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BY EMAIL

November 11, 2009

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

Dear Ms. Walli:

Re: Enbridge Gas Distribution Inc. - 2010 Rates
Jurisdictional Question
Board File No. EB-2009-0172

Dear Ms. Walli:

Please find attached the Board Staff Submission for the above proceeding. Please immediately forward the attached document to Enbridge and all intervenors in this proceeding.

Yours truly,

Original Signed By

Donna Campbell
Senior Legal Counsel

Attach

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.

BOARD STAFF SUBMISSIONS ON PRELIMINARY MOTION

Enbridge Gas Distribution Inc. ("Enbridge" or the "Company") filed an Application with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B, (the "Act") on September 1, 2009, amended on September 14, 2009, (the "Application"), for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2010. Enbridge's evidence was filed on October 1, 2009.

On October 23, 2009, the Board issued Procedural Order No. 1 advising that, as a preliminary matter, the Board would determine the issue of whether electricity generation facility projects, and their associated costs, assets and revenues, were properly part of the regulated operations of Enbridge and thus within the Board's ratemaking authority (the "jurisdictional question"). To address this jurisdictional question, the Board invited parties to answer two 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?

On November 9, 2009 the Board issued Procedural Order No. 2, amending the questions to be answered as follows:

1. Are the Green Energy Initiatives described in Enbridge's Application (Ex. B, Tab 2, Sch. 4), 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 Green Energy Initiatives, their associated costs, assets and revenues outside of the ratemaking process?

The Board also directed that all parties making submissions following the issuance of Procedural Order 2 answer the amended questions. Board staff's submissions reflect this direction.

OVERVIEW OF BOARD STAFF'S SUBMISSIONS

In the submissions that follow, Board staff addresses Enbridge's request to have the Green Energy Initiatives treated as if they are part of Enbridge's regulated operations, and thus within the ratemaking authority of the Board. Board staff submits that the ratemaking authority of the Board can only be engaged under section 36(2), and it is only the exercise of its ratemaking powers which can determine what forms part of utility operations and ratebase. To come within the Board's ratemaking authority, the Green Energy Initiatives must be related to the sale, transmission, distribution or storage of gas.

GREEN ENERGY INITIATIVES AND ENBRIDGE'S APPLICATION

The business activities that gas utilities have been permitted to carry on in Ontario have been expanded upon by Ministerial Directives. The expansion of permitted activities prompted the Green Energy Initiatives put forward by Enbridge.

Permitted Business Activities

Enbridge's business activities in Ontario are restricted by an Undertaking approved December 9, 1998 and effective March 31, 1999 (the "Undertaking")[1] which states:

> s.2.1 Enbridge shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.
>
> s.6.1 The Board may dispense, in whole or in part, with future compliance by any of the signatories hereto with any obligation contained in an undertaking.

Identical undertakings were signed by Union Gas Limited ("Union").

On August 10, 2006 a Minister's Directive ("2006 Directive")[2] was issued pursuant to s. 27.1[3] of the Act, which applied to both Enbridge and Union.

To assist the Government of Ontario in achieving its goals in energy conservation, the utilities' permitted business activities were expanded to include services related to:

a) the promotion of electricity conservation, natural gas conservation and the efficient use of electricity;
b) electricity load management; and
c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.

In addition, the utilities' permitted business activities were expanded in respect of research, review, preliminary investigation, project development and the provision of services related to the generation of electricity by means of large stationary fuel cells integrated with energy recovery from natural gas transmission and distribution pipelines.

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[1] Order in Council 2865/1998

[2] Order in Council 1537/2006

[3] Section 27.1: "The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources".

In addition, Enbridge's permitted business activities were expanded in respect of research, review, preliminary investigation, project development and the provision of services related to the local distribution of steam, hot and cold water in a Markham District Energy initiative.

On September 8, 2009 a Minister's Directive ("2009 Directive")[4] was issued pursuant to s. 27.1 of the Act and with reference to the passage of the *Green Energy and Green Economy Act, 2009*, which contains a series of initiatives related to promoting the use of renewable energy sources and enhancing conservation throughout Ontario. The 2009 Directive applies to both Enbridge and Union.

The business activities of the utilities are expanded to permit the ownership and operation by the utilities of:

a) renewable energy electricity generation facilities each of which does not exceed 10 megawatts or such other capacity as may be prescribed from time to time;
b) generation facilities that use technology that produces power and thermal energy from a single source which meet the criteria prescribed from time to time;
c) energy storage facilities which meet the criteria prescribed from time to time; and
d) assets required in respect of the provision of services which would assist the Government of Ontario in achieving its goals in energy conservation and includes assets related to solar thermal water and ground source heat pumps.

The Green Energy Initiatives

Enbridge is entering the third year of a five year Incentive Regulation plan which was approved by the Board in EB-2007-0615. In the Application[5], Enbridge requests approval of "a Y-factor and regulatory framework for the offering and provision of district energy and alternative or renewable energy activities and services by the regulated utility in future years."[6]

[4] Order in Council 1540/2009

[5] Enbidge 2010 Rate Adjustment Application, EB-2009-0172.
[6] Application, Ex. A, Tab 2, Sch. 1, p. 4, para. 13(f).

In the Application, Enbridge advises that the Company plans to pursue initiatives, and own and operate a variety of assets capable of generating and distributing alternative forms of energy to end-use customers in Enbridge's franchise area:

> Through these initiatives, Enbridge would design, market, invest in, own and operate assets that will primarily focus on providing space heating and cooling and domestic hot water for its customers. Some examples of the alternate and renewable energy solutions that Enbridge plans to offer include solar, ground source heat pumps, distributed and District Energy systems, micro combined heat and power and heat from waste technologies, geo-thermal systems and stationary fuel cell facilities (referred to in this evidence as "Green Energy initiatives").[7]

In its Application, Enbridge states that the 2009 Directive permits the Company to undertake Green Energy Initiatives within the utility and that it is clear from the 2009 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."[8]

The Company requests the establishment of a 2010 Y-factor in the amount of approximately $300,000 of revenue requirement to allow the recovery in rates of costs related to these projects. In accordance with the IRM Settlement Agreement[9] Enbridge also requires and requests the Board's approval to undertake the Green Energy Initiatives as "new regulated energy services".[10]

In the Application the Green Energy Initiatives are described as contributing towards meeting many of the Province of Ontario's clean energy goals, and providing benefits to Enbridge's existing customers. The benefits are described as "the addition of sustainable and growing business opportunities that will provide new sources of revenue to contribute towards Enbridge's long-term sustainability and the availability of different options for customers".[11]

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[7] Ibid., Ex. B, Tab 2, Sch. 4, p. 1, para. 1.
[8] Ex. B, Tab 2, Sch. 4, p. 1, para. 2.
[9] Ex. N1, Tab 1, Sch. 1.
[10] Ex. B, Tab 2, Sch. 4, p. 1, para. 3.
[11] Ex. B, Tab 2, Sch. 4, p. 2, para, 7; p. 3, para. 10.

As an example of how such initiatives would be treated, Enbridge describes its "near-term" Green Energy Initiatives as follows:

> Distributed energy projects represent an example of Green Energy Initiatives that the Company could design, build and operate within the utility in the near term. They are a logical extension of Enbridge's core service and complement its core competencies in a number of different areas.
>
> These projects have high initial capital costs, but they also have a long lifespan, with a steady stream of revenue over that time. Like many utility assets, there is a relatively long pay-back period associated with these projects. In addition, as is the case with natural gas system expansions, associated costs exceed revenues in the early years of the project, which revenues exceed costs in later years. This means that, in order for the projects to be viable, they must be treated in the same way as Enbridge's other regulated activities.
>
> The Company has been approached by and met with a number of parties about potential Green Energy Initiatives in its franchise area. The applications range from multi residential projects to small industrial projects to single family home projects. Each project has a different timeline and cost and revenue structure. Some projects are new construction projects, while others are retrofit projects.
>
> With OEB approval of Enbridge's request to serve these customers as part of the regulated utility, the Company would enter into contract negotiations with a number of the parties and commence construction in 2010 with completion of some projects prior to the end of 2010. The total cost of the Green Energy Initiatives that Enbridge plans to pursue in 2010 is approximately $10 million, of which $4.0 million is forecast to be closed to rate base in 2010. This results in an associated 2010 revenue requirement of approximately $300,000.[12]

Enbridge proposes the Green Energy Project assets[13] be included in the regulated utility and be a component of total ratebase for ratemaking purposes. Operating costs and revenues associated with these projects are proposed to be included when calculating the utility revenue requirement and any deficiency/sufficiency for ratemaking purposes.

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[12] Application, Ex. B, Tab 2, Sch. 4, paras. 12-15.
[13] This term is not defined in the Application but would appear to be the assets that are used in projects undertaken as part of the Green Energy Initiatives.

Enbridge states in its Application that it does not require the Board to establish rates for customers connecting to Green Energy Projects as the amounts to be charged would be set by contract.[14]

JURISDICTIONAL ARGUMENT

Enbridge's Argument

Enbridge's Argument in Chief states:

> … the Company wishes to highlight that it is not asking the Board to set or approve rates or charges for the activities that comprise its Green Energy Initiatives. It is, however, requesting that the Green Energy Initiative assets be included in the regulated utility and would be a component of total ratebase for ratemaking purposes. Operating costs and revenues associated with these projects would be included when calculating the utility revenue requirement and any deficiency/sufficiency for ratemaking purposes.
>
> Enbridge is therefore not asserting that section 36(2) of the OEB Act confers jurisdiction to set rates for electricity generation activities. On the other hand, for the reasons set out in the balance of these submissions, Enbridge asserts that the Board does have jurisdiction to include the associated costs, assets and revenues of electricity generation facility projects such as those now permitted under the recent Minister's Directives as part of Enbridge's regulated operations.[15]

Although ratebase itself technically does not form a part of the revenue requirement, its calculation is essential to the setting of rates. Ratebase is the base upon which the cost of capital is calculated. Depreciation is also calculated (or subtracted) from ratebase. Both the cost of capital and depreciation form part of the revenue requirement. Any changes to the Board approved ratebase can have a direct, significant, and immediate impact on a utility's revenue requirement. The calculation of the ratebase, therefore, is an essential condition precedent to the setting of rates. The Board's section 36 ratemaking powers are the authority under which it sets both the ratebase and the revenue requirement

[14] Ex. B, Tab 2, Sch. 4, p. 4, para. 16.
[15] Argument in Chief, p. 5.

Statutory Mandate

The Board sets the rates for gas utilities under section 36 of the Act which states in part:

> (2) The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.
>
> (3) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.
>
> (4) An order under this section may include conditions, classifications or practices applicable to the sale, transmission, distribution or storage of gas, including rules respecting the calculation of rates.

Board staff agrees with Enbridge's submission that the Board has broad powers to determine what constitutes a just and reasonable rate; that courts have held that the Board has wide discretion in determining just and reasonable rates and that the Board's rate setting powers should be interpreted in a fair, large, and liberal manner.[16] Board staff submits that while the case law speaks to the breadth of the Board's discretion when setting rates, and in determining the method by which rates will be set, it does not suggest that the Board can through the exercise of this broad discretion expand the grant of jurisdiction made to the Board under the Act.

In carrying out its responsibilities in relation to gas, the Board is to be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.

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[16] *Union Gas Ltd. v. Ontario (Energy Board)*, [1983] O.J. 3191 (Ont. Sup. Ct.), at para. 42.

Advocacy Centre for Tenant-Ontario v. Ontario Energy Board, [2008] O.J. 1970 (Ont. Div. Ct.), paras. 38, 56

5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

6. To promote communication within the gas industry and the education of consumers. [17]

The Board is also required to implement Ministerial Directives such as those issued under section 27.1.

Doctrine of Necessary Implication

Enbridge relies in part upon the doctrine of jurisdiction by necessary implication, as expressed by the Supreme Court of Canada in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* ("ATCO") to support its argument that the Board has the jurisdiction to make the Green Energy Initiatives' assets, costs and revenues part of the utility's regulated operations.[18]

In ATCO the doctrine of jurisdiction by necessary implication (the "doctrine") was defined as "when the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature". [19]

Enbridge submits that the Board is given jurisdiction to regulate the Green Energy Initiatives by express powers in the Act, and when appropriate, the Board's mandate will extend beyond the explicit powers through application of the doctrine.[20] It is the extension of the Board's explicit powers that is relied upon by Enbridge as the source of the Board's jurisdiction to grant its request.

Board staff submits this is a misinterpretation of the doctrine. The application of the doctrine is dependent upon whether the powers are narrowly or broadly drawn. Narrowly drawn powers can be understood to include by necessary implication all that is

[17] The Act, section 2.
[18] *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* [2006] 1 S.C.R. 140.
[19] Ibid., para. 51
[20] Argument in Chief, pp. 6-7, 16-17.

needed to enable a tribunal or agency to achieve the purpose for which the power was granted. Broadly drawn powers include only what is rationally related to the purpose of the power, that is, the doctrine is not necessary and not applied.[21]

Board staff submits that the Board's ratemaking powers are broadly drawn and as such the doctrine is neither necessary nor appropriately invoked.

Ratemaking Jurisdiction

Statutory Interpretation and Regime

Board staff submits that the plain and ordinary interpretation of section 36(2) grants the Board ratemaking authority over the transmission, distribution, storage and sale of gas only. For the Board's ratemaking jurisdiction to extend to the business activities now permitted by the Directives, and described in the Application as Green Energy Initiatives, the activities must relate to the distribution of gas.[22]

The statutory regime within which the Board operates and from which it derives its ratemaking jurisdiction consists of the Act and the regulations. While the Board is required to implement policy directives, and to be guided by statutory objectives when carrying out its responsibilities under the Act, the Board's ratemaking powers cannot be altered by the issuance of Ministerial Directives or additions to the Act's objectives. Only an amendment by the Legislature can increase (or decrease) the ratemaking powers granted by section 36(2). It is notable that despite the many amendments to the Act made by the *Green Energy and Economy Act, 2009*, the Legislature chose not to amend section 36(2).

Section 78(3)

The Legislature did amend section 78(3) of the Act under the *Green Energy and Green Economy Act, 2009*, which gives the Board ratemaking powers for electricity distributors and transmitters:

> The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's

[21] ATCO, para. 74.
[22] Included in 'the distribution of gas' is system gas.

> obligations under section 29 of the *Electricity Act, 1998*. [emphasis added to highlight the amendment]

It is clear that the Legislature has determined that with regard to electricity distributors and transmitters only, the inclusion of other activities within the ratemaking authority of the Board may occur in the future.

Currently no "other activity" has been prescribed. In its *Guidelines: Regulatory and Accounting Treatments for Distributor-Owned Generation Facilities*, the Board has stated that the statutory framework does not currently give the Board the power to include generation assets in ratebase, nor to permit rate recovery for any associated operations and maintenance expenses for distributors.[23] Board staff is not aware of any reason why the outcome would not be the same in relation to the rate treatment of the Green Energy Initiatives.

Separate Regimes for Gas and Electricity

At various points in its argument, Enbridge inveighs against what it calls "a compartmentalized approach to electricity and gas", and states "It could not have been intended that the Board's jurisdiction would be compartmentalized such that generation cannot even be looked at in a distribution case or that electricity cannot be looked at in a gas case."[24]

The statutory regime that is in place separates the Board's powers between gas and electricity. While parallel sections exist (for example, sections 36(2) and 78(3)) it is clearly the intention of the Legislature that the regulation of gas and electricity are separate. Board staff submits that while the Board may and does take notice of developments and issues arising in one area when considering the other, its jurisdiction for each area is separate and distinct, as mandated by the Legislature.

Effect of Finding not in Ratemaking Authority

In its written argument, Enbridge states that if the Board does not interpret its jurisdiction as widely as is urged, the electric and gas utilities will not be able to act upon the government's energy policy objectives.[25]

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[23] *Guidelines: Regulatory and Accounting Treatments for Distributor-Owned Generation Facilities*, G-2009-0300, September 15, 2009, p. 2.
[24] Argument in Chief, pp. 11, 13; also p. 9.
[25] Argument in Chief, p. 14-15.

The utilities' ability to act on the government's energy policy objectives is not dependent upon the outcome of this motion. The 2009 Directive permits the utilities to own and operate generation and storage facilities, and they will continue to have that right even if the Board finds that the Green Energy Initiatives do not fall within its ratemaking authority.

Enbridge also states that for the Green Energy Initiatives to be viable, they must be treated the same way as Enbridge's other regulated activities.[26]

The viability of initiatives is independent of their inclusion in regulated operations. Recently the Board has granted orders permitting the construction of transmission lines for wind farms. Each of these projects required significant capital investments before any return was realized. None of the applicants were regulated entities yet all of the projects underlying the applications have been successfully completed.[27] Clearly being part of a regulated operation is not required for a project to be viable.

Ministerial Directives

The Undertaking and section 36(2) both refer to the "transmission, distribution and storage of gas". They are assumed to have the same meaning.

The issuance of two Ministerial Directives supports staff's position that the Green Energy Initiatives do not fall within section 36(2). If the Minister was of the view that the Green Energy Initiatives were business activities captured by section 2.1 of the Undertakings (and hence also within the scope of section 36(2)), that is, they were related to the transmission, distribution and storage of gas, the issuance of Directives would not have been necessary.

In each Directive, the Minister makes reference to the Board's ratemaking powers.

The 2006 Directive states:

> To the extent that any activities undertaken by Enbridge Gas Distribution Inc. or Union Gas Limited in reliance upon this Directive are forecast to impact upon

[26] Application, Ex. B, Tab 2, Sch. 4, pp. 3-4, para. 13.
[27] Talbot Windfarm, Port Alma, Wolfe Island.

> their regulated rates, such activities are subject to the review of the Ontario Energy Board under the *Ontario Energy Board Act, 1998*.

The 2009 Directive states:

> This directive is not in any way intended to direct the manner in which the Ontario Energy Board determines, under the *Ontario Energy Board Act, 1998*, rates for the sale, transmission, distribution and storage of natural gas by Enbridge Gas Distribution Inc. and Union Gas Limited.

Enbridge relies upon the Directives as an expression of the Minister's intention that the Green Energy Initiatives form part of Enbridge's regulated operations and become a component of ratebase for ratemaking purposes. Board staff submits, however, that these references acknowledge the ratemaking powers of the Board as separate from and unaffected by the Directives.

Ancillary Services and Demand-Side Management

Enbridge submits that jurisdictional analysis should not focus on any particular proposed activity, but should take into account the objective, outcome or effect of the activity.[28] In support of this statement, Enbridge cites ancillary services and demand-supply management programs (DSM).

Ancillary Services

Enbridge states that in the context of the ancillary businesses[29], the Board allowed merchandise sales and a protection program for heating equipment within the gas utility operations. The Board did not set the prices to be charged by the ancillary business but included the results of the businesses in utility operations.[30] Enbridge states in its written argument: "One might question the Board's jurisdiction to allow merchandise sales or an equipment protection program within gas utility operations. However, the jurisdictional analysis requires a broader perspective. It is the objective, effect or outcome of the particular activity that provides the basis for the Board's jurisdiction."[31]

[28] Argument in Chief, p. 16.
[29] The ancillary services were a hot water heater rental program, a merchandise sales program, a natural gas vehicle program, and a heating insurance program.
[30] Ibid., p. 16
[31] Ibid., p. 16.

For a period of time the Board permitted ancillary services as part of the utility operations as such services were viewed as related to the sale, distribution, transmission and storage of gas. The programs were all brought forward as part of a sales and load building effort on the part of the gas utilities; at the time these programs were created, the utility was the only entity permitted to sell gas. The focus of the Green Energy Initiatives is not sale or load building opportunities.

As the number of ancillary services grew, the Board became more restrictive in its view of what would be permitted within utility operations and how those services would be treated. By 1995 fully allocated costing was required for all ancillary programs, and in 1999, the Board refused to allow the hot water rental program to continue as part of the regulated operations of the company, citing regulatory policy which encouraged the development of a 'pure utility' which did not offer non-monopoly services.[32]

Board staff submits that the treatment of ancillary services is not representative of the Board undertaking the type of jurisdictional analysis urged by Enbridge; instead the history of the Board's regulatory treatment of ancillary services reveals a narrowing rather than a broadening perspective of what is appropriately included in regulated operations for the sale, transmission, distribution and storage of natural gas.

DSM

As part of Enbridge's 2010 DSM Plan the Board has allowed the provision of low-flow showerheads and aerators; compact fluorescent light bulbs; and programs that enhance ventilation in commercial spaces.[33] Enbridge states in it written argument: "If one were to focus (inappropriately) on the nature of the particular activity, one might question the Board's jurisdiction to allow provision of showerheads or fluorescent light bulbs within gas utility operations…. However, the jurisdictional analysis requires a broader perspective. It is the objective, effect or outcome of the particular activity that provides the basis for the Board's jurisdiction".[34]

The establishment of DSM programs by the Board in 1993 was to ensure the utilities were looking at the most efficient ways to grow their distribution and transmission systems while managing demand, and to assist utility customers in reducing their

[32] EBO 179-14/15, March 31, 1999.
[33] Argument in Chief, pp. 15-16.
[34] Ibid., p. 16.

natural gas consumption. The activities included in the DSM programs were and continue to be related to the gas distribution and transmissions systems.

At a generic hearing held in 2006 to consider DSM activities for natural gas utilities ("Generic DSM Decision")[35] the Board held that as part of DSM, gas utilities could engage in activities including electric CDM that could "reasonably be viewed as complementary and ancillary to gas DSM and do not involve investments in infrastructure".[36] In arriving at its conclusion, the Board made the following comments concerning certain of Enbridge's DSM activities:

> EGD's current CDM activities with THESL were approved in EGD's most recent rates case. This program, however, is clearly incidental to EGD's DSM activities and it does not entail a separate infrastructure. EGD is free to continue its relationship with THESL regarding the TAPS program, and either gas utility may engage in similar programs with other electric LDCs where the CDM activity is clearly incidental to the utilities' DSM activities, or to engage in electric CDM stand-alone programs aimed at switching from electricity to gas where no dedicated investment in electric infrastructure would be required.[37]

It would appear that the Board approved Enbridge's 2010 DSM Plan, which included the compact fluorescent light bulbs referenced earlier, on a similar basis.

Board staff submits that the inclusion of various activities in DSM is not illustrative of the Board undertaking the jurisdictional analysis urged by Enbridge; rather it is the logical outcome of the application of clearly stated principles focused on the reduction of natural gas usage.

CONCLUSION

Parties making submissions were asked to answer two questions:

1. Are the Green Energy Initiatives described in Enbridge's Application (Ex. B, Tab 2, Sch. 4), their associated costs, assets and revenues properly part of the regulated operations of Enbridge and thus under the Board's ratemaking authority?

[35] Generic DSM Decision, EB-2006-0021, August 25, 2006.
[36] Ibid., p. 50.
[37] Generic DSM Decision, p. 51.

Board staff submits that the Board's ratemaking authority with regard to gas utilities is derived from the Act and its regulations, specifically section 36(2). It is only through the Board's ratemaking authority that assets, costs and revenues may enter ratebase. To come within the Board's ratemaking authority, the Green Energy Initiatives must be related to the sale, transmission, distribution or storage of gas.

2. If not, does the Board have jurisdiction to deal with the Green Energy Initiatives, their associated costs, assets and revenues outside of the ratemaking process?

Enbridge's request is specifically to include the Green Energy Initiatives' assets, costs and revenues into ratebase. For the reasons set out above, Board staff submits that the Board's ratemaking powers do not permit such inclusion in ratebase