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Please Reply to the TORONTO OFFICE

**BY EMAIL**

January 29, 2008  
Our File No. 2060604

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: Gas IRM Applications – EB-2007-0606/615**

We are writing to alert the Board to an issue of scheduling relating to the above proceeding.

As the Board is aware, a Settlement Agreement is being filed today, which provides that there is a partial settlement on the key rate issues: IRM structure, X factor, Y factors, average use adjustment, and base year adjustments. On these issues the party contesting the Partial Settlement is the School Energy Coalition.

Since the nature of the settlement was known, last week, we have been seeking information from the Applicant as to two areas. First, on the 24<sup>th</sup> we asked them to tell us the nature of the case they plan to put forward (ie. whether it is the Partial Settlement, the original Application, or something else). Second, yesterday we both re-interated that request, and asked why we had not yet seen lists of witnesses and the nature of the evidence they will be presenting.

Enbridge have been unable to provide any of that information while they were still negotiating the final terms of the Settlement Agreement, and as we understand it their initial position on these points will be provided to us today. We have not seen anything as yet. In addition, we do not yet know whether the original expert witness in the case, Dr. Lowry, will be called by Board Staff. We are awaiting the advice of Board Staff counsel on that.

On the other hand, the Procedural Order in this matter has the Settlement Agreement being heard on Thursday, January 31<sup>st</sup>, and the oral hearing beginning immediately thereafter. Assuming that the

GEC/Pollution Probe issues are heard first, that would still mean that the main contested issues would start on Friday, February 1<sup>st</sup>.

It takes a week or longer to prepare cross-examinations in a normal rate case. In this case, we have two additional difficulties: we will be the only ones cross-examining on most of the issues (we believe), and the volume of highly technical econometric and statistical analysis is substantial. We cannot start the process of distilling the evidence on the issues into efficient and cogent cross-examinations until we know what evidence is being presented, by what witnesses, and in what order.

Under these circumstances, it is physically impossible for us to proceed on Friday with the Enbridge case. We believe that we may, with some considerable difficulty, be able to start on February 5<sup>th</sup>. However, we also note our previous correspondence with the Board in which we advised of out-of-town commitments for the 6<sup>th</sup> through 8<sup>th</sup>, made prior to the various scheduling changes arising out of this ADR. Therefore, it may be in the interests of all concerned to start the hearing on Monday, February 11<sup>th</sup>. Although we have some other scheduling issues that week, we will change them if it is convenient for the Board to hear the case that week.

This letter is sent to alert the Board to the problem. We hope to discuss this matter with Enbridge and the other affected parties tonight or tomorrow, and find a solution, but we felt that it was best to give the Board warning in advance that the issue may come up.

All of which is respectfully submitted.

Yours very truly,  
**SHIBLEY RIGHTON LLP**

A handwritten signature in dark ink, appearing to read 'Jay Shepherd', with a stylized, flowing script.

Jay Shepherd

cc: Helen Newland, FMC (email)  
Michael Millar, OEB (email)  
Interested Parties (email)