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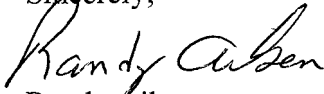
Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2009-0172 – Submissions of BOMA – Enbridge Gas Distribution Inc. - 2010 Rates

Please find attached the submissions of the Building Owners and Managers Association of the Greater Toronto Area in the above noted proceeding related to Issue 17.

Sincerely,



Randy Aiken
Aiken & Associates

cc Norm Ryckman, Enbridge Gas Distribution Inc.

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

**SUBMISSIONS OF THE BUILDING OWNERS AND MANAGERS
ASSOCIATION OF THE GREATER TORONTO AREA (“BOMA”)**

RETURN ON EQUITY IN THE CALCULATION OF EARNINGS SHARING

In Procedural Order No. 5 dated February 10, 2010, the Board amended the Final Issues List to include a new issue related to the ROE to be used in the calculation of the 2010 earnings sharing. The Board framed the issue as follows:

“Does the calculation of the earnings sharing referred to in Section 10.1 of the IRM Settlement Agreement require the use of an ROE based on the Board’s cost of capital policy in effect at the time the IRM Settlement Agreement was entered into, or the 2009 Cost of Capital Report, which is in effect at the time the earnings sharing calculation will be performed? (the “ROE Issue”)”

The Board also indicated that it would receive written submissions on the ROE issue. Enbridge Gas Distribution Inc. (“EGD”) filed their Argument in Chief on February 22, 2010.

Section 10.1 of the EB-2007-0615 Settlement Agreement (“Agreement”) dated January 29, 2008 states that than an earnings sharing amount will be calculated in the following manner:

- “(i) if in any calendar year, Enbridge’s actual utility ROE, calculated on a weather normalized basis, is more than 100 basis points over the amount calculated annually by the application of the Board’s ROE Formula in any year of the IR Plan, then the resultant amount shall be shared equally (i.e., 50/50) between Enbridge and its ratepayers;*

- (ii) *for the purpose of the ESM, Enbridge shall calculate its earnings using the regulatory rules prescribed by the Board, from time to time, and shall not make any material changes in accounting practices that have the effect of reducing utility earnings;*
- (iii) *all revenues that would otherwise be included in revenue in a cost of service application shall be included in revenues in the calculation of the earnings calculation and only those expenses (whether operating or capital) that would be otherwise allowable as deductions from earnings in a cost of service application, shall be included in the earnings calculation."*

BOMA does not accept that Section 10.1 of the Agreement requires the use of the ROE formula set out in the EB-2009-0084 2009 Report of the Board on the Cost of Capital for Ontario's Regulated Utilities (the "2009 Report") dated December 11, 2009.

BOMA has had the opportunity to see the draft submissions of both the Canadian Manufacturers & Exporters and the Vulnerable Energy Consumers Coalition on this issue and generally agrees and adopts their positions with THE following additional submission.

Section 2.4 of the Agreement

The phrase "ROE Formula" as used in paragraph i) of Section 10.1 is defined in Section 2.4 of the Agreement as "*the Board's formula for setting the ROE*". BOMA submits that the reference to setting the ROE must be taken in the context in which it is used in Section 2.4. In particular, the full sentence in Section 2.4 is as follows:

"The Parties agree that, except as otherwise provided in this Agreement, the percentage rate of return on equity ("ROE") of 8.39% that is already included in the Company's rates for 2007 will not be adjusted under the Board's formula for setting the ROE ("ROE Formula") during the term of the IR Plan. "

BOMA submits that the Board's formula for setting the ROE, or the "ROE Formula", refers back to the percentage rate of return on equity, or "ROE", earlier in the sentence. The reference is to the formula for setting **the** ROE, not to a formula for setting **a** ROE. The specific ROE being referred to is stated to be 8.39%, which was already included in the Company's base rates for 2007.

The Board's formula for setting the specific ROE of 8.39% referred to was based on the Board's cost of capital policy in effect at the time the Agreement was entered into. The ROE formula used to determine the 8.39% for 2007 was not the Board formula that came out of the 2009 Report, as this formula did not exist at the time of the Agreement.

BOMA therefore submits that the term "ROE Formula" as used elsewhere in the Agreement and defined in Section 2.4 of the Agreement clearly refers to the formula in the Board's cost of capital policy in effect at the time the Agreement was entered into.

As the Board is aware, a number of intervenors, including BOMA, have sought leave of the Board to file material that was distributed during the course of the settlement negotiations that, in the view of the intervenors, demonstrate the intent of the parties with respect to the protocol to be followed in the event the Board changes the ROE methodology within the IRM term. BOMA believes that a review of those documents demonstrates that EGD's interpretation of the Agreement is contrary to the intent of the parties.

All of which is respectfully submitted this 2nd day of March, 2010.

A handwritten signature in cursive script, reading "Randall E. Aiken", is written over a horizontal line.

Randall E. Aiken
Consultant to
Building Owners and Managers Association of the Greater Toronto Area