



***PUBLIC INTEREST ADVOCACY CENTRE  
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November 18, 2009

**VIA E-MAIL AND COURIER**

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

Dear Ms. Walli

**Re: EB-2009-0172  
Enbridge Gas Distribution Inc. 2010 Rates  
Vulnerable Energy Consumers Coalition (VECC)**

Please find enclosed the submissions of VECC with respect to the preliminary questions of jurisdiction posed by the Board in Procedural Orders 1 and 2.

Yours truly,

*Original signed*

Michael Buonaguro  
Counsel for VECC  
Encl.

**SUBMISSIONS OF VECC RE:  
JURISDICTION OF THE BOARD OVER GREEN ENERGY INITIATIVES**

1. In procedural order 1, augmented by procedural order 2, the Board asked for submissions on the following 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?
  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?
2. VECC generally agrees with the comprehensive submissions filed by Board Staff on these issues, and will refrain from duplicating those submissions here. VECC would only like to add some specific comments to the submissions already in front of the Board.

*Y-Factor Claim with respect to Green Energy Initiatives*

3. VECC notes as a preliminary matter that for the IRM period covered by the application the revenue requirement sought by EGD is approximately \$300,000.00, and the EGD seeks to recover this amount during the IRM as a Y-Factor.
4. In VECC's view the recovery of any amounts associated with Green Energy Initiatives (the "Green Initiatives") as Y-Factors would be contrary to the terms of the governing Settlement Agreement and subsequent decision of the Board approving the settlement. Accordingly, VECC submits, even if the Board were to determine that the proposed projects fell within the Board's ratemaking authority, that authority would not, in accordance with the settlement agreement, be exercised until EGD's rates are rebased.
5. VECC concedes, however, that the determination of the issues outlined above should be considered notwithstanding its position that there can be no rate impacts associated with the Green Initiatives in the current application. On review of the application material as filed, it is EGD's stated position that it would not go ahead with the one or more of the Initiatives unless it was

assured that the Initiatives could become part of its regulated business.<sup>1</sup> VECC presumes that it may be the case that EGD could decide to go ahead with a Green Initiative during IRM, even if prevented from immediately including the project in rates, if it knew that on rebasing, the costs would be included in its regulated revenue requirement.

*ISSUE 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?*

6. VECC generally supports the submissions of Board Staff on this issue, with the following additional comments.
7. As Board Staff sets out, the Board's rate making authority is circumscribed by s. 36(2) of the OEB Act, and relates solely to the sale, transmission, distribution and storage of gas.
8. At the same time, the business activities of EGD are circumscribed by its Undertakings, limited to the transmission, distribution and storage of gas, unless it receives prior authorization of the Board.
9. VECC submits that the effect of the OEB Act and the Undertakings are as follows:
  - a. all the business activities that EGD can perform without obtaining prior approval of the Board are specifically under the ratemaking authority of the Board, and
  - b. other than the sale of gas, any other activity that EGD could seek Board approval for is outside the Board's ratemaking authority.
10. In this way, VECC submits, the Board has the discretion to approve non-rate regulated activity, with the expectation that the Board can use that discretion in such a way as to maintain the integrity of its ratemaking authority over regulated activity.
11. To use the examples provided by Board Staff on page 14 of the Board Staff Submissions, the Board has over the years accepted some related activities such as Demand Side Management, but also decided to prohibit the rental of water heaters by EGD in large part because of the impact that activity has on the ability of the Board to properly exercise its ratemaking authority. As noted in the EBO-179-14/15 decision:

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<sup>1</sup> For example, EGD describes in its evidence filed November 13, 2009 how it would not proceed with its Solar Thermal Water Heating Technology unless included in its regulated operations.

The Board is not prepared, however, to approve a proposal to run the rental program as part of the “core utility”. The essence of such a proposal is that no separate costing of the program, and hence no assessment of its profitability is possible. Not only would the costs of the program not be assessed on a fully allocated basis, as the Board has previously directed, but there would be no way of assessing them at all. The extent of any cross subsidization by the ratepayers would be unknown, and there would be little incentive for the Company to operate the program as efficiently as possible. The Board notes as well that any stranded assets which might develop in the program would become a ratepayer responsibility.<sup>2</sup>

12. In VECC’s view this is a clear example of where the Board’s role in approving non- regulated activity interacts with its ratemaking jurisdiction; while it is true that the Board had the discretion to allow EGD to run a rental program, its exercise of that discretion was informed by its ratemaking authority over the distribution of gas.
13. The effect of the new Directives specifically:
  - a. dispose with the need for Board approval for properly constituted Green Initiatives, but
  - b. have no effect (nor could have an effect) on the Board’s ratemaking authority.
14. Accordingly, VECC submits, the only effect of the Directives is that they dispose with the need for Board approval of properly constituted Green Initiatives, allowing EGD to undertake certain projects which are specifically outside the jurisdiction of the Board to regulate.
15. VECC submits that the new Directives are significant to the Board in that they allow EGD to undertake new unregulated businesses without any necessary regard for the added complexity those new businesses may create in the Board’s task of exercising its ratemaking authority over the regulated parts of the business. However VECC agrees with the Board Staff submissions that nonetheless the Board’s ratemaking jurisdiction remains the same.

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<sup>2</sup> EB-176-14/15, paragraph 3.2.4. VECC notes that the application was filed during the transition to the current Undertakings and the enactment of the current OEB Act, however the relevant relationship between the undertakings and the Board’s jurisdiction over the sale, transmission, distribution and storage of gas remained constant.

*ISSUE 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?*

16. VECC has, it believes, a slightly different understanding of issue 2 than that expressed by Board Staff, in terms of what it means to “deal with” the Green Initiatives.
17. The Directive clearly permits EGD to take on a host of new activities as part of its business.
18. This means that there is the potential that EGD may be using regulated assets and resources to undertake Green Initiatives.
19. While it is the case that the Board does not have ratemaking authority over the Green Initiatives, it retains ratemaking authority over the matters related to the sale, distribution, transmission or storage of natural gas.
20. VECC submits that the Board does have the authority to “deal with” the Green Initiatives in the sense that it must separate within EGD those costs associated with the regulated business from those associated with Green Initiatives.
21. VECC submits that the Board must therefore “deal with” the Green Initiatives by ensuring that EGD’s costs related to Green Initiatives are fully allocated to the Initiatives so that what remains represents only those costs that relate to the regulated business. This is required not only to protect ratepayers of the core business but also to prevent conferring an unfair advantage to EGD in competitive Green Energy businesses

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF  
NOVEMBER 2009**