

April 3, 2009

Via Courier and RESS

Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge Street
Suite 2700
Toronto, ON
M4P 1E4

**Re: Enbridge Gas Distribution Inc. – 2009 Rate Application, Phase 2
Board File No.: EB-2008-0219, Direct Energy Evidence Submission**

Dear Ms. Walli,

Please find attached the evidence submission of Direct Energy Marketing Limited in the above noted proceeding.

Yours faithfully

Original signed by

Ric Forster
Director
Government & Regulatory Affairs
Direct Energy Marketing Limited

Cc Mr Norm Ryckman, Enbridge Gas Distribution
Cc Interested Parties

DIRECT ENERGY MARKETING LIMITED

**Evidence Submission re: Enbridge Gas Distribution Rate Adjustment Application, Phase II;
EB-2008-0219**

Evidence overview

Direct Energy (DE) believes that a fair, efficient and openly competitive market is the most desirable outcome for consumers and all market participants. As such, our submission will focus only on Issue #7, found in Procedural Order# 6 in the above noted proceeding, which states:

- Issue 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?

The evidence that follows will cover four main areas:

1. Background on the Firm Transport request made by Enbridge.
2. Issues with Enbridge's rationale for requesting Firm Transport.
3. Impact of approving this request on competitive markets.
4. Financial and implementation risks associated with the request for Firm Transport to be finalised by November 1, 2009.

1. Background

In Exhibit C, Tab 1, Schedules 8 and 10 in EB-2008-0219, Enbridge Gas Distribution (EGD) has made a request to amend their Rate Handbook to impose on Direct Purchase (DP) customers, the requirement of matching firm deliveries behind the city gate with firm upstream transportation (FT). The proposed wording changes to the Rate Handbook to be implemented for November 1, 2009 are as follows:

Unless otherwise authorized by the Company in writing, each Applicant taking service pursuant to an agent type Gas Delivery Agreement must meet its obligation to deliver gas to the Company on any given day by Firm Transportation for at least 90% of the Applicant's MDV. The Applicant must provide to the Company, by November 1 of each year that the Applicant is taking service, or such other date that the Company may reasonably require, sufficient proof of the Applicant's Firm Transportation arrangements.

EGD has stated that the decline in FT to the franchise area in recent years has necessitated the proposed changes in order to protect the reliability of the distribution system under peak demand conditions. The proposed changes are intended to apply to DP bundled service customers who deliver their mean daily volumes (MDV) to EGD's franchise area using their own upstream transportation arrangements. Furthermore EGD is specifically targeting its efforts to increase FT at small volume customers who receive their supply and transport from agents, marketers, or brokers. EGD is not demanding that large volume

customers demonstrate FT arrangements as EGD claims to have better ability to manage these customers as they are fewer in number and are "amenable" to curtailment should they fail to deliver.

Synopsis of Enbridge Rationale for FT Requirements

EGD's evidence indicates that direct shipper volumes constitute 45% of average daily natural gas deliveries to the franchise area and up to 15% of peak day demand. EGD relies on these deliveries to meet firm obligations for end users. Through investigation, EGD has found that according to TCPL's Index of Customers, as of November 1, 2007 approximately 12% of daily deliveries from direct shippers were transported using FT; leaving the remainder to be delivered through Interruptible Transport (IT) arrangements or through diversions of gas on firm contracts to other delivery areas. Enbridge submits that TCPL classifies IT and diversions as low priority services and as such, under peak day conditions these services have a higher likelihood of being curtailed. Furthermore EGD believes that TCPL will not maintain or build facilities for discretionary load.

During peak day conditions from January 13th to 15th, 2009 EGD submits that demand for transportation services on the TCPL Mainline exceeded available capacity and purports that shippers attempting to transport gas using IT or Diversion service were in many cases prorated or restricted. Despite the apparent restrictions, EGD states that all direct shipper gas was in fact delivered to EGD during this period.

EGD believes that the overall decline in FT could pose a significant risk to distribution system reliability. EGD estimates that it would cost approximately \$12M to restore 100,000 customers should a gas system outage occur due to a supply shortfall and loss in system pressure. From a consumer perspective, EGD provides the argument that small volume customers pay for firm transport reflective of EGD's firm transport portfolio, and therefore should receive firm transport from their agent/marketer/ broker. Enbridge included in their evidence a commissioned consultant's report, outlining the consultant's research and views on requirements for upstream transportation.

EGD submits that imposing a 90% FT requirement to underpin direct shipper firm deliveries by November 1, 2009 will address EGD's system reliability concerns. Reliability will be improved by increasing FT to the franchise by approximately 200,000 GJ/day for the upcoming winter, and increasing the amount of FT underpinning direct shipper delivery obligations to 52%.

2. Issues with Enbridge rationale and justification for proposing Firm Transport

No Evidence of Prior Failure

Neither in its evidence, nor in its response to interrogatories has EGD shown that system failure has occurred as a result of the transportation procurement practices employed by direct shippers. In fact, in DE IRR#3, (Exhibit I, Tab 9 Schedule 3) EGD agrees that retailers performed within Enbridge terms of reference for retail service during the peak period from January 13th to 15th, 2009, and that EGD has been able to balance its distribution system by the end of the gas day over the last decade. Furthermore, in BP IRR#5, (Exhibit I, Tab 10, Schedule 5), EGD submits that all expected gas supplies including non-direct purchase customers and contracted peaking supplies, arrived at the franchise area during the peak days noted above.

EGD has also claimed that they may be required to curtail firm large volume customers to protect its system, or to restore system pressure should an outage occur as a result of a supply shortfall. However no past occurrences of such events exist. In fact, during the January 13th to 15th, 2009 stressed time

period, Interruptible customers were still able to flow 439,235 GJ into the EGD franchise area through Curtailed Service Delivery (CSD), which demonstrates that the system is not in jeopardy. EGD's own evidence shows that the current nomination/system balancing process worked as expected, and all gas was delivered as required by market participants.

Quantifying the Risk

EGD claims throughout its evidence that the lack of FT underpinning firm deliveries to the franchise area poses a serious risk to system reliability, but is unable to quantify this risk. EGD is asking the Board to order a fundamental change to the way in which the market interacts at a significant cost to direct shippers, yet cannot substantiate the risk, nor demonstrate how the 90% FT requirement was derived. In IGUA IRR#12 (Exhibit I, Tab 11, Schedule 12) EGD was unable to provide probability estimates of the extreme circumstances that would lead to non-interruptible customers suffering a loss of service, other than to state that "EGD believes that the probability of the event is not zero." In response to DE IRR#23 (Exhibit I, Tab 9, Schedule 23) when asked to provide the calculations that arrive at a 90% FT requirement, EGD stated that the "low level of firm transportation poses a risk to EGD's distribution system reliability", and that a 90% requirement accommodates customer migration between agents while addressing system reliability. DE puts forth that EGD has not provided justification for a 90% FT requirement on a distribution system risk that EGD is unable to quantify. As noted later in this submission, the estimated costs of this request to the Ontario market of \$53M is an inappropriate and unnecessary over-insurance of a risk that has not been quantified.

Furthermore, the notion of a risk created by direct shippers shirking their delivery obligations to the utility for economic gain as suggested by the EGD consultant's report is unfounded. Direct shippers not only have contractual obligations to deliver supply on a daily basis as determined by the MDV established by Enbridge, but also the commercial and fiduciary obligation to service our mutual customers. Enbridge has the ability to impose financial penalties on direct shippers for non-deliveries, as well as the ability to terminate a Gas Delivery Agreement for events of default. Should the current financial penalties be insufficient to provide EGD with a level of comfort that direct shippers will continue to act appropriately, EGD and the Board should consider increasing these penalties.

No Evidence of a Future Security of Supply Issue

During peak day conditions from January 13th to 15th, 2009, EGD submitted that demand for transportation services on the TCPL Mainline exceeded available capacity. DE submits that even a 100% FT requirement will not solve a system security issue of this nature. In response to DE IR#7 (Exhibit I, Tab 9, Schedule 7), EGD agrees that firm transport does not lead to more operational capacity, in that it does not create additional pipelines. Furthermore, as market participants including EGD are unaware of any Open Season for additional TCPL capacity to the EGD franchise area, it would seem that EGD has not in fact requested any additional build. As such, if an operational problem exists, it is not being addressed by this proposal.

EGD is dictating that firm deliveries need to be underpinned by FT not only on peak days, but 365 days per year. If the TransCanada Eastern Gates were full, then year round FT would be required; however there is ample evidence to the contrary. According to the TransCanada website, there is excess capacity at Empress, as evidenced by the fact that firm volumetric requirements were only 38% as at November 1, 2008. In addition, the following TransCanada capacity is available starting April 1, 2009 and November 1, 2009 (as at March 30, 2009):

Table 1: Available TCPL Capacity

Table 1: Available Capacity		
Posted System Segments for FT, FT-SN⁽¹⁾, STS, STS-L, FT-NR	Capacity Starting Apr 1, 2009 (GJ/d)	Capacity Starting Nov 1, 2009 (GJ/d)
Empress to (Domestic)		
South Saskatchewan Delivery Area (SSDA)	1,738,994	1,773,073
Manitoba Delivery Area (MDA)	1,738,994	1,773,073
Western Delivery Area (WDA)	760,921	775,000
Northern Delivery Area (NDA)	760,921	775,000
North Bay Junction	760,921	775,000
Central Delivery Area (CDA)	760,921	775,000
Eastern Delivery Area (EDA) ⁽²⁾	193,863	193,863
Eastern Delivery Area (EDA) ⁽²⁾ FT-NR	39,393 ⁽³⁾	39,393 ⁽³⁾
Eastern Delivery Area (GMI EDA)	0	0
Sault Ste Marie Delivery Area (SSMDA)	9,000	9,000
Southwest Delivery Area (SWDA)	379,174	379,174

Source: TransCanada website

TransCanada mainline renewals effective April 1, 2009 show that firm long haul transport is renewing at a low rate of only 19%:

Table 2: TCPL Mainline Renewals

MAINLINE RENEWALS EFFECTIVE APRIL 1, 2009

Path Type	Eligible	Renewed	Non Renewed	Percentage Renewed
Eastern Short Haul	686,650	498,606	188,044	73%
Longhaul	291,798	54,800	236,998	19%
Western Short Haul	1,000	1,000	0	100%
Grand Total	979,448	554,406	425,042	57%

Quantities are Contract Demand in GJ/d. **Data is as of October 1, 2008.** Western: Delivery west of station 41, to MDA, or to Emerson; Longhaul: Primary Receipt west of 41 or at Emerson and Delivery east of 41 and Emerson; Eastern: completely east of station 41 or Emerson.

Source: TransCanada website.

The reason for the decline in TCPL Mainline renewals is the result of the natural market forces of supply and demand at work, as described in the TransCanada 2008 Annual Report:

"TransCanada faces competition at both the supply and market ends of its systems. This competition comes from other natural gas pipelines accessing the increasingly mature WCSB and markets served by TransCanada's pipelines. In addition, the continued expiration of long-term firm contracts has resulted in significant reductions in long-term firm contracted capacity and shifts to short-term firm and interruptible contracts on the Canadian Mainline, the Alberta System, Foothills, and the GTN System."

Source: http://www.transcanada.com/investor/annual_reports/2008/mda/pipelines/business_risks/

The gravity of the EGD security of supply argument is further called into question by the fact that EGD just held an open season for Tecumseh storage in February of this year for 2,600,600 GJ with 1.6% firm withdrawal capacity available which equates to 31,200 GJ/d. Yet in response to DE IR#6 (Exhibit I, Tab 9, Schedule 6) EGD explains that Tecumseh storage could not be used as a backstop for any non-deliveries required for system balancing as Tecumseh storage is assumed to be used at maximum deliverability on peak days. If EGD is offering firm storage delivery of 31,200 GJ/d, it would seem there is operational capacity available on peak days.

Firm Transport Charge for Small Volume DP Customers

EGD's argument that small volume customers are not receiving firm transport whilst paying for firm transport is inappropriate. This situation is the result of the limitations of the current EGD billing system, so cannot be used to justify this change. When the new nCIS system is functional, Marketers will be able to differentiate themselves based on transportation costs, which will allow Marketers to compete on another part of the EGD bill and should lead to market efficiencies for Ontario natural gas consumers.

3. Impact of approving this request on competitive markets

As illustrated above in the TransCanada 2008 Annual Report, diminishing WCSB production is causing the market forces of supply and demand to change the way gas is delivered to different parts of Canada. The cost of moving gas on TCPL mainline is increasing. The average toll from 2005 to 2007 was \$1.006/GJ, while the average toll for 2008 to 2009 has been almost 30% higher at \$1.297/GJ. As a result, market participants are finding alternate supply points to deliver gas to Ontario. Utilities in other jurisdictions are responding in a similar manner, for example in Centra's most recent General Rate Application (Centra Gas Manitoba Inc., 2009/10 & 2010/11 General Rate Application; 2008/09 Gas Supply Storage & Transportation Arrangements; Tab 6; Pages 9 and 10), Centra states:

"Centra has reduced its TCPL DCQ to the MDA to 160,000 GJ/day (formerly 200,000 GJ/day) primarily in response to a trend of declining load in Manitoba. The reduction in TCPL capacity is also projected to return Interruptible customers to levels of curtailment which are more reasonably reflective of this lower priority service, which has not been the case in recent years. The toll increases experienced by shippers on TCPL's Mainline in 2008, and the ongoing toll risk due to throughput uncertainty on the Mainline made reducing TCPL capacity an attractive option."

If more economical sources of gas exist south of Ontario, then this gas should flow to Ontario. Instead, EGD seems to be using its market position to shift the natural market forces of supply and demand by limiting direct shipper's ability to purchase Ontario landed gas for EGD franchise customers. It would follow that this practice will also limit choice and potential cost efficiencies for those customers. Instead of supporting competition and the evolution of the Ontario marketplace, EGD seeks to diminish existing market efficiencies by introducing restrictive and expensive rules.

If the competitive market is allowed to progress naturally, beneficial results can be experienced by all participants. For example, NGX is currently canvassing market participants for interest in adding Enbridge CDA to the trading screen for both the term and cash markets. By creating a cash market, more liquidity and the opportunity for price discovery will be possible in these market areas. If demand for these new hubs is artificially reduced by the dictated use of fixed TransCanada Mainline assets, then the development of further liquidity will be curtailed by arbitrary and unfounded utility requests.

It is interesting to note that EGD has been decreasing the proportion of TCPL FT transport that EGD flows over the last five years, as demonstrated in Shell IRR#14. In this table, EGD shows that in 2003, TCPL Mainline FT was 17% of total EGD gas delivered, whereas in 2008, TCPL FT only represented 5% of delivered gas. There is a reason why this percentage has dropped so dramatically; holding the TCPL FT is not the most economical way to get gas to Ontario. Unfortunately, the TCPL Mainline FT is the only route into Ontario that has ample excess FT capacity, so this will be the option that is most likely open to DP suppliers if 90% FT is mandated. However, if EGD was willing to unbundle the FT transport and storage, then DP suppliers could bring gas in through the more economical, fully subscribed Dawn-Parkway route.

Should EGD find TCPL Mainline transport uneconomical, EGD should turn back the firm capacity that it holds, and not shift the problem onto direct shippers. According to the EGD response to DE IR#2, 246,000 GJ of Empress to CDA or EDA expires in October of 2009. The annual cost of this transport is \$107 million. EGD has the option to turn back this transport and find alternatives, such as IT arrangements, shipping on other pipelines, or the purchase of Ontario landed gas. When transport is "out of the money", there is a market reason for this, and holding the transport is a choice that must be made by each market participant and not forced upon small volume DP customers under the guise of a system reliability problem.

On January 22, 2008 EGD presented information to APPrO demonstrating that there is demand destruction from the residential, commercial and industrial customer segments in the Ontario marketplace, and that the avenue for growth for traditional utilities will be through the increasing demand for Gas Fired Power Generation. EGD acknowledges that these customers will want short haul transport only and daily balancing.

Figure 1: Ontario Gas Demand Forecast

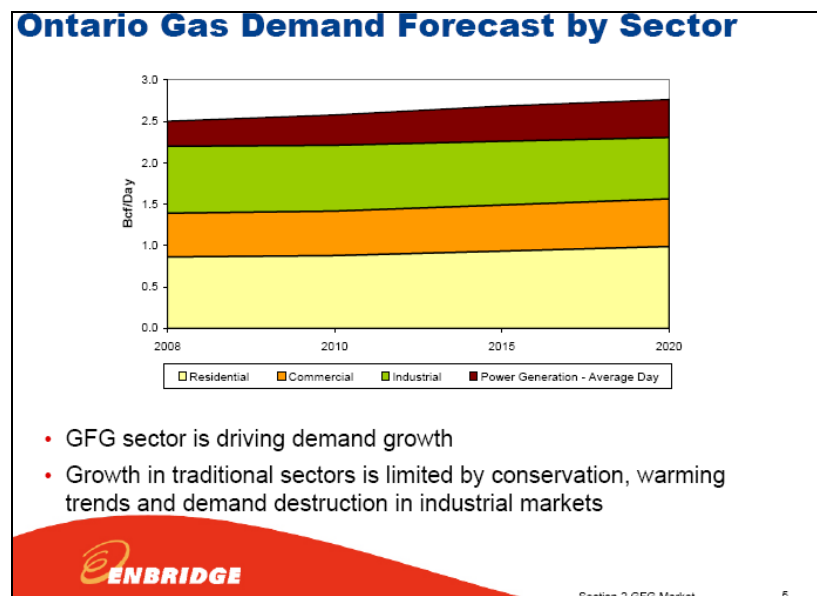


Figure 2: Differences in Service Requirements

Differences In Service Requirements Between GFG And Traditional Markets		
	Power Generation	Traditional Markets
Supply	Mostly Dawn based	Western Canada, Chicago and Dawn
Transport	Short haul	Long Haul and Short Haul
Storage	Daily balancing	Seasonal Balancing
Demand Driver	IESO requirements	Weather/Industrial demand
Scheduling	Frequent Intraday changes Reservation of capacity	Day ahead with few intraday changes



Section 2 GFG Market 10

Source; EGD presentation to APPRO on January 22, 2008

By reviewing this presentation, it would seem EGD could potentially shed the TCPL FT in order to be able to meet the fluctuating demands of Gas Fired Generation. In doing so EGD may have Affiliated transportation which can be contracted at more favourable terms. It also seems inconsistent that EGD is not requesting FT from Non ABC DP customers, even though the daily deliveries are almost as large as ABC DP (BP IRR#10) and the percent of FT held by these shippers is even lower than the ABC DP.

4. Financial Impact

While the primary argument put forth by DE in this evidence pertains to the inability of EGD to demonstrate that a system reliability risk exists, and furthermore that the proposed method to correct this perceived risk would not address the issue; the financial impacts of EGD's request cannot be ignored. EGD has rightly allowed the turnback of FT over many years, yet proposes to disallow this practice beginning on a single day less than six months from the likely date of a Decision in this proceeding. The cost to the Ontario marketplace of the over-insurance being requested by EGD is approximately \$53 million over five years. This estimate takes into account the cost to unwind the existing hedges for landed Ontario gas and replace these with new hedges for Alberta gas supply. This has been roughly estimated by taking the annual flows of the small volume DP customers of approximately 99.4 PJ/yr (BP IRR#10) at 90% volume and applying a cost to unwind hedges of \$0.10 per GJ and a cost to put on new hedges at \$0.019/GJ over a five year time frame. As EGD has not demonstrated that the security of the system is at risk, \$53 million is a high price to pay in order to make this artificial change in the market structure.

5. Conclusions

Direct Energy agrees that the safe and reliable distribution of natural gas is of paramount importance to Enbridge, market participants, and our mutual customers. In this proceeding however, DE believes that EGD has failed to demonstrate and quantify the risks to the system as a result of the transportation practices of direct shippers. Furthermore any risks to the balancing of the distribution system that EGD

has raised, by its own admission has also demonstrated that such risks can, and have, been mitigated through the tools and processes available to EGD today.

For the reasons noted in this submission, DE strongly believes that utilities should not be able to dictate the manner in which the competitive market should operate and views EGD's unfounded requirement for FT to be a step towards the re-regulation of the Ontario gas market. The overall market benefits from increased efficiencies in gas procurement, transportation and storage. However, EGD seems to be using its market position to limit direct shipper's ability to purchase Ontario landed gas, without demonstrating such risk even exists. Furthermore, if EGD deems the actual risk to system reliability occurs when demand exceeds capacity on the TCPL Mainline under peak conditions, EGD will not have addressed the issue by demanding FT for direct shipper supplies. Additional pipeline capacity, access to storage, or further curtailment will address this issue, not FT.

EGD has also put forth that FT is the only viable alternative to address the perceived risk. DE believes that other options should be examined including an increase in penalties for failure to deliver; the construction of more intra-provincial pipe to utilize liquid hubs and connect storage assets more directly; and the unbundling of storage and transportation assets to allow DP customers to balance a temperature sensitive load.

Finally, DE steadfastly takes exception to the comments in the consultant's report submitted by EGD that Marketers callously disregard LDC obligations to serve customers, and that marketers have no direct economic interest in maintaining the reliability of the distribution system. Marketers take their customer and delivery commitments extremely seriously. This is best demonstrated by the fact that not only were all supply obligations met by direct shippers during the peak days of January 13th to 15th of this year, but also by the fact that EGD has not had a single event of system failure in the past decade.