

**Enbridge Gas Distribution Inc.
Application for Recovery of the
Class Action Suit Deferral Account (CASDA)
EB-2007-0731**

Board Staff Submission

Introduction

Enbridge Gas Distribution Inc. (Enbridge) filed an application with the Ontario Energy Board, dated September 28, 2007, under section 36 of the *Ontario Energy Board Act, 1998*, seeking an order approving the final balance of the 2007 Class Action Suit Deferral Account (CASDA) and disposition of that balance.

In Procedural Order # 1 for this proceeding, the Board invited written submissions from parties on the application and ordered that Board staff submissions be filed by January 8, 2008.

Background

The Class Action Suit Deferral Account (CASDA) was created in 1995 and contains the costs related to a proposed class action lawsuit launched by Gordon Garland against Enbridge in April 1994, alleging that some of Enbridge's approved late payment penalties collected for customers may have exceeded the Criminal Code limit on interest rates.

The case had a long history in the courts. Ultimately, the Supreme Court of Canada held that Enbridge was liable to refund any Late Payment amounts paid by Mr. Garland and all affected ratepayers in excess of the Criminal Code limit since April 1994.

A settlement was reached in July 2006 and approved by the Ontario Superior Court of Justice, which resulted in a payment of \$22 million.

As of August 1, 2007 the CASDA had a balance of \$23,537,600 and interest totaling \$682,400.

The CASDA has been cleared to ratepayers in 1997 (E.B.R.O. 492), 2000 (RP-1999-0001), 2001 (RP-2000-0040), 2002 (RP-2001-0032), 2003 (RP-2002-0133) and 2004 (RP-2003-0048).

Board Staff Submission

Board staff would ask that intervenors and the applicant to comment on three aspects of the proposed 8 year recovery period. Specifically,

- The very low monetary impact of \$1.90 per customer per year compared with the impact of recovery over a shorter time period of 1 or 2 years.
- The long period over which this issue has evolved through repeated legal proceedings and the intergenerational issues that are exacerbated with a extended 8 year recovery period.
- Interest cost savings if the account were cleared over a shorter time period.