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BY EMAIL AND REGULAR MAIL

October 12, 2007

Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319, 26th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution – 2007 Rates
EB-2006-0034**

We are writing on behalf of Enbridge Gas Distribution Inc. (EGD) to respond to the motion brought by the HVAC Coalition Inc. (HVAC) for a review of the Board's costs decision in EB-2006-0034.

The purpose of this letter is not to debate the specific details of the cost claim made by HVAC, but to raise an important point of principle with respect to the Board's procedure for determining cost eligibility.

The procedure for determining cost eligibility is set out in the Board's Practice Direction on Cost Awards. According to section 4.01 of the Practice Direction, a party requesting costs must submit its reasons for claiming eligibility at the time of filing its notice of intervention. Section 4.02 of the Practice Direction goes on to state that the applicant has 14 days from the filing of the request for cost eligibility to submit any objection, after which time "the Board will rule on the intervention and the request for eligibility".

The clear intent of the Practice Direction is that requests for cost eligibility will be dealt with at the beginning of a proceeding, when interventions are filed and ruled on by the Board. Indeed, as already stated, section 4.02 of the Practice Direction plainly indicates that the Board will rule on a request for cost eligibility in conjunction with its ruling on the particular party's request for intervenor status.

By way of contrast, the quantum of cost awards to parties which have been determined to be eligible for costs generally is dealt with at the end of a proceeding. Section 5.01 of the Practice Direction sets out a series of criteria that the Board may consider when determining the amount of an award of costs and these criteria, virtually without exception, involve consideration of the particular party's conduct during the proceeding.

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On October 27, 2006, the Board issued a letter confirming the status of HVAC as an intervenor in EB-2006-0034. This letter states that "the Board has determined that HVAC is not eligible to apply for an award of costs". As far as we are aware, the Board has not at any time reversed its determination that HVAC is not eligible to apply for an award of costs.

It is clear from the grounds set out in HVAC's Notice of Motion (para. 2) that, in bringing its review motion at the end of the case, HVAC seeks to advance arguments about its "participation in the proceeding". Given that, according to the Practice Direction, rulings on cost eligibility are made when the Board rules on interventions at the beginning of a case, HVAC's review motion at the end of the case - based on arguments about its "participation in the proceeding" - effectively amounts to a challenge to both the wording and the intent of the Practice Direction regarding the procedure for determining eligibility.

EGD submits that HVAC's challenge to the procedure for determining costs eligibility should be considered, if at all, in the context of a review of the Practice Direction. (As it happens, the Board has recently engaged in a Consultation on the Practice Direction for Cost Awards, under docket EB-2007-0683.) Given that HVAC's position is really a challenge to the procedure set out in a Practice Direction, EGD submits that this position is not properly the subject-matter of a review motion at the end of EGD's rates case.

We look forward to receipt of the Board's directions regarding HVAC's review motion.

Yours very truly,

AIRD & BERLIS LLP



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