

Ontario Energy Board

Commission de l'Énergie
de l'Ontario



EB-2006-0034

IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c.15*

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2007.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Paul Vlahos
Member

Ken Quesnelle
Member

DECISION AND PROCEDURAL ORDER No. 2

Enbridge Gas Distribution Inc. ("EGD") filed an application dated August 25, 2006 with the Ontario Energy Board under the Section 36 of the Ontario Energy Board Act, requesting a rate increase effective January 1, 2007. On October 4, 2006 the Board issued Procedural Order No. 1 establishing an oral hearing on October 12, 2006 to hear submissions regarding the issues the Board should consider in this proceeding. This decision relates to that matter. It also deals with the status of three parties as intervenors and the eligibility for costs with respect to two of the parties.

Interventions

The Board was asked to deal with the status of Vulnerable Energy Consumers Coalition ("VECC"), the Low-Income Energy Network ("LIEN"), Mr. Matz and Mr. Neelin as intervenors. The Board accepts VECC, LIEN and Mr. Matz as intervenors having not heard any objections. With respect to Mr. Neelin, the Board has not received any correspondence and accordingly assumes that he is not seeking intervenor status.

Cost Eligibility

VECC's Notice of intervention is filed by the Public Interest Advocacy Centre ("PIAC") where it is stated that PIAC coordinates the participation of VECC. VECC's Notice of intervention states that VECC is a coalition of groups that represents the interests of those energy consumers who, because of their household income, or other distinguishing characteristics such as age, literacy etc., have a set of concerns that may differ in kind, and, in magnitude, from those of more affluent residential consumers as well as commercial and industrial customers. VECC is currently comprised of the Ontario Coalition of Senior Citizens, and the Federation of Metro Tenants Association.

LIEN's Notice of intervention states that LIEN is an organization of more than 50 member organizations from across Ontario, including, energy, public health, legal, tenant/housing, education and social and community organizations. LIEN aims to ensure universal access to adequate, affordable energy and to promote programs and policies which tackle the problems of energy poverty and homelessness.

PIAC (VECC's coordinator) and the Federation of Metro Tenants Association (one of the two groups represented by VECC) are members of LIEN.

EGD objects to the proposed funded interventions for these groups on the grounds that not only it is neither necessary nor appropriate for more than one intervenor to represent the same interest, that of low income consumers, but additionally they also represent to an extent the same organizations. EGD believes that VECC and LIEN should combine their interventions, or, in the alternative, should share one cost award.

In its Decision on Cost Awards dated September 12, 2006 pertaining to Union Gas' rates proceeding (EB-2005-0520), in dealing with the same issue the Board noted that the determination of duplication of intervention between LIEN and VECC is an issue that will need to be determined on a case-by-case basis. That Decision also stated that ... *Intervenors may find that at times they represent constituents that share common interests in general. Costs will not be considered unreasonable due to duplication so long as the intervenors remain focused on separate issues in a proceeding.*

EGD noted that its objection is not whether LIEN and VECC be given intervenor status. Therefore the Board does not need to address the status issue. This Decision deals only with cost eligibility for VECC and LIEN.

In order to be eligible for costs under the Board's Rules, applicants must represent consumers. Both VECC and LIEN qualify on that basis. However, section 5 of the Board's Rules also sets out certain principles in awarding costs. These include requirements that evidence should not be unduly repetitive of evidence presented by other parties, that reasonable efforts be made to cooperate with other parties to reduce the number of questions in cross examination and that parties not engage in conduct that unnecessarily extends the hearing.

It is clear that VECC and LIEN have considerable overlapping in constituency and interest. While the constituency and interest may not be identical, there is certainly substantial similarity that causes the Board to be guarded in any ruling for cost eligibility.

LIEN, unlike VECC, has an interest in certain environmental issues. However, this interest may in fact overlap with the interests of Pollution Probe and GEC both of whom are intervenors with a responsible track record and in receipt of cost awards on a regular basis.

It is not clear to the Board at this time that LIEN's perspective is unique from that of GEC or Pollution Probe on environmental issues and with VECC on issues other than LIEN's specific proposal to have a rate affordability program included as an issue in this proceeding, in which VECC does not take a position.

LIEN asked for an assurance in advance that it be eligible for costs.

Apart from the proposed rate affordability program issue, the Board expects that LIEN will establish the uniqueness of its positions relative to GEC, Pollution Probe and VECC outside of the proceeding process. For cost award eligibility purposes, the Board does not consider it to be necessary or acceptable for LIEN to participate fully in the proceeding to ascertain whether or not its perspectives are adequately represented by others.

The Board rules at this point that LIEN is eligible for costs with respect to the matter regarding a rate affordability program, as confined by the Board below. There is no duplication on that issue. With respect to other issues the Board is not prepared to make a ruling of eligibility for costs with respect to LIEN given that there may be an overlap at the interest of VECC, Pollution Probe and GEC. LIEN is free to bring in an application for cost eligibility at anytime relating to any other specific issue or LIEN can participate fully, but must bear in mind that the Board will not award costs if it turns out that such participation merely duplicates the participation by these other groups.

In summary, there is no question that VECC is eligible for costs in representing low income interests as it has done many times in the past. LIEN is a newcomer to these proceedings compared to other long standing intervenors and it should be cautious that it does not duplicate the efforts and expertise that others have developed over many years. However, both parties need to be conscious of a potential overlap but that is particularly so in the case of LIEN.

Rate Affordability Programs

As indicated in the discussion regarding costs, LIEN proposes that the Board accept as an issue in this proceeding the following:

Should the residential rate schedules for EGD include a rate affordability assistance program for low income consumers? If so, how should a program be funded? How should eligibility criteria be determined? How should levels of assistance be determined?

The inclusion of this issue in this proceeding is explicitly opposed by several parties. No party supported LIEN's proposal.

A number of parties questioned whether the Board had jurisdiction to hear this matter. A detailed argument was presented by LIEN but little substantive argument was presented by other parties. The Board believes that jurisdiction is a threshold issue and that, before proceeding further, the Board must satisfy itself that it has jurisdiction.

The Board therefore invites parties of this proceeding to file written submissions addressing the jurisdictional arguments made by LIEN on the record. Those submissions should be made within 15 days of this decision. LIEN will be allowed 5 days to file reply submissions. The Board's decision on this matter will include a Procedural Order that will deal with any further steps that may be necessary depending on the decision regarding jurisdiction. Regardless of the ruling on jurisdiction, it is by no means clear that it will be possible or appropriate to accommodate any substantive analysis of this matter within this proceeding given the schedule and also the generic nature of this issue. However, the Board is aware that this is the second time that LIEN has raised this issue and that jurisdiction, regardless of the forum, will have to be dealt with. Accordingly, the procedure referred to above will advance that process.

Other Issues

Two other issues were addressed in the hearing of October 12. The first related to issue 7.5 which concerns open bill access and whether the EDG proposal was consistent with the Board's direction in EB-2005-2001.

Direct Energy Marketing Inc. did not oppose the issue but argued for a phased approach in order that it would have additional time to file evidence which might be necessary. However, after hearing other submissions, including difficulty of staging the evidence, Direct Energy Marketing Inc. accepted the issue as currently drafted with the understanding that they can always bring an application to the Board to file new evidence.

The second issue related to issue 4.1 which concerns the appropriate rate of return on equity for EGD. The Industrial Gas Users Association expressed a concern that this issue might be broadened as a result of the decision in the Board's current Cost of

Capital proceeding with respect to the electricity sector. That proceeding is addressing incentive rate regulation and different methodologies with respect to the cost of capital.

The Board appreciates this concern and accepts the submissions from a number of parties that the wording of this issue be changed to make it clear that the cost of capital proposed by EGD will be calculated pursuant to the Board's draft guidelines as a formula based return on common equity. The revised wording is reflected in the issues list attached as Schedule A to this decision.

THE BOARD ORDERS THAT:

1. VECC and LIEN are eligible for costs, as stipulated in this decision.
2. The issues in this proceeding are as set out in Schedule A
3. The intervenors in this proceeding are as set out in Schedule B.
4. Interested parties may make written submissions on the jurisdiction of this Board to consider and implement rate affordability programs in accordance with the schedule set out in this decision.

DATED at Toronto, October 20, 2006

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary

SCHEDULE "A"

Enbridge Gas Distribution Inc. 2007 Rate Case EB-2006-0034

ISSUES LIST

1 RATE BASE (Exhibit B)

- 1.1 Are the amounts proposed for the 2007 Rate Base appropriate?
- 1.2 Are the amounts proposed for Capital Expenditures in 2007 appropriate?
(B1/T2/S1)
- 1.3 Is the budget amount proposed in 2007 for Safety & Integrity projects appropriate? (B1/T3/S1)
- 1.4 How should the Board deal with the Leave to Construct ("LTC") projects included in the 2007 capital budget given that there will be separate Board proceedings for the LTC projects? (B1/T3/S2)
- 1.5 Has the Company met the requirements of the Board's directive from the 2006 rate case to file an independent cost benchmark study for the EnVision project? (B1/T6/S1)
- 1.6 What are the appropriate EnVision cost and benefits and how should they be reflected in 2007 rates?
- 1.7 Is the business case, including the total project amount of \$133 million, proposed for the Automatic Meter Reading project ("AMR") justified?
(B1/T7/S1)
- 1.8 Is the proposed recovery of AMR costs in 2007 rates appropriate?

2 OPERATING REVENUE (Exhibit C)

- 2.1 Is the proposed amount for 2007 Transactional Services revenue appropriate, and is the associated sharing mechanism in accordance with the 2006 decision? (C1/T4/S1)
- 2.2 Is the proposed total 2007 Other Revenue Forecast appropriate? (C1-T5-S1)
- 2.3 Is the forecast of degree days appropriate? (C2/T4/S1)

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ISSUES LIST

- 2.4 Are the average use-per-customer forecasts for rate class 1 and rate class 6 appropriate? (C1/T3/S1 and C2/T3/S1)
- 2.5 Is the proposed 2007 contract gas volume and revenue forecast appropriate? (C1/T3/S1)
- 2.6 Is the proposed 2007 General Service gas volume and revenue forecast appropriate? (C1/T3/S1)
- 3 OPERATING COST (Exhibit D)**
- 3.1 Is the proposed 2007 gas cost forecast including the calculation of the PGVA Reference Price appropriate? (D1/T4/S1, D1/T4/S2)
- 3.2 Is the overall level of the 2007 Operation and Maintenance Budget appropriate? (D1-T2-S1)?
- 3.3 Is the Company's proposed fuel switching program appropriate?
- 3.4 Is the Company's proposed Energy Link program appropriate?
- 3.5 Is the budget for Human Resources related costs appropriate? (D1-T4-S1)
- 3.6 Do the revisions to the Regulatory Cost Allocation Methodology (RCAM) meet the Board's directives in the 2006 decision?
- 3.7 Is the proposed level of corporate cost allocation for 2007 appropriate?
- 3.8 Is the Company's forecast level of Regulatory and OEB related costs for 2007 appropriate?
- 3.9 Is Enbridge's decision to change to a December 31 taxation year-end, in 2007) appropriate? (D1-T5-S1)
- 3.10 Is the continuation of the Risk Management Program appropriate in the context of the Board's 2006 Decision directives? (D1/T4/S3)
- 3.11 Is the proposal to change depreciation rates for 2007, as proposed in the depreciation study, and the impact on 2007 customer rates, appropriate? (D1/T13/S1, D2/T2/S1)
- 3.12 Is the proposal for the establishment of 2007 Deferral and Variance Accounts appropriate? (D1T7/S1)

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ISSUES LIST

- 3.13 Is the proposal for the disposition of existing Deferral and Variance Accounts appropriate? (D1T7/S2)
- 3.14 Are the amounts proposed to be included in rates for capital and property taxes appropriate?
- 3.15 Is the amount proposed to be included in rates for income taxes, including the methodology, appropriate?

4 COST OF CAPITAL (Exhibit E)

- 4.1 What is the Return on Equity (ROE) for EGDI for the 2007 test year as calculated pursuant to the ROE Guidelines?
- 4.2 Are Enbridge's proposed costs for its debt and preference share components of its capital structure appropriate? (E1-T2-S1)
- 4.3 Is the proposal to change the equity component of the deemed capital structure from 35% to 38% appropriate? (E2-T2-S1)

5 COST ALLOCATION (Exhibit G)

- 5.1 Is the Applicant's cost allocation appropriate and is it based on its 2006 Board approved methodology? (G2-T1-S1)
- 5.2 Is the proposal to recover Demand Side Management costs in delivery charges, as opposed to load balancing charges, appropriate? (from G2/T3/S1 to G2/T3/S4)

6 RATE DESIGN (Exhibit H)

- 6.1 Is the proposal to introduce delivery demand charges for Rates 100 and 145 reasonable? (H1/T1/S1)
- 6.2 Is the proposal to allocate revenue requirement between the customer classes and annually adjust the monthly customer charges and variable charges to recover the revenue deficiency reasonable? (H1/T1/S1, H2, G2/T2/S1)

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ISSUES LIST

- 6.3 Should the Board approve the contents of the Applicant's Rate Handbook? (H1/T1/S1, H2/T6/S1, A1/T14/S2)
- 6.4 Is the proposed treatment of bundled transportation charges and T-service credit appropriate in light of the Board's Decision in RP-2003-0203 and the settlement agreement? (H1/T1/S1)

7 CUSTOMER CARE SUPPORT, CUSTOMER CARE SYSTEM, AND OPEN BILL ACCESS

- 7.1 Has Enbridge complied with the direction, in the EB-2005-0001 Decision, to file in evidence the following Customer Care Support Cost information: all agreements between Enbridge and CWLP, ECSI or any other EI-related entity related to the provision of customer care or CIS; the Program Agreement between CWLP and Accenture, including any amendments or revisions; financial statements for ECSI and CWLP (historical, bridge and test year); the return analyses described in the decision? (D1/T12/S3)
- 7.2 What actions or decisions are required by the Board regarding items in the 2006 and 2007 capital budgets which might be duplicated in the upcoming application for a Regulatory Asset Account? (D1/T10/S1/p2/AppA)
- 7.3 Are the forecast costs of the new CIS system appropriate? (B1/T5/S1/p3)
- 7.4 What are the appropriate costs for CIS and Customer Care for 2007, including internal and transition costs? (D1/T12/S1/p2 and D3/T2/Sched1/P1)
- 7.5 Is the Applicant's proposal of open bill access appropriate and consistent with the Board's direction in RP-2005-0001? (D1/T11/S1 to S5)

8 OTHER ISSUES

- 8.1 What are the actions or decisions necessary for the Board to be assured that the Board's decisions, including settlements, in the NGEIR (EB-2005-0551) proceeding will be appropriately captured and reflected in this proceeding?
- 8.2 What are the actions or decisions necessary for the Board to be assured that the Board's decisions, including settlements, in the DSM (EB-2006-0021) proceeding will be appropriately captured and reflected in this proceeding?

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ISSUES LIST

9 RATE IMPLEMENTATION

- 9.1 How should the Board deal with any revenue deficiency applicable from January 1, 2007 to the date that the Board's decision is implemented?
- 9.2 Should the Board set interim rates, effective January 1, 2007, to allow Enbridge to begin to recover its prospective revenue deficiency?

SCHEDULE "B"

**ENBRIDGE GAS DISTRIBUTION INC.
2007 RATE CASE
EB-2006-0034**

APPLICANT & LIST OF INTERVENORS

October 20, 2006

Applicant

Rep. and Address for Service

Enbridge Gas Distribution Inc.

Patrick Hoey
Director, Regulatory Affairs
Enbridge Gas Distribution Inc.

Address for personal service:
500 Consumers Road
North York ON M2J 1P8

Mailing address:
P.O. Box 650
Scarborough ON M1K 5E3

Tel: 416-495-5555
Fax: 416-495-6072
Email: patrick.hoey@enbridge.com

AND

Shari Lynn Spratt
Regulatory Coordinator
500 Consumers Road
North York ON M2J 1P8

Tel: 416-495-6011
Fax: 416-495-6072
Email: shari-lynn.spratt@enbridge.com

AND

Lorraine Chiasson
Regulatory Coordinator
500 Consumers Road
North York ON M2J 1P8

Tel: 416-495-5962
Fax: 416-495-6072
Email: lorraine.chiasson@enbridge.com

Counsel for applicant

Fred D. Cass
Aird & Berlis
BCE Place
181 Bay Street
P.O. Box 754, Suite 1800
Toronto ON M5J 2T9

Tel: 416-865-7742
Fax: 416-863-1515
Email: fcass@airdberlis.com

Counsel for applicant

Tania Persad
Enbridge Gas Distribution Inc.

Address for personal service:
500 Consumers Road
Willowdale ON M2J 1P8

Mailing address:
P.O. Box 650
Scarborough ON M1K 5E3

Tel: 416-495-5891
Fax: 416-495-5994
Email: tania.persad@enbridge.com

Intervenors

1. Accenture Business Services for Utilities Inc. ("ABSU")

Janet M. Clark
Vice-President and General Counsel
123 Commerce Valley Drive East
8th Floor
Thornhill ON L3T 7W8

Tel: 905-762-3881
Fax: 905-762-3351
Email: janet.clark@absu.accenture.com

2. Consumers Council of Canada ("CCC")

Julie Girvan
2 Penrose Road
Toronto ON M4S 1P1

Tel: 416-322-7936
Fax: 416-322-9703
Email: jgirvan@ca.inter.net

AND

Robert B. Warren
Counsel
WeirFoulds LLP
Barristers & Solicitors
The Exchange Tower, Suite 1600
P.O. Box 480, 130 King St. W.
Toronto ON M5X 1J5

Tel: 416-947-5075
Fax: 416-416-365-1876
Email: rwarren@weirfoulds.com

3. Coral Energy Canada Inc.
("Coral")

Paul Kerr
Manager, Market Affairs
100 - 60 Struck Court
Cambridge ON N1R 8L2

Tel: 519-620-7712
Fax: 519-624-7700
Email: paul.kerr@shell.com

AND

Elisabeth (Lisa) DeMarco
Counsel
Macleod Dixon LLP
Toronto – Dominion Centre
Canadian Pacific Tower
500 - 100 Wellington Street West
Toronto ON M5K 1H1

Tel: 416-203-4431
Fax: 416-360-8277
Email: elisabeth.demarco@macleoddixon.com

AND

Heather Landymore
Counsel
Macleod Dixon LLP
Toronto – Dominion Centre
Canadian Pacific Tower
500 - 100 Wellington Street West
Toronto ON M5K 1H1

Tel: 416-202-6702
Fax: 416-360-8277
Email: heather.landymore@macleoddixon.com

4. Direct Energy Marketing Inc.
("Direct Energy")

Dave Matthews
Director
Government & Regulatory Affairs - Eastern
Canada
2225 Sheppard Avenue East
Toronto ON M2J 5C2

Tel: 416-758-4267
Fax: 416-758-4272
Email: dave.matthews@directenergy.com

AND

Andrea Gibbs
Manager, Gas Markets
Government and Regulatory Affairs
2225 Sheppard Avenue East
Toronto ON M2J 5C2

Tel: 416-718-5820
Fax: 416-758-4272
Email: andrea.gibbs@directenergy.com

AND

Eric Hoaken
Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Tel: 416-777-5780
Fax: 416-863-1716
Email: hoakene@bennettjones.ca

5. Energy Probe Research
Foundation ("Energy Probe")

David S. Macintosh
c/o Energy Probe
225 Brunswick Avenue
Toronto ON M5S 2M6

Tel: 416-964-9223 ext. 235
Fax: 416-964-8239
Email: DavidMacIntosh@nextcity.com

AND

Thomas Adams
c/o Energy Probe
225 Brunswick Avenue
Toronto ON M5S 2M6

Tel: 416-964-9223 ext. 239
Fax: 416-964-8239
Email: TomAdams@nextcity.com

AND

Mr. Randy Aiken
Aiken & Associates
578 McNaughton Ave. West
Chatham, Ontario, N7L 4J6

Tel: 519-351-8624
Fax: 519-351-4331
Email: raiken@xcelco.on.ca

6. Gazifère Inc.

Lise Mauviel
Manager, Regulatory Affairs and Budgets
706 Blvd Gréber
Gatineau PQ J8V 3P8

Tel: 819-771-8321 ext. 2440
Fax: 819-771-6079
Email: lise.mauviel@gazifere.com

7. Green Energy Coalition ("GEC")

David Poch
Counsel to the GEC
1649 Old Brooke Road
R.R. #2
Maberly ON K0H 2B0

Tel: 613-264-0055
Fax: 613-264-2878
Email: poch@perth.igs.net

AND

Kai Millyard
72 Regal Road
Toronto ON M6H 2K1

Tel: 416-651-7141
Fax: 416-651-4659
Email: kai@web.net

8. HVAC Coalition

Martin Luymes
Co-ordinator
2800 Skymark Avenue,
Building 1, Suite 201
Mississauga, Ontario
L4W 5A6

Tel: 905 602-4700 ext. 235
Fax: 905 602-1197
Email: mluymes@hrai.ca

AND

John De Vellis
Shibley Righton LLP
700 - 250 University Avenue
Toronto ON M5H 3E5

Tel: 416-214-5232
Fax: 416-214-5432
Email: john.devellis@shibleyrighton.com

9. Hydro One Networks Inc.
("Networks")

Glen MacDonald
Senior Advisor – Regulatory Research and
Administration
Regulatory Affairs
8th Floor, South Tower
483 Bay Street
Toronto ON M5G 2P5

Tel: 416-345-5913
Fax: 416-345-5866
Email: regulatory@HydroOne.com

10. Industrial Gas Users Association
("IGUA")

Peter L. Fournier
President
99 Metcalfe Street, Suite 1201
Ottawa ON K1P 6L7

Tel: 613-236-8021
Fax: 613-230-9531
Email: pfournier@igua.ca

AND

Peter C.P. Thompson, Q.C.
Borden Ladner Gervais LLP
Barristers and Solicitors
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9

Tel: 613-787-3528
Fax: 613-230-8842
Email: pthompson@blgcanada.com

11. Jason F. Stacey

Natural Gas Specialist
471 Lincoln Gate
Oakville ON L6H 3J8

Tel: 905-338-8786
Fax: 905-338-5348
Email: jfstacey@interlog.com

12. Low-Income Energy Network
("LIEN")

Dr. Malcolm Jackson
FRC Canada
194 Berkeley Street
Toronto ON M5A 2X4

Tel: 416-365-3024
Fax: 416-365-3023
Email: malcolm.jackson@sympatico.ca

AND

Juli Abouchar
Willms & Shier Environmental Lawyers LLP
4 King Street West, Suite 900
Toronto ON M5H 1B6

Tel: 416-863-0711
Fax: 416-863-1938
Email: jabouchar@willmsshier.com

AND

Paul Manning
Willms & Shier Environmental Lawyers LLP
4 King Street West, Suite 900
Toronto ON M5H 1B6

Tel: 416-863-0711
Fax: 416-863-1938
Email: pmanning@willmsshier.com

13. Ontario Association of Physical
Plant Administrators ("OAPPA")

Valerie Young
Director, Research and Analysis
Aegent Energy Advisors Inc.
317 - 1 Eva Road
Toronto ON M9C 4Z5

Tel: 416-622-9449 ext. 104
Fax: 416-622-9797
Email: vyoung@aegent.ca

14. Ontario Energy Savings L.P.
("OESLP")

Nola L. Ruzycski
Director, Regulatory Affairs
200 - 6345 Dixie Road
Mississauga ON L5T 2E6

Tel: 905-795-4204
Fax: 905-564-6069
Email: nruzycki@energysavings.com

15. Ontario Power Generation
("OPG")

Barbara Reuber
Director, Ontario Regulatory Affairs
700 University Avenue, H18-G2
Toronto ON M5G 1X6

Tel: 416-592-5419
Fax: 416-592-6379
Email: barbara.reuber@opg.com

16. Pollution Probe

Jack Gibbons
Public Interest Economics
402 - 625 Church Street
Toronto ON M4Y 2G1

Tel: 416-926-1907 ext. 240
Fax: 416-926-1601
Email: jgibbons@pollutionprobe.org

AND

Murray Klippenstein
Klippensteins
300 - 160 John St.
Toronto ON M5V 2E5

Tel: 416-598-0288
Fax: 416-598-9520
Email: murray.klippenstein@klippensteins.ca

AND

Basil Alexander
Klippensteins
300 - 160 John St.
Toronto ON M5V 2E5

Tel: 416-598-0288
Fax: 416-598-9520
Email: basil.alexander@klippensteins.ca

17. School Energy Coalition

Bob Williams
Co-ordinator
Ontario Education Services Corporation
c/o Ontario Public School Boards' Association
439 University Avenue, 18th Floor
Toronto ON M5G 1Y8

Tel: 416-340-2540
Fax: 416-340-7571
Email: bwilliams@opsba.org

AND

Tanya Watson
Consultant
Institutional Energy Analysis, Inc.
700 - 250 University Avenue
Toronto ON M5H 3E5

Tel: 416-214-5218
Fax: 416-214-5418
Email: tanya.watson@shibleyrighton.com

AND

Jay Shepherd
Shibley Righton LLP
Barristers and Solicitors
700 - 250 University Avenue
Toronto ON M5H 3E5

Tel: 416-214-5224
Fax: 416-214-5424
Email: jay.shepherd@shibleyrighton.com

18. Sithe Global Power Goreway
ULC ("Sithe Goreway")

Duane Cramer
Sithe Global Power Goreway ULC
c/o Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

Tel: 416-869-7053
Fax: 416-947-0866
Email: cramer@sitheglobal.com

AND

James W. Harbell
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

Tel: 416-869-5690
Fax: 416-947-0866
Email: jharbell@stikeman.com

AND

Patrick G. Duffy
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

Tel: 416-869-5257
Fax: 416-947-0866
Email: pduffy@stikeman.com

19. Superior Energy Management
(a division of Superior Plus Inc.)
("SEM")

Greg McCamus
President
2001 - 6860 Century Avenue
East Tower
Mississauga ON L5N 2W5

Tel: 905-542-5489
Fax: 905-542-7715
Email: gmccamus@superiorenergy.ca

AND

Shiraz Ladha
2001 - 6860 Century Avenue
East Tower
Mississauga ON L5N 2W5

Tel: 905-542-5489
Fax: 905-542-7715
Email: sladha@superiorenergy.ca

AND

Elisabeth (Lisa) DeMarco
Counsel
Macleod Dixon LLP
Toronto – Dominion Centre
Canadian Pacific Tower
500 - 100 Wellington Street West
Toronto ON M5K 1H1

Tel: 416-203-4431
Fax: 416-360-8277
Email: elisabeth.demarco@macleoddixon.com

AND

Heather Landymore
Counsel
Macleod Dixon LLP
Toronto – Dominion Centre
Canadian Pacific Tower
500 - 100 Wellington Street West
Toronto ON M5K 1H1

Tel: 416-202-6702
Fax: 416-360-8277
Email: heather.landymore@macleoddixon.com

20. Thomas Matz

Orangeville ON
Email: matz@sympatico.ca

21. TransAlta Cogeneration L.P. and
TransAlta Energy Corp.
("TransAlta")

Rob Findlay
Box 1900, Station "M"
110 – 12th Avenue S.W.
Calgary AB T2P 2M1

Tel: 403-267-6947
Fax: 403-267-6906
Email: rob_findlay@transalta.com

AND

Peter Serafini
Box 1900, Station "M"
110 – 12th Avenue S.W.
Calgary AB T2P 2M1

Tel: 403-267-6935
Fax: 403-267-6906
Email: pete_serafini@transalta.com

AND

Sandy O'Connor
Box 1900, Station "M"
110 – 12th Avenue S.W.
Calgary AB T2P 2M1

Tel: 403-267-7638
Fax: 403-267-2575
Email: sandy_o'connor@transalta.com

AND

Elisabeth DeMarco
Macleod Dixon LLP
Toronto-Dominion Centre
Canadian Pacific Tower
500 - 100 Wellington Street West
Toronto ON M5K 1H1

Tel: 416-203-4431
Fax: 416-360-8277
Email: elisabeth.demarco@macleoddixon.com

AND

Heather Landymore
Macleod Dixon LLP
Toronto-Dominion Centre
Canadian Pacific Tower
500 - 100 Wellington Street West
Toronto ON M5K 1H1

Tel: 416-202-6702
Fax: 416-360-8277
Email: heather.landymore@macleoddixon.com

22. TransCanada Energy Ltd.

Margaret Duzy
Regulatory Affairs
55 Yonge Street, 8th Floor
Toronto ON M5E 1J4

Tel: 416-869-2180
Fax: 416-869-2114
Email: margaret_duzy@transcanada.com

AND

Patricia Klewchuk
Regulatory Research Analyst
450 - 1st Street S. W.
Calgary AB T2P 5H1

Tel: 403-920-7168
Fax: 403-920-2347
Email: patricia_klewchuk@transcanada.com

23. TransCanada PipeLines Limited
("TransCanada")

Bernard Pelletier
Senior Regulatory Analyst
450 - 1st Street S.W.
Calgary AB T2P 5H1

Tel: 403-920-2603
Fax: 403-920-2347
Email: bernard_pelletier@transcanada.com
transcanada_mainline@transcanada.com

AND

Murray Ross
55 Yonge Street, 8th Floor
Toronto ON M5E 1J4

Tel: 416-869-2110
Fax: 416-869-2119
Email: murray_ross@transcanada.com

AND

Jennifer R. Scott
Senior Legal Counsel
450 - 1st Street S.W.
Calgary AB T2P 5H1

Tel: 403-920-2977
Fax: 403-920-2354
Email: jennifer_scott@transcanada.com

24. Union Energy Limited
Partnership ("Union Energy LP")

Catherine David Nolan
Chief Financial Officer
2 Lansing Square, 12th Floor
Toronto ON M2J 4P8

Tel: 416-499-7098
Fax: 416-756-8212
Email: c davidnolan@unionenergy.com

AND

Kirsten Crain
Borden Ladner Gervais LLP
Barristers & Solicitors
World Exchange Plaza
1100 - 100 Queen Street
Ottawa ON K1P 1J9

Tel: 613-787-3741
Fax: 613-230-8842
Email: kcrain@blgcanada.com

25. Union Gas Limited ("Union")

Patrick McMahon
Manager, Regulatory Research and Records
50 Keil Drive North
Chatham ON N7M 5M1

Tel: 519-436-5325
Fax: 519-436-4641
Email: pmcmahon@duke-energy.com

26. Vulnerable Energy Consumer's
Coalition ("VECC")

Dr. Roger Higgin
Managing Associate
Econalysis Consulting Services
1102 – 34 King Street East
Toronto ON M5C 2X8

Tel: 416-348-9391
Fax: 416-348-0641
Email: rhiggin@econalysis.ca

AND

James Wightman
Econalysis Consulting Services
1102 – 34 King Street East
Toronto ON M5C 2X8

Tel: 416-348-0640
Fax: 416-348-0641
Email: jwightman@econalysis.ca

AND

Michael Buonaguro
Counsel for VECC
Public Interest Advocacy Centre
1102 - 34 King Street East
Toronto ON M5C 2X8

Tel: 416-348-0814
Fax: 416-348-0641
Email: mbuonaguro@piac.ca

**ENBRIDGE GAS DISTRIBUTION INC.
2007 RATE CASE
EB-2006-0034**

APPLICANT & LIST OF OBSERVERS

October 20, 2006

Applicant

Enbridge Gas Distribution Inc.

Rep. and Address for Service

Patrick Hoey
Director, Regulatory Affairs
Enbridge Gas Distribution Inc.

Address for personal service:
500 Consumers Road
Willowdale ON M2J 1P8

Mailing address:
P.O. Box 650
Scarborough ON M1K 5E3

Tel: 416-495-5555
Fax: 416-495-6072
Email: patrick.hoey@enbridge.com

AND

Shari Lynn Spratt
Regulatory Coordinator
500 Consumers Road
North York ON M2J 1P8

Tel: 416-495-6011
Fax: 416-495-6072
Email: shari-lynn.spratt@enbridge.com

AND

Lorraine Chiasson
Regulatory Coordinator
500 Consumers Road
North York ON M2J 1P8

Tel: 416-495-5962
Fax: 416-495-6072
Email: lorraine.chiasson@enbridge.com

Counsel for applicant

Fred D. Cass
Aird & Berlis
BCE Place
181 Bay Street
P.O. Box 754, Suite 1800
Toronto ON M5J 2T9

Tel: 416-865-7742
Fax: 416-863-1515
Email: fcass@airdberlis.com

Counsel for applicant

Tania Persad
Enbridge Gas Distribution Inc.

Address for personal service:
500 Consumers Road
Willowdale ON M2J 1P8

Mailing address:
P.O. Box 650
Scarborough ON M1K 5E3

Tel: 416-495-5891
Fax: 416-495-5994
Email: tania.persad@enbridge.com

Observers

1. Colin Davies
2. ECNG Limited Partnership
("ECNG")
3. Larry Keogh

Rep. And Address for Service

3 Sarah Street
Orangeville ON L9W 2L9

Bill Killeen
Director, Energy Supply
400-5575 North Service Road
Burlington ON L7L 6M1

Tel: 905-635-3288
Fax: 905-635-3298
Email: bkilleen@ecng.com

P.O. Box 297
Alliston ON L9R 1V5

4. **United Counties of Prescott
and Russell**

**Marc Clermont
Director, Public Works
59 Court Street
P.O. Box 304
L'Orignal ON K0B 1K0**

**Tel: 613-675-4661
Fax: 613-675-4920
Email: mclermont@prescott-russell.on.ca**

5. **Rodney Makohoniuk**

**2592 Birch Crescent
Mississauga ON L5J 4H1**

Email: rod_knee_13@hotmail.com