



EB-2011-0295

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. seeking approval of
its 2012-2014 Demand Side Management plan.

**PROCEDURAL ORDER No. 1 and
COST ELIGIBILITY DECISION**

Enbridge Gas Distribution Inc. ("Enbridge") filed an application with the Ontario Energy Board (the "Board") on November 4, 2011, seeking approval for its 2012-2014 Demand Side Management ("DSM") plan.

The Board has assigned file number EB-2011-0295 to this application.

The application has been filed pursuant to the Board's DSM Guidelines that were issued on June 30, 2011. Enbridge is seeking approval of a 2012 DSM budget of \$30.91M.

On November 16, 2011 the Board issued its Notice of Application. The Notice of Application notified interested parties that cost awards would be available to eligible parties in relation to their participation in this proceeding, and required parties to include the grounds for their cost awards eligibility in their intervention requests.

Decision on Cost Eligibility

The Board received one request for Observer status from Ms. Janaki Balakrishnan. The Board grants the request for Observer status from Ms. Balakrishnan.

The Board received intervention requests from Direct Energy Marketing Limited (“DE”) EnerQuality Corporation (“EnerQuality”), Just Energy Ontario L.P. (“Just Energy”), TransCanada Energy Ltd. (“TransCanada”), and Union Gas Limited (“Union Gas”). None of these parties requested eligibility for an award of costs. The Board approves the intervention requests from DE, EnerQuality, Just Energy, TransCanada, and Union Gas.

The Board also received requests for intervenor status and cost eligibility from the following parties:

- Building Owners and Managers Association Toronto (“BOMA”)
- Canadian Manufacturers & Exporters (“CME”)
- Consumers Council of Canada (“CCC”)
- Ecology Ottawa
- Energy Probe Research Foundation (“Energy Probe”)
- Federation of Rental-housing Providers of Ontario (“FRPO”)
- Green Energy Coalition (“GEC”)
- Industrial Gas Users Association (“IGUA”)
- Low-Income Energy Network (“LIEN”)
- Pollution Probe
- School Energy Coalition (“SEC”)
- Vulnerable Energy Consumers Coalition (“VECC”)

The Board has determined that the parties listed above are approved as intervenors and are eligible to apply for an award of costs in this proceeding.

Cost Claims

The Board will make use of certain criteria noted below in assessing claims that may be made for cost awards for intervenors determined as eligible for cost awards under the Board’s *Practice Direction on Cost Awards* (the “Practice Direction”) in this proceeding. These criteria are designed to ensure that costs are only awarded where the party provides assistance to the Board in examining relevant issues and that only reasonable costs are awarded.

Appendix A of the Practice Direction, the Cost Award Tariff (the “Appendix”), outlines hourly rates for legal and analyst/consultant fees. The Appendix notes that analyst/consultants are experts in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences and that time spent providing expert evidence, expert professional advice to the Board, or acting as an expert witness will be compensated at the appropriate rate as set out in the tariff. The Appendix also notes that a copy of the expert’s curriculum vitae must be attached to the cost claim.

The Appendix further notes that if a consultant provides case management services, these hours are to be listed separately and will be compensated at the case management rate. In this context, intervenors should ensure that, if time is to be claimed for case management services, the time spent on case management should be clearly separated from time spent on other activities and a full justification provided as to why the case management time was necessary and how it was differentiated from the time spent on other activities.

The Board also expects that where cost claims for oral hearing days are concerned, intervenors will generally only claim costs for one representative present in the hearing room, either counsel or an analyst/consultant, but not both. The Board would generally allow costs for more than one representative only to facilitate effective cross-examination of certain specialized evidence.

In considering all cost claims, parties should also be mindful of Section 5.01 of the Practice Direction, which outlines the criteria the Board may consider in determining the amount of a cost award to a party.

The Appendix also provides guidance as to acceptable claims for disbursements, noting that reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation directly related to the party’s participation in the process will be allowed. The Board is of the view that given the widespread availability and use of electronic documents, it is no longer reasonable for intervenors to make claims for the recovery of costs of copying or printing case documents, other than materials that are filed for use during the hearing.

Settlement Agreement

Prior to filing its application, Enbridge entered into negotiations with the members of the DSM Consultative to review its draft plan. The result of the collaborative discussions was a Settlement Agreement on the budget allocation, metrics, and targets for Enbridge's 2012 DSM plan and an agreement on the Terms of Reference for Stakeholder Engagement for the multiyear plan period 2012 to 2014.

The terms contained in the Settlement Agreement were adopted by the following parties:

- BOMA
- CCC
- CME
- Energy Probe
- EnviroCentre
- FRPO
- GEC
- IGUA
- LIEN
- Pollution Probe
- SEC
- VECC

The following intervenors were not parties to the Settlement Agreement:

- DE
- Ecology Ottawa
- EnerQuality
- Just Energy
- TransCanada
- Union Gas

Two issues are not the subject of a complete settlement: the first issue is the impact of the low income budget on the maximum incentive, and the second issue is the allocation of low income program costs and overheads. The Board has decided to review the Settlement Agreement first, through an oral hearing. Board staff and the intervenors which are not parties to the Settlement Agreement will have the opportunity to cross-examine Enbridge on the Settlement Agreement, and all parties will have the opportunity to make submissions on the Settlement Agreement.

The Board finds it necessary to make the following provisions in respect of the next steps in the proceeding.

THE BOARD ORDERS THAT:

1. The Board will sit on February 2, 2012 at 9:30 a.m. in the Board's North Hearing Room on the 25th Floor at 2300 Yonge Street, Toronto, ON to review the Settlement Agreement. Enbridge will be required to make a witness or witness panel available to answer questions respecting the Settlement Agreement from the Board, Board staff, or any of the intervenors that were not parties to the Settlement Agreement.
2. Intervenors who were not parties to the Settlement Agreement and Board staff shall indicate through a letter to the Board on or before January 31, 2012 whether they intend to ask questions and/or make submissions with respect to the Settlement Agreement. This letter shall be copied to all parties.

All filings to the Board must quote the file number, EB-2011-0295, be made through the Board's web portal at www.errr.ontarioenergyboard.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 and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at www.ontarioenergyboard.ca. If the web portal is not available you may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF

format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Filings: <https://www.errr.ontarioenergyboard.ca/>

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
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DATED at Toronto, January 16, 2012

ONTARIO ENERGY BOARD

Original Issued By

Kirsten Walli
Board Secretary

APPENDIX A

List of Intervenors

**ENBRIDGE GAS DISTRIBUTION INC.
EB-2011-0295**

**Enbridge Gas Distribution Inc.
EB-2011-0295**

APPLICANT & LIST OF INTERVENORS

January 17, 2012

APPLICANT

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Enbridge Gas Distribution Inc.

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APPLICANT & LIST OF INTERVENORS

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Enbridge Gas Distribution Inc.

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**Enbridge Gas Distribution Inc.
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**Enbridge Gas Distribution Inc.
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APPLICANT & LIST OF INTERVENORS

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Enbridge Gas Distribution Inc.

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Enbridge Gas Distribution Inc.

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