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VIA COURIER

September 11, 2007

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

Dear Ms. Walli:

Re: Enbridge Gas Distribution Inc.;
Incentive Regulation Plan;
Ontario Energy Board File No. EB-2007-0615

We are writing on behalf of Enbridge Gas Distribution Inc. and in accordance with Procedural Order No. 6 to file 11 hard copies and one electronic copy (in PDF format) of a factum outlining the submissions that Enbridge intends to make at the hearing of the Motion brought by Union Gas Limited.

Yours very truly,

Helen T. Newland

HTN\ko

Encls.

cc: All interested Parties EB-2007-0606/EB-2007-0615

EB-2007-0606
EB-2007-0615

IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15* (Sched. B);

AND IN THE MATTER OF an Application by Union Gas Limited for an Order or Orders approving a multi-year incentive rate mechanism to determine rates for the regulated distribution, transmission and storage of natural gas, effective January 1, 2008;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2008;

AND IN THE MATTER OF a combined proceeding of the Board pursuant to section 21(1) of the *Ontario Energy Board Act, 1998.*

FACTUM OF ENBRIDGE GAS DISTRIBUTION INC.

Introduction

1. Union Gas Limited ("Union") filed a Notice of Motion dated September 6, 2007, for an order of the Ontario Energy Board ("Board" or "OEB") that Union's application for rates, effective January 1, 2008, be severed from this proceeding and proceed independently of the application of Enbridge Gas Distribution Inc. ("Enbridge") on an expedited schedule.

2. Union's Motion is, in effect, a request for a review and variance of the Board's decision of July 13, 2007 that the applications of Union and Enbridge would continue to be heard on a combined basis (the "July 13th Decision"). The Board made this decision after hearing submissions from Union, Enbridge and intervenors.

3. In its submissions on July 13th, Enbridge stated that its preference was for a combined hearing so that common issues could be considered, for both utilities, at the same time and in the same venue [transcript, p. 10] This remains Enbridge's position today. Enbridge continues to believe that a joint hearing is the most expeditious and fairest way in which to proceed. Nothing has happened to change Enbridge's view in this regard.

4. The balance of this Factum is organized as follows: first, a response to Union's contention that the procedural delays experienced to-date have occurred because the Union application has been combined with the Enbridge application; second, an articulation on the issues raised by the Motion; third, an outline of the submissions that Enbridge intends to make at the hearing of the Motion; and fourth, a brief conclusion.

Procedural Delays

5. Union seeks to have its application severed from that of Enbridge. Its Factum points to procedural delays that Union implies have everything to do with being combined with Enbridge and nothing to do with other parties, including Union and the processing of Union's application.

6. That there have been delays is clear. That they are solely related to Enbridge's application is not. Some stakeholders were unable to file their interrogatories to Union and Enbridge by the prescribed date or were unable to file all of their own responses to interrogatories by the prescribed date. Moreover, Union has yet to complete its evidentiary filing. Indeed, on August 15, 2007, Union proposed that the commencement of the oral hearing be deferred until January 2008 to accommodate the filing of its Reply Evidence on weather and commodity risk management issues. This proposal was opposed by a number of parties and, in consequence, a compromise start date of December 6, 2007 was proposed, agreed to by all parties including Union, and was subsequently approved by the Board and reflected in Procedural Order No. 5.

7. Suffice it to say that all parties have and continue to struggle to keep the process moving along. While there have been initial challenges, this is hardly surprising in a proceeding of this kind. For the most part, it is progressing as contemplated. Bifurcating the proceeding at this stage has the very real potential of causing a whole new set of procedural delays. These are discussed below under the heading "fairness."

Issues

8. Union's Motion raises the following issues:

(a) Are there any material "changed circumstances" and/or "new facts" (as *per* Rule 44.01 of the Board's Rules of Practice and Procedure) that warrant a change to the July 13th Decision?

(b) Should the concerns about rate retroactivity outweigh the benefits of a combined hearing?

(c) Can concerns about rate retroactivity be addressed without the need to sever the applications?

(d) Are there any reasons why one application (i.e., Union's) should be afforded expedited treatment and can such special treatment be extended without prejudice to Enbridge?

Outline of Submissions

(a) what has changed

9. Union's Motion alleges that: (i) procedural delays since the July 13th Decision; (ii) the fact that Enbridge's and Union's incentive regulation ("IR") plans are "radically different;" and (iii) the fact that the Board has added the CIS/customer care cost as an

Enbridge-specific issue are all "changed circumstances and new facts" that warrant severing the Union application from the Enbridge application. Enbridge disagrees.

10. Union's first point – procedural delays – are the result of the cumulative, unavoidable, and not entirely unexpected circumstances of all parties in this proceeding and not of Enbridge alone. More importantly, these delays are not so egregious as to warrant a complete disregard for the principles of fairness, efficiency and efficacy that let the Board to make the July 13th Decision in the first place. Finally, the procedural delays on which Union relies in support of its Motion are a *fait accompli.* Procedural bifurcation will not roll back the clock.

11. Union's second point – the fact that the IR plans of Union and Enbridge are different – is nothing new. The Board made its July 13th Decision to continue with a joint proceeding with full knowledge that Union and Enbridge were filing different IR Plans. There has been no change in this circumstance.

12. The addition of the CIS/customer care issue – Union's third point – was done at the instigation of the Board and not as a result of any request by Enbridge. In its letter of August 20, 2007, the Board directed Enbridge to "add this matter to the evidence to be examined in this proceeding." The Board subsequently accepted the proposal of Board Staff that this issue should be treated as a Phase II matter in this proceeding. Enbridge believes the Board understood the consequences of these two procedural decisions when it took them. These decisions should not, now, be used as a reason to undo the July 13th Decision of the Board.

13. By raising the difference in the IR plans and the addition of the CIS/customer care issue, Union may be attempting to suggest that its application is simple and Enbridge's is not and that, accordingly, Union should be afforded special, expedited treatment. The Board should resist this suggestion. There are three reasons why.

14. The first is that both applications are complex in their own way, Union's no less so than Enbridge's. It is true that the Enbridge application now includes the CIS/customer care issue. The Union application, however, includes a significant and complex issue that is quite separate from Union's IR methodology: Union's request for a change in its weather forecast methodology. Moreover, the commodity risk issue pertains to Union alone. These issues have already generated many interrogatories to Union and will certainly extend the hearing process. Indeed, Union's weather forecast methodology proposal, if accepted, will necessitate changes to its base year (2007) rates. Enbridge's application does not request any adjustment to its 2007 rates.

15. The second reason has to do with fairness: fairness to Enbridge and fairness to intervenors. While it is true that Enbridge's IR methodology has not received the same degree of scrutiny at the Board, this is because Board Staff has expressed a preference for a price cap. Accordingly, the price cap methodology became the focus of the stakeholder consultation that preceded this hearing. These circumstances should not, however, dictate how the applications of Union and Enbridge are treated and should not form the

basis of expedited or special treatment for Union. Each application should be subject to the same level of examination and scrutiny.

16. The third reason has to do with perceptions of fairness and impartiality. Affording Union's application a different and expedited process from that of Enbridge's might be seen as an indication that the Board has already judged Union's application and found it to be worthy of special treatment.

(b) benefits of combined hearing

17. The benefits of a combined hearing fall into two separate but related categories: efficiency of hearing and efficacy of decision-making.

18. As for hearing efficiency, it is clear from the List of Issues that the preponderance of issues raised by applications of Union and Enbridge are important issues of regulatory policy that are common to both applications. In fact, depending on intervenors' positions on various issues, all 14 issues could be common, notwithstanding how the applicants choose to characterize these issues. A bifurcated proceeding will require that these common issues be heard twice: once in Enbridge's hearing and, again, in Union's hearing. This would be inefficient.

19. As for efficacy of decision-making, a combined proceeding affords the Board an opportunity to consider and evaluate the two IR methodologies in a comparative context. The ability, in a combined proceeding, to compare and contrast the benefits and short-comings of each methodology and the suitability of each IR plan to the circumstances of each utility will surely assist the Board in deciding the applications before it.

20. The benefits of a combined hearing were front and centre in the submissions of many of the consumer groups on the July 13th Motion Day. These submissions were accepted and adopted by the Board in its decision [transcript, p. 46] :

- In that regard, there is a belief by virtually all of the intervenors that there were benefits in a combined proceeding.

- Those benefits related to the efficiency of hearing the applications together, in addition to certain concerns of fairness with respect to Enbridge.

- The Board does recognize that there are likely a number of common issues, and there are certain gains in hearing time and cost in a combined hearing.

21. The benefits that originally persuaded the Board to continue with a joint proceeding, notwithstanding Union's objections, still pertain. Nothing has happened to change this.

(c) rate retroactivity

22. Union has, once again, raised concerns about rate retroactivity for its customers. Mechanisms, such as interim rates and rate smoothing, on a prospective basis, are available to mitigate "rate shock." The Board concluded, in its July 13th Decision, that these mechanisms could deal with Union's concerns about retroactivity [p. 47]:

> With respect to the retroactivity concern, we understand the concern of Mr. Penny on behalf of his client. The Board and intervenors also recognize that concern, but in all likelihood there are mechanisms such as interim rates and rate smoothing to reduce the rate shock he is concerned with, even though the consumption at issue is in the winter months when consumption is high. **In short, the Board is convinced there are mechanisms to deal with the concerns Union has with retroactivity.** [emphasis added]

23. Enbridge is willing to consider an appropriate mechanism to mitigate any rate shock that might otherwise flow from an implementation date later than January 1, 2008 if, indeed, rate shock becomes a problem or concern.

(d) fairness

24. If the Board severs the Union application from the Enbridge application it seems likely that one of the applicants, its shareholder(s) and its ratepayers will benefit at the expense of the other. This will happen if the Board decides to hear the two applications sequentially rather than in parallel, concurrent proceedings.

25. Parallel, concurrent IR proceedings would require two sets of Board staff, each with expertise in incentive regulation for gas utilities. It would require Pacific Economics Group to divide its attention on OEB matters between two proceedings. It would require another Board panel to come up to speed on the matters at issue and to revisit and endorse, or otherwise, decisions already taken by the panel in the joint proceeding. It would require intervenors and their counsel to divide their already stretched resources between two major proceedings at the same time.

26. Such an outcome seems unlikely. The more likely scenario is that the applications will be heard sequentially. This will mean that one applicant will have to wait until the other applicant stops. Union's request for expedited treatment implies that Union wants to go first. The ramifications of this would be extremely unfair to Enbridge and its ratepayers who would then be subject to interim rates for a much longer period than will likely be the case if the current procedural schedule is allowed to stand.

27. Sequential hearings, with Enbridge going last, will prejudice Enbridge and its ratepayers in at least three other ways:

- it will be subject to the inevitable demands to update and re-file its evidence, at a later date, when its application is finally heard;

- it will need to manage the consequence of operating under interim rates until late 2008 or early 2009 including the impact of making business decisions throughout the year which are subsequently not reflected in the Board's final decision on Enbridge's application; and

- it will be adversely affected by the determination of policy issues, common to both Enbridge and Union, in the Union proceeding before it has the opportunity to address these issues, itself, as an applicant.

Conclusions

28. It is Enbridge's submission that the grounds raised by Union in support of its Motion do not warrant a change to the July 13th Decision. If the Board decides otherwise, Enbridge will need to consider and evaluate the resultant implications. Like Union, Enbridge is concerned about the effect of delay on its ratepayers and its shareholder. This concern will dictate Enbridge's response to a change in the July 13th Decision.

September 11, 2007 **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Helen Newland

Helen Newland

Jerry H. Farrell

Counsel for the Appellant,
Enbridge Gas Distribution Inc.