

January 16, 2018

**BY COURIER (2 COPIES) AND RESS**

**Ms. Kirsten Walli**

Board Secretary

Ontario Energy Board

2300 Yonge Street, Suite 2700, P.O. Box 2319

Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: EB-2017-0224 – Enbridge Gas Distribution Inc. (“Enbridge”)  
EB-2017-0255 – Union Gas Limited (“Union”)  
2018 Cap and Trade Compliance Plans**

I am writing on behalf of Environmental Defence in response to the letter from Enbridge dated January 12, 2018, which objected to Environmental Defence and the Green Energy Coalition filing evidence in this proceeding.

**ED/GEC Not Seeking to Expand Scope**

Enbridge argues that filing Mr. Neme’s evidence would expand the scope of this proceeding.<sup>1</sup> This submission directly conflicts with draft issues list, which clearly includes cost-effectiveness, optimization and customer abatement as live issues within scope (see issues 1, 1.4, and 1.10). Mr. Neme’s evidence would directly relate to these issues. Enbridge’s submissions also conflict with the Board’s decision in the 2017 cap and trade compliance plans proceeding. The Board held that these same issues (i.e. the cost consequences of failing to include incremental abatement in cap and trade compliance plans) were within scope.<sup>2</sup> Indeed, the Board took these issues very seriously and considered them over five pages of its reasons.<sup>3</sup>

**No Conflict with DSM Framework**

Enbridge argues that Environmental Defence is seeking to turn this proceeding into a Demand Side Management (“DSM”) hearing.<sup>4</sup> This is a rehashing of Enbridge’s argument in the 2017 proceeding that no incremental abatement could be included in cap and trade plans because this would purportedly conflict with the budget maximums under the DSM Framework.<sup>5</sup> This position was not accepted by the Board in its 2017 cap and trade

<sup>1</sup> Letter from Enbridge, January 12, 2018, p. 1.

<sup>2</sup> Board Decision, EB-2016-0296/0300/0330, at p. 23-27.

<sup>3</sup> Board Decision, EB-2016-0296/0300/0330, at p. 23-27.

<sup>4</sup> Letter from Enbridge, January 12, 2018, p. 1.

<sup>5</sup> Enbridge Reply Submissions in EB-2016-0296/0300/0330 at para. 56 (“In short, those Parties advocating that a material amount of incremental DSM should have been added to EGDI’s 2017 Compliance Plan are effectively arguing that the Board’s DSM Decisions should be disregarded and that this cap and trade

decision.<sup>6</sup> Conservation under the Cap and Trade Framework is clearly incremental to conservation under the DSM Framework. The Board explicitly and unambiguously stated this four times in the Cap and Trade Framework and Filing Guidelines.<sup>7</sup> The fact that conservation is being pursued under the DSM Framework is no justification for the utilities' failure to consider incremental conservation (and implement it, if appropriate) as a way to reduce cap and trade compliance costs.

### **Not Duplicative of the DSM Mid-Term Review**

Mr. Neme's evidence would not be duplicative of the issues in the DSM Mid-Term Review. As noted in my letter of January 10, 2018, Mr. Neme's evidence "would provide a technical assessment of the utilities' evidence regarding the availability of incremental cost-effective conservation, estimate the conservation potential based on pre-existing reports, and calculate the potential savings (if any) that the utilities could achieve for consumers by including incremental conservation in their plans." These are not issues for the DSM Mid-Term Review.

Cap and trade proceedings focus on whether the utilities have complied with the Cap and Trade Framework's requirement to develop optimized and cost-effective plans, including an assessment of the balance between compliance options such as allowance purchases and incremental customer abatement. This is very different from the DSM Mid-Term Review, which focuses on potential adjustments to the DSM Framework. Mr. Neme's evidence would relate directly to core cap and trade compliance plan issues.

The utilities have put forward specific evidence in this proceeding to justify their decision not to include incremental conservation in their cap and trade compliance plans, including their analysis of the MACC curve.<sup>8</sup> Mr. Neme would provide a technical assessment of this evidence, which is specific to this proceeding and not at issue in the DSM Mid-Term review.

Mr. Neme's evidence would also directly examine an issue that is clearly only relevant to this cap and trade proceeding, namely, how much money the utilities could have saved their customers (if any) by including incremental conservation in their compliance plans. This goes to whether the cap and trade plans are truly cost-effective and compliant with the Cap and Trade Framework. It is not an issue that is relevant in the DSM Mid-Term Review.

Further still, Enbridge's argument is inconsistent with the Board's decision in the 2017 cap and trade proceeding. In that decision, the Board expressly encouraged the utilities to consider incremental customer abatement in their future compliance plans.<sup>9</sup> If the Board

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proceeding should have included a reconsideration of DSM budgets, cost effectiveness, targets and score cards, all it should be noted, in the very first year of the 4-year cap and trade compliance period.")

<sup>6</sup> Board Decision, EB-2016-0296/0300/0330, at p. 23-27.

<sup>7</sup> *Ibid.*, p. 23, appendix A: v, and vii.

<sup>8</sup> E.g. Union's Pre-Filed Evidence, EB-2017-0255, Exhibit 3, Tab 4, Appendix A, pp. 1-7.

<sup>9</sup> Board Decision, EB-2016-0296/0300/0330, at p. 27.

believed that incremental abatement had to wait for the 2018 Mid-Term review, it would not have included this express statement in its decision. Indeed, it is hard to see how the Board could have intended the issue of incremental conservation to be scoped out of cap and trade compliance plan proceedings until after the Mid-Term Review as this would result in no incremental conservation for at least two of the four years of the Cap and Trade Framework, and most likely for three of the four years.

### **Ramp Up Issue**

Enbridge argues that Mr. Neme's evidence is irrelevant because it would be impossible to ramp up additional conservation in 2018. However, that is a contested factual issue. It is inappropriate for Enbridge to be seeking a determination on that contested factual issue at this early stage without giving intervenors the opportunity to seek interrogatories, cross-examine, or file evidence.

Furthermore, even if no conservation could be ramped up at this stage, that is no excuse for Enbridge failing to include incremental cost-effective conservation in its compliance plan when it was initially being developed. This failure to include incremental conservation, in our view, means that the plans are not as cost-effective as possible and are not compliant with the Cap and Trade Framework, which in turn justifies a disallowance of a portion of the utilities' costs. In 2017 the Board declined to disallow any costs on the basis that the utilities did not have sufficient time to after the announcement of the program to implement incremental abatement. But 2018 is a different situation, particularly because the Board expressly encouraged the utilities to consider incremental customer abatement in their future compliance plans.<sup>10</sup>

### **Procedural Issues**

Enbridge incorrectly asserts that "Mr. Neme's evidence is not dependent on IR responses from Enbridge." Union provided 7 pages of analysis regarding the potential availability of incremental conservation.<sup>11</sup> Enbridge provided no equivalent analysis, making it impossible to technically assess its assertion that incremental conservation is unavailable without interrogatory responses. Even Union's evidence raises a number of important questions that require interrogatories for the purposes of Mr. Neme's analysis. Furthermore, interrogatory responses will be required for the assessment of the potential savings (if any) that the utilities could have achieved for consumers by including incremental conservation in their plans.

It is common practice to schedule intervenor evidence far enough after interrogatory responses to allow experts to develop evidence based on that information. This helps to address the huge asymmetry of information that could unfairly benefit the utilities. Without scheduling the interrogatory responses first, the utilities gain a significant unfair advantage. Enbridge's request to move away from the normal and fair practice should not be granted.

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<sup>10</sup> Board Decision, EB-2016-0296/0300/0330, at p. 27.

<sup>11</sup> Union's Pre-Filed Evidence, EB-2017-0255, Exhibit 3, Tab 4, Appendix A, pp. 1-7.

Environmental Defence has no objection to the utilities being afforded an opportunity to pose interrogatories to Mr. Neme.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', written in a cursive style.

Kent Elson

c: Parties in this proceeding