



EB-2011-0295

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. seeking approval of its 2012-
2014 Demand Side Management plan.

BEFORE: Cathy Spoel
Presiding Member

Cynthia Chaplin
Vice Chair

Paula Conboy
Member

DECISION AND ORDER ON UNSETTLED ISSUE
February 9, 2012

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application with the Ontario Energy Board (the “Board”) on November 4, 2011, seeking approval for its 2012-2014 Demand Side Management (“DSM”) plan.

The Board assigned file number EB-2011-0295 to this application.

The application has been filed pursuant to the Board’s DSM Guidelines that were issued on June 30, 2011 (EB-2008-0346). Enbridge is seeking approval of a 2012 DSM budget of \$30.91 million.

On November 16, 2011 the Board issued a Notice of Application.

On January 16, 2012, the Board issued Procedural Order No. 1 which set out the date for an oral hearing to review the Settlement Agreement filed by Enbridge with its application.

Prior to filing its application, Enbridge entered into negotiations with the members of the DSM Consultative to review its draft plan. The result of the collaborative discussions was a Settlement Agreement on the budget allocation, metrics, and targets for Enbridge's 2012 DSM plan and an agreement on the Terms of Reference for Stakeholder Engagement for the multiyear plan period 2012 to 2014. The parties agreed that the 2013 and 2014 budgets, metrics and targets will be the subject of further discussion and will depend in part on the results of the plan in 2012. Enbridge plans to file another application later in 2012 for either the 2013 or 2013 and 2014 rate years.

The parties to the Settlement Agreement are:

- Building Owners and Managers Association Toronto ("BOMA")
- Canadian Manufacturers & Exporters ("CME")
- Consumers Council of Canada ("CCC")
- Energy Probe Research Foundation ("Energy Probe")
- EnviroCentre
- Federation of Rental-housing Providers of Ontario ("FRPO")
- Green Energy Coalition ("GEC")
- Industrial Gas Users Association ("IGUA")
- Low-Income Energy Network ("LIEN")
- Pollution Probe
- School Energy Coalition ("SEC")
- Vulnerable Energy Consumers Coalition ("VECC")

On February 2, 2012 the Board sat to hear the Settlement Agreement. The Agreement sets out a complete settlement on all issues with respect to Enbridge's 2012 DSM plan with the exception of two unsettled issues. One of the unsettled issues dealing with the manner in which low income program costs are allocated was settled after the Settlement Agreement was filed and prior to the oral hearing on February 2, 2012. The parties agreed to the allocation of low income costs on the basis of distribution revenue. The Board heard oral submissions from parties regarding certain issues relating to the Settlement Agreement, as well as submissions on the remaining unsettled issue: whether the maximum incentive increases if the total budget is increased by 10% for incremental low income program spending.

The Board gave an oral Decision on February 2, 2012, accepting the Settlement Agreement and the rate consequences for the 2012 year.

Unsettled Issue: Does the maximum incentive increase if the total budget is increased by 10% to provide incremental funding for low income programs?

The one unsettled issue concerns the interpretation of section 11 of the Guidelines, "Incentive Payment", and in particular whether the maximum incentive may be increased by 10%, to \$10.45 million, in proportion to the 10% increase in the total budget (with the additional funds used for low income programs).

The relevant part of the section reads as follows:

To the extent that the approved DSM budgets deviate in magnitude from the Board proposed budgets, the Annual Cap should be scaled accordingly. This will help ensure that the eligible incentive amount is consistent with the expected level of efforts require to achieve or exceed the approved targets.

Intervenors generally agreed that the key question is what is meant by the phrase "Board proposed budgets" and whether it refers to the base amount (which for Enbridge is \$28.1 million) or to the base amount plus the incremental 10%.

Those supporting the latter interpretation point out that the Guidelines contemplate the 10% increase to the total budget for additional low income programs.

GEC, and others, supported the first interpretation, and GEC maintained that this was the only way to logically and holistically interpret the Guidelines which recognize that DSM is a difficult task that warrants incentives.

There was also some discussion as to whether the phrase “deviate” includes both increases and decreases. Most parties took the view that the term “deviate” was neutral and would cover change in either direction. . Enbridge pointed out, and many intervenors agreed, that the Board used specific directional language when it referred to “escalating” the budgets for inflation, but used neutral language when using the terms “deviation” and “scaled accordingly” to signify that the budgets could be modified in either direction. SEC argued that another interpretation could be that the Board intended only to capture deviations down from the \$9.5 million maximum incentive. This is demonstrated in the example provided on page 31 which refers to scaling down of the incentive when the approved budget is less than the Board proposed budget.

Board Findings

The Board concludes that the phrase the “Board proposed budgets” refers, in the case of Enbridge, to the level of \$28.1 million as identified on page 25 of the DSM Guidelines. While the Guidelines contemplate an increase of 10% for incremental low income program spending, that increase is expressed as an option, not as an expectation. The Board finds that the term “deviates” is neutral in nature and that therefore increases or decreases are contemplated. As a result, the Board interprets the Guidelines to mean that if Enbridge has an approved DSM budget which is in excess of \$28.1 million, then the maximum incentive will be increased proportionally.

Cost Awards

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Enbridge within **15 days** of the date of this Decision and Order. Enbridge may make submissions regarding the cost claims within **30 days** of this Decision and Order and the intervenors may reply within **45 days** of this Decision and Order. A decision and order on cost awards and the Board’s own costs will be issued in due course.

All filings to the Board must quote file number **EB-2011-0295**, be made through the Board's web portal at, www.errr.ontarioenergyboard.ca and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available parties may email their document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file two paper copies.

DATED at Toronto, February 9, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary