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March 2, 2010

BY EMAIL & COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St, Suite 2701  
Toronto ON M4P 1E4

Dear Ms. Walli:

**Board File No. EB-2009-0172**  
**Enbridge Gas Distribution Inc. – 2010 Rates Adjustment**  
**Submissions of Energy Probe**

Pursuant to Procedural Order No. 6, issued by the Board on February 18, 2010, please find attached two hard copies of the Submissions of Energy Probe Research Foundation (Energy Probe) in the EB-2009-0172 proceeding for the Board's consideration. An electronic version of this communication will be forwarded in PDF format.

Should you require additional information, please do not hesitate to contact me.

Yours truly,

David S. MacIntosh  
Case Manager

cc: Norm Ryckman, Enbridge Gas Distribution Inc. (By email)  
Fred D. Cass, Aird & Berlis LLP (By email)  
Intervenors of Record (By email)

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Energy Probe Research Foundation 225 BRUNSWICK AVE., TORONTO, ONTARIO M5S 2M6

Phone: (416) 964-9223 Fax: (416) 964-8239 E-mail: [EnergyProbe@nextcity.com](mailto:EnergyProbe@nextcity.com) Internet: [www.EnergyProbe.org](http://www.EnergyProbe.org)

**Ontario Energy Board**

**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.

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**Submissions of  
Energy Probe Research Foundation**

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**March 2, 2010**

**Submissions of  
Energy Probe Research Foundation**

**RETURN ON EQUITY IN THE  
CALCULATION OF EARNINGS SHARING**

**Overview**

1. To resolve a dispute between the Applicant and the other parties to the IRM Settlement (EB-2007-615) in respect of Section 10.1 of the Settlement Agreement, in Procedural Order No. 5 the Board agreed to amend the Final Issues List to include a new issue related to the ROE to be used in the calculation of 2010 earnings sharing.

2. In Procedural Order No. 6, the Board finalized the process for resolving the dispute and listed the new Issue 17 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")**

3. The Applicant filed its Argument-in-Chief on February 22, 2010, presenting its position that the IRM Settlement Agreement requires the use of an ROE based on the Board's 2009 Cost of Capital Report, referring to its determination that the ROE Formula that existed prior to the EB-2009-0084 Board Report did not meet the Fair Return Standard.

## **Position of Energy Probe**

4. Energy Probe was greatly assisted through the opportunity to review draft submissions of the Vulnerable Energy Consumers Coalition and the Canadian Manufacturers & Exporters. Energy Probe generally agrees with and adopts their positions as filed with the Board.

5. Despite the well presented Argument-in-Chief of the Applicant, Energy Probe submits that Section 10.1 of the IRM Agreement is predicated on the use of the Ontario Energy Board's cost of capital policy in effect at the time the IRM Agreement was concluded.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**March 2, 2010**

**Energy Probe Research Foundation**