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By electronic filing and by e-mail

August 17, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

**Re: EB-2010-0042 – Final Argument of BOMA – Enbridge Gas Distribution Inc.
2009 Earnings Sharing Mechanism and Other Deferral and Variance Accounts
Clearance**

In reviewing our Final Argument which was filed this morning, we have identified a phrasing error. Attached is our corrected submission. The changes are all in the last paragraph on page 2 and have been highlighted as such.

Sincerely,

Randy Aiken

Randy Aiken
Aiken & Associates

cc Norm Ryckman, Enbridge Gas Distribution Inc.

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 the clearance or disposition of amounts recorded in certain deferral or variance accounts.

FINAL ARGUMENT OF THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF THE GREATER TORONTO AREA ("BOMA")

I. INTRODUCTION

Enbridge Gas Distribution Inc. ("Enbridge") file an application, dated April 16, 2010, with the Ontario Energy Board ("Board") for the clearance of balances in certain deferral and variance accounts. Included in the clearance of these accounts was the calculation of the Earnings Sharing Mechanism ("ESM").

A Settlement Agreement was filed with the Board on June, 2010 that provided a comprehensive agreement on all of the issues except the Stock-Based Compensation ("SBC") expenses claimed by Enbridge in the calculation of the 2009 earnings sharing amount. The Board accepted the Settlement Agreement in the July 8, 2010 Decision and Procedural Order No. 2.

Pursuant to Procedural Order No. 2 additional evidence was filed, interrogatories were asked and answered and Enbridge filed argument in chief on the SBC issue on August 20, 2010.

This is the Final Argument of the Building Owners and Managers Association of the Greater Toronto Area ("BOMA") on the unsettled issue related to SBC.

II. STOCK-BASED COMPENSATION

BOMA has had the opportunity to review the Final Argument of the School Energy Coalition ("SEC") and the Submissions of the Vulnerable Energy Consumers Coalition ("VECC"). BOMA generally supports the analysis and the submissions of both SEC and VECC on the SBC issue.

BOMA submits that the Board should consider each of the three different kinds of stock-based compensation individually. The three kinds of stock-based compensation include Incentive Stock Options ("ISO"), Restricted Stock Units ("RSU") and Performance Stock Units (PSU).

Enbridge is claiming a 2009 expense of \$4.3 million in SBC costs, consisting of \$1.6 million for ISO costs, \$2.3 million for RSU costs and \$0.4 million for PSU costs (Exhibit B, Tab 6, Schedule 1, page 8).

a) ISO Costs

The Board has previously considered the issue of including the cost of stock options in determining the revenue requirement for Enbridge (EB-2006-0034). In the May 20, 2008 EB-2006-0034 Decision with Reasons the Board clearly states that the issue being dealt with in that case was narrow and was "*whether a non-cash expense qualifies as a regulatory expense for rate making purposes*" (page 6). The Board Decision on this narrow issue was as equally narrow. The Board accepted that the cost of stock options are recoverable from ratepayers. The Board did not specify when the cost of the stock options was recoverable.

As noted above, BOMA has had the opportunity to review the draft submissions of SEC. BOMA agrees with these submissions and submits that the cost of ISOs should be expensed in the year that they are exercised rather than amortizing this cost over the vesting period.

Deleted: and VECC

Deleted: granted

Deleted: based on a Black-Scholes valuation

BOMA also supports the analysis of this matter provided by SEC in its submission, including the tax considerations.

b) RSU Costs

RSUs are not stock options. An RSU is simply a deferred bonus paid to an employee 35 months after its grant. There are no stocks involved; only the price of the stock at a point in time is used to determine the level of the incentive bonus.

BOMA agrees with the submissions of SEC and VECC that the RSU costs should be treated as an expense in the year in which it is paid and valued at the amount actually paid.

c) PSU Costs

Similar to RSUs, PSUs are not actually stock at all. A PSU is a deferred bonus. There is no investment in the company's stock.

The PSUs are described in Exhibit I, Tab 5, Schedule 1, part (f). This section clearly illustrates that this bonus plan is entirely based on the profitability of the parent company. No part of the bonus is determined by criteria related to the regulated distributor other than the earnings generated for its parent. The incentive is, therefore, unrelated to the creation of any benefits for ratepayers (such as cost control, customer service, safety, etc.). In fact, the incentive is not even related to the financial well being of the regulated distributor. The incentive is entirely related to financial parameters of Enbridge's parent company.

BOMA therefore submits that the costs of the PSUs should be borne by the shareholders of Enbridge's parent company, and not Enbridge's ratepayers.

III. COSTS

BOMA requests that it be awarded 100% of their reasonably incurred costs of participating in this proceeding.

All of which is respectfully submitted this 27th day of August, 2010.

Randall E. Aiken

Randall E. Aiken
Consultant to
Building Owners and Managers Association of the Greater Toronto Area