

February 2, 2009

Ms. Kirsten Walli, Board Secretary  
**ONTARIO ENERGY BOARD**  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2008-0219: Enbridge Gas Distribution (EGD) 2009 IRM Rates - Phase II.**

**Proceeding Schedule.**

We write on behalf of the Industrial Gas Users Association (IGUA) to raise a concern regarding the schedule for this proceeding. The Hearing Panel may wish us to address this concern at the Issues Day herein scheduled for Friday February 6<sup>th</sup>.

Procedural Order No. 5 herein specifies that following determination of the issues list by the Hearing Panel, intervenors are to file evidence by Tuesday February 16<sup>th</sup>, following which written interrogatories are to be submitted on all evidence - that of EGD and of intervenors - simultaneously and no later than Monday February 23<sup>rd</sup>. This schedule is a departure from the conventional hearing schedule in which discovery is first had of the applicant's case, following which intervenors elect whether to file evidence, and if so what evidence to file, and then discovery proceeds on any such intervenor evidence.

Included in EGD's application are requests for approval of; i) a newly structured GDAR IVA fee; ii) a new in-franchise title transfer fee; and iii) a new requirement that direct purchase (DP) bundled service customers contract for firm upstream transportation in support of their delivery obligations. All three of these proposals seek substantial changes to existing delivery services, and entail material cost consequences to customers.

Further, EGD's prefiled evidence in respect of each of these proposals is limited to a high level description of the proposal and its rationale, captured in a relatively few pages. The in-franchise title transfer fee proposal is set out, and justified, in less than four pages of direct evidence and

one supporting numerical table. The IVA fee proposal is justified in less than three pages of direct evidence with one supporting table.

The proposed requirement that DP bundled customers contract for firm upstream transportation, which of the three proposals listed above is of most concern to IGUA, is described in five pages of direct evidence. This evidence is supported by what is cited in EGD's evidence [Ex. C/1/8, p. 4, para. 10] as "*an independent study and report*" on Canadian and US LDC transportation related requirements for DP customers. This "*study and report*" is provided without reference to its author, and constitutes 11 pages, a summary table and a number of pages reproduced from the tariffs of various LDCs. None of the pre-filed evidence in respect of this proposal; i) particularizes the potential cost exposure of the supply deficit concerns that have prompted the proposal; ii) elaborates on how customers are to demonstrate firm upstream transportation arrangements, and to what extent relative to their daily delivery requirements and/or contract demand; iii) addresses the customer's obligation in the case where an intermediary is used by the customer to source and supply gas; or iv) particularizes what transportation arrangements (of what degree of flexibility and for what length of time) would qualify under the proposal. These are just examples of details not addressed in EGD's prefiled evidence that would be relevant to consideration by parties, including IGUA, of whether and how to respond to EGD's proposal.

We wish to be clear that IGUA does not intend by raising these concerns to be critical of EGD. IGUA does note with appreciation that EGD took upon itself to convene a meeting with interested parties to discuss the firm upstream transportation proposal. That meeting was held earlier today. IGUA attended that meeting, and found it helpful. What is clear to IGUA following that discussion is that; i) the regulatory and commercial upstream transportation issues have some complexity; ii) the implications of EGD's proposal could impact rate class characterization for some of IGUA's members, and for others will impact their commercial dealings with marketers who serve them; and iii) implementation of the proposal would entail restructuring contractual relationships and provisions, and some time may be required to do that. While quite informative, the discussion at this afternoon's meeting was clearly not adequate substitute for a considered and written interrogatory process on this proposal.

IGUA is mindful of the Board's ongoing attempts towards more efficient and timely regulation. However, in the instance of Phase II of this particular proceeding, without a further discovery process IGUA is not in a position to properly determine whether it needs to file evidence to address the proposals, and if so what evidence it needs to file.

IGUA respectfully submits that it would be appropriate for the Board to provide for interrogatories on EGD's Phase II evidence prior to putting intervenors to the election of whether they will file evidence, and if so what evidence they will file. As already discussed above:

- Each of these three proposals entails brand new charges and/or customer requirements.
- Each of these three proposals has material financial consequence for customers.
- The evidence filed in support of each of the proposals is cursory.

In addition, IGUA notes that:

- One of the justifications cited by EGD and endorsed by intervenors in support of the phasing of this proceeding was that these Phase II issues, which would take more time than the mechanical IRM issues to determine, did not require determination in order to set rates. As a result, addressing these issues in a separate and second phase of the proceeding would allow (and in fact has allowed) the Board to set 2009 rates promptly, and then take the time required to properly consider and dispose of these additional issues since there would be no imperative to rush to conclusion.
- Adding to the current schedule provision for interrogatories on EGD's evidence prior to putting intervenors to election respecting the need for them to bring their own evidence should add 4 weeks or less to the process.

For these reasons, IGUA proposes that the Hearing Panel consider adjustment of the hearing schedule following the date for issuance of the final issues list (February 11). Set out below is a table reproducing the current hearing schedule, with a column added to illustrate how IGUA's proposal might be implemented. Comparison of these tables illustrates that IGUA's proposal would add approximately one month to the length of Phase II of this proceeding. In the result, and subject of course to the Board's own scheduling of the various matters that it must address this spring, the hearing would conclude in early May, rather than at the start of April.

<b>Event</b>	<b>Current Schedule</b>	<b>Proposed Adjustment</b>
Final Issues List	February 11	February 11
Intervenor Interrogatories of EGD	February 23	February 18
EGD responses to intervenor interrogatories	March 3	March 4
Intervenor evidence filed	(February 17)	March 20
Interrogatories on intervenor evidence	(February 23)	March 26
Intervenor responses to interrogatories	(March 3)	April 2
Technical Conference	March 11 & 12	April 7 & 8
Tech. Conference undertaking responses	March 16	April 13
Settlement Conference	March 18 & 19	April 20 & 21
File Settlement Proposal	March 23	April 24
Oral Hearing Concludes	April 2	Early May

IGUA would appreciate consideration of this proposal by the Board. Please note that I will be away for two weeks as of this evening, but in my absence any questions regarding this proposal can be directed to Robert Frank of our office, who can be reached at 416 202 6741. Mr. Frank will be attending on behalf of IGUA at the Issues Day scheduled for February 6<sup>th</sup>, and will be able to speak to this matter as appropriate.

Yours truly,  
**MACLEOD DIXON LLP**



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Intervenors of Record

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