



**EB-2010-0042**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15 (Sched. B);

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc. for an order or orders approving the clearance or disposition of amounts recorded in certain deferral or variance accounts.

## **DECISION AND PROCEDURAL ORDER NO. 2**

Enbridge Gas Distribution Inc. ("Enbridge" or the "Company") filed an application, dated April 16, 2010 (the "Application"), with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act*, S.O. 1998, c.15, Schedule B (the "Act") for an order approving the disposition of balances in certain deferral or variance accounts. The Board assigned file number EB-2010-0042 to the Application and issued its Notice of Application & Procedural Order No. 1 on May 6, 2010.

### **The Settlement Agreement**

The Board scheduled a Settlement Conference on June 21 and 22, 2010 and Enbridge filed the Settlement Agreement on June 29, 2010. The Settlement Agreement indicated that parties were unanimously in agreement with the settlement of all the issues except one, that being the stock-based compensation expenses which were included by Enbridge in its 2009 earnings sharing calculations. The parties requested that the Board schedule a formal process to hear the stock-based compensation issue (the "SBC Issue").

The Board has reviewed the Settlement Agreement and accepts that it provides a reasonable basis for the disposition of the issues before it, but for the SBC Issue, in this proceeding. The Settlement Agreement is attached as Appendix "A" to this Procedural Order.

## The SBC Issue

The Board notes the comments in the Settlement Agreement under Issue 13 regarding the parties' request that the Board hold a written hearing process to consider the SBC Issue. The wording in Issue 13 is as follows:

Parties are not in agreement about the stock-based compensation expenses included by Enbridge in its 2009 ESM Calculations. All parties agree that the issue of the amount of Enbridge's stock-based compensation expenses to be included in the 2009 ESM Calculations should be determined by the Board and propose, subject to the Board's direction, that this issue be addressed through a written hearing process. The parties request that the Board issue a Procedural Order with dates for Enbridge's filing of evidence on its stock-based compensation plan, interrogatories and responses and a written argument process.

All parties agree that if the Board issues a decision on this issue by November 24, 2010, then Enbridge will reflect the results of that decision in the 2009 ESM DA amount to be cleared in accordance with the process set out in Issue 20. In the event that the Board's decision is issued after November 24, 2010, then all parties agree that the 2009 ESM DA amount to be cleared will be as set out at Ex. C-1-1, and that any necessary adjustments will be included (with interest) as a credit to ratepayers in the 2010 ESM DA (even if there would not otherwise be any balance in that account, because the earnings sharing threshold is not reached).

In light of the settlement wording on the SBC Issue, the Board will therefore schedule a hearing process. The SBC Issue shall be framed as follows:

Is the amount included for stock-based compensation expenses in Enbridge's 2009 Earnings Sharing calculations appropriate?

The Board will now make provision for the following procedural matters in relation to the SBC Issue. Please be aware that further procedural orders may be issued from time to time.

### THE BOARD ORDERS THAT:

1. Enbridge shall file detailed evidence with respect to the stock-based compensation issue and deliver it to all parties by **July 21, 2010**.

2. Parties seeking information and material on Enbridge's evidence shall request it by written interrogatories filed with the Board and delivered to all the parties no later than **July 30, 2010**.
3. Enbridge shall file complete responses to all the interrogatories with the Board and deliver the responses to the other parties no later than **August 13, 2010**.
4. Enbridge shall file its argument-in-chief by **August 20, 2010**.
5. Parties wishing to make written submissions shall file such submissions with the Board and serve them on all parties by **August 27, 2010**.
6. Enbridge shall file its Reply to any submissions by **September 3, 2010**.

All parties shall file their submissions with the Board Secretary and must quote File Number EB-2010-0042. These submissions should be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address and must be sent to the Board by 4:45 pm on the date indicated with a copy to all parties. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document to the addresses below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Colin Schuch at [colin.schuch@oeb.gov.on.ca](mailto:colin.schuch@oeb.gov.on.ca) and Board Counsel, Maureen Helt at [maureen.helt@oeb.gov.on.ca](mailto:maureen.helt@oeb.gov.on.ca).

**DATED** at Toronto, July 8, 2010

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX "A"**

**SETTLEMENT AGREEMENT**

**2009 Earnings sharing and Deferral and Variance Account Clearances**

**EB-2010-0042**

## **SETTLEMENT AGREEMENT**

### **2009 Earnings Sharing and Deferral and Variance Account Clearances**

**June 29, 2010**

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## **PREAMBLE AND OVERVIEW**

This Settlement Agreement is filed with the Ontario Energy Board (the "OEB" or the "Board") in connection with the application of Enbridge Gas Distribution Inc. ("Enbridge" or the "Company"), for an order or orders approving the clearance or disposition of amounts recorded in certain deferral or variance accounts.

In Procedural Order No. 1, the Board established the process to address this Application, as well as the Issues List for this proceeding (which is the list of accounts requested for disposition found at Exhibit A, Tab 2, Schedule 1, Appendix A).

A Settlement Conference was held on June 21 and 22, 2010. George Dominy acted as facilitator for the Settlement Conference. This Settlement Agreement arises from the Settlement Conference and subsequent discussions.

Enbridge and the following intervenors, as well as Ontario Energy Board technical staff ("Board Staff"), participated in the Settlement Conference:

BUILDING OWNERS AND MANAGERS ASSOCIATION OF THE  
GREATER TORONTO AREA (BOMA)  
CANADIAN MANUFACTURERS & EXPORTERS (CME)  
CONSUMERS COUNCIL OF CANADA (CCC)  
ENERGY PROBE RESEARCH FOUNDATION (Energy Probe)  
INDUSTRIAL GAS USERS ASSOCIATION (IGUA)  
SCHOOL ENERGY COALITION (SEC)  
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

The Settlement Agreement deals with all of the issues on the "Issues List", as well as the issue of when and how the deferral and variance accounts are to be cleared, which parties have agreed should be added to the issues set out in the Board's Issues List. That additional issue ("How should Enbridge's 2009 Deferral and Variance Accounts be cleared?") is included as Issue 20 in this Settlement Agreement.

All intervenors listed above participated in the Settlement Conference and subsequent discussions. Board Staff takes no position on any issue and, as a result, is not a party to the Settlement Agreement. Enbridge and all intervenors have agreed to the settlement of the issues as described on the following pages. Accordingly, any reference to "parties" in this Settlement Agreement is intended to refer to Enbridge and all intervenors listed above. The description of each issue assumes that all parties participated in the negotiation of the issue, unless specifically noted otherwise.

Best efforts have been made to identify all of the evidence that relates to each settled issue. The supporting evidence for each settled issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit B, Tab 3,

Schedule 1 is referred to as B-3-1. The identification and listing of the evidence that relates to each settled issue is provided to assist the Board.

The Settlement Agreement describes the agreements reached on the issues. The Settlement Agreement provides a direct link between each settled issue and the supporting evidence in the record to date. In this regard, the parties are of the view that the evidence provided is sufficient to support the Settlement Agreement in relation to the settled issues and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the Board to make findings agreeing with the proposed resolution of the settled issues. In the event that the Board does not accept the proposed settlement of any issue, then subject to the parties' agreement on non-severability set out in the final paragraph below, further evidence may be required on the issue for the Board to consider it fully.

According to the Board's *Settlement Conference Guidelines* (p. 3), the parties must consider whether a settlement proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. Enbridge and the other parties who participated in the Settlement Conference consider that no settled issue requires an adjustment mechanism other than those expressly set forth herein.

None of the parties can withdraw from the Settlement Agreement except in accordance with Rule 32 of the *Ontario Energy Board Rules of Practice and Procedure*. Finally, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions parties might take with respect to the same issue in future proceedings, whether during the term of Enbridge's current five year Incentive Regulation ("IR") plan, or thereafter.

The parties agree that all positions, negotiations and discussion of any kind whatsoever which took place during the Settlement Conference and all documents exchanged during the conference which were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Settlement Agreement. The parties agree that the inclusion of this specific confidentiality provision in this Settlement Agreement is without prejudice to the position that any party may take, as relates to any other existing or future Settlement Agreement, in respect of issues related to confidentiality at Settlement Conferences, and provisions in Settlement Agreements related to confidentiality.

It is acknowledged and agreed that none of the provisions of this Settlement Agreement are severable. If the Board does not, prior to the commencement of the hearing of the evidence in this proceeding, accept the provisions of the Settlement Agreement in their entirety, there is no Settlement Agreement (unless the parties agree that any portion of the Settlement Agreement that the Board does accept may continue as a valid Settlement Agreement).

## THE ISSUES

### 1. 2008 Demand Side Management V/A (2008 DSMVA)

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-2	Board Staff Interrogatory #2

### 2. 2008 Lost Revenue Adjustment Mechanism (2008 LRAM)

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-2	Board Staff Interrogatory #2

### 3. 2008 Shared Savings Mechanism V/A (2008 SSMVA)

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-2	Board Staff Interrogatory #2

#### **4. 2009/10 Class Action Suit D/A (2009/10 CASDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-2	Board Staff Interrogatory #2

#### **5. 2009 Deferred Rebate Account (2009 DRA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates

#### **6. 2009 Gas Distribution Access Rule Costs D/A (2009 GDARCDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-1-2	Gas Distribution Access Rule Cost Deferral Account explanation
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-7 and 8	Board Staff Interrogatories #7 and 8
I-3-6	CME Interrogatory #6

## **7. 2009 Ontario Hearing Costs V/A (2009 OHCVA)**

As part of the overall settlement contained herein, all parties agree that the principal balance in the 2009 OHCVA, as detailed at Ex. I-3-10, p.3, will be reduced by \$574,300, to reflect a reduction in Enbridge's costs related to the Cost of Capital consultative so that the total costs amount to be recovered for that proceeding is \$100,000. All parties also agree to the inclusion of an additional amount of \$61,700 in the principal balance of the 2009 OHCVA, in respect of costs claimed by an intervenor that had not been included in the amount set out in Ex. C-1-1. As a result of these adjustments, the new principal balance in the 2009 OHCVA is \$19,100. That amount, along with applicable interest, will be cleared in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-1-6	2009 OHCVA
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-3-10	CME Interrogatory #10
I-5-1	SEC Interrogatory #1

## **8. 2009/10 Open Bill Service D/A (2009/10 OBSDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-2	Board Staff Interrogatory #2
I-4-1	VECC Interrogatory #1

## **9. 2009/10 Open Bill Access V/A (2009/10 OBAVA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates

I-1-2 Board Staff Interrogatory #2  
I-4-1 VECC Interrogatory #1

#### **10. 2009 Municipal Permit Fees D/A (2009 MPFDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1 Balances Requested for Clearance at July 1, 2010  
C-1-3 Municipal Permit Fees Deferral Account explanation  
C-2-1 Clearance of 2009 Deferral and Variance Account Balances  
C-2-2 Derivation of Proposed Unit Rates  
I-3-7 CME Interrogatory #7

#### **11. 2009 Average Use True-Up V/A (2009 AUTUVA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1 Balances Requested for Clearance at July 1, 2010  
C-1-5 Average Use True Up Variance Account explanation  
C-2-1 Clearance of 2009 Deferral and Variance Account Balances  
C-2-2 Derivation of Proposed Unit Rates  
I-3-8 and 9 CME Interrogatories #8 and 9  
I-4-6 and 9 VECC Interrogatories #6 and 9  
I-5-6 SEC Interrogatory #6

#### **12. 2009 Tax Rate and Rule Change V/A (2009 TRRCVA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1 Balances Requested for Clearance at July 1, 2010  
C-1-4 Tax Rate and Rule Change Variance Account explanation  
C-2-1 Clearance of 2009 Deferral and Variance Account Balances  
C-2-2 Derivation of Proposed Unit Rates  
I-2-4 BOMA Interrogatory #4

### 13. 2009 Earnings Sharing Mechanism D/A (2009 ESMDA)

Subject to the potential adjustment set out below, all parties agree to the clearance of the principal balance in this account, as set out at Ex. C-1-1, along with applicable interest, in accordance with the process set out in Issue 20.

Parties are not in agreement about the stock-based compensation expenses included by Enbridge in its 2009 ESM Calculations. All parties agree that the issue of the amount of Enbridge's stock-based compensation expenses to be included in the 2009 ESM Calculations should be determined by the Board and propose, subject to the Board's direction, that this issue be addressed through a written hearing process. The parties request that the Board issue a Procedural Order with dates for Enbridge's filing of evidence on its stock-based compensation plan, interrogatories and responses and a written argument process.

All parties agree that if the Board issues a decision on this issue by November 24, 2010, then Enbridge will reflect the results of that decision in the 2009 ESMDA amount to be cleared in accordance with the process set out in Issue 20. In the event that the Board's decision is issued after November 24, 2010, then all parties agree that the 2009 ESMDA amount to be cleared will be as set out at Ex. C-1-1, and that any necessary adjustments will be included (with interest) as a credit to ratepayers in the 2010 ESMDA (even if there would not otherwise be any balance in that account, because the earnings sharing threshold is not reached).

All parties agree that the settlement of the 2009 ESMDA issue is without prejudice to positions that intervenors may take in future proceedings as to whether Enbridge's participation in activities with the Ontario Power Authority (OPA) or other similar entities is appropriate for a regulated gas distribution utility.

While all parties accept, for the purposes of the overall settlement described herein, Enbridge's calculations of the costs and revenues associated with unregulated storage operations, it is agreed that Enbridge will file as part of its 2010 ESM filing an analysis of the appropriate allocation of the costs of regulated and unregulated storage operations. All parties agree that this evidence will contain a similar level of detail to that set out in the filing made by Union Gas in EB-2010-0039 (at Ex. A-4).

**Evidence:** The evidence in relation to this issue includes the following:

B-1-1	ESM Calculations
B-1-2	ESM Calculations and Required Rate of Return 2009 Historical Year
B-1-3	Utility Earnings – Comparison of 2009 Historical Year to 2007 Board Approved
B-1-4	Utility Earnings – Reconciliation of 2009 Utility Income to Audited EGDI Consolidated Income
B-2-1	Ontario Utility Rate Base – Comparison of 2009 Historical Year to 2008 Historical Year
B-2-2	Ontario Utility Rate Base – Comparison of 2008 Historical Year to 2007 Historical Year
B-2-3	Property, Plant and Equipment Summary Statement – Average of Monthly Averages 2009 Historical

B-2-4	Comparison of Utility Capital Expenditures 2009 Historical Year to 2008 Historical Year
B-2-5	Comparison of Utility Capital Expenditures 2008 Historical Year to 2007 Historical Year
B-3-1	Utility Operating Revenue 2009 Historical Year
B-3-2	Comparison of Gas Sales and Transportation Volume by Rate Class 2009 Historical Year to 2009 Board Approved Budget
B-3-3	Comparison of Gas Sales and Transportation Revenue by Rate Class 2009 Historical Year to 2009 Board Approved Budget
B-3-4	Customers, Volumes and Revenues by Rate Class 2009 Actual
B-3-5	Details of Other Revenue 2009 Historical Year to 2008 Historical Year
B-3-6	Details of Other Revenue 2008 Historical Year to 2007 Historical Year
B-4-1	Operating Cost 2009 Historical Year
B-4-2	Operating and Maintenance Expense by Department Ending December 2009
B-5-1	Required Rate of Return 2009 Historical Year
B-5-2	Utility Income 2009 Historical Year
B-5-3	Cost of Capital 2009 Historical Year
C-1-1	Balances Requested for Clearance at July 1, 2010
C-1-2	Gas Distribution Access Rule Cost Deferral Account explanation
C-1-3	Municipal Permit Fees Deferral Account explanation
C-1-4	Tax Rate and Rule Change Variance Account explanation
C-1-5	Average Use True Up Variance Account explanation
C-1-6	2009 OHCVA
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
D-1-1	Enbridge Gas Distribution Inc. Consolidated Financial Statements December 31, 2009
D-1-2	Enbridge Gas Distribution Inc. Management's Discussion and Analysis – December 31, 2009
I-1-3, 4 and 6	Board Staff Interrogatories #3, 4 and 6
I-2-1, 2 and 6	BOMA Interrogatories #1,2 and 6
I-3-1 to 3	CME Interrogatories #1 to 3
I-4-2 to 5	VECC Interrogatories #2 to 5
I-5-2 to 5 and 7 to 8	SEC Interrogatories #2 to 5 and 7 to 8

#### 14. 2009 IFRS Transition Costs D/A (2009 IFRSTCDA)

Subject to the condition set out below, all parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

All parties agree that the acceptance and clearance of amounts contained in the 2009 IFRSTCDA is part of the overall settlement contained herein, and is without prejudice to the right of the Board and intervenors to review, in a future proceeding, the appropriateness of the amount charged by Enbridge Inc. and recorded in the 2009 IFRSTCDA (\$956,000, as indicated at Ex. I-4-10), including but not limited to whether the amount is appropriate in light of RCAM.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-4-10	VECC Interrogatory #10
I-5-1	SEC Interrogatory #1

### **15. 2009 Ex-Franchise Third Party Billing Services D/A (2009 EFTPBSDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates

### **16. 2009 Purchased Gas V/A (2009 PGVA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-9	Board Staff Interrogatory #9
I-2-3	BOMA Interrogatory #3

### **17. 2009 Transactional Services D/A (2009 TSDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-5	Board Staff Interrogatory #5
I-4-8	VECC Interrogatory #7

## **18. 2009 Unaccounted for Gas V/A (2009 UAFVA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates

## **19. 2009 Storage and Transportation D/A (2009 S&TDA)**

All parties agree to the clearance of the principal balance in this account, which is set out in Appendix "A", along with applicable interest, in accordance with the process set out in Issue 20.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates

## **20. How should Enbridge's 2009 Deferral and Variance Accounts be cleared ?**

All parties agree that the principal balances in Enbridge's 2009 Deferral and Variance Accounts, with applicable interest, subject to adjustments to the 2009 ESMDA and the 2009 OHCVA as set out herein, should be cleared in conjunction with Enbridge's January 1, 2011 QRAM Application. The principal amounts in Enbridge's 2009 Deferral and Variance Accounts to be cleared are as set out in Ex. I-2-3 (with changes to the 2009 OHCVA, as set out in Issue 7 herein). For ease of reference, these amounts are set out in the chart attached as Appendix "A" to this Settlement Agreement.

The balances will be cleared to customers in a single instalment during the January 2011 billing cycle. The timing of the clearance is intended to accommodate the resolution of the HST issue described below.

Enbridge agrees to seek a ruling or other binding decision from the Canada Revenue Agency ("CRA") about whether clearance to customers of the balances in the Deferral and Variance Accounts will result in any refund of HST or reduction in HST that would otherwise be payable by customers. Should the CRA allow a refund of HST or a reduction in HST otherwise payable, any such HST credit will be passed through to

customers, provided always that there will be no expense or outlay by Enbridge or its shareholder to fund or contribute to the HST refund or reduction.

All parties agree that any incremental costs incurred by Enbridge in its efforts to obtain and implement a CRA ruling on the HST issue may be included as a cost in Enbridge's 2010 OHCVA and are recoverable from ratepayers, subject to a prudence review.

All parties agree that Enbridge shall file a Draft Rate Order, including the appropriate schedules showing balances, unit rates by rate class, and clearance timing, for the clearance of Enbridge's 2009 Deferral and Variance Accounts. The Draft Rate Order will be filed with the intention of obtaining a Board Rate Order by December 1, 2010 authorizing the clearances. The timing of this Rate Order will permit the inclusion of the clearances in the January 1, 2010 QRAM Application.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-1	Balances Requested for Clearance at July 1, 2010
C-2-1	Clearance of 2009 Deferral and Variance Account Balances
C-2-2	Derivation of Proposed Unit Rates
I-1-1 and 9	Board Staff Interrogatory #1
I-2-5 and 6	BOMA Interrogatories #5 and 6
I-3-4, 5 and 11	CME Interrogatories #4, 5 and 11
I-4-7	VECC Interrogatory #7

## Appendix "A"

### ENBRIDGE GAS DISTRIBUTION INC. DEFERRAL & VARIANCE ACCOUNT BALANCES FOR CLEARANCE<sup>1</sup>

			Balances for clearance January 1, 2011	
Line No.	Account Description	Account Acronym	Principal (\$000's)	Interest <sup>2</sup> (\$000's)
<u>Non Commodity Related Accounts</u>				
1.	Demand Side Management V/A	2008 DSMVA	(73.3)	(56.3)
2.	Lost Revenue Adjustment Mechanism	2008 LRAM	37.3	0.2
3.	Shared Savings Mechanism V/A	2008 SSMVA	5,803.2	32.3
4.	Class Action Suit D/A	2009/10 CASDA	4,709.5	416.2
5.	Deferred Rebate Account	2009 DRA	-	-
6.	Gas Distribution Access Rule Costs D/A	2009 GDARCD A	2,838.8	-
7.	Ontario Hearing Costs V/A	2009 OHCVA	19.1	0.1
8.	Open Bill Service D/A	2009/10 OBSDA	87.7	3.0
9.	Open Bill Access V/A	2009/10 OBAVA	79.5	1.2
10.	Municipal Permit Fees D/A	2009 MPFDA	202.2	-
11.	Average Use True-Up V/A	2009 AUTUVA	5,626.9	31.2
12.	Tax Rate and Rule Change V/A	2009 TRRCVA	(350.0)	(2.3)
13.	Earnings Sharing Mechanism D/A	2009 ESMDA	(19,300.0)	(103.2)
14.	IFRS Transition Costs D/A	2009 IFRSTCDA	2,111.0	11.9
15.	Ex-Franchise Third Party Billing Services D/A	2009 EFTPBSDA	(27.9)	(0.1)
16.	Total non commodity related accounts		1,764.0	334.2
<u>Commodity Related Accounts</u>				
17.	Purchased Gas V/A	2009 PGVA	(45,275.2)	(2,568.2)
18.	Transactional Services D/A	2009 TSDA	(7,062.1)	(41.5)
19.	Unaccounted for Gas V/A	2009 UAFVA	9,596.7	52.8
20.	Storage and Transportation D/A	2009 S&TDA	(1,594.8)	(11.6)
21.	Total commodity related accounts		(44,335.4)	(2,568.5)
22.	Total Deferral and Variance Accounts		(42,571.4)	(2,234.3)

Notes:

- The principal balances set out in this spreadsheet are taken from Ex. I-2-3, with changes made as set out in the Settlement Agreement.
- The interest amounts set out in this spreadsheet are forecast amounts, to be finalized at the time that the accounts are cleared.
- As approved in EB-2007-0731, the CASDA is to be cleared over 5 years (2008 - 2012). The 2008 installment was cleared in July and August 2008, and the 2009 installment will occur in April and May 2010. The Company will clear the 2010, or third installment, along with the other accounts listed herein.
- The forecast 2009 GDARCD A and 2009 MPFDA amounts for clearance are the result of revenue requirement calculations. (Found in evidence at Ex.C-2-2 and C-1-3)
- The balance in the 2009 OHCVA reflects the agreement of all parties, as set out in Issue 7 of the Settlement Agreement.
- The forecast OBSDA and OBAVA balances are in accordance with the EB-2009-0043 approved Settlement Agreement.
- The AUTUVA explanation is found in evidence at Ex.C-1-5.
- The TRRCVA explanation is found in evidence at Ex.C-1-4.
- The ESMDA explanation is found in evidence at Ex.B-1-1 and B-1-2. As set out in Issue 13 of the Settlement Agreement, there may be adjustments to this amount, which will be reflected through changes to either the principal balance of the 2009 ESMDA or as entries in the 2010 ESMDA, depending on the timing of the Board's decision on the stock-based compensation issue set out in Issue 13.