

**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 and storage of gas commencing January 1, 2009.

**ARGUMENT IN CHIEF OF  
ENBRIDGE GAS DISTRIBUTION INC.  
(PHASE 2 ISSUES)**

**I. Introduction**

1. On September 26, 2008, Enbridge Gas Distribution Inc. (Enbridge) filed an Application with the Board for an order approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2009. The Board issued a Procedural Order on November 13, 2008 in which it stated that it would deal with the Application in two phases. A full settlement of all issues in Phase 1 of the proceeding was approved by the Board by Order dated December 18, 2008.

2. The Issues List for Phase 2 of the proceeding was established by the Board's Decision on Issues List and Procedural Order No. 6, which was issued on February 17, 2009. The final Issues List attached as Appendix B to the Procedural Order identified eight issues for Phase 2 of the proceeding.

3. At the opening of the hearing of the Phase 2 issues, the Board accepted a Settlement Proposal that had been filed on May 5, 2009.<sup>1</sup> As a result of the Board's acceptance of this Settlement Proposal, Issues 1 to 6 in the Phase 2 Issues List were

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<sup>1</sup> Ex. N1-2-1; 1Tr.6.

settled. This left two unresolved issues, Issue 7 (Upstream Contracting Requirements) and Issue 8 (Incentive Rate Mechanism, or IRM, Filing Timeline).

4. Parties agreed in the Settlement Proposal, and the Board accepted, that Issue 8 could be addressed in written argument, without need for a witness panel to be called at the hearing.<sup>2</sup> This argument in chief filed on behalf of Enbridge will address Issue 7 (Upstream Contracting Requirements), which was the subject of oral evidence given before the Board panel, and Issue 8 (IRM Filing Timeline), which was not the subject of any oral evidence before the Board panel.

## **II. Upstream Contracting Requirements**

### **(a) Enbridge's Proposal**

5. Enbridge filed evidence with the Board explaining its concern that a decline in firm transportation arrangements to its franchise area could pose a significant risk to distribution system reliability.<sup>3</sup> As stated in Enbridge's pre-filed evidence, this risk affects all customers since a failure to deliver adequate supplies of natural gas to the city gate could result in loss of system pressure and system outages could follow. Enbridge's evidence states that a solution that increases firm upstream transport to the franchise area and reduces system reliability risk is warranted for the upcoming winter.<sup>4</sup>

6. Direct shipper volumes constitute approximately 45% of average daily natural gas deliveries to Enbridge's franchise area and up to 15% of peak day demand. Enbridge relies on these volumes of gas to meet its obligation to provide firm distribution service on a daily basis, including under design day conditions.<sup>5</sup>

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<sup>2</sup> Ex. N1-2-1, p. 9; 1Tr.6.

<sup>3</sup> Ex. C-1-10, p. 1, para. 3.

<sup>4</sup> Ex. C-1-10, pp. 1-2, para. 3.

<sup>5</sup> Ex. C-1-8, p. 2, para. 6.

7. When Enbridge filed its original evidence on this issue (September 26, 2008), the Index of Customers maintained by TransCanada PipeLines Limited (TCPL) showed that Firm Transportation (FT) contracts to Enbridge's franchise area, net of Enbridge's contracts, totaled approximately 64,000 GJ/day as of November 1, 2007. These FT volumes of 64,000 GJ/day represented about 12% of daily deliveries from direct shippers (about 521,000 GJ/day).<sup>6</sup>

8. When Enbridge filed its supplemental evidence on this issue (March 2, 2009), TCPL's Index of Customers showed that FT contractual volumes, net of Enbridge's contracts, had declined from 64,000 GJ/day as of November 2007 to 36,000 GJ/day as of November 2008.<sup>7</sup> These FT volumes of 36,000 GJ/day represented about 8% of direct shipper daily delivery obligations in November 2008 (approximately 456,000 GJ/day).

9. Enbridge believes that the use of non-firm upstream transportation services by or on behalf of both small volume and large volume direct shippers poses a distribution system reliability risk. However, the large volume direct shippers are significantly fewer in number than the small volume customers and are potential candidates for curtailment in the event that they fail to deliver. This means that Enbridge has a better ability to manage system reliability risks with the large volume direct shippers than with the small volume customers.<sup>8</sup>

10. Accordingly, Enbridge proposes a solution that would apply, effective November 1, 2009, to customers who receive their gas supply and upstream transportation through agents, marketers or brokers.<sup>9</sup> More specifically, Enbridge proposes that the Rate Handbook be amended to require that customers taking service pursuant to an agent type Gas Delivery Agreement meet their obligations to deliver gas to Enbridge on any

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<sup>6</sup> Ex. C-1-8, p. 3, para. 7.

<sup>7</sup> Ex. C-1-10, pp. 2-3, para. 5.

<sup>8</sup> Ex. C-1-10, pp. 1-2, paras. 3-4.

<sup>9</sup> Ex. C-1-10, pp. 1-2, para. 3.

given day by FT service for at least 90% of their Mean Daily Volume (MDV).<sup>10</sup> The 90% requirement allows flexibility for an agent or marketer to deal with customer migration after term pool renewals, while requiring that most of the delivery obligation be underpinned with firm transportation.<sup>11</sup> The proposed Rate Handbook revision would require the affected customers to provide sufficient proof of FT arrangements by November 1 of each year.<sup>12</sup>

11. Enbridge's proposal would address its system reliability concerns by increasing firm transport to the franchise area by an estimated 200,000 GJ/day for the upcoming winter. This would increase the percentage of FT underpinning direct shipper delivery obligations from 8% to 52%.<sup>13</sup> As well, in the event that Enbridge remains concerned about a shortfall in firm transportation to meet demand, it proposes that it will contract for (and recover in rates the costs of) additional firm transportation for subsequent temporary assignment.<sup>14</sup>

12. To the extent that non-firm transportation arrangements by large volume customers result in system integrity issues, Enbridge will make every effort to direct curtailment to the customer or customers who caused the supply failure.<sup>15</sup> Further, Enbridge will continue to monitor the level of FT arrangements to its franchise area and will provide updates in the rate adjustment process for 2010 and 2011. If warranted, Enbridge may propose additional changes to its tariff provisions, which could include expanding the requirement to hold FT contracts to all direct shippers taking service under Ontario transportation service (T-service) arrangements, or instituting a chargeable standby/backstopping service for large volume customers.<sup>16</sup>

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<sup>10</sup> Ex. C-1-10, p. 1, para. 2.

<sup>11</sup> Ex. C-1-10, p. 10, para. 26.

<sup>12</sup> Ex. C-1-10, p. 1, para. 2.

<sup>13</sup> Ex. C-1-10, p. 10, para. 28.

<sup>14</sup> Ex. C-1-10, p. 10, para. 28.

<sup>15</sup> Ex. C-1-10, p. 11, para. 28.

<sup>16</sup> Ex. C-1-10, p. 2, para. 4; Ex. C-1-10, p. 11, para. 28.

(b) System Reliability

13. A number of parties appear to place weight on the fact that the Enbridge system has not yet experienced an outage by reason of the failure of direct shippers to deliver gas to the franchise area. Obviously, though, Enbridge cannot wait for a system outage before it brings an issue like this to the Board. It would be irresponsible for a gas distributor to ignore risks to the reliability of its system unless and until they actually give rise to a system failure.

14. On the contrary, the responsibility of the gas distributor is to do its best to plan to avoid significant outages on its system. This is precisely what Enbridge has done and why it has brought forward the issue now under consideration. It seems, on the one hand, that parties to this proceeding are quite willing to accept that Enbridge holds the responsibility for system reliability planning.<sup>17</sup> On the other hand, though, parties challenge Enbridge's efforts to fulfill that responsibility when the issue of concern is the reliability of direct shipper gas deliveries<sup>18</sup> (which, again, represent about 45% of average daily deliveries and up to 15% of peak day requirements).

15. In fulfilling its responsibility to do its best to plan to avoid significant outages on its system, Enbridge asked whether TCPL could give an assurance that there is sufficient upstream capacity on a peak day to meet the entire needs of the franchise area. TCPL was unable to give such an assurance.<sup>19</sup> As a result, Enbridge submits that there is every reason to be concerned when only about 8% of direct shipper daily delivery obligations are underpinned by FT service from TCPL. In this regard, the evidence of the TCPL witnesses in response to questions from Board counsel was as follows:

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<sup>17</sup> 3Tr.17; 3Tr.18.

<sup>18</sup> 3Tr.17.

<sup>19</sup> 1Tr.136.

I think what needs to be clarified, perhaps, is that what's important isn't whether or not, in an overall sense, there is sufficient available pipeline capacity. When we look at a peak day on the system, the real question is: Can deliveries to any particular area on an absolute peak day be absolutely assured?

I think the important point is that if one is relying on interruptible or discretionary transportation services, there is greater likelihood that the supply may not show up on a real peak day. Does it happen often? No. Can it happen? Yes.<sup>20</sup>

(c) Quantification of the Risk

16. Those parties who challenge Enbridge's efforts to fulfill its responsibility for system reliability planning have suggested that Enbridge should provide a more precise quantification of the risk that it has identified. The risk, of course, is that gas deliveries to Enbridge's franchise area not underpinned by firm transportation arrangements on upstream pipelines will be interrupted or curtailed when those deliveries are needed to match demand and maintain system pressures. Apparently, some parties believe that Enbridge should provide a specific calculation of the probability that such an event will occur.

17. The problem is that these parties look to Enbridge to quantify the risk of an event occurring on upstream pipelines. As Ms. Giridhar explained, Enbridge has no way of assessing the probability of interruptions to service from TCPL.<sup>21</sup> The witnesses from TCPL were asked about this risk assessment and their response was as follows:

You know, in terms of an assessment of risk or in terms of being able to quantify the risk, I'm not sure that's an easy thing even for TransCanada to do, and it's not something that TransCanada actually tries to do or does on a routine basis.

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<sup>20</sup> 3Tr.173.

<sup>21</sup> 1Tr.159; 2Tr.36-7.

We do design our system to meet our firm transportation requirements, our firm transportation obligations. We do not design our system to ensure that we can move interruptible volumes.<sup>22</sup>

18. This subject was addressed again by the TCPL witnesses during examination by Board counsel. When asked by Board counsel about information concerning the availability of capacity to provide discretionary services to Ontario at times of peak, the TCPL witnesses gave the following evidence:

I don't believe we've done any specific studies to look at that. However, for the most part we believe there is adequate capacity for most days and most peak days, but the problem with the issue is that on a given peak day, there are no guarantees. We don't know where else that capacity will be required. We don't know who will bid and take STFT. We don't know whether or not we may have some equipment problems like we experienced last January, and as such, it's that discretionary capacity that is the first capacity to be cut.

So have we done any studies? No. Generally is there capacity? Yes. On a real peak day, especially if there are any issues, will everybody get all of their allocation and all of their capacity for discretionary services? Probably not.<sup>23</sup>

19. In short, TCPL itself does not attempt to quantify a risk that turns on many imponderables, including where capacity will be required on peak day, who will bid and take Short-term Firm Transportation (STFT), whether equipment problems might occur, and so on. Given that TCPL itself does not attempt to quantify this risk, Enbridge submits that it can hardly be expected to do so.

20. The element of this problem that Enbridge is able to quantify is the risk that it will experience Design Day conditions. Ms. Giridhar explained that there is a one in five, or

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<sup>22</sup> 3Tr.125.

<sup>23</sup> 3Tr.175.

20%, risk that Enbridge will encounter Design Day weather in any given year.<sup>24</sup> The outcome of combining Enbridge's Design Day conditions with current upstream contracting practices by direct shippers has not yet been tested. The last time Enbridge came close to its Design Day conditions was January 15, 2004, when the level of FT underpinning direct shipper volumes to Enbridge's franchise area was approximately 214,000 GJ/day, compared to approximately 36,000 GJ/day in 2008. At the timely nomination window on January 15, 2004, TCPL did not authorize any Interruptible Transportation (IT) services to the Central Delivery Area (CDA) or the Eastern Delivery Area (EDA). TCPL authorized only 27% of Diversions to the EDA, which includes Enbridge, Union Gas Limited (Union), Gaz Metropolitan and downstream markets, and 70% of Diversions to the CDA, which includes Enbridge and Union franchise areas.<sup>25</sup>

21. As of November 2008, the FT underpinning for direct shipper volumes is much less than it was in January of 2004 and the question is what will happen if Enbridge experiences its Design Day conditions and TCPL cuts IT and Diversions much like it did in 2004. In response to this question, Ms. Giridhar stated:

...if we had the level of firm contracts we do today and we had design-day conditions, and the same sorts of cuts that TransCanada had, for example, the last time we were close to design-day conditions, we believe we would not be seeing a large proportion of the 400,000 GJ/day that are not contracted for firm, based on our understanding.<sup>26</sup>

22. Even though some parties seem reluctant to acknowledge the risk of concern to Enbridge, it became apparent that the risk is not to be taken lightly when the Direct Energy witnesses were asked about responsibility for the consequences of a system outage. The question put to the witnesses was whether Direct Energy would support a tariff provision establishing direct shipper responsibility for the full costs and losses of

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<sup>24</sup> 2Tr.36.

<sup>25</sup> Ex. TCU3.4.

<sup>26</sup> 2Tr.205-6. Information about the non-FT deliveries of 400,000 GJ per day referred to by Ms. Giridhar is set out in paragraph 8 of this Argument.

Enbridge and its customers in the event that a failure to deliver can be traced to a particular direct shipper. Initially, Mr. Khoja replied that, “under certain circumstances”, if the outage can be attributed to a direct shipper and if Enbridge can demonstrate that it did everything in its ability to mitigate the situation, then “we would be amenable to that”.<sup>27</sup> This was followed up, however, by an answer from Mr. Ray, who said “I don’t believe we would find that amenable”.<sup>28</sup>

23. Furthermore, even assuming (while not accepting) that the risk identified by Enbridge is a small one, the level of the risk must be considered in light of the consequences that would ensue should the risk materialize. Without going into detail about potential impacts on customers, suffice it to say that the central consequence of the risk materializing is a system outage - possibly even a major system outage. There would be an interruption of service to firm gas distribution customers, on a day that is likely to be one of the coldest days of the winter. Any significant outage on the system is unlikely to be of short duration, because, in order for service to be restored, each affected customer must be shut off and then, after system pressures have stabilized, each affected customer must be re-started.<sup>29</sup>

24. Put simply, this is a situation to be avoided. The fact that an upstream pipeline is unable to provide a numerical quantification of the risk that it might cut non-firm transportation services is no reason to ignore the very real concern raised by Enbridge about the potential confluence of Enbridge’s Design Day conditions with current upstream contracting practices by direct shippers.

(d) Cost of Addressing the Risk

25. During the hearing, the Enbridge witnesses were questioned about the potential costs of the proposal made by Enbridge to address system reliability risk. Enbridge’s

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<sup>27</sup> 3Tr. 32.

<sup>28</sup> 3Tr.32-3.

<sup>29</sup> 2Tr.26; 3Tr.27-8.

proposal does not dictate any particular transportation path that must be used by agents for direct purchase customers to meet the requirement for firm upstream transportation.<sup>30</sup> However, given current constraints on short haul paths on the TCPL system, Enbridge recognizes that, for 2010, the firm transportation requirement would likely be met with long haul FT from TCPL. On this subject, it is important to bear in mind that agents for customers on Ontario T-service currently receive an amount based on TCPL's long haul toll (the T-service credit) that compensates them for holding long haul firm transport. This cost is recovered from system gas customers and direct purchase customers, who pay a weighted average cost of upstream transportation on the basis of Enbridge's firm upstream transportation arrangements and an amount equal to the T-service credit.<sup>31</sup>

26. With the implementation of the new Customer Information System, Enbridge will be able to unbundle the upstream transportation charge on the bill, such that the T-service credit can be eliminated and agents can directly charge customers for the transportation arrangements made on their behalf.<sup>32</sup> In answer to an undertaking given during the hearing, Enbridge provided the combined cost effects of its proposal and of the unbundling of the transportation charge.<sup>33</sup>

27. The elimination of the T-service credit (at the current approved TCPL long haul toll of \$1.19 per GJ) would reduce the annual bill of a typical residential customer on system gas or a Western T-service arrangement by about \$5 per year relative to the current weighted average cost of transport. Assuming that the Ontario T-service agent's charge to the customer is the same as the cost of long haul FT service on the TCPL system, Enbridge's proposal would result in about a \$7 increase in the annual bill relative to the current weighted average cost of transportation. The differential between the bill for a system gas or Western T-service customer and the bill for an Ontario T-

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<sup>30</sup> 1Tr.132.

<sup>31</sup> Ex. C-1-10, pp. 7-10, paras. 18-24; 1Tr.21; 1Tr.38.

<sup>32</sup> Ex. C-1-10, p. 9, para. 25.

<sup>33</sup> Ex. HDU2.1.

service customer, all else remaining the same, would be approximately \$12 per year, or \$1 per month at the current level of TCPL long haul tolls. Using TCPL tolls of \$1.30 per GJ and \$1.44 per GJ, the differential increases to \$1.16 per month and \$1.33 per month, respectively.<sup>34</sup>

28. The TCPL evidence indicates that the additional revenue from incremental long haul FT contracts and flow would result in lower tolls for customers across the system, including customers in Enbridge's franchise area.<sup>35</sup> This was expanded on during the Technical Conference, where TCPL explained that FT service provides more toll stability for shippers, but that today it has a lot of contracting for discretionary services, which creates some uncertainty from year to year as to what the toll will be.<sup>36</sup>

29. Enbridge therefore submits that, under the current bundled transportation charge mechanism, all customers pay the cost of firm upstream transportation and should receive the benefits of firm upstream transportation and system reliability. For small volume residential customers taking an agent-type Ontario T-service, the combined impact of Enbridge's proposal and the unbundling of the transportation charge is in the range of \$1 to \$1.33 per month. Enbridge submits that this is a reasonable cost impact relative to the potential consequences of a system outage if current upstream contracting practices continue. The cost impact could be further mitigated by a reduction in TCPL's tolls as a result of increased contracting or by the availability of short haul transportation paths in the future.<sup>37</sup>

(e) Other Jurisdictions

30. The extent to which certain parties cross-examined Enbridge on its proposal during the hearing might create the impression that the proposal is unusual or even

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<sup>34</sup> Ex. HDU2.1.

<sup>35</sup> Ex. L, Tab 21, p. 14, A16; Ex. I, Tab 15, - Item 6.

<sup>36</sup> TCTr., April 23, 2009, pp. 62-3.

<sup>37</sup> As to future availability of short haul transportation paths, see 3Tr.173-4.

startling. In fact, nothing could be further from the truth. Dr. Overcast reviewed 40 utility service areas in order to gather information about the approach taken in other jurisdictions. This review reveals that, far from being unusual or startling, Enbridge's proposal will, if adopted, bring its practices more into line with the norm for gas utilities.<sup>38</sup>

31. Dr. Overcast's report indicates that a requirement that firm service behind the city gate be coupled with firm transportation to the city gate is a necessity for gas distributors that offer unbundled service to all customers including residential and small commercial customers. There is no fundamental reason, he observed, to permit a lower quality of service to the city gate than for distribution service. To do so shifts the cost of reliability to customers who have maintained firm service to the city gate.<sup>39</sup>

32. Of the forty gas distributors reviewed by Dr. Overcast, all but six had provisions that allowed for:

- (a) a mandatory assignment of transport held by the gas distributor; or
- (b) demonstration of firm upstream transportation arrangements; or
- (c) firm standby service with the gas distributor; or
- (d) curtailment if the customer fails to deliver.<sup>40</sup>

Gas distributors that do not require such provisions typically have access to natural gas production or storage supplies (or both) within their franchise areas.<sup>41</sup>

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<sup>38</sup> Ex. C-1-9, *Report for Enbridge Gas Distribution Tariff Provisions for Transportation and other Miscellaneous Provisions*.

<sup>39</sup> Ex. C-1-9, p. 8.

<sup>40</sup> Ex. C-1-8, p. 4, para. 11.

<sup>41</sup> Ex. C-1-8, p. 5, para. 11.

33. During re-examination of the Enbridge witness panel at the hearing, Dr. Overcast was asked whether the judgment that Enbridge has brought to bear on the issue at hand is any different from what he would expect, or has seen, from any other responsible utility in North America. His response was as follows:

Well, they're kinder than some, but in general, this is exactly what an LDC does. They say: We've got to have enough firm capacity, made up of a whole long laundry list of what that capacity might be, to meet our design day and potentially with some reserves. And I think that what they're doing is a reasonable approach to addressing the issue of providing reliable service.<sup>42</sup>

34. Dr. Overcast's evidence is consistent with the testimony of TCPL at the Technical Conference. The TCPL witnesses were asked by counsel for Canadian Manufacturers and Exporters about an assessment of the system reliability risk identified by Enbridge and the answer given to the question included the following observations:

One thing from our perspective, being the operators serving a lot of LDCs both in Canada and the U.S., is typically we find the LDCs have a requirement to hold firm, they or their customers. If it's a firm market, you must hold firm transportation. ...

I think, from an operating perspective, I think that makes sense. That may mean on many days you have excess capacity that isn't required, but really what the pipeline is designed for and I think what customer needs are is on the day when it is minus 30 and everybody desperately needs gas. I think that is when I personally believe that firm requirement customers should have firm service in those cases.<sup>43</sup>

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<sup>42</sup> 2Tr.210.

<sup>43</sup> TCTr., April 23, 2009, p. 23.

35. There has been discussion during this case about the extent to which certain other jurisdictions are “pipeline constrained”.<sup>44</sup> While it is of interest for the Board to know about possible pipeline constraints in other jurisdictions, the fundamental point remains that a gas distributor must be able to rely on supplies of gas to arrive at the franchise area when they are needed or else be able to curtail the customers responsible for non-delivery of gas.

36. The evidence in this case is that Enbridge is pipeline constrained.<sup>45</sup> Nevertheless, comparing the extent to which different jurisdictions are or may be pipeline constrained masks the real issue, which is whether there are reliable upstream arrangements for the arrival of gas at the franchise area on behalf of customers who cannot realistically be curtailed in the event of non-delivery. In the case of Enbridge, the evidence of TCPL referred to above confirms Enbridge’s view that, under Design Day conditions, it cannot rely on the arrival of gas at the franchise area that is not underpinned by firm upstream transportation arrangements.

### **III. IRM Filing Timeline**

37. The Settlement Agreement for Enbridge’s Incentive Regulation (IR) plan was approved by the Board in EB-2007-0615 (2008 proceeding). The IR Settlement Agreement provides for an annual rate adjustment process and very specifically sets out a timeline (the “Settlement Agreement Timeline”) for the rate setting process. The Settlement Agreement Timeline is as follows:

The Company shall file [rate setting] information, by October 1<sup>st</sup>, for the purpose of receiving a Board-approved rate order by December 15<sup>th</sup>, stipulating new rates in each rate class, in time for implementation on January 1<sup>st</sup> of the following year  
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<sup>44</sup> E.g., 3Tr.69-70.

<sup>45</sup> Ex. I-11-17.

<sup>46</sup> EB-2007-0615 Settlement Agreement, Ex. N1-1-1, p. 30, para. 12.1.1.

38. Because the Settlement Agreement Timeline was agreed to by parties and accepted by the Board, Enbridge submits that all reasonable efforts should be made to preserve it, or at least its general spirit or thrust. More particularly, it is important to bear in mind that the Settlement Agreement Timeline was established in the context of a move from traditional Cost of Service regulation to IR and in the context of a formulaic approach to rates that (barring some meaningful disagreement about one or more of the elements of the formula) should permit an expeditious determination of the annual rate adjustment. Also, any consideration of change to the Settlement Agreement Timeline should take account of the fact that, the earlier the date for Enbridge's evidentiary filing, the less current will be the information used to make the annual rate adjustment.

39. In order to preserve the general spirit or thrust of the Settlement Agreement Timeline, to allow for rates to be in place by January 1<sup>st</sup> and to accommodate the use of inputs that are as current as contemplated by the IR Settlement Agreement, Enbridge proposes the following approach (using representative 2009 dates):

September 1st – Enbridge files Rate Adjustment Application (inclusive of an approximate rate and bill impact), with supporting evidence to be filed later

September 4th – the Board issues a Notice of Application (NOA)

Approximately September 5th to 12th – Enbridge publishes NOA as required

By October 1st – Enbridge files annual rate adjustment evidence to support the Application (this allows the use of the most up-to-date inputs for the IRM Adjustment Formula)

Around October 5th – the Board issues Procedural Order No. 1

By October 23rd – Technical Conference to answer questions on Enbridge's Application and evidence (any undertakings to be answered within a week)

By November 10th – Settlement Conference (with Settlement Proposal to be filed within a week)

December 1st – Enbridge files January 1st QRAM Application inclusive of the annual rate adjustment

By December 15th – the Board issues Final Rate Order re: annual rate adjustment

By December 23rd – the Board issues January 1st QRAM decision

40. In formulating this proposed approach, Enbridge has taken into account that, during Phase 1 of this proceeding, the process moved very efficiently, productively and effectively, from the time when the parties were able to come together “face to face” at the Technical Conference to address the application of the IRM Adjustment Formula. (As it happens, though, the Phase 1 Technical Conference took place almost 10 weeks after the filing of the Application, while the entire period encompassed by the Settlement Agreement Timeline is in the order of 13 weeks.)<sup>47</sup> Enbridge’s proposed approach also enables it to layer the January QRAM rate change onto the annual rate adjustment in order to have both rate changes implemented into billing on January 1<sup>st</sup>.

41. Enbridge acknowledges that its proposed approach likely will not work if there is no settlement of the formulaic adjustment to rates. For this to happen, there must be a meaningful disagreement about one or more elements of the formula and efforts to settle this difference must be unsuccessful. In that event, interim rates can be implemented as of January 1<sup>st</sup>, with final rates to be implemented at a later date to reflect the full year impact of any rate change; but at least parties will have made their best efforts to preserve the spirit and thrust of the Settlement Agreement Timeline.

42. Enbridge’s proposal encompasses, of course, only the determination of rates under the IRM Adjustment Formula (as in Phase 1 of this proceeding). The proposal assumes that any other issues would be addressed on a separate timeline (as in Phase 2 of this proceeding) or in a different proceeding.

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<sup>47</sup> Ex. C-1-11, p. 3, para. 11.

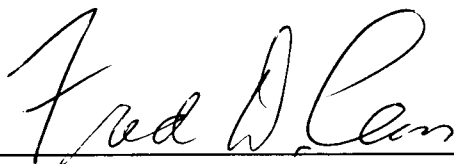
43. Enbridge submits that, given the formulaic adjustment contemplated by the IR Settlement Agreement, its proposed timeline should be quite achievable. This is supported by the experience in Phase 1 of this case with the first annual adjustment process. In Phase 1, a full settlement of all issues pertaining to the formulaic adjustment was reached and the Board's decision approving the settlement was issued on December 18, 2008. Enbridge's proposal is intended to improve on this positive experience such that a Board Rate Order can be issued by December 15<sup>th</sup>, in accordance with the Settlement Agreement Timeline.

#### **IV. Order Requested**

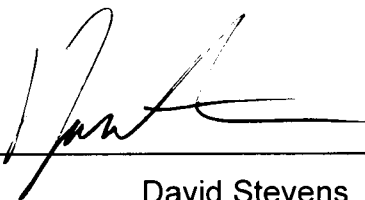
44. Enbridge therefore respectfully requests that the Board approve its proposed changes to the Rate Handbook in order to address the system reliability issue that it has raised. Enbridge also requests that the Board approve its proposed process for consideration of the annual IR rate adjustment, in order to maintain the spirit and thrust of the Settlement Agreement Timeline.

All of which is respectfully submitted.

May 21, 2009



Fred D. Cass



David Stevens

Counsel for Enbridge Gas Distribution Inc.