

By E-mail



February 5, 2009

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto ON M4P 1E4

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9
tel.: (613) 237-5160 fax: (613) 230-8842
www.blgcanada.com

PETER C.P. THOMPSON, Q.C.
direct tel.: (613) 787-3528
e-mail: pthompson@blgcanada.com

Dear Ms Walli,

Enbridge Gas Distribution Inc. 2009 Rates

Board File No.: EB-2008-0219
Our File No.: 339583-000017

As solicitors for Canadian Manufacturers & Exporters ("CME"), we are providing comments on two matters which we understand will be discussed by interested parties on Issues Day in this proceeding scheduled for Friday, February 6, 2009. Unfortunately, neither Mr. DeRose nor I can attend the Issues Day Hearing.

Our comments on Issues No. 8 and 9 (the "Unbundling Issues") on the Draft Issues List and the schedule changes proposed by counsel for the Industrial Gas Users Association ("IGUA") in a letter to the Board dated February 2, 2009, are contained in the sections of this letter which follow.

The Unbundling Issues

The questions posed in Issues 8 and 9 relate to the request made by Direct Energy Marketing Limited ("Direct Energy") that the services offered by Enbridge Gas Distribution Inc. ("EGD") be unbundled to the same extent that Union Gas Limited ("Union") offers unbundled services to customers located in the Union South operating area. This proposal was initially made by the Gas Marketer Group ("GMG") in the generic EB-2008-0106 proceeding. The Board directed GMG to submit its proposals in utility-specific rates proceedings. Direct Energy's response is that Issues 8 and 9 be considered and determined in this case.

No evidence has been filed by either Direct Energy or EGD with respect to these unbundling proposals. When Direct Energy, EGD and perhaps others have filed such evidence, many parties will be questioning the effect of the proposals on EGD, marketers and consumers.

We submit that, when considering how best to deal with Issues 8 and 9, the Board should recognize that there are a number of similarities between the proposals, which form the subject matter of these issues, and EGD's proposal to change the requirements for the contracting of upstream transportation by direct purchasers as a condition to obtaining distribution services, which forms the subject matter of Issue 7.

First, each of the EGD and Direct Energy proposals, if approved, will materially alter the distribution services *status quo* upon which EGD's Incentive Rate Mechanism ("IRM") rates are based. We submit that any measures which materially alter the distribution services *status quo*, upon which IRM rates are based, should not be implemented until the IRM rates are re-based. While it is appropriate to consider the proposals during the operation of IRM rates and to approve them, the implementation of any such approvals should not take place until 2012 when EGD's IRM rates are to be re-based.

Second, many parties will be questioning the impacts of EGD's contracting requirement proposals and Direct Energy's unbundling proposals to determine their effects on marketers and consumers.

Third, each of the proposals were initiated at approximately the same time. The unbundling proposals were first submitted in the EB-2008-0106 proceeding at or about the same time that EGD submitted its proposal to change the requirements for the contracting of upstream transportation by direct purchasers as a condition of obtaining distribution services from EGD.

Fourth, there is a linkage between the two (2) proposals in the sense that both upstream transportation requirements, as a condition for obtaining distribution services, and distribution services on EGD are required by marketers to provide services to gas consumers.

In the context of these similarities and linkages between EGD's proposal, which forms the subject matter of Issue 7, and the unbundling proposals, which form the subject matter of Issues 8 and 9, we submit that, on fairness and efficiency grounds, the most appropriate course for the Board to follow is to establish a process whereby the subject matter of Issues 7, 8 and 9 will be considered at the same time.

Accordingly, we submit that the most appropriate course to adopt is to eliminate Issues 7, 8 and 9 from the scope of these proceedings and to direct that these issues be heard either in a Phase 3 of this proceeding or as a Phase 2 of EGD's 2010 IRM rates case.

The adoption of this process suggestion will allow all interested parties sufficient time to present evidence and to conduct their discovery examinations of each of the proposals which EGD and Direct Energy make which, if approved, would materially alter the services *status quo* base for EGD's currently approved IRM rates.

Proposed Scheduling Changes

Counsel for IGUA proposes scheduling changes for Phase 2 of this proceeding to allow parties to complete discovery of EGD's pre-filed evidence before preparing and pre-filing any evidence in response. IGUA characterizes three (3) of EGD's Phase 2 proposals as seeking "substantial changes to existing delivery services" and entailing "material cost consequences to customers". IGUA identifies EGD's proposed requirement that Direct Energy purchase unbundled customers contract for firm upstream transportation, being the subject matter of Issue 7, as the item of greatest concern.

If our submissions are accepted, then matters pertaining to Issue 7, the item of greatest concern to IGUA, as well as matters pertaining to Issues 8 and 9 will be removed from

the ambit of Phase 2 of this proceeding and will be heard, either in a Phase 3 of this proceeding or a Phase 2 of the 2010 IRM Application. This course of action would allow all interested parties to have a full discovery of EGD's proposals and Direct Energy's proposals which, in our view, are linked.

If our submissions with respect to the severance of matters pertaining to Issues 7, 8 and 9 are accepted, then matters pertaining to Issues 1 through to 6 will remain on the Final List of Issues to be determined in Phase 2 of this case. We agree with counsel for IGUA that there are matters falling within the ambit of these issues upon which interested parties should be permitted to have discovery of EGD before preparing and pre-filing any evidence in response to EGD's proposals.

In this context, we submit that the schedule changes counsel for IGUA proposes are appropriate in relation to matters falling within the ambit of Issues 1 to 6 inclusive on the Draft Issues List.

Summary

In summary, our recommendations are:

- (a) remove Issues 7, 8 and 9 from the ambit of this proceeding, and
- (b) adopt the schedule changes proposed by counsel for IGUA for the purposes of determining matters falling within the ambit of Issues 1 to 6 inclusive on the Draft Issues List.

Please contact me if you have any questions about the contents of this letter.

Yours very truly,



Peter C.P. Thompson, Q.C.

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- c. Interested Parties EB-2008-0219
 - Colin Schuch (OEB)
 - Paul Clipsham (CME)
 - Vince DeRose (BLG)

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