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N.D.C. Holland
K.A. Mullin
K.H. Dewhirst

Exchange Tower
Suite 1600
P.O. Box 480
130 King Street West
Toronto, Ontario Canada M5X 1J5

Tel (416) 365-1110
Fax (416) 365-1876

Internet <http://www.weirfoulds.com>

Robert B. Warren

E-mail warrenr@weirfoulds.com
Direct Line (416) 947-5075
File No. *

Monday, February 26, 2001
VIA FACSIMILE

Mr. Paul B. Pudge
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Mr. Pudge:

Re: Gas Distribution Access Rule - Board File No: RP-2000-0001

We are Counsel to the Consumers' Association of Canada (CAC). We are writing in response to your letter dated February 6, 2001, inviting comments from interested parties on the Ontario Energy Board's (Board) proposed Rule, entitled *The Gas Distribution Access Rule* (the Rule).

The Board indicates in its letter that the proposed Rule establishes principles to standardize the conduct of business between distributors and marketers and distributors and customers. The Board also states that it is anticipated that the benefits of the proposed Rule will be manifest in increased openness, fairness and fluidity of the commodity gas supply market.

From CAC's perspective, the Board should not underestimate the importance of the Rule for residential consumers. In particular, the Board should recognize that the determination of the issues of broker billing and customer mobility significantly impact the ability of residential consumers to obtain the full benefits of a de-regulated marketplace on a non-discriminatory basis.

The Board also indicates that, among other things, the Rule reflects the considerations of the interests of all stakeholders. That, with respect, is not accurate. The Rule reflects the views of those stakeholders with the resources to have employees or consultants participate in the stakeholder task force process. As a practical matter, accordingly, the Rule reflects the views of those stakeholders who have a commercial interest in the operation of the Rule. In developing the proposed Rule the Board undertook a consultation process. Although the Rule will have an important effect on residential consumers of natural gas, the process did not allow for the participation of consumer groups such as the CAC. By precluding any form of funding for these groups the Board effectively precluded their participation. The process did not allow for balanced stakeholder participation.

Having the process dominated by both marketers and distributors does not represent a fair balancing of interests.

The Board's letter refers to the fact that the distributors may incur costs to comply with this Rule including changes to information systems, complaint handling and processing requirements without any indication that there has been an adequate assessment of those costs. These costs are ultimately paid for through rates by the utility customers.

CAC cannot submit comments at this time. It does not have the resources to consider all of the relevant information and submit comments at a level of detail that the importance of the Rule manifestly requires. In addition, CAC does not believe that there is an adequate evidentiary record on which to comment. More importantly, for the CAC to submit comments now may create the impression that the consumer perspective was represented on equal terms with the other stakeholders throughout the development of the Rule. Put simply, it was not. If the Board seeks input from the residential consumer perspective, it should undertake a process that allows for that input on balanced terms with other stakeholders.

Recommendations:

CAC urges the Board to implement a process that provides a full and equal opportunity for residential consumer groups to participate in the development of the Rule. Given the importance of these issues on enhancing further development of the natural gas commodity market for all stakeholders, CAC submits that the Board should initiate a hearing process. That hearing process may be written. It would be preferable, however, if the hearing process were oral. An oral hearing process would allow for the submission of evidence, a testing of that evidence and provide the Board with the necessary elements to issue a balanced and well-informed decision on these critical issues. A process by which all parties are allowed to participate, on equal terms, and to test the evidence upon which the elements of the Rule be based is likely to reduce, substantially, the risk that there will be legal challenges to the Rule. As things now stand, such legal challenges would seem, from the submissions made in October, 2000, inevitable. The Board will, of course, be sensitive to the fact that the interests of residential consumers could not, for reasons of cost, be represented in such legal challenges.

With a hearing process, for example, the Board would be afforded the opportunity to consider the proposals and the potential cost implications of the various proposal on distributors regarding changes to information systems, complaint handling and processing requirements. The Board should not proceed, in our view, without a full analysis of the potential cost implications. In addition, the Board would have before it a complete evidentiary base, rather than the untested submissions of the various stakeholders.

There would appear to be confusion as to the extent to which the process giving rise to the draft Rule precludes further consideration of some elements of the Rule. Enbridge Consumers Gas (ECG) has, in its most recent rate application provided pre-filed evidence on a number of matters including issues around the provision of system gas. In that evidence ECG specifically addresses concerns it has with the proposed Rule. (RP-2000-0040, Exhibit A, Tab 21) From CAC's perspective it is unclear as to where the Board intends to deal with those concerns, through the DAR process or in the context of the rate case. In effect, it is unclear as to whether or not CAC will have

a full opportunity to address the DAR issues in the context of the rate case. Our assumption is that we will not.

CAC notes that ECG would also appear to be unhappy with the process by which the Rule was developed, and to support some form of oral hearing process to develop the Rule. In support of this reading of ECG's position, we refer to the following interrogatory response in RP-2000-0044:

Delaying implementation of the relevant parts of the DAR would also allow the OEB to obtain a full evidentiary record around the broker billing issue and would provide to parties the OEB's views as to why the implementation of broker billing is appropriate. The process to date has not lent itself to the participation of consumer interests and we believe that the OEB would be assisted by these perspectives, particularly in light of the consumer survey results.

(Exhibit I, Tab 3, Schedule 49)

CAC recognizes that the Board has overall concerns about the costs of its processes. CAC believes that there a number of ways in which the Board can deal with those concerns. Revising the eligibility requirements for those seeking cost awards is one way. To move to streamlined processes that preclude participation of certain groups, particularly in light of the Board's enhanced consumer protection mandate is dangerous. It only strengthens the position of the distributors and the marketers without proper consideration of the interests of consumers.

CAC understands that the stakeholder consultation process would seem, on the surface, to be cost-effective way to arrive at the basic elements of the Rule. It is not, however, an adequate substitute for a hearing process. The importance of the Rule demands that there be no question as to the integrity of the process by which it is developed. As it stands, there is such a question.

We would be willing to meet with you to further discuss these issues.

Yours very truly,

Weir & Foulds

Robert B. Warren

RBW/dlh

Comments on Proposed GDAR_CAC.wpd

cc: Peter Dyne, Consumers' Association of Canada
Judy Hubert, MEST
Union Gas Limited
Enbridge Consumers Gas