

Direct Dial: (416) 216-2311
Direct Fax: (416) 216-3930
rking@ogilvyrenault.com

SENT BY COURIER

Toronto, December 4, 2009

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

Dear Ms. Walli:

**RE: Enbridge Gas Distribution Inc. ("Enbridge") 2010 Rates
Toronto Hydro Request for Late Intervenor Status
Board File No. EB-2009-0172**

We are counsel to the Association of Power Producers of Ontario ("APPrO"). By way of this letter, APPrO is asking the Board to deny the request by Toronto Hydro-Electric System Limited ("THESL") for late intervenor status. In its intervention request of December 2, 2009, THESL states that its only interest in the proceeding is the issue of inclusion in rate base of utility investments in renewable energy generation. There are two grounds for APPrO's position:

- procedurally, the submissions of the parties (and reply of Enbridge) on the Preliminary Motion have concluded, and it would be unfair to allow THESL to have the last word on the issue; and
- substantively, THESL has no interest in the specific issues that are the subject of the Preliminary Motion.

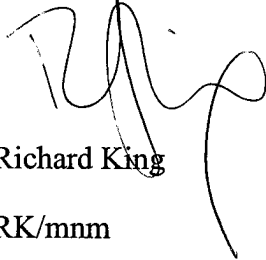
With respect to the first ground, the written submissions of Enbridge, Board Staff and all other parties to the proceeding were filed between November 4th and November 19th, 2009. Oral submissions (including Enbridge's oral reply) were made on November 24, 2009. All of this took place in accordance with the Board's Procedural Order No. 1, issued on October 23, 2009. It would be unfair to allow a late intervenor to make submissions on the questions set out in the Procedural Motion, with the full record on these issues at their disposal. In effect, this would

provide THESL with an ultimate reply right in this proceeding, putting THESL in a more advantageous position than had they participated in accordance with the Board's process set out in the Procedural Order. APPrO submits that this is a precedent the Board should refrain from setting.

With respect to the second ground, as noted above, THESL indicates that its only interest in the proceeding is the issue of inclusion in rate base of utility investments in renewable generation. THESL has its rates (including determination of rate base) set in accordance with section 78 of the *Ontario Energy Board Act, 1998* ("OEB Act"). The issue before the Board on the Preliminary Motion was whether Enbridge's Green Energy Initiatives (as that term is defined in Enbridge's evidence and November 4th submission on the Preliminary Motion) could be brought within rates established under section 36 of the OEB Act. All parties (including Enbridge and Union Gas Limited) agreed that the issue on the Preliminary Motion was the interpretation of section 36 of the OEB Act (i.e., the provision related to the setting of rates for gas sales, distribution, transmission and storage). Sections 36 and 78 of the OEB Act are different. Indeed, the differences were the subject of frequent comment by parties during the course of written and oral submissions on the Preliminary Motion.

For these reasons, APPrO is requesting that THESL be denied late intervenor status.

Yours very truly,



Richard King

RK/mnm

Encl.

cc. Colin McLorg (THESL)
Colin Schuch (OEB)
Donna Campbell (OEB)
Norm Ryckman (Enbridge)
Fred Cass (Aird & Berlis LLP)
All Intervenors in EB-2009-0172