

January 27, 2010

Kirsten Walli, Board Secretary  
**ONTARIO ENERGY BOARD**  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E5

Dear Ms. Walli:

**Re: EB-2009-0172: Enbridge Gas Distribution Inc. (EGD) 2010 Rates.**

**Updated Exhibit E/T3/S1 - Return on Equity for Earnings Sharing Purposes.**

We are in receipt of the captioned updated evidence, filed by EGD last week. In this evidence EGD has presented an Return on Equity (ROE) calculated in accord with the Board's revised methodology for determining ROE, as recently established in EB-2009-0084. EGD also appears to indicate in this updated evidence that:

1. It will not seek to reopen the current IRM plan/settlement agreement, which presumably is intended to mean that it will not seek any adjustment to 2010 rates on account of the Board's revised Cost of Capital policy.
2. However, "[a]t a minimum for Enbridge, any Board approved ROE will be effective for the purposes of the Earnings Sharing Mechanism ("ESM") described in the EB-2007-0615 Settlement Agreement." [Page 2 of the evidence, end of first paragraph.]

IGUA does not accept that the EB-2007-0615 Settlement Agreement expressly or necessarily provides for earnings sharing calculations based on an ROE determined through a mechanism different from that in place at the time that the settlement was reached. IGUA submits that if EGD is seeking, in this proceeding, a determination by the Board that the ROE to be applied for the purposes of 2010 earnings sharing determination is one resulting from application of the mechanism now established by the EB-2009-0084 policy, then:

- (a) EGD should seek to add the issue to the Board approved issues list.
- (b) If permitted by the Board, the issue should be subject to proper and full review and determination.

IGUA submits that the Board should first determine whether it will add the issue of the appropriate ROE mechanism to be applied to EGD's 2010 earnings sharing to the issues list in this proceeding. The alternative is for the issue to be deferred for consideration in EGD's next earnings sharing application. IGUA recognizes, however, that EGD and its shareholder may wish to have greater certainty on this issue at the outset rather than following the test year in question. Accordingly, IGUA would not object to a request by EGD that the issue be added to this proceeding. Indeed, for the reasons that follow, IGUA is of the view this may be a good approach.

In any event, there must be a proper and full review of the issue of whether the Board should apply its updated ROE formula to EGD's earnings sharing mechanism during the term of the current IRM. This issue has two components. First is consideration of whether it would be appropriate to apply an ROE mechanism different from that in place when the Settlement Agreement, including the earnings sharing mechanism embedded therein, was negotiated and approved. As noted above, IGUA does not agree that the EB-2007-0615 Settlement Agreement expressly or necessarily contemplates this outcome. Second is consideration of whether the Board's new ROE methodology should be applied to EGD in particular. The EB-2009-0084 Report expressly contemplates consideration in individual rates cases of whether the Board's new formula should be applied in the specific circumstances of any particular utility.

The Board could determine the first component of the issue (whether it would or could apply an updated ROE formula to EGD's earnings sharing mechanism during the current IRM term) in this proceeding. In that event interrogatories on the issue should be provided for. If the Board determines that it would or could apply an updated ROE formula to EGD's 2010 earnings sharing mechanism, a process would be required to enable review of whether the EB-2009-0084 ROE Formula should be applied in the specific circumstances of EGD. That process must include an opportunity for intervenors to elicit from EGD, and test, further evidence relevant to the matter, and to lead their own evidence on the matter.

Your truly,

**MACLEOD DIXON LLP**



Ian A. Mondrow

- c. Murray Newton, IGUA
- Norm Ryckman, EGD
- Fred Cass, AIRD & BERLIS (Counsel for EGD)
- Intervenors of Record

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