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Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms. Walli:

Re: Enbridge Gas Distribution Inc.'s Application for Demand Side Management Deferral Accounts - EB-2010-0029

We are Counsel to the Consumers Council of Canada ("Council"). By Application dated February 4, 2010, Enbridge Gas Distribution Inc. ("EGD") applied to the Ontario Energy Board ("Board") for approval of Demand Side Management ("DSM") deferral accounts for the years 2010-2014 to support a five-year solar thermal space heating pilot project . In addition, EGD has requested approval of the Application by March 19, 2010. These are the submissions of the Council regarding EGD's Application.

EGD has secured funding from Natural Resources Canada ("NRCan") to undertake a project that will field test and evaluate different solar thermal collector types and storage technologies in different configurations. NRCan is providing funding for the program up to a maximum of $3.975 million or 47% of the budgeted costs. EGD has indicated that it is in the process of seeking supporting funding from other partners and participants (Ex. A/T1/S3). The total expected cost of the program is $8.5 million and the potential cost to EGD's ratepayers is $4.5 million. (Ex. A/T1/S3/p. 11) EGD is seeking approval to have any costs associated with this program recovered outside of its pre-approved DSM budget for 2010 and beyond. The details of the project have not been developed and the rate classes that will "benefit" from the program have not been identified (Ex. B/T2/S5).

The Council has been a supporter of EGD's DSM activities since their inception. In addition, the Council sees merit in the development of provincial and federal programs to reduce Greenhouse Gas emissions. The Council does not, however, support EGD's proposal for the deferral accounts for a number of reasons set out below.

DSM Framework:

The current DSM framework was developed in 2006 during the Board's generic proceeding on DSM for natural gas utilities (EB-2006-0021). The Board approved a three-year term at that time and has since extended that term an additional 2 years. That framework established initial budgets and a formulaic process by which budgets would be developed in subsequent years. EGD is required to develop its DSM portfolio within that budget. To the extent EGD wants to spend more it can only do so to produce Total Resource Cost Test ("TRC") savings beyond its approved TRC target.

EGD's proposal is to spend money outside of its approved budget on a program where "it is expected that the TRC and the SCT results for this project alone would not be robust due to the significant up- front investment required" (Ex. B/T7/S10).

The Council submits that EGD's proposal is clearly outside of the DSM parameters negotiated by EGD and intervenors , and ultimately approved by the Board. EGD is not seeking recovery of the costs of the program from its ratepayers at this time, but approval of the deferral accounts will inevitably lead to a potential recovery from ratepayers of $4.5 million. This is not consistent with the spirit of what was negotiated by the parties during the generic proceeding. EGD is required to work within its approved budget and only permitted to exceed it if the program results in positive TRC benefits.

The Council notes EGD has admitted that the program is outside of the current regulatory framework. The evidence states, "EGD and all stakeholders, including the Board itself, need to be ready and willing to stretch the boundaries of the regulatory framework, if we are to collectively achieve the goals in conservation and emission reduction as set out by the Ontario government" (Ex. B/T7/S1/p. 1)

If the regulatory framework is to be changed and "stretched" the Council submits that this should not be done through a process such as this one. If the scope of EGD's DSM activities is to be broadened, and the parameters of the current framework altered, a more comprehensive process should be undertaken, giving all parties an opportunity to comment on the extent to which change is required. Approval of this project, which could impose a $4.5 million cost on ratepayers, would represent a fundamental change to the current framework.

Nature of the Program:

The program has been characterized by EGD as "a research project to assess, evaluate, test and compare the effectiveness of various solar thermal technologies combined with various thermal storage technologies in a number of different applications. The focus of the project and its research is on the development and evaluation of solar thermal space heating technologies for the benefit of ratepayers and the province" (Ex. B/T1/S1/p. 2)

The Council submits that this is clearly outside of EGD's primary role in providing the transmission, distribution and storage of gas. The Board in its Decision on December 22, 2009, regarding EGD's motion seeking approval to pursue other green energy initiatives, rejected the proposal to diversify into activities beyond the transmission, distribution and storage of gas. The Board's Decision stated:

> There are a number of reasons why these investments should not be allowed in rate base. When assets are allowed in rate base it is generally because those assets are related to the monopoly franchise. Enbridge does not have a monopoly franchise for the production of renewable energy. Its franchise is related to the distribution of natural gas. To the extent that Green Energy initiatives involve activities for the production of renewable energy, they occur within a competitive market. Other participants would be materially disadvantaged were that to occur. The same line of reasoning applies to the Green Energy Initiatives that do not directly involve the generation of electricity, but which take place within a broad competitive market involving the provision of new and refined products designed to facilitate the creation of an innovative conservation culture in Ontario. Permitting a well-financed public utility to include its costs of participation in this market into its rate base, thereby transferring the risk to the ratepayer is unfair to other market participants. (Decision On a Preliminary Motion, EB-2009-0172, p. 6)

The Council submits that EGD's current proposal is no different from its proposals that were the subject of that Decision. If EGD intends to carry out "green" initiatives that go beyond the distribution of natural gas, it should do so outside of its regulated operations. Although EGD is not proposing to add the costs of the program to rate base, they are seeking potential recovery from its ratepayers. The same principles, defined by the Board in its Decision on the motion, should apply.

In its defence of the project EGD has claimed that the financial impact of the program on its ratepayers is "de minimis". The Council does not consider $4.5 million de minimis. In addition, if this application is approved, EGD will almost certainly come forward with other similar projects. The potential impact on ratepayers would significantly increase if that were to occur.

Design of the Program:

EGD is effectively seeking approval of a program that, to a large extent, has not be defined. EGD states that the "project will be designed and developed through an iterative process" (Ex. A/T1/S3/p. 10) In addition, the number and details of the exact sites and the mix of technologies to be implemented will not be finalized until the screening process in Phase 1 is complete. The partners and pilot sites have not been finalized (Ex. B/T4/S3/p. 1). The overall budget is not been confirmed. The $8.5 million "was the best estimate at the time when the proposal was submitted to NRCan" in September 2009" (Ex. B/T7/S6/p. 1) Is this a cap, or could EGD's ratepayers be asked to fund more than the $4.5 million?

The relationship between EGD, its yet unnamed partners and NRCan is also undefined, as is the allocation of the funding . The Council notes that in the sample agreement provided there is a provision for "repayment of the contribution" to NRCan. How this is intended to work and the potential impact on ratepayers is not clear. EGD has also indicated that, although its intent is for the $4.5 million to be recovered from partners and participants as well as other funding agencies prior to seeking any funding from ratepayers, the exact allocation plan cannot be determined at this time. In addition, EGD has not yet confirmed which of its rate classes will be involved in the program and therefore, which classes will fund the program. (Ex. B/T2/S5/p. 1)

With respect to funding the Council is unclear as to why ratepayer support is being sought in light of the comment in the proposal that, "Enbridge Gas Distribution and Enbridge Inc. have sufficient cash reserves , credit facilities and the ability to raise equity to fund this project" (Ex. B2/T2/S1/Att., p. 19). What is the expected involvement of EGD's shareholders in this project?

Conclusions:

In summary, the Council urges the Board to reject EGD's application to establish the deferral accounts to record the cost of the proposed solar heating program for the following reasons:

1. The proposal is clearly outside of parameters of the current DSM framework. The proposal to exceed the budget as proposed is not consistent with what was agreed to by the parties and approved by the Board in the generic DSM proceeding;

2. The program has not been subject to cost-effectiveness screening and therefore the potential benefits to ratepayers are not known;

3. If the Board wishes to consider inclusion of the program despite the fact it is not consistent with the current framework, a more comprehensive process should be undertaken. To consider the request set out by EGD in the context of a narrow accounting order application is not appropriate, and unfair to ratepayers ;

4. The project is beyond the scope of what EGD should be permitted to do within the context of its regulated monopoly business. The Board's findings in the preliminary motion decision are directly applicable to this application. Activities of this sort should be undertaken outside of the regulated business;

5. Many details of the program remain undefined including the partners and pilot sites. The project design and development will be undertaken at a later date, as part of an "iterative" process;

6. The rules around funding are also unclear. The cost impact for ratepayers is not known; and

7. EGD has made it clear that its parent has the resources required to fund the project.

Yours truly,

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