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June 21, 2019

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli,

**RE: EB-2018-0331 – Submissions of London Property Management Association**

Please find attached the submissions of the London Property Management Association ("LPMA") in the above noted proceeding..

Yours very truly,

*Randy Aiken*

Randy Aiken  
Aiken & Associates

c.c. EGI Regulatory Proceedings  
Adam Stiers, Enbridge Gas Inc

**Applications for the disposition of Cap and Trade-Related  
Deferral and Variance Accounts for the Period 2016-2018**

**Enbridge Gas Inc.**

**EPCOR Natural Gas Limited Partnership**

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**SUBMISSIONS  
OF  
LONDON PROPERTY MANAGEMENT ASSOCIATION**

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**A. INTRODUCTION**

On September 11, 2018, Enbridge Gas Distribution Inc. (“Enbridge Gas”) and Union Gas Limited (“Union”) filed their October 2018 Quarterly Rate Adjustment Mechanism (“QRAM”) filings with the Ontario Energy Board (“OEB”). EPCOR Natural Gas Limited Partnership (“ENGLP”) filed its October 2018 QRAM application on September 20, 2018. These applications sought approval to adjust rates charged for natural gas to account for changes in both gas supply costs and the discontinuance of the provincial cap and trade program.

On August 30, 2018, the OEB issued a letter to the gas utilities directing them to request the elimination of their cap and trade charges and the disposition of any projected net credit amounts in the aggregate balance of their cap-and-trade related deferral and variance accounts as at September 30, 2018 as part of the October 2018 QRAM applications. This was the result of the provincial government’s July 3, 2018 Ontario Regulation 386/18, Prohibition Against the Purchase, Sale and Other Dealings with Emission Allowances and Credits which revoked Ontario Regulation 144/16, The Cap and Trade Program and prohibited registered participants, including the gas utilities, from purchasing, selling, trading or otherwise dealing with emission allowances and credits.

On September 27, 2018, the OEB issued decisions and interim rate orders for the three October 2018 QRAM applications, elimination the cap and trade charges and approving the interim disposition of any over-collections in the cap-and-trade related deferral and variance accounts of both Enbridge Gas and Union. This interim disposition was pending a prudence review to be conducted by the OEB.

Subsequent to the current proceeding being initiated for the prudence review of the gas utilities cap-and-trade related variance and deferral account balances, Enbridge Gas and Union merged effective January 1, 2019 to form Enbridge Gas Inc. (“EGI”).

Given that the evidence is based on separate deferral and variance accounts, the London Property Management Association (“LPMA”) has structured its submission with respect to the amounts claimed by Union and Enbridge Gas separately for each account, while noting that the submissions in general apply equally to both former distributors. LPMA is not making any submissions with respect to ENGLP.

## **B. TREATMENT OF DEFERRAL AND VARIANCE ACCOUNTS**

LPMA submits that the treatment of the Greenhouse Gas Emissions Impact Deferral Accounts (“GGEIDA”) should be separated from the treatment of the Greenhouse Gas Emissions Compliance Obligation – Customer Related (“GGECO-Customer”) and the Greenhouse Gas Emissions Compliance Obligation – Facility Related (“GGECO-Facility”) variance accounts.

The GGECO customer and facility related accounts are variance accounts that have tracked the variance between actual customer and facility related obligation costs and customer and facility related obligation costs recovered in rates as approved by the OEB. In essence, these accounts are true up accounts to ensure that actual costs, no more, no less, flow through to customers. These accounts are very similar to the operation of the purchased gas variance accounts which are flow through accounts and agreed to be Y factors under the incentive rate making regimes that were in place over the 2014 through 2018 period for each of Enbridge Gas and Union.

The GGEIDA is a deferral account which has recorded the administrative costs associated with the impacts of provincial and federal regulations related to greenhouse gas emission requirements. Unlike the GGECO customer and facility related accounts, the forecasted amounts in these accounts were never embedded in rates and never recovered through rates until the October 2018 QRAM decisions and interim rate orders.

In addition, the OEB had separate applications and approvals of the GGEIDA as compared to the GGECO accounts. In the case of Union, the GGEIDA was approved in the EB-2015-0367 Decision and Accounting Order dated April 7, 2016 and amended in the EB-2016-0296/EB-2016-0300/EB-2016-0330 Decision and Order dated September 21, 2017. The GGECO customer and facility related accounts were approved in the EB-2016-0296/EB-2016-0300/EB-2016-0330 Decision and Order.

LPMA submits that the GGECO customer and facility related accounts should be treated in the same way as Y factors, given that these costs are purely pass through accounts with the associated variance accounts providing a true up to the actual costs.

LPMA is not able to make any submissions on whether or not the actual costs in the GGECO customer and facility related accounts for each of Union and Enbridge Gas are appropriate or prudent because most of the evidence related to the obligations costs was deemed confidential and was available for review by LPMA.

LPMA submits that the GGEIDA accounts should be treated in the same way as Z factors, given that these costs are not related to the obligation costs, but strictly to the administrative costs associated with the implementation of the government's cap-and-trade system. In other words, there is a distinct separation of the costs to set up, run and track the cap-and-trade system from the actual obligation costs associated with the cap-and-trade system.

LPMA submits that the administrative costs included in the GGEIDA of both Union and Enbridge Gas clearly meet the definition of a Z factor. The EB-2013-0202 Settlement Agreement for Union's 2014-2018 IRM ("Settlement Agreement") filed on July 31, 2013 clearly spelled out the qualifications for prospective or historical cost increases/decreases to qualify as "Z factors". There were five criteria set out on page 23 of the Settlement Agreement. The OEB accepted the Settlement Agreement in its Decision and Order dated October 7, 2013.

The first criterion is that a Z factor must causally relate to an external event that is beyond the control of the utility's management. Clearly this is true since the triggering event that gave rise to the need for administrative costs was the introduction of the government's cap-and-trade regulations.

The second criterion indicates that the cost increase/decrease must result from, or relate to, a type of risk for which a prudent utility would not be expected to take risk mitigation steps and which is out of the realm of the basic undertaking of the utility. Clearly distributors would not be expected to take any risk mitigation steps for an unknown provincial government regulation that was outside of the realm of the basic undertaking of the utility prior to the introduction of the cap-and-trade regulations.

The third criterion is that the cost increase/decrease is not otherwise reflected in the price cap index. To be reflected in the price cap index, the impact of the provincial cap-and-trade regulation would have to have an impact on the national gross domestic product

input price index for final domestic demand – and this impact would have to be observed within the timeframe that the cap-and-trade system was in place.

The inflation factor used in the price cap index for any year under Union’s IRM is based on the increase in the second quarter of the previous year over the second quarter of the preceding year. For example, as illustrated in Exhibit A at page 5 in EB-2017-0087, the inflation index for 2018 was based on the increase in the index from the second quarter of 2017 to the second quarter of 2018.

Since the cap-and-trade rates were implemented on January 1, 2017, the inflation factors used to calculate the price cap index for 2016 and 2017 could not reflect the impact of the cap-and-trade implementation since the data used was all prior to the implementation. For 2018, the inflation factor could have included six months of the impact of the cap-and-trade implementation since the data used included the second quarter of 2017, six months after the rates were implemented and charged to ratepayers. However, it is doubtful that the impact would have shown up to any large extent in a national index that quickly. Any impact at the national level would have been minimal given that the cap-and-trade costs impacted only part of the energy sector in one province.

Of course, if the OEB were to determine that the cap-and-trade regulations are reflected in the price cap index, then the administrative costs would not qualify as a Z factor and the costs should be denied because they are accounted for in the higher price cap index.

The fourth criterion is that the cost must be prudently incurred. The prudence of some of the costs incurred by Union are discussed in Section E, part ii) below.

The fifth criterion is that the costs must meet the materiality threshold of \$4.0 million for Union. LPMA discusses this criterion in Section D below.

LPMA submits that the administrative costs included in the GGEIDA accounts of Union and Enbridge Gas qualify as Z factors and should be treated by the OEB as such.

### **C. THE EB-2015-0367 DECISION AND ACCOUNTING ORDER**

In the EB-2015-0367 Decision and Accounting Order (“D&AO”) dated April 7, 2016, the OEB approved the establishment of the proposed GGEIDA requested by Union. The OEB further stated in its Findings on page 3 of the D&AO that it found that Union demonstrated the need for the account and agreed that the expected costs were likely to be material and that the precipitating event – the government’s cap and trade program – was clearly outside of management’s control.

The OEB then indicated that the actual costs that Union incurred to meet its new obligations were to some extent within management's control and that they would be reviewed by the OEB when the account was brought forward for disposition.

LPMA notes that the OEB approved a similar deferral account for Enbridge Gas in its 2016 rates proceeding, EB-2015-0114.

As the OEB noted in the Union D&AO, parties indicated concern regarding the type of expenses that might be recorded in the deferral account in both the Enbridge Gas and Union proceedings. The OEB indicated that it would review the costs for prudence and would determine whether the costs were appropriate for recovery from ratepayers in the context of Union's IRM Framework when it brought forward a request for disposition of the balances in the GGEIDA.

As noted above, the OEB amended Union's GGEIDA in the EB-2016-0296/EB-2016-0300/EB-2016-0330 Decision and Order dated September 21, 2017. The amendment limited the account to the administrative costs associated with the impacts of federal and provincial regulations. The same wording was used for the Enbridge Gas GGEIDA.

LPMA submits that the OEB and Union and Enbridge Gas expected the administrative costs associated with the implementation of the government's cap-and-trade could be material and hence the need for a deferral account to record the costs incurred. LPMA also submits that the OEB was clear that the balances in the account would be subject to review and whether these costs were appropriate to be recovered from ratepayers. At page 4 of the Union D&AO, the OEB noted that with regard to the disposition of the balances in the GGEIDA, the risk of disallowance was borne by the distributor.

#### **D. MATERIALITY**

In the EB-2013-0202 Settlement Agreement, Union and the parties agreed up on a materiality threshold of \$4 million during the 2014 through 2018 incentive rate mechanism term.

In the EB-2012-0459 Decision with Reasons dated July 17, 2014, the OEB approved a materiality threshold for Enbridge Gas of \$1.5 million.

A review of the EGI evidence in the current proceeding shows that Union's GGEIDA did not exceed the materiality threshold of \$4.0 million in any year in the 2016 through 2018

period. The amounts proposed for recovery by Union are shown in Table 1 of Exhibit A and peaked at \$3.828 million in 2017.

Table 1 also includes the GGEIDA amounts claimed by Enbridge Gas. The amounts in the GGEIDA did not exceed their \$1.5 materiality threshold in 2016 or 2018. The amount for 2017, of \$2.315 million, exceeds the materiality threshold.

Given the lack of materiality of the Union amounts in the GGEIDA and the lack of materiality of the Enbridge Gas amounts in 2 out of 3 years, LPMA submits that the only amounts that should be approved for recovery is the \$2.315 million for Enbridge Gas in 2017. It is the only material amount incurred for administrative costs associated with the government's cap-and-trade implementation.

## **E. OTHER CONSIDERATIONS**

### **i) 2016 Cap-and-Trade Deferral and Variance Account Balances Should be Denied**

If the OEB determines that the balances in the GGEIDA, GGECO-customer and GGECO-facility variance accounts in aggregate rather than separately, despite the clear difference in, and purpose of, the GGECO variance accounts and the GGEIDA deferral account, then LPMA submits that the 2016 figures shown in Table 1 of Exhibit A for 2016 should still be rejected for recovery from ratepayers by the OEB.

The amounts for Enbridge Gas (\$0.868 million) and Union (\$2.292 million) are still well below the respective materiality thresholds for the two distributors.

### **ii) Prudence of Administrative Costs**

LPMA notes that the Union costs were significantly higher than those of Enbridge Gas, especially related to the higher number of full time equivalent employees, as identified in Exhibit I.STAFF.6.

Union identified one of the reasons for the higher costs and higher number of staff as being related to Union taking a strategic approach to begin working on longer-term investments, new business activities and abatement and offset opportunities earlier than Enbridge Gas did. While Union did not quantify the cost difference specific to this reason, LPMA submits that it makes up a significant portion of the more than \$3.75 million difference between the Union and Enbridge Gas salaries and wages identified in Table 1 of Exhibit I.STAFF.6.

Given the termination of the cap-and-trade program, LPMA submits that ratepayers have not received any value for money associated with these longer-term investments explored by Union. As the OEB noted in the EB-2015-0367 D&AO, the distributor bears the risk of disallowance. LPMA submits that Union should have been prudent in its pursuit of longer-term investments, new business activities and abatement and offset opportunities, given the newness of the cap-and-trade program, as did Enbridge Gas.

If the OEB determines that Union has provided, or will provide value, to ratepayers based on these additional expenditures, then LPMA submits that this amount should be recovered from all EGI customers, not just those in the Union rate zones. Clearly any value obtained by the Union expenditures will accrue not only to Union ratepayers but also to Enbridge Gas ratepayers given the merger that has taken place since these additional costs were incurred.

#### **F. COSTS**

LPMA requests that it be awarded 100% of its reasonably incurred costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**  
**June 21, 2019**

**Randy Aiken**  
**Consultant to London Property Management Association**