

September 20, 2004

Mr. John Zych,
Board Secretary
Ontario Energy Board
2300 Yonge Street, 26th Floor
Toronto, ON M4P 1E4

Dear Mr. Zych:

**Re: Proposed Amendments to Affiliate Relationship Code for Gas Utilities (“ARC”)
RP-2004-0140 – Union Gas Supplementary Submission**

On March 15, 2004 the Board requested that affected utilities provide comments on the Proposed Amendments to the Affiliate Relationship Code for Gas Utilities (“ARC”). On June 3, 2004 the Board issued a Notice of Proposal to Amend a Code and invited comments from interested stakeholders. In response, Union Gas (“Union”) submitted comments to the Board on March 25 and June 30, 2004.

On September 3, 2004, the Board issued the Revised Proposed Amendments to the ARC. In this notice the Board identified that further stakeholder input would be accepted. This letter contains Union’s input on the revised proposed amendments. These comments build on Union’s previous submissions and focus on the matters of most concern to Union.

Shared Core Corporate Services (Section 1.2)

Union supports including a definition of shared core corporate services in the ARC and is generally comfortable with what the Board has developed. Union agrees that examples of shared core corporate services help clarify the definition and supports including these in the ARC and Background Policy Paper (“BPP”).

Union appreciates that the Board would not want an overly broad definition of shared core corporate services. However, it is unlikely that a complete list of shared core corporate services could be created. Union submits that the ARC should be modified to note that the listed functions are examples. Union expects that a service omitted from the list could be considered a “shared core corporate service” if properly justified.

In Union’s view nothing differentiates the strategic management and policy support aspects of engineering services, environmental services, facilities management and information technology

from the services that are referenced in the proposed definition. Union understands that if an affiliate is providing a major portion of an activity, it would be appropriate to test the price paid for the service in the market. However, if the only service shared relates to corporate oversight responsibilities then Union submits that it should qualify for consideration as a shared core corporate service.

Sharing of Services and Resources (Section 2.2.5)

Union agrees with the change to Section 2.2.5 as it clearly defines the transfer-pricing rule that will apply to the sharing of resources in an emergency. However, Union does not see the need to include the term "unanticipated" when discussing the term "emergency".

The word unanticipated implies that prior knowledge of a potential emergency would make Section 2.2.5 inapplicable. It may not be the intention of the Board for example, that recovery efforts after a severe winter storm not be considered an emergency if the possibility of a storm was known in advance. Union submits that the word unanticipated from Section 2.2.5 should be removed.

Comprehensive Business Case Analysis (Section 2.3.3)

When defining the scope of the comprehensive business case analysis, the revised proposed amendments refer to a description of relevant utility needs on a per-item basis. Union interprets per-item to be a generic definition. As such, when analyzing services, "per-item" would have the same meaning as "per-service".

Union's view is consistent with evidence filed in Enbridge Gas Distribution's 2005 Cost of Service proceeding. In this evidence, the consultant noted that in order to meet the Board's requirements, inter-company charges should be based on specific services¹. While this may not require clarification in the ARC, the Board needs to consider this when revisiting the BPP.

Threshold Tests (Section 2.3.6 and 2.3.7)

In applying the threshold tests for competitive bidding, Section C.2.d of the BPP notes that the threshold tests are based on the total dollar value over the term of the contract. As noted previously by Union, this creates incongruence between the threshold value, which is an annual figure, and the cumulative value of a multi-year contract.

Union submits that a better approach would be to match the terms of both the threshold and the contract value. This ensures equal treatment of contracts regardless of their term. Union submits that the Board should consider amending Section C.2.e of the BPP as follows:

How should utilities apply the threshold tests?

Note that both the proposed threshold tests (in sections 2.3.6 and 2.3.7) are based on the average annual dollar value over the life of the contract. Some outsourcing contracts may not have a fixed dollar amount. In such cases, the utility should make a reasonable estimate of the likely average annual dollar value of the contract. An internal budget estimate may be useful for this purpose.

¹ Enbridge Gas Distribution Inc. RP-2003-0203 (2005 Cost of Service proceeding) Exhibit A6, Tab 17, Schedule 3, *Deloitte Consulting Review of Corporate Cost Allocation Methodology* Page 45, Section 6.3.3

Transfer of an Asset (Sections 2.3.12 to 2.3.16)

It is inappropriate that the BPP contains guidelines on the treatment of gains and losses on the sale of assets to affiliates. The parties to the asset transfer have no bearing on this matter. The question of the treatment of gains and losses can only be answered in the context of a particular sale of a particular asset. The answer turns, not on who purchases the asset, but on issues such as whether or not the asset is used to serve the public, whether it is depreciable or non-depreciable, and whether, even if depreciable, it was sold above or below net book value and/or original cost.

The rate treatment of any gains and losses is an issue that must be decided by the Board in the appropriate forum. This allows for the filing of evidence and hearing of argument with respect the transaction in question. In Union's view the proper forum for this is a rates proceeding.

Background Policy Paper

The Board's September 3, 2004 notice states that it is not reissuing the draft BPP at this time. As noted in prior submissions by Union and other parties, there are questions about the BPP's ultimate purpose and how the Board will apply it. As such, Union looks forward to the opportunity to provide further comment on the draft BPP.

Please contact me if you require additional information, at (519) 436-4538.

Yours truly,

Mike Packer
Director, Regulatory Affairs

cc: Michael Penny (Torys)