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. 176642176655/177169

January 24, 2019

VIA RESS, EMAIL AND COURIER

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

Attention: Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: EB-2017-0224/0255/0275: Enbridge Gas Distribution Inc., Union Gas Limited, EPCOR Natural Gas Limited Partnership, Applications for Approval of the Cost Consequences of 2018 Cap and Trade Compliance Plans

BOMA is writing in reply to Enbridge Gas Inc.'s ("Enbridge") letter of January 17, 2019. In that letter, Enbridge stated that BOMA's preparatory time for the Technical Conference was much higher than the average cost claim and the next highest cost claim for that work.

BOMA has not had the opportunity to examine the cost claims of the other intervenors. However, BOMA notes that in the Board's cost claim form, there is no line for the work of the review and analysis of the applicant's evidence and related documentation. So it was necessary for BOMA to put those hours on the line "Preparation for the Technical Conference". The actual work of preparing for the Technical Conference is done later, after the interrogatory responses had been received. Parties should be provided costs for time spent on a detailed review and analysis of the applicant's proposals. That work is separate from and precedes the work of formulating interrogatories and, once responses to the interrogatories have been received, preparing follow-up questions for the Technical Conference. Viewed in this light, BOMA's cost claim is not excessive.

Enbridge noted that BOMA's claim for "Argument" was higher than the average claim for Argument, and the next highest claim. BOMA suggests that its Argument, which was thirty

pages, was larger, more detailed, broader and deeper in scope than most of the other Arguments, some of which were only five or six pages, and many of them were from parties that were more or less opposed to gas utilities engaging in ratepayer-funded conservation programming.

On the other hand, BOMA analyzed the proposals in some depth, including:

- an analysis of the difference between energy efficiency (equipment-driven) and conservation, a broader concept that includes best practices in consumption monitoring, maintenance, changes in operating methods, and comparisons ongoing with the other facilities of a similar type, those that have been proven to yield large annual savings, at modest cost, with relatively little capital expenditure on new equipment;

- the advantages utilities have through their customer relationships which allow them to extend the performance-based approach to large number of customers, which greatly increases the number of customers that participate;

- the boost to intensity-based conservation provided by new Ontario Regulations 397-11 and 20-27, which require consumers to report detailed data on energy consumption;

- the pioneering work of the Toronto and Region Conservation Authority in energy intensity measurement for its programs, such as Sustainable Schools, Greener Health Care, and the Mayor's Megawatt Challenge;

- the use of intensity based Performance Metrics to determine utility shareholder incentives.

These proposals, and others included at p3 of Schedule A to BOMA's Argument (in this case, the Schedule is an integral part of BOMA's Argument) are not found in the Arguments of most of the other intervenors.

BOMA suggests the Board panel review the BOMA Argument, in particular Schedule A, before making its cost award decision.

Second, BOMA believes Enbridge's proposal that Board's cost awards in other cases should be considered as guide to this is inappropriate and raises legal issues. As the Board is well aware, each proceeding is separate, and the Board's decision should be based solely on the facts of the case at hand.

Finally, BOMA asserts that it is not appropriate or fair for the Board to disallow part of a cost claim on the grounds that that claim is above the average, or mean, cost claim of the other intervenors.

BOMA submits that to not allow a portion of a cost claim on the basis that the claim 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. 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 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.

In conclusion, BOMA respectfully suggests that its claim of $81,306.00 is reasonable and should be approved.

Yours truly,

FOGLER, RUBINOFF LLP

Thomas Brett
TB/dd
cc: All Parties *(via email)*