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June 16, 2009

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Dear Ms Walli,

Enbridge Gas Distribution Inc. ("EGD")
2008 Earnings Sharing Mechanism and Other Deferral and Variance Accounts
Board File No.: EB-2009-0055
Our File No.: 339583-000039

I. Introduction

This letter contains the submissions of Canadian Manufacturers & Exporters ("CME") pertaining to this matter.

In preparing these submissions, we have considered Mr. Aiken's Written Submissions on behalf of The Building Owners and Managers Association of the Greater Toronto Area ("BOMA"). As noted below, we support and adopt the arguments made by Mr. Aiken on the particular items addressed in BOMA's Submissions.

II. Calculations of the Earnings to be Shared with Ratepayers and its Allocation to Rate Classes

Earnings Sharing Mechanism ("ESM") Amount to be Shared with Ratepayers

EGD's Consolidated Financial Statements at Exhibit D, Tab 1, Schedule 1, page 2 indicate that EGD's Return on Equity ("ROE") for the year ending December 31, 2008, was 11.4%. In CME Interrogatory No. 1 (Exhibit I, Tab 4, Schedule 1), EGD was asked to provide an exhibit which reconciles the 11.4% ROE shown in the Financial Statements and the 10.22% Achieved ROE shown at line 42 of Exhibit B, Tab 1, Schedule 2 in the Earnings Sharing Determination. In the Updated Evidence, at Exhibit M, Tab 1, Schedule 2, the Additional ROE is 10.21%. EGD's response, in subparagraph (e) on page 4 of Exhibit I, Tab 4, Schedule 1, lists a number of items which it says are not relevant or included within the Utility ROE calculation and refers CME EGD's response to SEC Interrogatory No. 1 at Exhibit I, Tab 7, Schedule 1.

EGD's response lacks transparency in that it does not show either the numerator or the dominator which produces the 11.4% ROE in the Financial Statements and, more importantly, how each of the items within the corporate consolidated calculation, which are either not relevant or included within the Utility ROE calculation, operate to affect

the numerator and the denominator of the 11.4% consolidated ROE calculation to produce a Utility ROE calculation of 10.22%.

We request that EGD provide a transparent calculation of this nature with its Reply Argument so that the Board and its Staff can verify that EGD's Utility ROE calculation of 10.22% (now 10.21%) is, in fact, compatible with the 11.4% recorded in EGD's Financial Statements for the period ending December 31, 2008, filed at Exhibit D, Tab 1, Schedule 1, pages 1 to 77.

A particular feature of EGD's calculation that should be investigated is the proportion of Gas Costs EGD calculates as being allocable to its weather normalization adjustments to revenues. From EGD's response to SEC Interrogatory No. 1, at Exhibit I, Tab 7, Schedule 1, at page 2, we see that the gas distribution margin for the consolidated entity at line 5 of \$1,010.6M, when expressed as a ratio of total revenues at line 3 of \$3,011.0M, is about 33.6%. The gas commodity and distribution costs, at line 4 is for the consolidated entity, are about 66.4% of total revenues.

In the Utility, however, in column 2, the gross margin at line 5 reduces materially from 33.6% to about 31% and the costs at line 2, when expressed as a proportion of the utility revenue, produces a ratio of about 69%, a material difference when compared to the comparable ratio of 66.4% for the consolidated entity.

One of the apparent causes of the materially reduced margin of 31% for the Utility, compared to the 33.6% gross margin for the consolidated entity, appears to be the weather normalization adjustment EGD makes in which it removes \$133.1M of revenues and a total of \$98.3M of costs from lines 1 and 2 of column 1 and line 4 of column 1. These weather normalization adjustment amounts appear in references (a), (b) and (c) in Exhibit I, Tab 7, Schedule 1, page 3 and are also found at Exhibit B, Tab 3, Schedule 1, page 1 of 4, and Exhibit B, Tab 4, Schedule 1, page 1 of 8.

The \$98.3M of costs attributable to the revenue adjustment of \$133.1M reflects a cost-to-revenue ratio of 73.9%. If the cost-to-revenue ratio for the normalized revenues of \$133.1M was 66.4%, being the ratio for the consolidated entity derived from the Financial Statements, then the costs to be removed in the normalization adjustment would be about \$88.4M rather than the \$98.3M adjustment EGD has made.

Utility income before tax would increase by some \$9.9M, of which 50% or \$4.950M would be allocable to ratepayers.

In its Interrogatory No. 4 (Exhibit I, Tab 1, Schedule 4), Board Staff asked EGD to describe the methodology underpinning its weather normalization calculation. Unfortunately, the response to the question does not assist us in understanding why the proportion of costs attributable to the weather normalization revenue adjustments should be materially greater than the proportion of costs attributable to audited consolidated income. If EGD cannot explain this phenomenon to the satisfaction of the Board, then the Board should question whether the \$98.3M of costs attributable to the normalizing revenue adjustment of \$133.1M have been overstated with the result that the earnings to be shared with ratepayers has been understated.

Based on the high level calculations we have made, we believe that there may be an understatement of earnings to be shared with ratepayers by as much as \$4.950M, being 50% of the \$9.9M described above.

Allocation of ESM Amount to Ratepayers

We agree with BOMA that the allocator to be used to attribute the earnings sharing amount to the various rate classes should be the same for Union Gas Limited ("Union") and EGD. Mr. Aiken's rationale for urging the Board to use the ROE/Rate Base allocator is sound. Accordingly, we urge the Board to approve the ROE/Rate Base allocator rather than the Distribution Revenue allocator EGD has used.

III. Other Deferral Account Balances and Their Allocation

Non-Commodity-Related Accounts

(a) Total amount EGD seeks to clear at October 1, 2009

We agree with Mr. Aiken that the total amount EGD seeks to collect from ratepayers should be reduced to \$24.3642M to reflect EGD's evidence in response to CME Interrogatory No. 2 to the effect that EGD no longer seeks to clear the balances in the 2008 Open Bill Service and 2008 Open Bill Access Deferral and Variance Accounts. These items are being addressed in the Open Bill Application proceeding (EB-2009-0043).

(b) Ontario Hearing Costs Variance Account

It is of concern to CME that a substantial portion of the variance EGD seeks to recover from ratepayers of \$2.2521M is attributable to 2008 Legal and Consultant costs totalling some \$1.968M, which exceed total intervenor costs in 2008 of \$899,000 by an amount of more than \$1M. Intervenor costs in 2008 include all of their Legal and Consultant costs and cover the several active intervenors in EGD's proceedings before the Board.

The fact that the total 2008 intervenor Legal and Consultant costs for several intervenors is less than 50% of the amount EGD, by itself, seeks to recover through this deferral account is, on its face, a disparity which suggests that the Legal and Consultant costs EGD incurred in 2008 are materially excessive.

The expectation was that, with the settlement of EGD's Application for approval of a 5 year Incentive Regulation Mechanism ("IRM"), EGD's legal and consultants costs would be materially lower than the amounts initially budgeted for 2008. That expectation has not materialized and a primary cause of this situation appears to be unreasonably large sums EGD has paid out in 2008 for legal services and consultants. A 2008 bill from the Brattle Group of \$841,000 for services (see Exhibit I, Tab 6, Schedule 9), apparently rendered in connection with the EB-2007-0615 proceeding in which that group, to our knowledge, did not provide any significant degree of services in 2008 because the matter was settled early in 2008, prompts CME to question the reasonableness of the amounts EGD seeks to recover from ratepayers. A material disallowance in the amounts claimed appears to us to be required.

(c) The Unbundled Rates Customer Migration Variance Account – 2008 URCMVA

EGD's calculation of the amount of \$485,661 which it seeks to recover from ratepayers is provided in response to CME Interrogatory No. 2 at Exhibit I, Tab 4, Schedule 2, page 3. EGD adjusts revenues paid by the migrating customer under Rate 115 for storage and unaccounted for gas ("UFG") to derive distribution revenue under Rate 115 of \$893,805. From that amount, EGD deducts distribution revenue under Rate 125 of \$404,144 to derive the amount recorded in the variance account of \$485,661.

CME would like to know and asks EGD to provide, in its Reply Argument, the amounts that are paid under Rate 125 by the migrating customer for UFG and storage revenue under Rate 315, so that the total of those amounts can be compared to the amount of \$195,488 which the customer was paying for those items while being served under the bundled Rate 115. If EGD is recovering more than \$195,488 for UFG and storage from the Rate 125 customer, then the increased UFG and storage recoveries from the customer now being served on Rate 125 should be deducted from the variance amount of \$485,661 which EGD has recorded in the deferral account. EGD should be kept whole; but not enriched by the deferral account.

(d) Municipal Permit Fees – 2008 MPFDA

CME questions whether this deferral account was intended to effectively operate as an "incremental capital expenditure module" related to municipal permit fees. We certainly never envisaged that the account would operate in this manner and thereby oblige ratepayers to pay equity return and taxes on amounts EGD pays for municipal permit fees. Our expectation was that these expenses would be recoverable as a Cost of Service item, like Municipal Taxes.

We suggest that if municipal permit fees are to be treated as capital items, then the carrying costs on such fees should consist entirely of tax deductible interest in order to relieve ratepayers from having to enhance EGD's equity returns through the operation of this deferral account. We suggest that the interest costs should be based on an application of the Board's short-term interest rate to the component of Rate Base attributable to municipal permit fees.

For 2009, EGD indicates that there is some \$691,300 in Rate Base attributable to municipal permit fees. We understand that the Board's short-term debt rate for 2009 is 1.33%. Accordingly, the net and gross carrying costs over and above Depreciation and Municipal and Other Taxes recoverable in this deferral account for 2009 should be about 3%, being the sum of the deficiency amount of 1.62%, shown for 2009 at line 9 of Exhibit C, Tab 1, Schedule 3, page 3, and the Board's 1.33% short-term debt rate; and not the 9.20% shown for 2009 at line 10 of Exhibit C, Tab 1, Schedule 3, page 3.

For the Rate Base amount for 2009 of \$691,300, we calculate the recoverable amount to be about \$20,739 rather than the \$99,600 EGD proposes. The amount EGD seeks to recover in the deferral account is about 4.8 times the amount we submit is reasonably recoverable from ratepayers. It is unreasonable to require ratepayers to pay equity return and income taxes on municipal permit fees.

Alternatively, the charges should be treated as an item of Cost of Service and amortized over the period considered by the Board to be appropriate, with the amortized amount to be recovered from ratepayers with interest at the Board approved short-term interest rate.

Commodity-Related Accounts

(a) Purchase Gas Variance Account

We rely on the Board and its Staff to verify that the debit balances which EGD has recorded in the PGVA and forecasts for clearance at October 1, 2009, are reasonable.

Allocation of New Deferral Account Amounts to Rate Classes

We agree with and have nothing to add to Mr. Aiken's submissions with respect to the correctness of the allocators EGD proposes to apply to attribute, to the various rate classes, the balances determined by the Board to be appropriate for the Average True-Up Variance Account ("ATUVA"), the Municipal Permit Fees Deferral Account ("MPFDA"), and the Tax Rate and Rule Change Variance Account ("TRRCVA").

We reiterate our support for Mr. Aiken's submission that the balance determined by the Board to be appropriate for the Earnings Sharing Mechanism Deferral Account ("ESMDA") should be allocated by applying the ROE/Rate Base allocator, rather than the Distribution Revenue allocator EGD proposes.

IV. Costs

CME requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding.

Please contact me if there are any questions about the submissions contained in this letter.

Yours very truly,



Peter C.P. Thompson, Q.C.

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c. Intervenor EB-2009-0055
Paul Clipsham (CME)

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