144365	Christina 1019 11:46	29.15	F
6	765-5559	0	1019 09:37	Fogler Rubinoff 77 King St. West	CHANG SCHOOL/HEASLIP HOUSE 297 Victoria St	LPB - 999999 Lbs: 25 $3.75	dan.f(reception 1019 10:58	12.77	33
7	765-5647	2	1019 10:52	Fogler Rubinoff 77 King St. West	WEATMOUNT GUARANTEE SERVICE IN 600 Cochrane Dr (Mark)	VW - 175597	12.57time/Aisha 1020 16:26	34.10	96
8	765-5650	4	1019 10:59	Fogler Rubinoff 77 King St. West	ONTARIO ENERGY BOARD 2300 Yonge St	TB - 175596 Pieces: 2	Fatima 1019 13:38	10.89	E
9	765-5669	4	1019 11:14	Fogler Rubinoff 77 King St. West	ONTARIO ENERGY BOARD 2300 Yonge St	TB - 168193	Fatima 1019 13:37	10.89	E
10	765-5725	1	1019 11:54	Fogler Rubinoff 77 King St. West	GOODMANS 333 Bay St	WRM - 164582	paul 1019 12:37	6.05	B
11	765-5792	1	1019 13:25	Fogler Rubinoff 77 King St. West	FTI CONULTING 79 Wellington St W	MAD - 144374	kate 1019 13:51	6.05	B
12	765-5809	4	1019 13:56	Fogler Rubinoff 77 King St. West	TRINITY DEV 3250 Bloor St W (Etob)	JBG - 143815	Pat 1020 09:10	10.89	93
13	765-5810	4	1019 13:58	Fogler Rubinoff 77 King St. West	DESIGN SCIENCE CORP 1550 Kingston Rd (Pick)	CRD - 141835	rolah 1020 08:37	15.40	33
14	765-5815	0 Ret	1019 14:11	Fogler Rubinoff 77 King St. West	BANK OF SCOTIA 40 King St W	RMR - 175795	dalla-parvin 1019 15:05	15.00	B
15	765-5849	4	1019 14:50	Fogler Rubinoff 77 King St. West	mrrobert peccia 253 Oxford St (Rich)	smg - 999999	Fdoor 1020 08:35	16.78	22
16	765-5888	4	1019 15:33	Fogler Rubinoff 77 King St. West	BVGLAZING SYSTEMS INC 131 Caldari Rd (Conc)	CRD - 136860 Pieces: 2 Lbs: 40 $6.00	kelly 1020 13:03	22.78	69
17	765-5892	2 (nd)	1019 15:36	Fogler Rubinoff 77 King St. West	homEquity bank 1881 Yonge St	RMR - 175795	anne 1020 08:56	13.75	Y
18	765-5895	2 (nd)	1019 15:39	Fogler Rubinoff 77 King St. West	FIRSTSERVICE CORPORATION 1140 Bay St	CRD - 171039	deanna 1020 10:02	4.51	666
19	765-5911	0 Ret	1019 15:52	Fogler Rubinoff 77 King St. West	TORONTO DOMINION BANK 55 King St W	ACC - 999999	Good night 1019 17:37	15.00	B
20	765-5949	2 (nd)	1019 16:30	Fogler Rubinoff 77 King St. West	Abrahamse Berkis Pinto LLP 2 St Clair Ave W	SS - 133825	matens 1020 09:05	8.25	Y
21	765-5966	3 (nd)	1019 16:59	Fogler Rubinoff 77 King St. West	PANAGO PIZZA 109 ATLANTIC AVE	SAC - 168081	Alexandra 1020 11:34	9.08	26
22	765-5972	3 (nd)	1019 17:39	CONCIERGE 66 Collier St	BRIARLANE RENTAL PROP 85 Spy Crt (Mark)	SHS - 144412	mariana 1020 15:49	26.68	96
							SubTotal	317.57	
							HST	41.28	
DownLoad report for this date range							**Total**	**358.85**	

ATTACHMENT 3

November 30, 2017

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: EB-2016-0296 - Union Gas Limited – 2017 Cap-and-Trade Compliance Plan – Comments on Cost Claims

Union Gas Limited ("Union") received cost claims for the above noted proceeding from:

- Association of Power Producers of Ontario ("APPrO"),
- Building Owners and Managers Association, Greater Toronto ("BOMA"),
- Consumers Council of Canada ("CCC"),
- Canadian Manufacturers & Exporters ("CME"),
- Federation of Rental-housing Providers of Ontario ("FRPO"),
- Industrial Gas Users Association ("IGUA"),
- London Property Management Association ("LPMA"),
- Low Income Energy Network ("LIEN"),
- School Energy Coalition ("SEC"),
- Environmental Defence ("ED"), and
- Ontario Sustainable Energy Association ("OSEA").

Union has reviewed the cost claims and, with the exception of BOMA, has no specific concerns. The cost claim submitted by BOMA appears to exceed the next highest claim and the approximate average of the other claims by approximately three times.

Based on the foregoing, the costs being claimed by BOMA appear to be excessive. The Ontario Energy Board should consider this when reviewing this cost claim.

Yours Truly,

[original signed by]

Adam Stiers
Manager, Regulatory Initiatives

cc: Crawford Smith, Torys
All Intervenors (EB-2016-0296)

AIRD BERLIS

Dennis M. O'Leary
Direct: 416.865.4711
E-mail: doleary@airdberlis.com

November 29, 2017

VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Enbridge 2017 Cap and Trade Compliance Plan
EB-2016-0300 Cost Claims

We are writing as counsel to Enbridge Gas Distribution Inc. ("**Enbridge**").

Currently we are aware of ten cost claims being filed by various parties which relates to the Enbridge 2017 Cap & Trade Compliance Plan proceeding. Three include cost claims specific to Enbridge's Compliance Plan application (EB-2016-0300) by CME, FRPO and Environmental Defence. However the cost claims of OSEA combine its claims against Enbridge and Union Gas into one claim and each of APPRO, BOMA, CCC, IGUA, LIEN, and SEC have aggregated their cost claims for the three natural gas utility compliance plan applications into one amount. While Enbridge has no comment on the specifics of the cost claims as filed, by the aggregation of claims by certain parties, it is unable to determine the amounts that are allocable to it. Presumably this also makes it difficult for the Board to make a costs Order.

Rather than put the several intervenors to the task of refiling their cost claims with an allocation of time and disbursements to each of the three natural gas utilities, one option is for the Board to consider, and if appropriate, approve the cost claims by the three parties which are directed specifically to Enbridge. In respect of the balance of the cost claims, where a party has aggregated its cost claims against two or all three of the utilities, then the aggregate of such amounts could be considered by the Board and, if appropriate, allocated to the two or three utilities on a pro-rata basis using the Gas Utility Compliance Plan Cost Forecast Summary Table which appears at Table 2 of the Board's Decision and Order dated September 21, 2017 ("Forecast Cost Table").

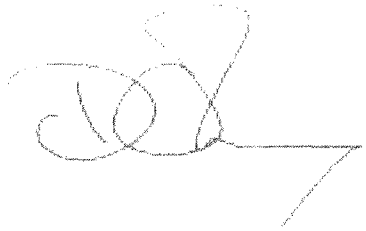
A potential concern with this approach is that certain parties may have expended little or no time on the NRG Compliance Plan Application and witness panel because they directed their attention to the earlier Enbridge and Union Gas evidence and witness panels. Many of the issues raised by the parties were addressed by Enbridge and Union Gas witnesses in writing or orally. Using a straight pro-rata allocation based upon the

Forecast Cost Table could lead to an inappropriately small amount being allocated to NRG as it appears that its share under such an approach would be less than 0.2%. If, for example, the aggregate of costs claimed totalled $100,000, NRG's share is calculated at only $200 which may not be appropriate.

In the event that a decision on cost claims is not issued in time for Enbridge to make payment of the approved amounts in calendar 2017, Enbridge confirms its view that any payment made in respect of these costs claims in 2018 will remain eligible to be included in the 2017 GGEIDA.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary
DMO/vf

Cc: Tom Brett
Kristi Sebalj
Vanessa Innis
Crawford Smith
Andrew Mandyam
Brian Lippold
Richard King

30973562.1

ATTACHMENT 4

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

Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 168193

December 7, 2017

VIA RESS, EMAIL AND COURIER

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

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: Cap and Trade Compliance Plans (Combined Proceeding): Enbridge Gas Distribution Inc. (EB-2016-0300), Union Gas Limited (EB-2016-0296) and EPCOR (EB-2016-0330)

BOMA is writing to support its cost claim, in light of Union's objection. BOMA filed lengthy, comprehensive, and well-reasoned arguments on both of Union's and EGD's compliance plans, and their respective rate impacts.

Moreover, in order to understand and properly address the companies' Cap and Trade Compliance Submissions, it was necessary to review the recently enacted cap and trade legislation and regulations, and the Ontario Government's policy framework and supporting documentation, all of which were complicated, lengthy documents. In order to clarify the evidence, BOMA found it necessary to ask many interrogatories; 47 of Union, and 46 of EGD. The fact that much of the evidence was available to only the Board and its staff made the task of discovery and analysis more difficult and time consuming. In order to get enough information to form a coherent view of what the utilities proposed to do, and what the implications would be for ratepayers, it was necessary to do a great deal of interpretation, extrapolation, and analysis of the little public information that was made available to intervenors.

Given the fact that the proposed link with California was imminent, and that Ontario price forecasts were derived from California price forecasts, BOMA also analysed the current California regime and the proposed changes to that regime, to determine the likely impact on Ontario's plan. BOMA filed a California legislation and policy addendum to its submissions.

In addition, BOMA:

- addressed a comprehensive analysis on the "prudency issue", given the nuances in the utilities' proposals on the prudency topic;
- explained and made a comprehensive analysis of the importance of enhanced DSM to the success of the utilities' cap and trade initiatives, and how those enhancements should be made;
- conducted a thorough assessment of the resources, personnel and otherwise, that the utilities were requesting to formulate and execute their compliance plans;
- offered support for some of EGD's future investment ideas, and proposals for annual reports;
- presented the need for additional transparency in future cases;
- made suggestions to the Board for enhancements to the utilities' future submissions.

If the Board does decide to re-examine BOMA's cost claim, BOMA requests they begin by re-reading BOMA's arguments.

BOMA respectfully suggests that the magnitude of the effort made, and the quality of its analysis and recommendations support the cost claim.

Yours truly,

FOGLER, RUBINOFF LLP

Thomas Brett

TB/dd

cc: Kristi Sebalj, OEB *(via email)*
Vanessa Innis, Union *(via email)*
Crawford Smith, Torys *(via email)*
Andrew Mandyam, EGD *(via email)*
Dennis O'Leary, Aird & Berlis *(via email)*
Brian Lippold, NRG *(via email)*
Richard J. King, Oslers *(via email)*
Marion Fraser, Fraser & Company *(via email)*

Ontario

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER ON COST AWARDS

EB-2016-0296/ EB-2016-0300/ EB-2016-0330

UNION GAS LIMITED

ENBRIDGE GAS DISTRIBUTION INC.

NATURAL RESOURCE GAS LIMITED

Application for approval of 2017 Cap and Trade Compliance Plan cost consequences.

BEFORE: Ken Quesnelle
Presiding Member and Vice Chair

Victoria Christie
Member

March 28, 2018

INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to Union Gas Limited (Union Gas), Enbridge Gas Distribution Inc. (Enbridge Gas) and Natural Resource Gas Limited (NRG) proceeding.

Union Gas, Enbridge Gas and NRG (collectively, the Gas Utilities) each filed an application with the Ontario Energy Board (OEB) on November 15, 2016 seeking approval of the estimated costs arising from their respective cap and trade Compliance Plans for the January 1 to December 31, 2017 time period.

The OEB granted the following parties intervenor status and cost award eligibility:

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association, Greater Toronto (BOMA)
- Canadian Manufacturers & Exporters (CME)
- Consumer Council of Canada (CCC)
- Environmental Defence
- Federation of Rental-housing Providers of Ontario (FRPO)
- Industrial Gas Users Association (IGUA)
- Low-Income Energy Network (LIEN)
- London Property Management Association (LPMA)
- Ontario Association of Physical Plant Administrators (OAPPA)
- Ontario Greenhouse Vegetable Growers (OGVG)
- Ontario Sustainable Energy Association (OSEA)
- School Energy Coalition (SEC)

On September 21, 2017, the OEB issued a combined Decision and Order for the public portions of the Gas Utilities' Compliance plans which sets out the process for intervenors to file their cost claims, for the Gas Utilities to object to the claims and for intervenors to respond to any objections. The OEB issued its Decision and Rate Orders for each of the Gas Utilities on November 16, 2017.

The OEB received cost claims from APPrO, BOMA, CME, CCC, Environmental Defence, FRPO, IGUA, LPMA, LIEN, OSEA and SEC. OAPPA and OGVG indicated through email that they would not file cost claims. The OEB accepted CME's cost claim

filed on November 23, 2017, and CCC's cost claim filed on November 24, 2017, notwithstanding the late filing.

On November 29, 2017, Enbridge Gas filed a letter with the OEB indicating that OSEA had submitted one claim for Enbridge Gas and Union Gas combined, and that each of APPRO, BOMA, CCC, IGUA, LIEN and SEC submitted one claim for the three Gas Utilities combined. Enbridge had no comment on the specifics of the cost claims as filed as it was unable to determine its share of the claims. Enbridge Gas suggested that the OEB consider approving the cost claims by CME, FRPO and Environmental Defence, which were directed specifically to Enbridge Gas. Enbridge Gas further suggested that the OEB allocate the other aggregated claims to the appropriate Gas Utilities on a pro-rata basis using the utility's Compliance Plan Cost Forecast Summary Table which appears at Table 2 of the OEB's Decision and Order dated September 21, 2017 (Forecast Cost Table).

On November 30, 2017, Union Gas filed a letter with the OEB indicating that it had no specific concerns with the cost claims with the exception of BOMA. Union Gas stated that BOMA's cost claim appeared to exceed the next highest claim and the approximate average of the other claims by approximately three times.

On December 7, 2017, BOMA replied to Union Gas' letter of objection and explained that it was necessary to review the complicated and lengthy: recently enacted cap and trade legislation and regulations; the Ontario Government's policy framework; and supporting documentation. BOMA stated that, in order to clarify the evidence it was necessary to ask many interrogatories; 47 of Union Gas, and 46 of Enbridge Gas. BOMA further submitted that, in order to get enough information to form a coherent view of the Gas Utilities' proposals, and the implications for ratepayers, it was necessary to do a great deal of interpretation, extrapolation, and analysis of the little public information that was made available to intervenors.

Findings

The OEB has determined that the cost awards granted in this proceeding will be allocated to the three applicants using the OEB section 30 cost assessment methodology.[1] This will result in a cost allocation that is proportionate to the number of customers each utility has. As these were the first hearings dealing with the cost

[1] Ontario Energy Board Act, 1998, S.O. 1998, Chapter 15, Schedule B, page 26 of 90

consequences of cap and trade compliance plans, the OEB has dealt with many of the issues in a generic fashion. The cost allocation has been addressed similarly. Analysis indicates that the allocation of costs using more precise cost drivers would not result in a materially different outcome.

With respect to the individual claims, the OEB finds that BOMA's claim of $80,845.00 and OSEA's claim of $28,275.00 are unreasonable. BOMA has defended its claim on the basis that it had to complete extensive research and analysis on the regulatory framework in Ontario and on the broader anticipated cap and trade market. The OEB finds that the level of BOMA's effort with respect to gaining its understanding of the broad cap and trade framework is not fully eligible for reimbursement. As per the OEB's *Report of the Board – Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities*, the OEB's role is not to approve the Compliance Plans but to assess these plans for cost-effectiveness and reasonableness.[2] The OEB does not consider BOMA's efforts to be commensurate with what would be required to assess the reasonableness of the cost consequences of the proposed plans.

OSEA's claim exceeds the claims of all other intervenors, with the exception of BOMA, with no apparent additional value or product for its efforts. The OEB does not consider OSEA's contributions or efforts warrant the amount claimed.

The OEB accepts that the range of the other submitted claims are reasonable and will use them to establish reasonable awards for both OSEA and BOMA.

BOMA and OSEA are each awarded $22,000.00 which is the mid point between the approximate average of all other intervenor claims ($19,000) and $25,000.00 which is the approximate claim of the highest four of the other nine intervenors.

The OEB has reviewed the claims filed to ensure that they are compliant with the OEB's *Practice Direction on Cost Awards*.

The claim of FRPO requires a small correction to a hotel accommodation charge because the hotel receipt do not match the cost claim.

The claim of LIEN requires a reduction of $27.72 due to duplicate courier charges claimed.

[2] OEB Cap and Trade Framework, p. 7

The OEB finds that the claims of APPrO, CME, CCC, ED, IGUA, LPMA, and SEC and the adjusted claims of BOMA, OSEA, FRPO and LIEN are reasonable and that each of these claims shall be reimbursed by the appropriate Gas Utility. The claims of APPrO, CME, CCC, ED, IGUA, and SEC and the adjusted claims of BOMA, OSEA, and LIEN shall be apportioned to, and reimbursed by, Enbridge Gas, Union Gas and EPCOR Natural Gas Limited Partnership (formerly NRG) based on the number of customers each utility has. The claims of LPMA and FRPO shall be reimbursed by Union Gas and Enbridge Gas, respectively.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas Distribution Inc. shall immediately pay the following amounts to the intervenors for their costs:

• Association of Power Producers of Ontario	$14,848.96
• Building Owners and Managers Association, Greater Toronto	$13,130.80
• Canadian Manufacturers & Exporters	$15,191.04
• Consumer Council of Canada	$10,905.78
• Environmental Defence	$8,860.46
• Federation of Rental-housing Providers of Ontario	$14,971.81
• Industrial Gas Users Association	$15,239.40
• London Property Management Association	$9,083.84
• Low-Income Energy Network	$6,509.77
• Ontario Sustainable Energy Association	$13,130.80
• School Energy Coalition	$8,201.25

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Union Gas Limited shall immediately pay the following amounts to the intervenors for their costs:

• Association of Power Producers of Ontario	$9,971.20
• Building Owners and Managers Association, Greater Toronto	$8,817.44
• Canadian Manufacturers & Exporters	$10,200.92
• Consumer Council of Canada	$7,323.33

- Environmental Defence $5,949.88
- Federation of Rental-housing Providers of Ontario $9,981.21
- Industrial Gas Users Association $10,233.39
- London Property Management Association $6,055.90
- Low-Income Energy Network $4,371.36
- Ontario Sustainable Energy Association $8,817.44
- School Energy Coalition $5,507.22

3. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, EPCOR Natural Gas Limited Partnership (formerly NRG) shall immediately pay the following amounts to the intervenors for their costs:

- Association of Power Producers of Ontario $58.53
- Building Owners and Managers Association, Greater Toronto $51.76
- Canadian Manufacturers & Exporters $59.88
- Consumer Council of Canada $42.99
- Environmental Defence $34.93
- Industrial Gas Users Association $60.07
- Low-Income Energy Network $25.66
- Ontario Sustainable Energy Association $51.76
- School Energy Coalition $32.33

4. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Enbridge Gas Distribution Inc, Union Gas Limited and EPCOR Natural Gas Limited Partnership (formerly NRG) shall pay the OEB's costs of, and incidental to, this proceeding immediately upon receipt of the OEB's invoice.

DATED at Toronto March 28, 2018

ONTARIO ENERGY BOARD

Kirsten Walli
Board Secretary

OEB's Decision and Order on Cost Awards

EB-2016-0296/ EB-2016-0300/ EB-2016-0330

Gas Distributor, Transmitter, Storage Company	Association of Power Producers of Ontario	Building Owners and Managers Association, Greater Toronto	Canadian Manufacturers & Exporters	Consumer Council of Canada	Environmental Defence	Federation of Rental-housing Providers of Ontario	Industrial Gas Users Association	London Property Management Association	Low-Income Energy Network	Ontario Sustainable Energy Association	School Energy Coalition	Total
Enbridge Gas Distribution	$ 14,848.96	$ 13,130.80	$ 15,191.04	$ 10,905.78	$ 8,860.46	$ 14,971.81	$ 15,239.40	$ 9,083.84	$ 6,509.77	$ 13,130.80	$ 8,201.25	$ 130,073.92
Union Gas	$ 9,971.20	$ 8,817.44	$ 10,200.92	$ 7,323.33	$ 5,949.88	$ 9,981.21	$ 10,233.39	$ 6,055.90	$ 4,371.36	$ 8,817.44	$ 5,507.22	$ 87,229.28
Natural Resource Gas	$ 58.53	$ 51.76	$ 59.88	$ 42.99	$ 34.93		$ 60.07		$ 25.66	$ 51.76	$ 32.33	$ 417.91
TOTAL	$ 24,878.69	$ 22,000.00	$ 25,451.84	$ 18,272.10	$ 14,845.27	$ 24,953.02	$ 25,532.86	$ 15,139.74	$ 10,906.79	$ 22,000.00	$ 13,740.80	$ 217,721.11

ATTACHMENT 6

EB-2016-0296
EB-2016-0300
EB-2016-0330

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

AND IN THE MATTER OF an application by Union Gas Limited, Enbridge Gas Distribution Inc., and Natural Resource Gas Limited for approval of 2017 Cap and Trade Compliance Plan cost consequences;

AND IN THE MATTER OF the Board's Decision and Order on Cost Awards dated March 28, 2018.

NOTICE OF MOTION

The Building Owners and Managers Association ("BOMA") will make a Motion to the Ontario Energy Board (the "Board") on a date and at a time to be determined by the Board.

PROPOSED METHOD OF HEARING: BOMA proposes that the Motion be heard orally.

THE MOTION IS FOR an Order of the Board:

To review and vary its March 28, 2018 Decision and Order on Cost Awards in the EB-2016-0296/0300/0330 proceeding (the "Cost Recovery Decision"), and make a cost award to BOMA of no less than $60,000.00.

THE GROUNDS FOR THE MOTION ARE:

1. BOMA submitted a cost award of $80,914.45. The Board panel awarded BOMA costs of $22,000.00, or approximately one quarter the requested amount. BOMA is of the view that the decision contains errors of fact and that the reduction of seventy five percent

(75%) is unjustified, unfair, and punitive, and requests the Board to reconsider its decision.

2. First, neither EGD nor EPCOR raised the issue of the amount of BOMA's claim. Union was the sole complainant, and solely on the basis that BOMA's claim was substantially higher than the next highest. The next highest claims were $25,532.86 (IGUA), $25,451.84 (CME), and $24,878.69 (APPrO). Union stated it was concerned with the discrepancy.

3. In replying to Union's concern, in its letter of December 7, 2017, BOMA stated that in order to properly address whether the cost consequences of companies' Cap and Trade Compliance Submissions should be recovered from ratepayers, BOMA needed to review the reasonableness, optimization, and cost-effectiveness of the Compliance Submissions. BOMA stated that since the utilities' compliance plans were the first ones submitted under the new Cap & Trade program, BOMA needed to understand the legal, regulatory, and economic context in which the submissions were made. To gain such an understanding, and to ensure that the utilities' compliance plans were consistent with both the legislative framework and the Board's Cap and Trade Framework, BOMA reviewed the Cap and Trade legislation and Ontario Regulation 144, both of which were lengthy and complicated documents. BOMA was the only intervenor to do that. BOMA also included a review of Quebec and California programs, given the fact that the imminent accession of Ontario to the WCI, planned for January 1, 2018 (and now in place), might well have had an impact on the shape of the 2017 compliance plan. In addition, BOMA reviewed several other documents, such as offset regulation protocols, the economic analysis of Ontario only versus an Ontario, Quebec and California allowance market,

including the short and longer term impacts on allowance prices, the secondary markets in Ontario and California, including the ICE futures market. Finally, it reviewed relevant material, including related to offsets, included abatement activities, the impact of the Green Investment Fund, and various ICF studies done for the Board or the utilities.

4. In its December 7, 2017 letter, BOMA also noted that its final argument:

- *"addressed a comprehensive analysis of the "prudency issue", given the nuances in the utilities' proposals on the prudency topic, including when the prudency review of the costs would take place;*
- *made a comprehensive analysis of the importance of enhanced DSM to the success of the utilities' cap and trade initiatives, and how those enhancements could be made;*
- *conducted a thorough assessment of the resources, personnel and otherwise, that the utilities were requesting to formulate and execute their compliance plans;*
- *offered support for some of the utilities' future investment ideas, and proposals for annual reports;*
- *presented the need for additional transparency in future cases;*
- *made suggestions to the Board for enhancements to the utilities' future submissions."*

With respect to the second bullet, the Board itself suggested there were parallels with respect to DSM, which BOMA noted in its IRs, cross examination and argument. BOMA contends that the interrelationship between DSM and Cap and Trade must be considered, that these matters cannot be treated as silos and it is critical to consider how synergies can be achieved for the sake of all customers and given that buildings account for such a large proportion of greenhouse gas emissions, the members of BOMA in particular. Our clients and all customers do not have the luxury of compartmentalizing these two critical policy imperatives and fully understanding the similarities and differences underpinning the duality of the policy and regulatory frameworks is critical.

5. Finally, given the fact that the utilities submissions were highly redacted, and given the intervenors' responsibility to provide a coherent assessment of the cost consequences of the utilities' proposals, BOMA needed to have as full an understanding as possible of the legislative and policy and regulatory underpinnings of the utilities' Compliance Plans. The time spent acquiring that understanding allowed BOMA to infer the approximate shape of the utilities' Compliance Plans (in a more thorough and comprehensive manner), which allowed BOMA to address the costs issue.

6. The Board panel, in its Cost Award Order, took issue with the eligibility for cost recovery of BOMA's costs incurred in order to understand the policy and legislative context of the utilities' Compliance Plans, the cost consequences of which the Board would determine to be recoverable in rates, or not.

The Board stated that:

> *"The OEB finds that the level of BOMA's effort with respect to gaining its understanding of the broad cap and trade framework is not fully eligible for reimbursement. As per the OEB's Report of the Board – Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities, the OEB's role is not to approve the Compliance Plans but to assess these plans for cost-effectiveness and reasonableness".*

BOMA agrees with the OEB's statement of its mandate in the above quoted passage. However, the Board erred in asserting that BOMA asked the Board to approve, or assumed that the Board would approve, the utilities' Cap and Trade programs. Rather, BOMA addressed whether the cost consequences of the utilities plans were reasonable, cost-effective, and optimized, given the legislative and policy framework in which the plans were formulated. That is the test that the Board itself stated at p1 of the Cap and Trade Framework:

> *"The OEB will assess the utilities' Compliance Plans for cost-effectiveness, reasonableness, and optimization and ultimately to determine whether to approve the associated cap and trade costs for recovery from customers".*

7. In order to determine whether costs of the Compliance Plans should be recovered from customers, the Board needs to determine whether these costs are reasonable, appropriate, and cost-effective in the circumstances, and that determination requires the Board to understand whether the Compliance Plans, the costs of which were in issue, were cost-effective, reasonable, and optimized, in light of the obligations and options the utilities had, given the legislative and policy framework within which those plans were formulated.

8. In other words, the reasonableness, cost-effectiveness, and optimization, of the Plans themselves, and the issue of whether the costs of the Plans should be recovered from ratepayers, are inextricably linked.

9. BOMA notes at least one major intervenor commented favourably on BOMA's Final Argument, and another intervenor, having requested and obtained BOMA's permission to do so, utilized some of BOMA's research and analysis in its own cross-examination. In addition, BOMA was one of very few intervenors that addressed all of the issues.

10. <u>The Severity of the Reduction</u>

The Board erred when it made an unreasonable and punitive reduction in BOMA's claim, from $80,914.45 to $22,000.00, a reduction of almost seventy five percent (75%), a virtually unprecedented percentage reduction of a cost claim. The only explanation the Board gave, other than to compare it with other cost claims that it had found

"reasonable", was to find that "the level of BOMA's effort to gain its understanding of the broad cap and trade framework is not fully eligible for reimbursement" (our emphasis).

11. Even accepting that the Board's proposition, cited at p3 above, may justify some reduction in BOMA's claim, it is not justification for a seventy five percent (75%) reduction in BOMA's claim. And, given that this was the first OEB proceeding dealing with the new Cap and Trade regime, BOMA would suggest that a major effort to understand the legislation, the regulations, and the policy background was necessary.

12. Moreover, rather than making a reasonable reduction to BOMA's claim, the Board awarded it $22,000.00, which it stated "is the midpoint between the approximate average of all other intervenors' claims ($19,000.00) and $25,000.00, which is the approximate claim of the highest four of the other nine intervenors". In other words, the Board awarded BOMA costs in an amount several thousand dollars (over twelve percent (12%)) lower than the cost awards to several other intervenors. Several intervenors received awards well above BOMA's, including APPrO ($24,878.69), CME ($25,451.84), and FRPO ($24,953.02). That was inappropriate and unfair, given the quality, breadth and depth of BOMA's efforts and submissions, made separately for each of Union and EGD.

13. BOMA submits that these errors of fact, and the punitive level of the disallowance constitutes grounds for the Board to rehear the portion of the Board's cost award order that relates to BOMA.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. Final Argument of BOMA.

2. Cost Claim of BOMA.

3. Such further and other documents as counsel may advise and the Board may permit.

All of which is respectfully submitted, this 17th day of April, 2018.

FOGLER, RUBINOFF LLP
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77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

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Counsel to BOMA

TO: **ONTARIO ENERGY BOARD**
P. O. Box 2319
2300 Yonge Street
Toronto, Ontario M4P 1E4

Kirsten Walli, Board Secretary

Tel: (416) 481-1967
Fax: (416) 440-7656

AND TO: **INTERVENORS OF RECORD IN EB-2016-0296/0300/0330**

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

AND IN THE MATTER OF an Application by Union Gas Limited, Enbridge Gas Distribution Inc., and Natural Resource Gas Limited for approval of 2017 Cap and Trade Compliance Plan cost consequences;

AND IN THE MATTER OF the Board's Decision and Order on Cost Awards dated March 28, 2018.

EB-2016-0296/0300/0330

ONTARIO ENERGY BOARD

NOTICE OF MOTION

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ATTACHMENT 7

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Ontario

BY E-MAIL

October 18, 2018

Thomas Brett
Fogler, Rubinoff LLP
Barristers and Solicitors
77 King Street West
Suite 3000, PO Box 95
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Toronto, Ontario M5K 1G8

Dear Mr. Brett

Re: Building Owners and Managers Association
Motion to Review and Vary OEB Cost Awards Decision EB-2016-0296/0300/0330
OEB File Number EB-2018-0164

This will acknowledge receipt on April 17, 2018, of a Notice of Motion for a review and variance of the OEB's Decision and Order on Cost Awards in proceeding EB-2016-0296/0300/0330 issued on March 28, 2018. The OEB apologizes for its late response. The OEB has assigned File Number EB-2018-0164 to this matter. Please refer to this file number in all future correspondence to the OEB regarding this matter. All information related to this matter must be filed with the Board Secretary.

Please direct any questions relating to this application to Laurie Klein, Project Advisor at 416-440-7661 or Laurie.Klein@oeb.ca.

Yours truly,

Original Signed By

John Pickernell
Manager, Applications Administration

cc: All Interested Parties EB-2016-0296/0300/0330 (via email)