



EB-2008-0219

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. for an Order or Orders approving or fixing
just and reasonable rates and other charges for the sale,
distribution, transmission and storage of gas commencing
January 1, 2009.

BEFORE: Paul Sommerville
Presiding Member

David Balsillie
Member

DECISION ON ISSUES LIST AND PROCEDURAL ORDER NO. 6

Phase 2

Enbridge Gas Distribution Inc. ("Enbridge" or the "Applicant") filed an Application on September 26, 2008 (the "Application") with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998 c.15, (Sched. B), as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2009. The Board has assigned file number EB-2008-0219 to the Application and has issued a Notice of Application dated October 20, 2008 ("the Notice").

In Procedural Order No. 1 the Board bifurcated the case into two Phases: In Phase 1 the Board approved a full settlement of all the issues in its order dated December 18,

2008. Phase 1 set the rates for 2009 pursuant to the Incentive Rate Mechanism established under EB-2007-0615.

This phase, Phase 2, deals with ancillary matters, ostensibly unrelated to the setting of rates, applied for by Enbridge in connection with its 2009 rates application.

A Draft Issues List was circulated to parties on January 21, 2009 as part of Procedural Order No. 5.

On February 6, 2009 the Board convened an Issues Day to hear submissions on the Draft Issues List for Phase 2 of the proceeding. This decision will establish the final Issues List for Phase 2.

The Canadian Manufacturers & Exporters (“CME”), the Industrial Gas Users Association (“IGUA”) and the Consumers Council of Canada (“CCC”) filed written submissions on the Draft Issues List. Enbridge, the School Energy Coalition (“SEC”), Direct Energy, Energy Probe Research Foundation (“Energy Probe”), the Vulnerable Energy Consumers Coalition (“VECC”), IGUA and Shell Energy each appeared at the hearing.

The Draft Issues List identified the following ten issues:

1. Is Enbridge’s request for approval of a new deferral account to record the incremental costs of complying with new International Financial Reporting Standards (IFRS) guidelines appropriate? (Ex. C/1/2)
2. Is Enbridge’s request for approval to change some of the non-energy service charges listed on Rider G appropriate? (Ex. C/1/3)
3. Is Enbridge’s request for approval of some revisions to wording in the rate handbook in respect of late payment penalties, the “force majeure” clause, and some other areas appropriate? (Ex. C/1/4)
4. Is Enbridge’s request for approval of the discontinuation of an Alternative Dispute Resolution (ADR) commitment stemming from the EB-2006-0034 proceeding requiring the submission of an EnVision benefit report on an annual basis appropriate? (Ex. C/1/5)

5. Is Enbridge's request for approval of a revision to the GDAR IVA fee, from a percentage of the absolute value of the adjustment, to a flat transaction fee appropriate? (Ex. C/1/6)
6. Is Enbridge's request for approval of an In-Franchise Title Transfer fee, to account for additional costs for the provision of this service after the new CIS software becomes operational appropriate? (Ex. C/1/7)
7. Is Enbridge's request for approval of a change in the requirements for the contracting of upstream transportation that would require direct purchase bundled service customers to contract for firm upstream transportation appropriate? (Ex. C/1/8)
8. What is an appropriate approach to the unbundling of storage and transportation services from the delivery of natural gas supply for all customer classes of Enbridge? (Direct Energy letter Oct 29/08)
9. What conditions should be associated with such unbundling? (Direct Energy letter Oct 29/08)
10. What should be the timing of the next IRM filing (2010 rates)?

Of these Issues, items 1 through 7 inclusive were originally proposed by Enbridge as the subject matter for Phase 2. Direct Energy proposed the inclusion of items 8 and 9, and Board Staff proposed item 10.

The Board also heard submissions with respect to the timing of certain incidents within the proceeding. Specifically, IGUA urged the Board to amend the case timetable, which appeared as an Appendix A to Procedural Order No. 5. This position was supported by CCC and CME in their respective written submissions. IGUA's proposal, which was not opposed by any party, would add an interval to accommodate a discovery process prior to the filing of intervenor evidence. It argued that this additional process would enable intervenors to consider the nature of any evidence they wished to file in light of an enhanced appreciation of the Applicant's filing.

The Board agrees, and an amended timetable appears as an Appendix "A" to this Decision and Procedural Order. Parties will note that in addition to providing the interval

suggested by IGUA, the Board has also made provision for the filing of additional or updated evidence by the Applicant, should it wish to do so.

The Parties agreed that Issues 1 through 6 inclusive should be included in the Issues List for this proceeding and should be considered within the timeframes outlined in the now amended case timetable. The Board agrees, and these Issues will form part of the Issues List for this proceeding, without amendment.

There were divergent views with respect to the remaining Issues.

As the proponent of Issues 8 and 9, Direct Energy pointed to the history that the underlying issue has had before the Board in previous proceedings. The proposal embedded in Issues 8 and 9 has been deferred before, most recently in EB-2008-0106, where the Board expressly directed the Gas Marketer Group (which included Direct Energy) to bring the issue to a utility-specific rates proceeding. This is such a proceeding, and Direct Energy argued that the time has come to adjudicate the issue.

Enbridge disagreed. It argued that Issues 8 and 9 ought not be considered within this case. In its view, major preparation would be required to respond to the issues adequately. Such preparation would include a comprehensive assessment of the implications of Direct Energy's unbundling proposal for Enbridge and its customers. In its view, the unbundling exercise contemplated involves a major change in practice and approach, and development of a workable model would be very time-consuming for everyone involved and not appropriate within the context of this limited case. While Enbridge suggested that Issues 8 and 9 be removed from this case, it indicated that it would be prepared to consult with parties respecting the subject matter of the Issues in order to establish the scope of the preparation needed and the time involved in doing so.

CCC and CME argued that not only should Issues 8 and 9 not be considered within this case, but also that Issue 7 should be deferred to the time of the next rebasing exercise for Enbridge, consideration of which will begin in calendar year 2012. In their view, Issues 7, 8 and 9 are linked and of such complexity and importance that major preparation would have to be undertaken by all parties.

Enbridge strongly rejected the suggestion that consideration of Issue 7 be deferred. In its view, Issue 7 addresses important system reliability matters, and must be dealt with

now. Any delay in the consideration of this issue could result in the highly undesirable interruption of service for firm supply customers. Issue 7 reflects an Enbridge proposal that would require direct purchase bundled customers to enter into firm upstream supply contracts.

SEC suggested that the Board create a Phase 3 within this proceeding to deal with Issues 8 and 9. It acknowledged the complexity of the Issues, and the need for a considerably prolonged evidentiary process. SEC was concerned that deferring the unbundling proposal until the next rebasing as suggested by CCC and CME at this stage was unnecessary. In its view, it was important to progress toward consideration of the issue now, leaving the ultimate timing of that consideration open.

VECC suggested that Issue 7 should remain on the Issues List for consideration in this proceeding. In this way Enbridge could make its argument that this Issue required immediate consideration, and was not linked to Issues 8 and 9.

IGUA's position respecting the change in the case timetable referenced above was largely motivated by its view that Issue 7, as well as Issues 5 and 6, needed a more exhaustive evidentiary process than the former timetable provided. IGUA took no position with respect to the inclusion of Issues 8 and 9 in this Phase.

The Board finds that Issue 7 shall be included in the Issues List for this proceeding, without amendment.

In making this finding the Board is influenced by Enbridge's assertion that system reliability is in jeopardy and requires immediate remediation. This proposition will be tested in the course of our consideration of the Issue, together with Enbridge's proposal for the nature of and the timing of the solution. The Board is not convinced at this stage that consideration of this Issue is so linked to Issues 8 and 9 that they must be considered together. It is open to Parties to take that position in the course of this proceeding, should they wish to do so.

In the Board's view, the amended timetable provides an adequate opportunity for the Parties to prepare for the consideration of Issue 7 within this proceeding.

The parties were unanimous in the view that even the amended timetable does not provide an adequate structure for the consideration of Direct Energy's unbundling

proposal, embodied in Issues 8 and 9. The Board agrees, and acknowledges that the implications of unbundling are far-reaching and require special treatment.

Leaving aside Direct Energy's Issues Day brief written submission, the Board observes that there is no evidence on the record on unbundling by either the utility or any other party. Clearly there is a need for such evidence should the Board wish to consider the unbundling proposal.

The Board agrees with the submissions of Enbridge and others that to address Direct Energy's unbundling proposal, there ought to be a more complete process. The Board has for a number of years in various forums, signaled its interest in examining the issues around unbundling. The Board believes the time is right to create the conditions which will enable such an examination at Enbridge. With this in mind, the Board will, in this case, initiate a process which will establish a foundation for the consideration of the Issues as part of the 2010 IRM rates proceeding.

The Board directs Enbridge to convene a Conference, to be attended by all of the Parties including Board Staff, the purpose of which is to establish a process for the consideration of Direct Energy's unbundling proposal. The Conference is intended to establish timelines for the preparation and filing of evidence in time for filing in the 2010 IRM case. The Board expects all Parties to participate constructively and in good faith to achieve this purpose.

The manner of proceeding with the issue within the 2010 rates case is a matter that must be determined by the panel hearing that case. The Board wants to make it clear that by introducing a process at this time to address the unbundling issue is in no way an indication that unbundling is predestined, or that Direct Energy's proposal will be adopted. There may be compelling arguments that no unbundling should be undertaken at Enbridge. Parties may also wish to argue that such a change in the mid-term of an Incentive Rate Mechanism is inappropriate. The Parties will of course be able to make those arguments in the course of that proceeding. The Board's intention in this proceeding is simply to create the conditions that make it possible for the issue to be considered in the next IRM case.

Board staff will facilitate the arrangements for the conference.

Parties to this proceeding that have been deemed eligible to claim awards of costs will also be eligible to claim awards of costs for their participation in the unbundling conference. The Board, as always, will be mindful of the value of stakeholder input relative to the amounts claimed.

Except to make provision for the conference described above, this panel will not consider Issues 8 and 9 in this proceeding, and they will be removed from the Issues List.

With respect to Issue 10, Enbridge expressed a concern about the wording of the issue because it seemed to suggest that only an earlier filing date would rectify the timing problem. Enbridge said that the existing timeline of the annual IRM filing, already established by agreement in the IRM Settlement Agreement, should be preserved as much as possible. Enbridge said that Issue 10 should instead be focused on how to make the existing timelines work rather than suggesting, as the wording seems to indicate, that the timing of rate applications during the IRM period should be altered from the timelines set out in the settlement. SEC indicated that the existing timeline required about an extra month to achieve its goal.

While the Board acknowledges Enbridge's point, in the Board's view the discussion should not necessarily be restricted in the way that Enbridge suggests. It appears to the Board that the current timeline and procedural process for the annual IRM rate adjustment may not allow for a timely Board rate order, as evidenced by the recent 2009 rate adjustment process in the fall of 2008. The Board therefore believes it would be beneficial to encourage an unrestricted discussion of Issue 10 in this case, and will construe Issue 10 to include that discussion.

The Board's observes that the inclusion of ancillary, ostensibly non-rate related issues, now comprising Phase 2 of this proceeding, has resulted in an extended process, not necessarily contemplated as part of the IRM mid-term adjustment. Some of the non-rate related issues have financial and operational consequences for customers.

In its consideration of the issues remaining on the Issues List the Board will consider whether the proposals made by the Applicant ought to be implemented in the mid-term of the IRM process, or left to a later date. The Board is concerned that Applicants may be selective in introducing changes in the mid-term, omitting changes that may be disadvantageous, while including those which are advantageous.

The Board has no reason to believe that this applicant has done any such thing, but as a matter of principle, in these early days of the new IRM environment, the Board thinks it important to ensure that the IRM process achieves its fundamental purpose which is to provide a form of regulation that is appropriately light-handed and fair.

The Board encourages parties to address this subject in their evidence and submissions.

The Board will now make provision for the following procedural matters. An amended case timetable for Phase 2 is attached as Appendix A. The Final Issues List for Phase 2 is attached as Appendix B.

Please be aware that further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Enbridge may, at its option, file updated evidence on or before Monday, March 2, 2009.
2. Parties seeking information and material on Enbridge's evidence shall request it by written interrogatories filed with the Board and delivered to all the parties no later than Monday, March 9, 2009.
3. Enbridge shall file complete responses to all the interrogatories with the Board and deliver the responses to the other parties no later than Monday, March 23, 2009.
4. Any intervenor wishing to file evidence shall file such evidence with the Board and copy all parties by Monday, April 6, 2009.
5. Parties seeking information and material on any intervenor's evidence shall request it by written interrogatories filed with the Board and delivered to all the parties no later than Monday, April 13, 2009.
6. Intervenor's shall file complete responses to all the interrogatories with the Board and deliver the responses to all the other parties no later than Monday, April 20, 2009.

7. A Technical Conference shall be convened on Wednesday, April 22, 2009 so that parties may respond to questions related to the evidence filed. The Technical Conference may proceed on April 23, 2009 if required. The Technical Conference will be transcribed and will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto at 9:30 am.
8. Enbridge and the other parties will respond to any undertakings given at the Technical Conference on or before Monday, April 27, 2009.
9. A Settlement Conference will be convened at 9:30 a.m. on Wednesday, April 29, 2009 with the objective of reaching a settlement among the parties on the issues. The Settlement Conference may proceed on April 30, 2009, if needed. The Settlement Conference will be held in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto.
10. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board no later than 4:45 p.m. on Tuesday, May 5, 2009.
11. The oral hearing will commence in the Board's hearing room on Thursday, May 7, 2009 at 2300 Yonge Street, 25th Floor, Toronto at 9:30 a.m. The hearing may proceed on May 8, May 14 and May 15, if needed.
12. The list of Intervenors is attached as Appendix C to this Order.
13. All parties shall file their submissions with the Board Secretary and must quote file number EB-2008-0219. These submissions should be made through the Board's web portal at www.errr.oeb.gov.on.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, telephone number, fax number and e-mail address and must be sent to the Board by 4:45 pm on the date indicated with a copy to all parties. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the addresses below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer

access are required to file 7 paper copies. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Colin Schuch at colin.schuch@oeb.gov.on.ca and Board Counsel, Donna Campbell at donna.campbell@oeb.gov.on.ca.

DATED at Toronto, February 17, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

**APPENDIX A
Enbridge 2009 Rates
EB-2008-0219**

**Case Timetable
Phase 2**

	Event	Date 2009
1.	Enbridge to file updated evidence (optional)	March 2
2.	Interrogatories on Enbridge evidence	March 9
3.	Interrogatory responses (Enbridge)	March 23
4.	Intervenor evidence filed	April 6
5.	Interrogatories on intervenor evidence	April 13
6.	Interrogatory responses (intervenors)	April 20
7.	Technical Conference	April 22, 23
8.	Tech. conference undertaking responses	April 27
9.	Settlement Conference	April 29, 30
10.	File Settlement Proposal	May 5
11.	Oral Hearing (4 days)	May 7, 8, 14, 15

APPENDIX B

Final Issues List

Enbridge 2009 Rates - EB-2008-0219

Phase 2

1. Is Enbridge's request for approval of a new deferral account to record the incremental costs of complying with new International Financial Reporting Standards (IFRS) guidelines appropriate? (Ex. C/1/2)
2. Is Enbridge's request for approval to change some of the non-energy service charges listed on Rider G appropriate? (Ex. C/1/3)
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7. Is Enbridge's request for approval of a change in the requirements for the contracting of upstream transportation that would require direct purchase bundled service customers to contract for firm upstream transportation appropriate? (Ex. C/1/8)
8. What should be the timing of the next IRM filing (2010 rates)?

APPENDIX C

List of Intervenors

ENBRIDGE GAS DISTRIBUTION INC.

2009 RATES APPLICATION

EB-2008-0219

APPLICANT & LIST OF INTERVENTIONS

February 6, 2009

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