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June 5, 2009

VIA COURIER, RESS AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc. ("Enbridge")
Year 2 of 5 Year Incentive Regulation Plan – 2008 - 2012
Ontario Energy Board ("Board") File No. EB-2008-0219**

As per the schedule determined during the hearing of Phase II of Enbridge's 2009 rate adjustment proceeding attached please find Enbridge's Reply Argument.

This Reply Argument has been filed through the Board's RESS, two copies are being delivered by courier and it will be available on the Enbridge website at www.enbridge.com/ratecase.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L Chiasson'.

Lorraine Chiasson

encl.

cc: Mr. F. Cass, Aird & Berlis LLP
All Interested Parties EB-2008-0219 (via email)

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.

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

I. Introduction

1. There are two issues for argument in this proceeding, upstream contracting (Issue 7) and Incentive Rate Mechanism (IRM) Filing Timeline (Issue 8).
2. Enbridge Gas Distribution Inc. (Enbridge or EGD) received submissions from the following parties on the upstream contracting issue: the Association of Power Producers of Ontario (APPRO), the Building Owners and Managers Association of the Greater Toronto Area (BOMA), BP Canada Energy Company (BP), the Consumers Council of Canada (CCC), Canadian Manufacturers & Exporters (CME), Direct Energy Marketing Limited (Direct), ECNG Energy L.P. (ECNG), Energy Probe Research Foundation (Energy Probe), Industrial Gas Users Association (IGUA), the Ontario Association of Physical Plant Administrators (OAPPA), the School Energy Coalition (SEC), Shell Energy North America (Canada) Inc. (Shell), TransCanada PipeLines Limited (TCPL) and the Vulnerable Energy Consumers Coalition (VECC).
3. Parties agreed in the Settlement Proposal, and the Board accepted, that the IRM filing timetable issue would be addressed in written argument only, without a witness

panel at the hearing.¹ Enbridge's Argument in Chief set out its proposal on the filing timetable issue. Only five parties made submissions on this issue (BOMA, CCC, CME, Energy Probe and SEC). All those parties except SEC either support or do not oppose Enbridge's proposed timetable for addressing rate adjustments in future years during the IRM term. SEC proposes a modest change to Enbridge's suggested approach, which Enbridge addresses below.

II. Upstream Contracting Requirements (Issue 7)

4. Parties have made extensive submissions in respect of transportation arrangements for delivery of gas to Enbridge's franchise area. The submissions of Shell on just this one issue alone are 24 pages. BP's submissions on the issue are 14 pages and Direct's submissions are 12 pages. The page count balloons when all of the other submissions on the issue are taken into account.

5. In the course of these extensive submissions, certain parties have used pejorative language to describe Enbridge's position. More will be said about this later, but, for present purposes, Enbridge notes Direct's assertion that there is a "fundamental flaw" in Enbridge's application,² BP's assertion that Enbridge's proposal is "flawed"³ and Shell's assertion that Enbridge's evidence is "speculative, inaccurate and irrelevant".⁴ Simply put, if Enbridge's position is flawed or speculative, it should not take hours and hours of cross-examination, as well as pages and pages of submissions, to bring out any such shortcoming.

6. On the contrary, the extensive submissions that have been made in respect of upstream transportation arrangements put it beyond any shadow of a doubt that the concern raised by Enbridge is indeed a very serious issue. This is confirmed also by

¹ Ex. N1-2-1, p. 9, 1Tr.6.

² Final Argument of Direct, p. 4, para. 11.

³ Written Argument of BP, p. 5.

⁴ Submissions of Shell, p. 22, para. 54.

the wide range of perspectives revealed in the submissions. Without attempting to lay out the full spectrum of positions, Enbridge notes, on the one hand, Energy Probe's acceptance that the use of Discretionary services for higher and higher percentages of gas deliveries to Enbridge should give rise to concern not only for Enbridge, but also for customers.⁵ In a similar vein, TCPL says that the use of Firm Transportation (FT) contracts would reduce the risk that insufficient gas will be available to meet the needs of Enbridge's customers, particularly on extremely cold days.⁶

7. On the other hand, Shell's argument offers quite a different perspective. While TCPL sets out in some detail a number of reasons why, from a system reliability and planning point of view,⁷ FT has advantages over Discretionary services, Shell says that Enbridge's proposal to require additional FT is "garbage". In point of fact, Shell calls the proposal a text book example of "Garbage in – Garbage out".⁸ And then, as surprising as it may seem, Shell shows just how discerning it is on the subject of "garbage" by citing "Wikipedia" as an authority in its argument.⁹

8. Even among the parties that share a common position on the upstream transportation issue, there is such a wide range of submissions that it becomes difficult to reconcile arguments with one another. The following are some examples of these contradictions:

(i) ECNG submits that Enbridge's proposal is "premature",¹⁰ yet CME questions why Enbridge did not act sooner.¹¹

(ii) CME and IGUA presumably speak on behalf of a similar group of customers, but CME tries to develop an argument that the problem is Enbridge's fault on the ground

⁵ Final Argument on Behalf of Energy Probe, p. 3, para. 6.

⁶ Written Argument of TCPL, p. 7.

⁷ Written Argument of TCPL, pp. 1-8.

⁸ Submissions of Shell, p. 18, para. 46.

⁹ Submissions of Shell, p. 18, para. 46 and fn. 52.

¹⁰ Argument of ECNG, p. 2.

¹¹ Argument of CME, p. 10, para. 34.

that Enbridge has allowed turnback of TCPL capacity,¹² while IGUA argues that Enbridge should not be permitted to suspend turnbacks of TCPL capacity.¹³

(iii) CME asks the Board to reiterate that Enbridge has an obligation to take all reasonable steps to ensure system reliability¹⁴ and BP says that it is entirely appropriate for Enbridge to concern itself with the risk of supply failure,¹⁵ but Shell expresses its disdain for the notion that Enbridge might attempt to evaluate the “effectiveness of direct shippers’ supply arrangements”.¹⁶

(iv) IGUA says that “prescription” of transportation contracting practices would impair the proper functioning of the market,¹⁷ but BP – effectively confirming the evidence of Dr. Overcast¹⁸ - says that it adapts its practices and marketing activities in accordance with the rules and frameworks of different jurisdictions and that, if the rules in Ontario change, it will adapt.¹⁹

(v) BOMA submits that there has been a lack of meaningful discussion of alternative solutions²⁰ (which will be addressed further below) but CCC²¹ asks the Board to ignore Dr. Overcast’s review of “best practices” in other jurisdictions²² that formed the basis for Enbridge’s original evidence setting out alternative approaches to the firm transportation issue.²³

9. The submissions on the upstream transportation issue are so extensive and wide-ranging that, without subjecting the Board to an inordinately lengthy Reply argument, it will not be possible for Enbridge to respond to each and every point.

¹² Argument of CME, p. 10, para. 32.

¹³ IGUA Phase II Argument, pp. 9-10, paras. 45-50.

¹⁴ Argument of CME, p. 15, para. 49.

¹⁵ Written Argument of BP, p. 1.

¹⁶ Submissions of Shell, p. 22, para. 55.

¹⁷ IGUA Phase II Argument, p. 4, para. 14.

¹⁸ 2Tr.207-8

¹⁹ Written Argument of BP, p. 1.

²⁰ Argument of BOMA, p. 2.

²¹ Written Argument of CCC, p. 8, para. 29.

²² Ex. C-1-8, p. 4, para. 10.

²³ Ex. C-1-8, p.4, para. 11.

Instead, Enbridge will attempt to group submissions into several areas and then it will address a number of the submissions that do not fall squarely into these areas.

(a) “Firm equals Firm”

10. BP describes Enbridge’s proposal as “principle driven” and summarizes the principle, neatly and concisely, as “firm equals firm”.²⁴ By this, BP is referring to the proposition that “firm delivery obligations must be matched by firm transport”.²⁵ BP’s use of the “firm equals firm” encapsulation is, of course, exactly right: firm does equal firm and anything less than firm does not equal firm. As was stated during oral testimony of the TCPL witnesses at the Technical Conference, TCPL serves “a lot of LDCs both in Canada and the U.S.” and typically the LDCs have a firm transportation requirement: “If it’s a firm market, you must hold firm transportation”.²⁶

11. The striking feature of the extensive submissions that have been made on the upstream transportation issue is that no party – not one single party – has been able to provide a principled or reasoned basis for the Board to decide that a utility can depart from the “firm equals firm” proposition while still carrying out responsible system supply planning. Indeed, the opposite is true of the submissions. When looked at carefully, a number of positions advanced by other parties implicitly or explicitly accept the importance of firm upstream arrangements to the franchise area in support of firm downstream obligations.

12. Although it really should be a matter of evidence rather than argument, ECNG submits that, in order to meet their obligation to make firm deliveries to Enbridge’s franchise area, direct shippers purchase deliveries to the franchise area from “multi-billion dollar, highly credit-worthy counter-parties” on a “firm” basis.²⁷ Essentially, then,

²⁴ Written Argument of BP, p. 8. para. (i).

²⁵ Written Argument of BP, p. 8, para. (h).

²⁶ Technical Conference Tr., April 23, 2009, p. 23.

²⁷ Argument of ECNG, p. 5.

ECNG accepts that “firm equals firm”, but posits that a firm delivery commitment from a “multi-billion dollar” counterparty is as good as firm upstream transportation arrangements. However, the fact that ECNG finds it necessary to refer to “multi-billion dollar, highly credit-worthy counter-parties” is the clue that reveals the fallacy in this approach.

13. There is nothing that requires direct shippers to contract with “multi-billion dollar, highly credit-worthy counter-parties”; there is nothing that establishes standards for acceptable counterparties, whether in the “multi-billion dollar” category or otherwise; there is no reason whatsoever to assume that all direct shippers will consistently apply the same standards for an acceptable counterparty (and, indeed, given the competitive nature of the market, one would expect the opposite); there is not even a requirement that direct shippers disclose the counterparties with which they make their delivery arrangements. Moreover, the fact that a counterparty is in the “multi-billion dollar” category may (despite recent financial market failures) give the direct shipper some level of confidence about a financial remedy in the event of non-delivery, but this is really small comfort when the concern is that excessive reliance on non-firm transportation arrangements could result in a system failure affecting other customers.

14. In short, this argument provides no basis for Enbridge (or the Board) to be comfortable that a delivery commitment from a contractual counterparty is as good as firm upstream transportation.

15. An argument made by a number of parties is that deliveries by direct shippers to the Enbridge franchise area are supported by Short Term Firm Transportation (STFT) on the TCPL system, as well as TCPL’s FT service.²⁸ Again, this argument accepts, implicitly or otherwise, the proposition that “firm equals firm”, but suggests that STFT is as good as FT which is not factually correct.

²⁸ Final Submission of OAPPA, pp.1-3, paras. 4-7; Submissions of Shell, p. 14, para. 39;

16. For the purposes of its gas supply planning, Enbridge must know by the beginning of the winter season (*i.e.*, November 1st) the extent to which it can rely on deliveries of gas to arrive at its franchise area through the winter months. Without such information, Enbridge would not be in a position to take appropriate and timely action to address any shortfall in reliable upstream arrangements for the franchise area. If, by November 1st, direct shippers were able to provide evidence to Enbridge of contracts for STFT providing good coverage to support firm obligations across the winter season, then this would go some way towards addressing the issue of concern to Enbridge. However, the fact that, as the winter progresses, shippers are able to pick up STFT in an opportunistic fashion simply is not responsive to Enbridge's concern.

17. The TCPL witnesses explained that, when a winter peak day arrives, TCPL does not know where the available capacity on its system will be required, or who will bid and take STFT.²⁹ As well, the evidence of TCPL is that events such as particular demand in an area, or an occurrence on the system, may limit the availability of STFT to a specific delivery area.³⁰ Thus, in the absence of a prior demonstration of contracted capacity, there is no basis for Enbridge (or the Board) to be comfortable that, under Design Day conditions, direct shippers on Enbridge's system will have secured sufficient STFT to support downstream obligations.

18. Another argument made by parties opposing Enbridge's proposal accepts that there is a potential future scenario where the "firm equals firm" proposition will take hold. OAPPA says that, should the "excess capacity" on TCPL begin to decline, parties "likely" will be proactive and prudent and "make the necessary arrangements to ensure their firm delivery obligations can continue to be met".³¹ Similarly, ECNG says that, if and when the usage of the TCPL pipeline increases, shippers will "likely" migrate back

²⁹ 3Tr.175.

³⁰ 3Tr.130.

³¹ Final Submission of OAPPA, p. 3, para. 7.

to the TCPL FT service, or an equivalent upstream option: “This is how the market works”.³²

19. These submissions envisage at least a future scenario where it will be important for direct shippers to make firm upstream transportation arrangements. However, the best that the parties making these submissions can say is that direct shippers “likely” will make the necessary arrangements. Enbridge submits that security of supply to customers is simply too critical to rest on a notion that the market “likely” will act in a certain way.

20. In fact, the approach revealed by these submissions is indicative of the general attitude of the parties opposing Enbridge’s proposal. These parties all seem to accept that Enbridge bears the responsibility to ensure the reliable delivery of gas to its system. However, when Enbridge endeavours to fulfill this responsibility and raises a concern about the reliability of deliveries not underpinned by firm transportation, the response, to paraphrase, is “just let the market work”. Indeed, as referred to above, Shell goes so far as to suggest that it is too much to expect a gas distributor like Enbridge to evaluate the intricacies of direct shippers’ supply arrangements.³³

21. The obvious problem with this approach is that it means that the gas distributor is not able to fulfill the responsibility that all parties agree it should bear. BP states that it is entirely appropriate for EGD to concern itself with the risk of supply failure.³⁴ OAPPA agrees that reliability of supply delivered into the distribution system is “an important matter for the utility”.³⁵ However, if the “effectiveness of direct shippers’ supply arrangements” is not a matter for consideration by the gas distributor, then the distributor cannot fulfill its responsibility to address the reliability of supply into the franchise area.

³² Argument of ECNG, p. 6.

³³ Submissions of Shell, p. 22, para. 55.

³⁴ Written Argument of BP, p. 1.

³⁵ Final Submission of OAPPA, p. 1.

(b) Evidence of Reliability Issue

22. The most consistent theme in the submissions of parties opposed to Enbridge's proposal is that the evidence does not substantiate the risk of concern to Enbridge. Enbridge's perspective is entirely different: in Enbridge's view the record of this proceeding has expanded to the extent that there is a vast amount of information intended to explain the nature of the concern that has been raised.

23. It is unfortunate that parties who legitimately seek to understand Enbridge's concern have found the evidence to be deficient and Enbridge will address this later in this argument. First, though, Enbridge will respond to the submissions of Shell about the adequacy of the evidence, because, far from making any real attempt to understand Enbridge's position, Shell's objective seems to be to deride Enbridge's proposal, Enbridge's evidence and Enbridge's witnesses.³⁶

24. The following are some of the many instances where Shell obviously has either ignored Enbridge's evidence, or has not taken the trouble to understand the evidence:

(i) Shell begins its argument on "the evidentiary burden" with the assertion that Enbridge has not attempted to quantify the risk, other than to say that it "is not zero".³⁷ This is patently not true. As recently as Argument in Chief, Enbridge pointed out that it has addressed the element of the problem that it is able to quantify, namely, the risk that it will experience Design Day conditions.³⁸ Enbridge's evidence is that there is a 20% risk that it will experience Design Day conditions in any given year.³⁹

³⁶ Examples are the assertions that Enbridge's proposal is "unprecedented by the lack of credible evidence", that the proposal "lacks substance, analysis and coherence" and that it is a "text-book example of 'Garbage in-Garbage out'", Submissions of Shell, pp. 2 and 18, paras. 3 and 46.

³⁷ Submissions of Shell, p. 3, para. 6.

³⁸ Argument in Chief, pp. 7-8, para. 20.

³⁹ 2Tr.36.

(ii) Shell immediately moves on to assert that Enbridge claimed for the first time in Argument in Chief that TCPL “should be relied upon” to quantify the risk.⁴⁰ This also is patently untrue. What Enbridge said in Argument in Chief is that even TCPL itself does not attempt to quantify the risk with respect to the availability of discretionary services at times of peak.⁴¹ Nowhere in its argument did Enbridge say that TCPL should be relied upon to quantify the risk. Furthermore, Enbridge’s argument was not the first time that it stated its position on this point: The Argument in Chief indicated that Enbridge has no way of assessing the probability of interruptions to service from TCPL⁴² and this is what Ms. Giridhar said in evidence.⁴³

(iii) Shell refers to “EGD’s submission that its burden is met by showing that the risk is greater than zero”.⁴⁴ Enbridge never made any such submission. Enbridge’s Argument in Chief speaks for itself and need not be repeated here, but it should be noted that the argument addressed quantification of the risk in some detail and covered a number of different points, without at any time suggesting that Enbridge is resting its case solely on the proposition that the risk is greater than zero.⁴⁵

(iv) Shell submits that Enbridge is trying “now” to assert that curtailment is an effective discipline for large volume customers, but, Shell says, curtailment is irrelevant as a way to enforce delivery obligations.⁴⁶ This submission entirely misses the point of the evidence led by Enbridge right from the beginning of this case. In its original pre-filed evidence (dated September 26, 2008), Enbridge provided the results of Dr. Overcast’s review of how 40 other gas distributors deal with issues about the reliability of upstream gas deliveries.⁴⁷ The evidence made clear that one of the options to address the reliability of upstream deliveries is to include a provision allowing the gas distributor to curtail a

⁴⁰ Submissions of Shell, p. 3, para. 6.

⁴¹ Argument in Chief, pp. 6-7, paras. 17-19.

⁴² Argument in Chief, p. 6, para. 17.

⁴³ 1Tr.133 and 159; 2Tr.36-7.

⁴⁴ Submissions of Shell, p. 4, para. 9.

⁴⁵ Argument in Chief, pp. 6-9, paras. 16-24. As one example only, see paragraph 23, which reiterates Enbridge’s position that the level of risk must be considered in light of the consequences that would ensue should the risk materialize.

⁴⁶ Submissions of Shell, p. 7, para. 18.

⁴⁷ Ex. C-1-9.

customer that fails to deliver.⁴⁸ Appendix 1 to Dr. Overcast's report contains actual examples of gas distributors that have made provision for this option to address non-delivery by particular customers.⁴⁹ Enbridge's original pre-filed evidence pointed out that this is an option that is only possible for large volume customers.⁵⁰ The discussion around curtailment to address non-delivery has been a feature of the case from the outset and it is nothing less than astounding that Shell says it is being asserted "now" and that it is irrelevant.

(v) In its submissions, Shell challenges the evidence that Enbridge is pipeline constrained.⁵¹ This evidence was given by Enbridge in response to an interrogatory⁵² and Shell did not cross-examine on the interrogatory response. Nevertheless, Shell proceeds in argument to offer its views about the evidence, which is regrettable because Shell confuses the issue of pipeline constraints on the TCPL system⁵³ with the issue of whether Enbridge is pipeline constrained. Enbridge is pipeline constrained because the operation of its distribution system is dependant on certain quantities of gas flowing from each of two pipeline systems and it has no meaningful latitude to substitute one system for the other.⁵⁴

(vi) Shell asserts that Enbridge "inexplicably" refers to all alternatives other than FT as "interruptible".⁵⁵ In support of this assertion, Shell provides five examples from the evidence. Inexplicably, though, the word "interruptible" does not appear anywhere in any one of these five examples.⁵⁶ The examples use the terminology of "firm" and "non firm". Shell's purpose seems to be to throw up doubt about Enbridge's knowledge and expertise because of instances where Enbridge did not put STFT service into the "firm" category.⁵⁷ As it happens, TCPL directly addressed this point in its argument. TCPL noted that it has two categories

⁴⁸ Ex. C-1-8, p. 4, para. 11.

⁴⁹ Ex. C-1-8, App. 1.

⁵⁰ Ex. C-1-8, p. 5, para. 11.

⁵¹ Submissions of Shell, pp. 12-3, paras. 31-5.

⁵² Ex. I-11-17.

⁵³ This can be seen from the Submissions of Shell, pp. 11-2, paras. 30-33.

⁵⁴ Ex. I-11-17.

⁵⁵ Submissions of Shell, p. 14, para. 38.

⁵⁶ Submissions of Shell, p. 14, para. 38, fn. 37.

⁵⁷ Submissions of Shell, p. 14, para. 38.

of service, Firm and Discretionary and that STFT falls into the Discretionary category, because TCPL does not build facilities or reserve capacity on a long term basis for it.⁵⁸

(vii) Shell makes a series of submissions about how it believes that Enbridge can carry out system supply planning in relation to the November 1st date when Enbridge ensures that its seasonal and Design Day supply plan is in place.⁵⁹ Essentially, Shell says that STFT is “contracted for closer to the time it is required”⁶⁰ and that, accordingly, Enbridge’s reliance on its own supply planning date of November 1st demonstrates a fundamental misunderstanding of the market.⁶¹ While the opportunistic use of STFT may be a practice that yields financial benefits to other market participants, a gas distributor cannot base its system supply planning on an assumption that STFT not contracted for at the beginning of the winter season will be available as and when needed.⁶² A gas distributor cannot plan for peak day on, or close to, the actual peak day, at a time when there is no assurance that service will be available or what the cost of any available service might be. The suggestion that a gas distributor might allow itself to fall into this utterly untenable position reveals that, while Shell accuses Enbridge of not understanding the market, Shell itself lacks even a rudimentary understanding of utility gas supply planning.

(viii) Shell includes in its submissions a purported calculation of STFT services purchased in the winter of 2008-2009. These numbers are misleading, because Shell appears to have added up STFT taken for a week and then presented the total as if it is a monthly number. This produces numbers like 191,846 GJ/day in December 2008 and 860,601 GJ/day in January 2009.⁶³ According to Enbridge’s calculation, the correct monthly numbers for these months are, respectively, 770 GJ/day and 185,862 GJ/day. The error in Shell’s calculation was confirmed by TCPL in its letter to the Board dated May 20, 2009.

⁵⁸ Written Argument of TCPL, p, 2..

⁵⁹ Submissions of Shell, pp. 17-21, paras. 45-51.

⁶⁰ Submissions of Shell, p. 20, para. 50.

⁶¹ Submissions of Shell, p. 20, para. 51.

⁶² See the evidence of TCPL referred to above about the availability of STFT.

⁶³ Submissions of Shell, p. 16, para. 42.

25. There are many additional areas where Shell's submissions – and to a lesser extent, the submissions of other parties – need to be corrected. However, Enbridge cannot possibly address all of these corrections and still keep its Reply argument within reasonable bounds (either in relation to timing or length). The important point, Enbridge submits, is that the submissions of parties who assert that Enbridge's evidence is deficient make evident that they have overlooked, or do not understand, key aspects of the evidence.

26. Before leaving this subject, Enbridge will return once again to the issue of risk quantification. In spite of Enbridge's Argument in Chief – and TCPL's evidence that even it does not attempt to quantify the risk of unavailability of Discretionary services – some parties (Shell being the leading example⁶⁴) continue to press the point that they think Enbridge should have done more to quantify the risk of failure of upstream transportation.

27. The witnesses from Direct identified areas where they thought that Enbridge might provide more evidence. As stated in Direct's argument, the idea is that Enbridge would tender "engineering-related evidence" about "how pressures on the Enbridge system are reacting on peak days" or "an analysis of the amount of stress on city gates and how much gas is flowing to the city gates relative to the approved operating capacities".⁶⁵ The witnesses confirmed, however, that they had not raised this in interrogatories or at the Technical Conference and, when asked for examples of where they have seen such evidence, they referred to facilities cases (stating as an example that ATCO has made application in Alberta for "increased infrastructure").⁶⁶

28. Enbridge designs its distribution system to handle peak day loads and evidence about how pressures in the distribution system react on peak days, or about peak day stresses on gate stations, is not going to bring anyone any closer to a determination of

⁶⁴ See, e.g., Submissions of Shell, p. 3, para. 6 and p. 23, para. 61.

⁶⁵ Final Argument of Direct, p. 2, para. 7.

⁶⁶ 3Tr.22.

the likelihood that upstream deliveries of gas will not arrive at the city gate on a peak day (or at any other time). There cannot be even the slightest doubt that, if Enbridge were to bring forward such evidence, opposing parties would say that this evidence does nothing to answer their questions about quantification of the risk of unavailability of Discretionary services on the TCPL system.

29. Electricity distribution systems, of course, have outages from time to time and an analysis of a historical record of outages presumably would produce some data relevant to a determination of the risk of a future outage. For all of the reasons explained at length in this case, gas distribution systems operate very differently. Re-starting a gas distribution system is nothing like re-starting an electricity distribution system.⁶⁷ As a result, gas distribution planners work very carefully to ensure that significant outages simply do not occur. This is precisely why Enbridge is before the Board in this case.

30. But parties opposed to Enbridge's proposal seek to turn around this careful planning – the very reason Enbridge is before the Board - as an argument against the proposal: they say, in effect, "Enbridge hasn't had an outage, so there can't really be a problem". They do the same in relation to risk quantification. They demand that Enbridge quantify the risk of the very occurrence – a system outage – that Enbridge's planners work so diligently to avoid. There is no past history of outages on Enbridge's gas distribution system that might provide data for a risk quantification exercise, because Enbridge's planners – the very people who are recommending Enbridge's proposal to the Board – have been successful in ensuring that significant outages do not occur. Enbridge submits that insistence on quantification of the risk of an event that has never happened – and that is directly dependant on the availability of deliveries from an upstream pipeline - acts as a smoke-screen and sets up a burden that Enbridge cannot reasonably be expected to meet.

⁶⁷ 1Tr.19.

(c) Alternative Solutions

31. Parties suggest that there has been a lack of consideration of alternatives to Enbridge's proposal; BOMA, for example, says that Enbridge failed to provide any meaningful discussion of alternative solutions.⁶⁸ Again, Enbridge's original pre-filed evidence (dated September 26, 2008) included a review by Dr. Overcast of the practices of 40 other gas distributors. Enbridge drew from this review the following alternative approaches that are actually utilized by other distributors:

- (i) a mandatory assignment of distributor-held transportation;
- (ii) a demonstration of firm upstream transportation arrangements;
- (iii) firm standby service with the gas distributor; and
- (iv) curtailment of a customer that fails to deliver.⁶⁹

32. In its supplemental evidence (dated March 2, 2009), Enbridge elaborated on these, and other, alternatives. This discussion of alternatives included reference to mandatory assignment of distributor-held transportation, the possibility of a "vertical slice" methodology, penalties and a firm standby service.⁷⁰ As the proceeding moved forward, many other ideas were brought forward as possible solutions and addressed in the evidence; these ran the gamut from construction of facilities to allow TCPL to offer more short-haul service⁷¹ through to installation of remotely controlled mechanisms to allow curtailment of customers who fail to deliver gas to the franchise area.⁷²

33. In other words, by no stretch of the imagination has there been any lack of discussion of alternative solutions in this proceeding. The problem is not a lack of

⁶⁸ Argument of BOMA, p. 2.

⁶⁹ Ex. C-1-8, p.4, para. 11.

⁷⁰ Ex. C-1-10, pp. 5-7, paras. 13-16.

⁷¹ 3Tr.173-174

⁷² 2Tr.71-2.

consideration of alternatives; the problem is that all of the alternatives have a cost associated with them, or cannot be immediately implemented, or both, and no stakeholder group wants to pay the costs of a solution.

34. In fairness to Direct, Enbridge notes Direct's acknowledgement in its final argument that a "suitable temporary solution" would involve marketers contracting for a certain proportion of firm transportation, with the costs of any "shortfall" contracted for by Enbridge being "socialized among all distribution customers".⁷³ Direct proposes that the proportion of firm transportation (whether Firm or Short Term) be based on the same proportion of firm transportation during the 2008/09 winter for non-Ontario landed supplies and refers to Exhibit HD3.8 in this context. EGD has recalculated the amount of STFT contracted for the winter of 2008/09 that spanned full months, based on Exhibit HD3.8 as shown below. While the amount of STFT contracted in December was insignificant, the amounts contracted for the entire months of Jan-Mar reflect an amount comparable to 200,000 GJ/d. While it is not known whether this STFT was contracted on behalf of small volume customers including Direct's customers, Enbridge suggests that its proposed level of firm transport is not burdensome relative to the level of STFT contracted for in 2008/09.

Nov 2008	Dec 2008	Jan 2009	Feb 2009	Mar 2009
3,361	770	185,862	170,235	170,486

*Units: GJ/d

35. The desire to avoid paying the costs of a solution goes so far as to drive CME to try on the idea that perhaps Enbridge's shareholder should pay some or all of the costs.⁷⁴ The basis for this suggestion is not clearly stated, but presumably a connection is supposed to be made with CME's comments about Enbridge's "role" in "creating the current situation".⁷⁵ Suffice it to say that daily deliveries to the franchise area on behalf

⁷³ Final Argument of Direct, p. 12, para. 32.

⁷⁴ Argument of CME, p. 14, para. 48.

⁷⁵ Argument of CME, pp. 10-12, paras. 32-39.

of system gas customers are underpinned by firm transportation and Enbridge did nothing to “create” the so-called optimization decisions by direct shippers that have led those shippers to different contracting practices. As VECC pointedly observes, direct shippers are transferring any potential risk to Enbridge and its customers while optimizing their costs of transportation using a number of physical and financial arrangements.⁷⁶

36. Unfortunately, Enbridge has not been able to come up with a cost-free solution to the issue. Since there are costs associated with all of the alternatives that have been brought forward, and since no stakeholder group wants to pay the costs, it is probably not surprising that parties might want more consideration of alternatives. Enbridge submits, though, that the underlying difficulty is the appropriate allocation of costs, rather than a need for more debate about alternative solutions.

37. VECC’s argument on the cost allocation issue in fact responds head-on to the submissions that have made by parties opposed to Enbridge’s proposal about the costs of implementing a solution. In essence, VECC observes that, if the Board accepts that a solution should be implemented, the need for that solution is driven by the actions of direct shippers who, in optimizing their costs, have created a situation of risk to all users of gas. More specifically, VECC says that the fact that it will cost direct shippers money to reduce the risk they have caused to the system should not dissuade the Board from taking action.⁷⁷

(d) Comprehensive Review

38. Another theme emerging from certain of the arguments is that the issue now before the Board might somehow have turned out differently if Enbridge had carried out

⁷⁶ Submissions of VECC, p. 6, para. 17.

⁷⁷ Submissions of VECC, pp. 6-7, para. 19.

additional consultations with stakeholders.⁷⁸ As will have become apparent to the Board by now, there are certain parties to this proceeding that will not willingly concede that the risk identified by Enbridge is a real one. Needless to say, it is unlikely that any amount of stakeholder consultation will be productive if certain participants in the discussion are not willing to accept, unless and until the Board says otherwise, that Enbridge has even raised a real issue.

39. Notwithstanding the stakeholder conference held in January of 2009, the pre-filed evidence, answers to interrogatories, a Technical Conference and two full days of ADR, these parties remain firm in their conviction that upstream contracting practices of direct shippers should not change (although it must be said that this position takes shape in most of the submissions as an argument that Enbridge's evidence is somehow deficient, rather than an explanation as to why there is no risk associated with current contracting practices). It should also be noted that, as a result of this proceeding, parties have had the benefit of hearing from TCPL, not only through written evidence, but also at the Technical Conference and at the hearing.

40. The Board has seen the submissions of other parties and will be able to judge for itself the extent to which certain parties remain adamantly unmoved by the evidence that has been led in this proceeding. Given that this evidence, including the useful and illuminating testimony from TCPL, has not been successful in moving certain parties off of their position that Enbridge has not raised a real issue, there is absolutely no reason to believe that additional stakeholder consultations would have been in any way productive.

41. In fact, it appears that stakeholders who genuinely want to understand the concerns raised by Enbridge have been influenced by the adamant position of certain parties that Enbridge has not raised a real issue. This appears, for example, from the

⁷⁸ *E.g.*, IGUA Phase II Argument, p.5, para. 25.

argument of BOMA. BOMA says: “BOMA has no evidence to indicate that one party or the other is correct. All that is known, is that both parties cannot be correct.”⁷⁹

42. As discussed above, any consideration of solutions to the concern raised by Enbridge naturally leads to an issue about who should pay for the solution. (This can be seen in many of the arguments, including those of BOMA⁸⁰ and APPRO.⁸¹) The cost allocation issue is a difficult one on its own, but the Board will appreciate that the difficulty is compounded when one faction says that there is not even a real risk to be addressed. It is understandable that stakeholders will be reluctant to agree that customers should pay the costs of a solution when certain parties are saying that there is not even a problem. In other words, attempts to discuss alternatives founder when there is disagreement on the existence of the underlying concern.

43. For these reasons, Enbridge is skeptical about the suggestion made by BOMA,⁸² and supported by other parties,⁸³ that there should be a “comprehensive review” of the situation. As stated above, it is unfortunate that parties who genuinely want to understand the concern raised by Enbridge have found the evidence to be unconvincing and Enbridge considers it important to be responsive to the points made by these parties. However, it is exceedingly difficult to do so in a context where certain other parties will not willingly concede that Enbridge has even raised a real issue (and where, in Enbridge’s view, one of those parties is focused more on deriding Enbridge’s evidence than on understanding the evidence).

(e) Other Areas

44. Of course, there are numerous submissions made by other parties that have not been addressed under the general headings set out above. As already stated, it is not

⁷⁹ Argument of BOMA, p. 4.

⁸⁰ Argument of BOMA, pp. 6-8.

⁸¹ Submissions of APPRO, p. 2, para. 6.

⁸² Argument of BOMA, p. 4.

⁸³ *E.g.*, Argument of CME, p. 9, para. 29.

feasible for Enbridge to reply to each and every submission on the upstream contracting issue, but it will respond to certain points that have not already been covered. These are as follows:

(i) Events of January, 2009

Certain parties imply that the events of January 13-15, 2009 are a lynch-pin of Enbridge's position on the upstream transportation issue. OAPPA, for example, states that "To support its proposal for upstream contracting requirements, Enbridge has focused on only one three-day period during the winter of 2008/9 (January 13-15, 2009)".⁸⁴ Having positioned this three-day period as a central focus of Enbridge's case, parties such as OAPPA suggest that, even though the timely nomination window was not met on January 15th, the fact that gas deliveries eventually were made can be taken as an indication that the market works.

Of course, Enbridge had already raised its concern about the reliability of upstream transportation in its filing with the Board prior to January 2009. As it happens, on January 15, 2009 the weather did not even come close to Enbridge's Design Day conditions and yet, because of difficulties on the TCPL system, Enbridge did not receive gas nominations in a timely manner.

Enbridge believes that such an occurrence on a day that fell far below Design Day conditions should be a matter of real concern to all parties (and to the Board) and should not be held up as an example of how well the system works. In any event, though, the point raised by Enbridge does not turn on the events of January 13-15, 2009 – when weather was well below Design Day parameters. As indicated in Argument in Chief, a much more important consideration is the potential outcome of combining Design Day conditions with current upstream contracting practices by direct shippers.⁸⁵

Enbridge's evidence is that, if it had experienced Design Day conditions on January 15th, an additional 400,000 GJ of gas

⁸⁴ Final Submission of OAPPA, p. 3, para. 9.

⁸⁵ Argument in Chief, pp. 7-8, para. 20.

would have been needed at the franchise area.⁸⁶ IGUA has arrived at the conclusion that there was an additional 600,000 GJ of “leeway” available at this time.⁸⁷ This is not the purport of the evidence: IGUA’s calculation of the 600,000 GJ includes curtailment and peaking supplies which were utilized and therefore cannot be viewed as “leeway” or incremental to meet higher demand conditions.

(ii) Nomination Windows

Certain parties make submissions about nomination windows that appear to reflect a misunderstanding of the evidence. For an accurate understanding of nomination windows and the implications of a nomination not being approved at the timely nomination window, Enbridge refers the Board to the evidence⁸⁸ and the submissions of TCPL.⁸⁹

(iii) Timing of Application

Parties mischaracterize Ms. Giridhar’s evidence by indicating that Enbridge was aware of a problem in April 2007,⁹⁰ but that Enbridge did not take action until the filing with the Board in September of 2008. In fact, Enbridge was not aware of a problem in April of 2007; this was when the gas supply planning group began to look into the nature and implications of upstream contracting practices.⁹¹ For the winter of 2007/2008, Enbridge had not come to any conclusion that action was warranted.⁹²

The evidence indicates that, on September 15, 2008, the gas supply planning group took the upstream transportation issue to Enbridge’s Executive Management Team⁹³ and, within less than two weeks of this review of the issue by senior management, Enbridge filed its initial evidence on the issue. The extensive cross-examination and submissions on the issue in this proceeding confirm that Enbridge was prudent in carrying out a careful examination of the issue,

⁸⁶ 2Tr.108.

⁸⁷ IGUA Phase II Argument, pp. 4-5, paras. 19-21.

⁸⁸ 3Tr.160-1.

⁸⁹ Written Argument of TCPL, pp. 5-7.

⁹⁰ Argument of CME, p. 10, para. 34.

⁹¹ Technical Conference Tr., April 22, 2009, p. 148.

⁹² 1Tr.31.

⁹³ Ex. I-12-5.

including a review by senior management, before putting forward a proposal.

(iv) Natural Gas Electricity Interface Review

SEC appears to argue that the Board should take comfort from findings in the NGEIR Decision that the gas market is integrated and not constrained by transportation capacity, and that this mitigates any reliability risk that might exist for Enbridge.⁹⁴ No other party makes this assertion.

Enbridge submits that the findings in the NGEIR Decision are not relevant to the issue now being considered. While the Board's NGEIR Decision did make findings about alternatives available to Ontario storage customers, those determinations were made when examining alternatives for customers who acquire gas storage at Dawn.⁹⁵ There was no examination of alternatives available to customers requiring gas delivery to the city gate in Enbridge's franchise area. As exhaustively canvassed in this proceeding, the only such alternatives require the use of the TCPL system. TCPL is unable to provide an assurance that there is sufficient upstream capacity on a peak day to meet the entire needs of the franchise area.⁹⁶ In these circumstances, it cannot be said that the findings in NGEIR about liquidity at Dawn have any application to the question of peak day reliability in Enbridge's franchise .

(v) Penalties and Contractual Remedies

Originally, Direct put forward the idea that a solution to the concern raised by Enbridge might be stiffer contractual penalties. Specifically, Direct said, in its prefiled evidence: "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 those penalties."⁹⁷

⁹⁴ Submissions of SEC, pp. 3-8, paras. 11-23.

⁹⁵ See, for example, the discussion at pp. 7-11 of the Decision with Reasons in EB-2005-0551 (NGEIR), where it is made clear that the focus of the forbearance examination was the natural gas storage facilities at or near the Dawn Hub, and that to reach Enbridge's franchise areas, gas stored at Dawn must flow over the Union pipeline and then through the TCPL transmission system.

⁹⁶ 1Tr.136.

⁹⁷ Ex. L-7, p. 3.

In its argument, Direct has changed course on the subject of penalties. Rather than addressing submissions to the idea that penalties might be increased, Direct argues that there is no evidence that “existing” penalties are not working.⁹⁸ Quite conceivably, Direct thought it best to back away from the idea of stiffer penalties after discussion during cross-examination about increased penalties that would make a direct shipper that fails to deliver responsible both for losses and costs of the utility and for losses and costs of affected customers.⁹⁹

Whatever the reason for Direct’s change of mind, it is quite clear that the existing penalties are not “working” to address the concern raised by Enbridge about upstream transportation arrangements. Obviously, the existing penalties do not work as a solution to Enbridge’s concern about contracting practices because those practices have occurred with the penalties in place. In short, the penalties and contractual remedies relied upon by certain parties have not prevented the degradation of firm transportation to Enbridge’s franchise area that has caused Enbridge to bring the upstream transportation issue before the Board.

(vi) **EBRO 410**

Arguments have been made about the Board’s decision in EBRO 410.¹⁰⁰ These are the same points that were raised by Shell during cross-examination and that were fully and cogently answered both by Ms. Giridhar and by Dr. Overcast.¹⁰¹

(vii) **Maintaining Delivery Reliability**

During the hearing, counsel for CCC cross-examined the Enbridge witnesses at some length about what would happen if the Board were to reject Enbridge’s proposal.¹⁰² While the content of the actual decision would have to be evaluated, surely it is self-evident that Enbridge would have to proceed very carefully before implementing a solution for next winter if no solution is called for in the Board’s decision.

⁹⁸ Direct Final Argument, p. 7, para. 17.

⁹⁹ 3Tr.32-3

¹⁰⁰ Argument of CME, p. 6, paras. 18-19.

¹⁰¹ 1Tr.81-87.

¹⁰² 1Tr.43-47.

Yet, as a result of Ms. Giridhar responding in this fashion,¹⁰³ CME submits that Enbridge “appears to be disregarding its obligation to maintain the delivery reliability of its distribution system”.¹⁰⁴ Enbridge submits that it is a brazen contradiction for CME to argue that Enbridge has not demonstrated the existence of a material risk¹⁰⁵ while also arguing that, if Enbridge does not take action to address the risk – notwithstanding a Board decision rejecting Enbridge’s position – Enbridge will be disregarding its obligation to maintain delivery reliability.

(viii) Basis Differential

Direct’s argument quotes a series of comments made by Mr. Ray about basis differentials.¹⁰⁶ These observations about basis differential are not relevant to a gas distributor’s supply planning. Quite simply, a responsible gas distributor cannot leave a certain portion of its firm gas supply plan unfilled on the ground that a forecast summer-winter basis differential gives some indication of the extent of pipeline constraints.

(ix) Competition

Direct describes Enbridge’s proposal as “anti-competitive”.¹⁰⁷ The response to this contention can be found in Enbridge’s Argument in Chief, under the heading “Cost of Addressing the Risk”.¹⁰⁸ Enbridge observes as well that VECC’s comments about the contracting practices of direct shippers apply in this context. As discussed above, VECC points out that direct shippers have been optimizing their costs while transferring any potential risk to Enbridge and its customers.¹⁰⁹ Seen in this light, Enbridge’s proposal – far from being “anti-competitive” – would ameliorate the existing situation which allows marketers to optimize their own costs and transfer risk to others.

¹⁰³ 1Tr.45.

¹⁰⁴ Argument of CME, pp. 11-2, paras. 37-8.

¹⁰⁵ Argument of CME, p. 9, para. 28.

¹⁰⁶ Final Argument of Direct, pp. 2-4, para. 9.

¹⁰⁷ Final Argument of Direct, p.8, paras. 20-4.

¹⁰⁸ Argument in Chief, pp. 9-11, paras. 25-9.

¹⁰⁹ Submissions of VECC, p.6, para. 17.

(x) OAPPA Calculations

OAPPA suggests that the level of firm transportation, including FT and STFT, over the period 2000/2001 to 2007/2008 demonstrates stability rather than deterioration.¹¹⁰ However, OAPPA takes FT and STFT deliveries as a percentage of total deliveries on actual peak day, rather than as a percentage of Design Day volumes. Enbridge submits that a constant Design Day volume is more appropriate as the denominator in the calculation than a variable actual peak day number. Making this adjustment causes the conclusion drawn by OAPPA to be reversed. Further, the absolute level of firm transport has declined steadily since 2003/2004 and Enbridge has been adding approximately 50,000 customers per year over the period of OAPPA's calculations, which further exacerbates Enbridge's concern about transportation arrangements underpinning delivery obligations to small volume customers.

(xi) Credit to Direct Shippers for TCPL Transportation Toll

Direct Energy submits that the reason why direct shippers have been getting a credit for the full TCPL eastern toll is because of limitations in Enbridge's CIS system.¹¹¹ However, recognition of the billing mechanics of the credit, does not justify the use of non firm transportation when direct shippers are being compensated for firm transport.

(xii) Peaking Services

Certain parties have commented on Enbridge's utilization of peaking services as part of its gas supply portfolio.¹¹² Peaking services are part of Enbridge's Board-approved supply portfolio, but the evidence is that Enbridge will be reviewing elements of this service because of instances during the last winter when peaking supplies were not confirmed until the last nomination window.¹¹³

¹¹⁰ Final Submission of OAPPA, pp.1-2, paras. 5-6.

¹¹¹ Final Argument of Direct, pp. 5-7, paras. 13-4.

¹¹² Written Argument of BP, p. 7, para. (f) and Final Argument of Direct, p. 4, para.11.

¹¹³ 1Tr.77; 2Tr.137-8.

(xiii) **Diversity**

IGUA submits that new pipeline capacity from Dawn, as opposed to additional transportation on TCPL's northern mainline, would significantly diversify and enhance gas supply options for Ontario gas consumers.¹¹⁴ It is important to put this submission about diversity into context. IGUA's submission, and its cross-examination on the issue, relate to diversity of supply to Ontario consumers generally, that is, access to a number of supply basins available through the Dawn hub.¹¹⁵ The issue in this proceeding concerns the availability of gas supplies at Enbridge's franchise area, not the Dawn hub.

(xiv) **Unbundling**

Direct makes a submission about unbundling that it links to the M12 capacity held by Enbridge on the Union Gas system.¹¹⁶ Enbridge submits that this reference to M12 capacity completely clouds the issue under consideration in this case. The issue in this case relates to upstream transportation arrangements for daily delivery obligations to Enbridge's franchise area. Enbridge's M12 capacity is not sized for daily delivery obligations; it is sized for the load balancing that Enbridge carries out for all customers.¹¹⁷

As it did on Issues Day, Enbridge submits that it would be a mistake to link consideration of the upstream transportation issue with unbundling. In this regard, Enbridge refers the Board to its submissions on Issues Day about the scope and scale of unbundling issues and the timetable that will be required for a full consideration of those issues.¹¹⁸ Combining the upstream transportation issue with unbundling would slow down the timetable for consideration of both matters and, as already stated, it would cloud the issues because the upstream transportation issue relates to daily deliveries that are made to the Enbridge franchise area.

¹¹⁴ IGUA Phase II Argument, pp. 7-8, para. 34.

¹¹⁵ 2Tr.97-8.

¹¹⁶ Final Argument of Direct, p. 10, para. 29.

¹¹⁷ Technical Conference Tr. April 22, p. 83.

¹¹⁸ Issues Day Transcript, pp. 6-10.

III. IRM Filing Timeline (Issue 8)

45. Of the five parties who addressed this issue in their submissions, four did not oppose Enbridge's proposed timeline for future applications. As CCC noted, "all parties support a timely process and the avoidance of retroactive rate adjustments to the extent possible".¹¹⁹

46. Only SEC took issue with Enbridge's proposed timeline, suggesting that it be moved up by one month, to allow for the possibility that a hearing may be necessary.¹²⁰ Enbridge disagrees with this suggestion, as it would require the use of different (and less current) inputs into the IRM Adjustment Formula than contemplated in the IRM Settlement Agreement. In any event, if a hearing is necessary, Enbridge does not believe that changing the start date of the process by one month substantially increases the likelihood of having a rate order in place on January 1st.

47. Enbridge does not object to the suggestion made by BOMA that issues not directly related to the determination of rates under the IRM Adjustment Formula should be addressed in a separate application, rather than as a subsequent phase of the rate adjustment proceeding.¹²¹ Enbridge does note, though, that some such issues (like those addressed in Phase II of this proceeding) will have rate impact and therefore the Board and stakeholders may see them as most properly being part of a rate proceeding.

IV. Conclusion

Enbridge urges the Board to recognize the risk to system reliability for the upcoming winter that arises from the declining use of firm upstream transportation to meet the needs of small volume customers. Enbridge also respectfully asks the Board to approve the proposal that customers taking service under an agent-type Gas Delivery

¹¹⁹ Written Argument of CCC, p. 13, para. 44.

¹²⁰ Submissions of SEC, p. 9, paras. 24-25.

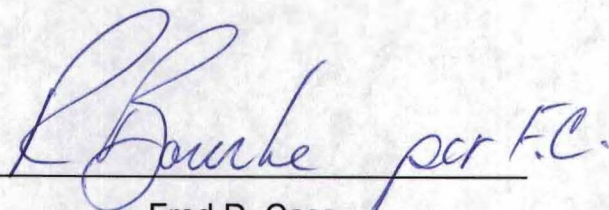
¹²¹ Argument of BOMA, p. 9.

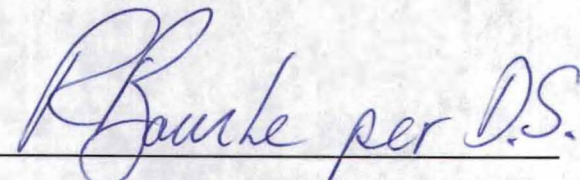
Agreement provide, by November 1st of each year, sufficient proof of FT arrangements to underpin at least 90% of Mean Daily Volume. Should the Board not accept the FT proposal, Enbridge urges the Board to require, at a minimum, that there be sufficient proof by November 1st of STFT service for the period from December to March as an interim measure to substitute for the FT requirement.

As noted in the evidence, Enbridge continues to be concerned about STFT service as a sustainable long term solution for the upstream contracting issue. If the Board decides in favour of this alternative solution for the upcoming winter, Enbridge is willing to enter into a collaborative process with stakeholders to work towards a sustainable solution for the longer term that would include consideration of a "vertical slice" methodology such as that used by Union Gas.

All of which is respectfully submitted.

June 5, 2009


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