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VIA E-MAIL

September 19, 2007

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms Walli:

Re: EB-2007-0606/0615
Motion by Consumers Council of Canada ("CCC") Re. Interim Cost Award

Pursuant to paragraph 2 of Procedural Order No. 7, Enbridge Gas Distribution Inc. ("EGD") offers the following comments in relation to the Amended Motion Record of CCC dated August 23, 2007.

As EGD submitted on August 3, 2007 in connection with the Board's consultation regarding the Practice Direction on Cost Awards in EB-2007-0683, the company is not opposed to eligible parties receiving interim cost awards at significant junctures in proceedings of extended duration. EGD does not, however, support the concept of advanced funding (see attached submission of August 3, 2007).

As EGD indicated in paragraph 10 of its August 3rd submission, a request for an interim cost award should be supported by some evidence as to the time and expenses incurred to a specified date. Moreover, the applicants (here, EGD and Union) would be required to pay 90% of the approved interim costs, leaving a 10% "hold back". This mechanism would permit the Board to decide, at the conclusion of the proceeding, whether the interim request was overstated having regard to the requestor's contribution to the entire proceeding.

Finally, EGD notes that CCC is propounding an hourly rate of $300 for senior counsel, consultants and experts. EGD has no further submissions to make on this issue than those contained in its August 3rd submission (paragraph 8).

We trust these comments are helpful; should the Board require anything further we would be pleased to assist.

Yours very truly,

Michael D. Schafler
per: S lyn RK
MDS/mds

Encl.

cc: Robert Warren (WeirFoulds LLP – CCC)
Michael Penny (Torys LLP – Union Gas Limited)
Jerry Farrell/Helen Newland (Fraser Milner Casgrain LLP – EGD)
Patrick Hoey (EGD)
All Intervenors

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EB-2007-0683

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF the Ontario Energy Board's Consultation on the Practice Direction on Cost Awards

SUBMISSIONS OF ENBRIDGE GAS DISTRIBUTION INC.

1. Enbridge Gas Distribution Inc. ("EGD") is pleased to provide its comments in response to the consultation initiated by the Ontario Energy Board (the "OEB" or the "Board") in respect of whether changes are needed to the Practice Direction on Cost Awards (the "Practice Direction").

2. In general, EGD has found that the OEB's Practice Direction is effective and appropriate in the manner in which it enables a wide variety of stakeholders to actively participate in regulatory activities before the Board. As explained in these submissions though, EGD does believe that there are some changes that could be made to the Practice Direction that would positively impact on the Board's regulatory processes by fostering and encouraging efficiency, while at the same time maintaining the ability of stakeholder groups to actively and effectively participate and represent their interests and constituencies.

3. In its July 11, 2007 letter, the OEB invited parties to comment on the two issues that have been identified as being of greatest concern to stakeholders in relation to cost awards: eligibility and the level/adequacy of the tariff. EGD has focused its comment on these topics.

Eligibility

4. EGD sees no reason to change the eligibility criteria set out at section 3.03 of the Practice Direction, but does suggest adding some guidance in section 3.04, which provides that in determining whether a party is eligible for costs the Board can consider any factor it considers relevant in the public interest.

5. In particular, EGD believes that section 3.04 of the Practice Direction should make clear that the Board may find it appropriate to determine whether a party seeking costs represents substantially the same interests or constituency as another party seeking costs. This would make it clear to existing and proposed Intervenors that duplicative funded representation of the same consumer groups and interests will be questioned and that the Board may, where appropriate, limit the cost eligibility (at least on an overall basis) of substantially similar parties. It would also be consistent with section 4.03 of the Practice Direction which provides that the Board may provide direction to parties as to any matter which relates to the determination of the amount of a cost award, including "combining interventions and avoiding duplication of evidence". Such a clarification would address EGD's concern that, from time to time, it seems that there is more than one funded group representing essentially the same interest in a proceeding. In those circumstances, the proceeding is prolonged and ratepayers as a whole are put to greater costs, without any corresponding benefit in terms of additional perspectives being presented to the Board.

6. Section 3.05 contains a list of parties presumptively not eligible for a cost award. It provides that certain parties, such as applicants and electricity and gas market participants, are not eligible for cost awards, except in special circumstances. EGD submits that this list should be expanded to make clear that all parties who are pursuing their own private commercial interests beyond their interests as ratepayers, whether individually or as a group, ought not to be eligible for costs. While there is certainly no reason why such parties cannot fully participate as intervenors in OEB regulatory activities, it is not appropriate for ratepayers as a whole to fund this participation which typically is intended to protect non-ratepayer interests.

7. As can be seen from the comments above, EGD believes that it is very important for groups or associations seeking cost eligibility to clearly set out, in their eligibility request, the ratepayer or other groups that they represent, along with the substantial issues in a given proceeding that are important to their constituency. In particular, information about such matters as (i) the constituency and mandate of the group or association; (ii) the substantial issues of interest to the group or association; (iii) the criteria used to determine the issues in which the group or association will be involved; (iv) the manner in which instructions are obtained by the group or association's representative; (v) the manner in which the group or association funds its participation in regulatory activities before the OEB; and (vi) the experience of the group or association and its representative before the OEB and similar regulators would

be helpful to enable the OEB and the applicant to assess the appropriateness of cost eligibility requests.

The Tariff

8. EGD appreciates the contributions, assistance and leadership provided by experienced counsel and other senior intervenor representatives during the course of OEB proceedings. EGD is aware that some parties have observed that the tariff amounts in the Practice Direction are lower than they ought to be, particularly for senior counsel. EGD does not disagree with this observation. EGD would support an appropriate increase in the Practice Direction tariff that would recognize the contribution of senior counsel and consultants. In this regard, EGD notes that the tariff amounts for senior counsel allowed by the Alberta Energy and Utilities Board ($250 per hour) and the British Columbia Utilities Commission ($225 per hour) are somewhat higher than the OEB tariff for the most senior counsel in Ontario ($210 per hour).

9. Another concern that has been raised by intervenors relates to having to wait until the end of long proceedings before receiving cost awards. In the context of rates and other proceedings that last for many months, EGD understands this concern, especially since cost awards are often the primary source of funding for intervenor representatives. EGD is not opposed to adding a provision to the Practice Direction that would permit parties who have been found to be eligible for cost awards to apply for and receive interim cost awards at significant junctures during the course of proceedings of extended duration. While EGD is not opposed to the provision of appropriate interim cost awards, it does not support any concept of advance funding.

10. If the OEB believes that allowing for interim cost awards is appropriate, EGD has a proposal as to how this could work. Under EGD's suggested approach, interim cost award requests would be dealt with in an expedited fashion, with a more detailed review to occur at the end of the proceeding. At specified time(s) during the course of a proceeding, eligible parties would submit high level (or short form) requests for an interim cost award relating to time and expenses incurred to a specified date. Each party would retain copies of the back-up documentation to support its interim cost award request, but this would not be produced at that time unless specifically requested by the Board. The applicant (the party paying the cost awards) would not review or comment on the interim cost award requests. Based on its review of the high level interim cost award requests, the Board would issue interim cost awards and the

applicant would be required to pay 90% of the interim cost award. The final 10% of the interim cost award would be "held back", in order to allow for the possibility that the Board ultimately decides that the interim request was overstated in the context of the party's contribution to the proceeding as a whole. At the end of the proceeding, a party that had received an interim cost award would set out its total cost claim, including back-up documentation, for the entire proceeding. At that time the applicant would be permitted to comment on the party's cost request. The Board would then consider the party's cost claim for the proceeding in its entirety and determine a proper cost award for that party in the context of its participation in and contribution to the proceeding as a whole. The Board's final cost award would set out a party's total entitlement to costs over the full proceeding, and would require the applicant to pay that amount less whatever amount had already been paid through the interim cost award.

11. While EGD supports appropriate changes to the tariff for senior intervenor counsel and representatives, and does not oppose the availability of interim costs, both of which would benefit intervenors, EGD believes that there is also an opportunity to implement other changes that would benefit everyone by improving the efficiency of regulatory processes before the OEB.

12. In recent proceedings, EGD has been pleased to observe intervenor groups working together to consolidate positions and divide responsibility for many of the issues that have proceeded to hearing. This contributes to a faster, more efficient and less expensive pre-hearing, negotiation, settlement and hearing process.

13. EGD believes that encouraging the cooperation and efficiency of intervenors benefits all parties. It should be noted though that the steps taken by intervenors in this regard are not always obvious to the Board. To that end, EGD submits that it would be appropriate for intervenors to highlight, as part of their cost award request, the steps that have been taken to work together with other intervenors to consolidate positions, divide responsibilities and take positive steps to reduce duplication and increase efficiency in the proceeding.

14. EGD recognizes that there can be a disincentive to any particular intervenor combining its efforts with others, thereby reducing its own role. On the other hand, such actions definitely benefit the process and ratepayers as a whole. In order to encourage and reward intervenors who succeed in improving the efficiency of the OEB's regulatory activities, EGD submits that it is appropriate to provide the Board with discretion to award costs at a rate up to 33% above the tariff to those particular intervenors who clearly demonstrate that they have substantially

contributed to the increased efficiency of a particular proceeding. While others may argue that there are a variety of circumstances where it would be appropriate for the OEB to award costs in excess of the tariff rates, EGD submits that it is appropriate to strictly reserve this discretion solely to situations where a particular intervenor has substantially contributed to improving the efficiency of a proceeding. In those circumstances, the existence and cost of the incentive will be justified by the fact that everyone involved with the regulatory process benefits from increased efficiency.

15. EGD is grateful for the opportunity to make these comments. EGD looks forward to reviewing the submissions of other stakeholders and reserves the right to comment on such submissions in the context of any proposed changes to the Practice Direction.

Date: August 3, 2007