

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch.B, as amended;

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc. pursuant to the *Ontario Energy Board Act* for an Accounting Order or Orders to establish certain deferral accounts related to a solar thermal pilot project.

---

### FINAL ARGUMENT ON BEHALF OF THE SCHOOL ENERGY COALITION

---

**March 10, 2010**

**JAY SHEPHERD P.C.**

120 Eglinton Avenue East, Suite 500  
Toronto, Ontario M1P 3E5

Jay Shepherd

Tel: 416-804-2767

Email: [jay.shepherd@canadianenergylawyers.com](mailto:jay.shepherd@canadianenergylawyers.com)

Counsel for the School Energy Coalition

## TABLE OF CONTENTS

<b>1</b>	<b>GENERAL COMMENTS.....</b>	<b>2</b>
1.1	<u>INTRODUCTION</u> .....	2
<b>2</b>	<b>THE PROJECT .....</b>	<b>3</b>
2.1	<u>GENERAL</u> .....	3
2.2	<u>VALUE OF THE PROJECT</u> .....	3
2.3	<u>ENBRIDGE ROLE</u> .....	4
2.4	<u>PILOT VS. LONG TERM NATURE</u> .....	5
2.5	<u>SOURCES OF FUNDING</u> .....	6
2.6	<u>RATEPAYER BENEFIT</u> .....	7
2.7	<u>CONCLUSION</u> .....	8
<b>3</b>	<b>REGULATORY PROCESS ISSUES.....</b>	<b>9</b>
3.1	<u>GENERAL</u> .....	9
3.2	<u>TIMING</u> .....	9
3.3	<u>IRM IMPLICATIONS</u> .....	10
3.4	<u>DSM CATEGORIZATION AND REGULATORY PROCESS</u> .....	11
<b>4</b>	<b>RECOMMENDED RESOLUTION.....</b>	<b>12</b>
4.1	<u>ORDER PROPOSED</u> .....	12
4.2	<u>CONDITIONS</u> .....	13
<b>5</b>	<b>OTHER MATTERS .....</b>	<b>14</b>
5.1	<u>COSTS</u> .....	14

## **1 GENERAL COMMENTS**

### **1.1 Introduction**

**1.1.1** On February 4, 2010 Enbridge Gas Distribution Inc. filed an application for an accounting order to establish certain deferral accounts – characterized as DSM deferral accounts – for the years 2010-2014. The Application relates to an \$8.5 million “research pilot project” to investigate solar thermal heating including related heat storage. The project has been approved for funding by Natural Resources Canada under the Clean Energy Fund, in the amount of \$3.975 million. Enbridge seeks to recover the balance from other partners, and any shortfall from the ratepayers through the proposed deferral accounts.

**1.1.2** This is the Final Argument in this matter on behalf of the School Energy Coalition.

**1.1.3** Our submissions in this Final Argument are divided into two distinct sections. In Section 2, we look at the project in and of itself, separate from any related process issues. In this regard, we assume for the purposes of the analysis that the project is included in a normal cost of service application by Enbridge, all in a timely manner. Then, in Section 3, we consider the regulatory process issues that arise because of the timing of the application, because of the status of Enbridge rates as IRM-based, and because of the current status of the Enbridge DSM plan. This analysis in Section 2 and 3 leads to our recommended outcome, in Section 4.

## 2 THE PROJECT

### 2.1 General

2.1.1 In this section, we analyze the Company's proposal as if it had been included as a spending proposal in a cost of service application before this Board. This involves all of the normal questions: is this an intrinsically good use of ratepayer funds, is it appropriate for Enbridge to be leading it, is the budget appropriate, etc.

### 2.2 Value of the Project

2.2.1 On the face of it, there is little doubt that research into ways solar gain can be harnessed to reduce fossil fuel use in a cost-effective way is inherently worth considering. This is why so many government and NGO programs, both in Canada and around the world, promote such activities.

2.2.2 We note, for example, that the existing *ecoEnergy for Renewable Heat* program sponsored by NRCan, and its sister program in Ontario, *Ontario Solar Thermal Heating Initiative*, specifically target solar thermal development in a Canadian context. One component of those programs is funding for utilities to do pilot solar thermal projects directed at residential heating and hot water use.

2.2.3 On the other hand, because there is so much support, there is also a lot of funded activity. The appropriateness of additional activity in the area is therefore dependent on the incremental value of the specific project.

2.2.4 The Board can take some comfort from the fact that NRCan has approved substantial funding for this project. Since NRCan has expertise in the field, it can be presumed to have done its due diligence, and determined that this project has incremental value.

2.2.5 However, Enbridge is asking the Board in this Application to approve in principle the investment of ratepayer funds, so the Board cannot, in our view, simply rely on the NRCan decision without forming an independent judgment. On the record as it stands now, it is not clear to us that there is sufficient evidence to support such a judgment.

2.2.6 In particular, we are concerned about the apparent scope of the "design phase" of the project, as described in the NRCan application at page 9 [B/2/1/Attach, p. 9]. This includes considerable basic work that we would have expected should be done before such a project would even be proposed. As just one example, we would have expected to see in the Application to this Board a comprehensive analysis of what has been done in the field to date, and how this project builds on

that work to add incremental value. That information does not appear in the Application to this Board, nor in the NRCan document. It appears that work will not even be done until funding of the design phase commences.

- 2.2.7** It may well be that in its implementation, this project will be less prosaic than it appears on its face. If, for example, the Company intends to build on the borehole storage technology being pioneered in Drake's Landing, the Okotoks housing project, that would be something of considerable value.
- 2.2.8** There are many areas in which the current state of knowledge can be pushed forward in this area. It is just not apparent from the record before this Board that this will be anything more than a demonstration project of known, conventional solar thermal collections systems and storage methods.
- 2.2.9** Because of our concern that the value of this project is not as apparent as it should be, we will later propose that if the Board gives an approval, the Board approve only the first phase funding, and even then with conditions.

## **2.3 Enbridge Role**

- 2.3.1** Assuming that the project itself has value, the next question is whether it should be a regulated gas utility, and in particular Enbridge, that should carry it out. If Enbridge wanted to do a pilot project in supercapacitor electricity storage systems, the Board might well raise its collective eyebrows and wonder what that has to do with gas distribution. This project raises similar questions, although perhaps the answers are not as obvious.
- 2.3.2** The project is characterized as a DSM pilot project, and so the obvious analogy is to other DSM programs that seek to reduce natural gas use. In the simplest case, if Enbridge proposed to provide incentives for customers to install solar preheating systems for their hot water space heating systems, that would in general be considered a legitimate DSM program. The fact that it replaces some gas heating with solar heating is one way of looking at it, but the other way is that gas use is being reduced through a complementary appliance. If it is as simple as that, this Board has already determined that promoting the reduction in natural gas use is a core activity for a gas distributor.
- 2.3.3** It is not as simple as that. Gas DSM programs currently come in two flavours. The traditional, program approach is based on the paradigm that the utility provides financial or other assistance to customers to actively reduce their gas use. The success of the program is tested by the TRC test, and the utility is rewarded for success based on that same test. In recent years, the Board has authorized a new, market transformation approach to DSM. The Board and utilities are still wrestling with how to do that most effectively, but in essence the utility tries

through demonstrations, channel assistance, and other means to create or increase market pull for an efficient product. The utility is rewarded for its success by a fixed incentive, usually based on a measurement of market response.

- 2.3.4** What is now being proposed is a third type of DSM, in which the utility's role is to conduct research into a method or methods of reducing gas use. In this new approach to DSM, the program itself is not intended to reduce gas use, except incidentally. It is instead intended to acquire knowledge so that future activities – whether by the utility or someone else in the market - can reduce gas use.
- 2.3.5** Enbridge has funded research in the past, as part of a separate program (not part of DSM) that ratepayers have funded. This is not new, although in the past most EGD research has been directed at increasing natural gas use. What is new is folding the research into the DSM activity, and thus effectively adding a new type of DSM that follows different rules from those the Board has previously approved.
- 2.3.6** The other aspect of this is the Applicant's incentive to carry out this research. In conventional DSM (program or market transformation), there is a financial reward for success. Here there appears to be none. In past research, the reward would be increased throughput. Here that is not applicable.
- 2.3.7** It would appear to us that the real reward to Enbridge from this project is stated well in their NRCan application, i.e. "transform its position as the largest natural gas distributor in Canada to the largest clean and green energy distributor" [B/2/1/Attach. p. 4].
- 2.3.8** This is, indeed, a laudable goal, and one that we support from a policy perspective. However, distributing "clean and green energy" is not currently a regulated activity, and is not likely to be one. There is currently a market for it, and there is little doubt that it is and will continue to be contestable in most or all of its aspects. While Enbridge Inc. may well have good reason to work toward this goal, it is not clear to us why a regulated gas utility would have similar reason.
- 2.3.9** For these reasons, it would appear to us that there is doubt as to whether Enbridge Gas Distribution is the appropriate proponent of this project. Given our comments later on process issues, in our view this Application does not provide sufficient justification for the Board to approve ratepayer recovery for this project.

## **2.4 Pilot vs. Long Term Nature**

- 2.4.1** The characterization of this project as a pilot project struck us as odd, particularly in light of the approach taken in the NRCan application.
- 2.4.2** In that application, the Company notes that the equipment component of the

project, \$6.6 million of the \$8.5 million total, represents assets that will be in place for 30 years [e.g. B/2/1/Attach. p. 22]. The project, however, ends after three years of monitoring, so that there is a 27 year “tail” in which the site owners, who own the equipment that has been paid for by the government and the ratepayers, reap the benefits of the energy savings.

**2.4.3** On the face of it, this does not appear to us to be a pilot project at all. As we note in the discussion below, it appears to us that the entire incremental cost is being paid by NRCan, and aside from that it is a demonstration project with monitoring and information sharing.

**2.4.4** In fact, the whole tone of the NRCan application is one of a long term project. By way of example, the application on page 1 says “The project is expected to reduce carbon dioxide emissions by 20,000 tonnes over the life of the systems installed and reduce energy usage by 400,000 GJ for the target sample of 200 dwellings, homes, small commercial installations in units or multi-residential buildings.”

**2.4.5** Statements like this beg the question of why this project is not simply a DSM program, to be tested like any other DSM program by the use of the TRC test. If the program fails that test, then the Board can legitimately ask whether this is a good use of ratepayer funds.

## **2.5 Sources of Funding**

**2.5.1** The Applicant proposes that the ratepayers be on the hook for about \$4.5 million of the project costs, being the entire amount that is not being funded by NRCan. They note that they hope to get funding from other sources, so the \$4.5 million is a maximum, not the expected amount. No information is provided about the other sources of funding.

**2.5.2** This approach in the Application appears to us to be inconsistent with the NRCan application in at least two very distinct ways.

**2.5.3** First, on page 6 of the NRCan application [B/2/1/Attach. p. 6], the expected contributions to the project are listed. The only cash contribution listed is from Enbridge. All others are information or in-kind. The reason this is relevant is that the cash requirements of the project, as listed on page 17, are more than \$7.5 million, and the in-kind, including those from Enbridge, are about \$900,000. In these circumstances, it would appear that the minimum amount to be paid by the ratepayers is \$3.5 million, a fact that does not appear in the Application.

**2.5.4** Second, and more important, the NRCan application asks the Clean Energy Fund for the entire incremental cost of the solar systems. The calculation, set out on page 19 of that document, shows that the total project cost is \$8.5 million, but the

cost of conventional equipment for the same purposes would be \$1.1 million, leaving a net cost of \$7.4 million. Deducted from that are lifetime fuel savings and emissions savings, presumably enjoyed by the site owners, leaving a net cost of \$4.2 million. That is the amount that is requested from NRCan. (We do not know how this was reduced to \$3.975 million, as that does not appear to be in the evidence.)

- 2.5.5 This raises an obvious question. If NRCan is paying 100% of the incremental cost (which is the whole basis for the calculation of the NRCan amount – see page 18), then what are the ratepayers supposed to pay for? Presumably we are not being asked to defray the cost that the site owners would incur for conventional equipment, nor the fuel savings that the site owners will enjoy. If there is an incentive amount required to convince site owners to participate, that might be a normal DSM program expense, but we would expect that to be calculated based on how much is needed, not simply 100% of all costs of all types.
- 2.5.6 This is exacerbated by the fact that \$6.6 million of the project costs are equipment, which will be owned by the site owners, not Enbridge. It appears that Enbridge proposes to give that gear to the site owners free of charge, and allow them to reap the energy savings and emissions savings as well, all at ratepayer expense.
- 2.5.7 Enbridge has noted that they plan to seek contributions from site owners and other partners. However, once they have approval from this Board to collect all costs from the ratepayers, we fail to see their incentive to collect anything from other partners.
- 2.5.8 It is submitted that, based on the NRCan application, this project is designed so that all costs of this project are represented either by payments from NRCan, or benefits to the site owners. Absent some evidence that an incentive payment will be required for site owners to adopt this technology, and the appropriate amount of that incentive, we believe on the record there is no requirement for ratepayer funding disclosed. The deferral accounts are therefore unnecessary.

## **2.6 Ratepayer Benefit**

- 2.6.1 Finally, we note that generally regulated gas distributors are not authorized by this Board to spend ratepayer money except on activities that benefit the ratepayer. Here, with no intent to transform the market, and with no conventional DSM program, it is not clear what benefits will accrue, ever, to the ratepayer.
- 2.6.2 We do note that Enbridge proposes that it will learn much about solar thermal, and that information will somehow be available to the market for others to use.
- 2.6.3 But we looked in both the NRCan application and the record before this Board for



some clear statements that the information learned in this project will be made publicly available. We are unable to find any. What appears from all documents is that there will be information generated, which will be shared with NRCan, and will be shared with the partners in the project, but general publication of that information does not appear to be a required part of the plan.

- 2.6.4** Given the lack of any other ratepayer benefits, we believe that, if this Board approves any ratepayer recovery of any amount, a condition should be that all results from this project are made available publicly, and no affiliate of the Applicant should have prior or preferential access to the information developed through the project.

## **2.7 Conclusion**

- 2.7.1** Based on the above, and taking into account the record before the Board in this proceeding, it is submitted that there are several serious concerns about whether this project should be approved, even if it were proposed in a cost of service proceeding as part of a normal budget.

### **3 REGULATORY PROCESS ISSUES**

#### **3.1 General**

**3.1.1** In our submission, there are three basic regulatory issues that the Board should address in the context of this Application:

- (a) Is it appropriate to approve this Application using the truncated process requested by the Applicant?
- (b) Is an application for additional spending of this type appropriate for a regulated utility in an IRM year, and is it consistent with the IRM model applicable to Enbridge?
- (c) Is an application to expand an existing gas DSM plan in a manner such as this appropriate?

**3.1.2** Our conclusion is that each of these questions should be answered in the negative.

#### **3.2 Timing**

**3.2.1** Other parties will undoubtedly express their concerns about the limited process being followed in this case at the request of the Applicant, essentially due to a plea for urgency.

**3.2.2** In our submission it was neither appropriate nor reasonable for the Applicant to file this Application on February 4<sup>th</sup> for, essentially, approval to spend \$4.5 million of ratepayer money, and expect a completed process by March 31<sup>st</sup>. We know that the Minister's announcement at Enbridge was January 11<sup>th</sup>, which means that clearly some time one to four weeks before that the approval of the project was known. We fail to understand why, at the very least, the Application was not filed more than a month earlier.

**3.2.3** We also note that the Application, at 13 pages, was very sparse. Enbridge, highly experienced in the regulatory process, should have known that many of the things requested in the interrogatory process would be needed, and should have included them in a timely prefile. Failure to do so meant that the bulk of the record appeared less than a week before submissions were due, and most of the questions that would be raised (which are raised in those IR responses) cannot be answered.

**3.2.4** The Board will note that, in the last Section, we consider at some length statements in the NRCan application that appear to be inconsistent with what the Applicant is proposing in this proceeding. We believe that the record would have been

significantly improved if we could have asked questions about those problems, rather than being left to surmise what we will in making submissions. In the best case, there should have been a short oral hearing, in which the Board could have heard first hand those explanations, and asked questions themselves.

- 3.2.5** Proper process was prevented due to the stated urgency of approval. Part of that urgency is because Enbridge did not file until February 4<sup>th</sup>. Part of that urgency turns out not to arise at all, as the March 31<sup>st</sup> deadline is not as hard and fast as first appeared.
- 3.2.6** But the bigger issue here is that Enbridge allowed the March 31<sup>st</sup> date to be established in the first place. No explanation has been given, save that NRCan wanted that date (presumably for federal government fiscal purposes). It would seem straightforward for Enbridge to have simply told NRCan that the OEB's processes take longer than that, and arrange for a later date.
- 3.2.7** There is, however, a "so what?" implicit in this analysis. Even if the process was too short and limited in scope, it is the process the Board approved, and a decision still has to be made.
- 3.2.8** In our submission, that decision must be made on the record before the Board. It is the responsibility of the Applicant to ensure that there is a sufficient record to support the Applicant's requested relief. If, as we contend, the record is insufficient for that purpose, in our view that is the Applicant's problem and the Applicant should not be given the benefit of the doubt where a fuller process would have produced a more suitable record.

### **3.3 IRM Implications**

- 3.3.1** The second regulatory issue arises out of the fact that the Applicant is in a multi-year IRM rate setting regime. That plan includes provision for Z factors, but has criteria associated with them.
- 3.3.2** What that IRM plan does not include is provision for the regulated utility to identify a new area of activity, and seek to bolt it onto the approved activities as incremental spending. In fact, the whole concept of IRM is that the utility has freedom to change what it is doing, and how it is doing it, to drive efficiencies and create a better regulated utility in time for the next rebasing. That management freedom is commonly held up as one of the touchstones of IRM, a major reason why utilities like it.
- 3.3.3** In our submission, it is contrary to the principles of IRM to allow a regulated entity to maintain the formula revenue requirement (within which all spending is supposed to be included, save Y and Z factors), but at the same time come to the

Board and ask for more money.

- 3.3.4** We accept that, in this case, what is being requested is an accounting order only, but clearly the Board would have no reason to approve such an order unless it considered that some or all of the proposed costs should be recovered from ratepayers.
- 3.3.5** In this case, it is submitted that the requested additional spending does not qualify as a Z factor, and the Applicant has not presented a case to justify the Board departing from the normal principles of IRM, forging new ground not in a rebasing year, but in an IRM year.
- 3.3.6** Therefore, it is submitted that there is no regulatory basis on which the Application can be approved consistent with the Board's policies and processes.

#### **3.4 DSM Categorization and Regulatory Process**

- 3.4.1** As noted earlier, the Applicant is proposing to add this project as the first of a new category of DSM program. In this new category, there is no immediate goal to reduce gas use, or transform a market. The immediate goal is to learn more about a technology, in hopes that in the future that technology can be part of other programs to reduce gas use and provide benefits to ratepayers.
- 3.4.2** While this may indeed be a good idea, in our submission a major change in the DSM paradigm for Enbridge should not be introduced in this manner.
- 3.4.3** Enbridge is currently operating under a multi-year DSM framework, which has been twice extended. Relatively soon, the Board will consider a new multi-year plan, and that would be an appropriate time for Enbridge to propose new categories of DSM programs, and how they would fit into the overall plan. An ad hoc proposal, as here, is not in our view the appropriate approach.
- 3.4.4** Therefore, it is submitted that even if this project is appropriately part of the Applicant's DSM activities, it should be funded within the limits of the existing DSM budget until such time as a new multi-year plan and budget is considered and approved.

## **4 RECOMMENDED RESOLUTION**

### **4.1 Order Proposed**

- 4.1.1** From the above submissions, it will be clear to the Board that we think there are ample reasons to deny the Applicant's request in this proceeding. In our submission, both the substance of the Application, and the implications that it has on the regulatory processes applicable to Enbridge, militate against approval.
- 4.1.2** There is just one small problem. The Government of Canada is offering a cheque for \$4 million to do work that could have significant long-term value to this province. Notwithstanding the concerns we have expressed above, there remains a basic principle of business to be considered, i.e. "Take the money!"
- 4.1.3** In these circumstances, we believe that a limited approval might allow the project to start, while still taking due account of the concerns we have expressed.
- 4.1.4** In our submission, if the Board wishes to assist the Applicant in allowing this project to proceed, the Board should approve the deferral account requested for 2010 only. This will, under the terms of the NRCAN application, allow Enbridge to proceed with the design phase, and to develop the sort of base of information on which the Board could consider the much larger spending in years 2011 and beyond.
- 4.1.5** We note that this proposal is in keeping with the phased approach to the NRCAN approvals anyway. Just as NRCAN has milestones, and may not continue funding beyond a milestone if the results are not acceptable to them, so this Board can approve the deferral account for the first phase only, then consider – on a much better record – whether further spending makes sense.
- 4.1.6** This would also allow the Board to solve two other problems. First, in that first year the Company has to identify partners, and their contributions. The issues we have raised about how much is really needed from ratepayers, if anything, will thus become clear, and the Board will know, in considering phase 2, roughly how much ratepayer money is needed. Second, by the time the phase 2 funding is being considered, the new DSM plan for the Applicant will also be before this Board. It may in fact be efficient to hear the request for approval of subsequent phases of this project within the context of the new DSM plan proceeding.
- 4.1.7** It is therefore submitted that, if the Board wishes to approve any part of this Application, that approval should be limited to the 2010 deferral account only.

## **4.2 Conditions**

**4.2.1** We believe that attached to any approval should be two express conditions.

**4.2.2** First, it is submitted that the Board should make clear, as it always does, that approval of the deferral account is not approval of recovery from ratepayers. However, in this case we believe the Board should go further, and expressly state that the Board will consider, in determining clearance of the 2010 account, the extent to which Enbridge has found other funding partners to defray costs of the project.

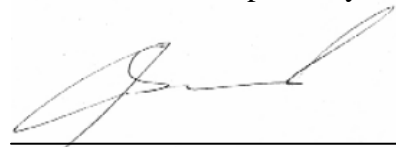
**4.2.3** Second, the only ratepayer benefit that we can identify is the information that arises out of the project. To ensure that benefit is delivered, it is submitted that it should be a condition of any deferral account approval that all information from the project be made public in a timely manner (preferably on a regularly updated website), and that no entity related to Enbridge have any access to commercially valuable information from the project prior to its public dissemination.

## **5 OTHER MATTERS**

### **5.1 Costs**

- 5.1.1** The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.



---

Jay Shepherd  
Counsel for the School Energy Coalition