



**EB-2009-0172**

**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, transmission and storage of gas commencing  
January 1, 2010.

## **PROCEDURAL ORDER NO. 1**

### **PRELIMINARY MOTION**

Enbridge Gas Distribution Inc. (“Enbridge” or the “Applicant”) filed an Application on September 1, 2009 (as amended on September 14, 2009) with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2010. The Board assigned file number EB-2009-0172 to the Application and has issued a Notice of Application dated September 18, 2009 (the “Notice”).

The Application is for rates for 2010 to be set under the Incentive Regulation plan methodology as approved by the Board under File No. EB-2007-0615 (“2010 Rates”). 2010 will be the third year of the five year plan. The rates under the plan are adjusted each year by the application of a Distribution Revenue Requirement per Customer Formula (the “Adjustment Formula”). The Applicant’s evidence was filed on October 1, 2009.

## Intervenors

The Board received requests for intervenor status from a number of parties responding to the Notice. The Board will grant intervenor status to all the parties that requested such status. These parties are:

- Association of Power Producers of Ontario
- Building Owners and Managers Association of the Greater Toronto Area
- BP Canada Energy Company
- Canadian Manufacturers & Exporters
- Consumers Council of Canada
- Direct Energy Marketing Limited
- ECNG Energy L.P.
- Energy Probe Research Foundation
- Industrial Gas Users Association
- Jason Stacey, Natural Gas Specialist
- Just Energy Ontario L.P.
- Ontario Association of Physical Plant Administrators
- Ontario Power Generation Inc.
- Pollution Probe
- PowerStream Inc.
- School Energy Coalition
- Shell Energy North America (Canada) Inc.
- TransCanada Energy Ltd.
- TransCanada Pipelines Limited
- Union Gas Limited
- Vulnerable Energy Consumer's Coalition

The Board received one request for Observer status. The Board grants the request for Observer status from:

- TransAlta Cogeneration L.P. and TransAlta Generation Partnership

## **Cost Award Eligibility**

A number of parties responding to the Notice requested eligibility to claim an award of costs. The Board will grant cost eligibility status to all the parties that requested such status. These parties are:

- Association of Power Producers of Ontario
- Building Owners and Managers Association of the Greater Toronto Area
- Canadian Manufacturers & Exporters
- Consumers Council of Canada
- Energy Probe Research Foundation
- Industrial Gas Users Association
- Ontario Association of Physical Plant Administrators
- Pollution Probe
- School Energy Coalition
- Vulnerable Energy Consumer's Coalition

## **Interim Rates**

The Board recognizes that its procedural schedule may make it impracticable to have new rates in place for January 1, 2010. Insofar as it appears uncertain that new rates will be in place for January 1, 2010, the Board orders that, in the absence of an intervening Order establishing new rates, the Enbridge rates in effect as at December 31, 2009 shall be interim rates, effective January 1, 2010. This order extends to rates altered through the application of the QRAM adjustment which is expected to be made on or around January 1, 2010. In granting Enbridge's request with respect to interim rates, the Board emphasizes that this should not be construed as predictive, in any way whatsoever, of the nature of or the content of the Board's final order in this case, including the effective date of the Board's final order.

## **Jurisdictional Question**

Section 36(2) of the *Ontario Energy Board Act, 1998*, authorizes the Board to make orders approving or fixing just and reasonable rates for the transmission, distribution and storage of gas.

On September 8, 2009, a Minister's Directive was issued which permits Enbridge and Union Gas Limited ("Union") to own and operate electricity generation facilities. Prior to the issuance of this Directive both of these companies were sharply limited in their activities by virtue of Undertakings made to the Ontario Government in 1998.

In its application Enbridge states: "It is clear from the Minister's Directive that such projects and the associated costs, assets and revenues may be included as part of Enbridge's regulated operations, subject of course to review and approval by the Board." [Ex. B. Tab 2, Schedule 4, p. 1, para. 2]

The final paragraph of the Minister's Directive states that it is not in any way intended to direct the manner in which the Ontario Energy Board determines rates for the sale, transmission, distribution and storage of natural gas by Enbridge and Union under the *Ontario Energy Board Act, 1998*.

The Board has decided to determine the issue of whether electricity generation facility projects, and their associated costs, assets and revenues, are properly part of the regulated operations of Enbridge and thus under the Board's ratemaking authority (the "jurisdictional question"), as a preliminary matter. This procedural order sets out a schedule for the filing of written argument by all parties and the hearing of oral argument.

All parties wishing to make written submissions are asked to answer the following questions:

1. Are the electricity generation facility projects, and their associated costs, assets and revenues properly part of the regulated operations of Enbridge and thus under the Board's ratemaking authority?
2. If not, does the Board have jurisdiction to deal with the electricity generation facility projects and their associated costs, assets and revenues outside of the ratemaking process?

It is the intention of the Board to proceed with the normal process of the application promptly following the determination of the jurisdictional question. Parties are asked to be ready to file their interrogatory questions shortly after the Board's decision on this preliminary issue.

The Board will make provision for the following procedural matters. Please be aware that further procedural orders may be issued from time to time.

**THE BOARD ORDERS THAT:**

1. The approved List of Intervenor is attached as Appendix "A" to this procedural order.
2. Enbridge's rates in effect as at December 31, 2009 shall be interim effective January 1, 2010.
3. Enbridge shall file its written argument on the jurisdictional question with the Board on November 4, 2009, and provide copies to all parties.
4. Board staff shall file its written submissions on the jurisdictional question with the Board on November 11, 2009, and provide copies to all parties.
5. Intervenor shall file their written submissions on the jurisdictional question with the Board on November 18, 2009, and provide copies to all parties.
6. The Board will hold an oral hearing to hear arguments on the jurisdictional question on November 24, 2009. The oral hearing will commence at 9:30am and will be held in the Board's hearing room on the 25<sup>th</sup> floor at 2300 Yonge Street, Toronto, Ontario.
7. All parties shall file their submissions with the Board Secretary and must quote file number EB-2009-0172. These submissions should be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address and must be sent to the Board by 4:45 pm on the date indicated with a copy to all parties. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document to the addresses below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer

access are required to file 7 paper copies. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Colin Schuch at [colin.schuch@oeb.gov.on.ca](mailto:colin.schuch@oeb.gov.on.ca) and Board Counsel, Donna Campbell at [donna.campbell@oeb.gov.on.ca](mailto:donna.campbell@oeb.gov.on.ca).

**DATED** at Toronto, October 23, 2009

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**LIST OF INTERVENORS  
ENBRIDGE GAS DISTRIBUTION INC.  
EB-2009-0172**

**Enbridge Gas Distribution Inc.  
EB-2009-0172**

**APPLICANT & LIST OF INTERVENORS**

October 23, 2009

**APPLICANT**

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**APPLICANT & LIST OF INTERVENORS**

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**Enbridge Gas Distribution Inc.  
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**Enbridge Gas Distribution Inc.  
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**Enbridge Gas Distribution Inc.**

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