

ONTARIO ENERGY BOARD

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

POLLUTION PROBE

DOCUMENT BRIEF

(Re: Review of Settlement Proposal)

February 3, 2012

KLIPPENSTEINS,
Barristers & Solicitors
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Lawyers for Pollution Probe

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EB-2011-0327

Union Gas 2012 DSM Programs

Target Yields

Large Industrial T1/R100	Residential/Commercial/Small Industrial Resource Acquisition	Low Income
220.6 cubic metres per dollar ¹	58.9 cubic metres per dollar ²	6.3 cubic metres per dollar ³

¹ 1,000,000,000 cubic metres divided by \$4,534,000. *Settlement Agreement*, pp. 8 & 24.

² 826,000,000 cubic metres divided by \$14,022,000. *Settlement Agreement*, pp. 8 & 16.

³ 43,000,000 cubic metres divided by \$6,839,000. *Settlement Agreement*, pp. 8 & 28.

EB-2011-0327

UNION GAS LIMITED

SETTLEMENT AGREEMENT

January 31, 2012

Part 1 - Agreement

The evidence in this proceeding (referred to here as the "Evidence") consists of the Application including the updates to the Application, and Union's responses to the interrogatories.

Appendices A and C to this Settlement Agreement are also included in the Evidence. References to the Evidence are provided in relation to each of the agreed items contained in the Agreement.

Those Evidence references are not exhaustive, and each of the agreed items is supported by all of the Evidence.

With the exception of Pollution Probe, the Participating Parties explicitly request that the Board consider and accept this Settlement Agreement as a package. None of the matters in respect of which a settlement has been reached is severable. Numerous compromises were made by the Participating Parties with respect to various matters to arrive at this comprehensive Agreement.

The distinct issues addressed in this proposal are intricately interrelated, and reductions or increases to the agreed-upon amounts may have financial consequences in other areas of this proposal which may be unacceptable to one or more of the Participating Parties. If the Board does not accept the Agreement in its entirety, including any partially settled issues, then there is no Agreement unless the Participating Parties agree that those portions of the Agreement that the Board does accept may continue as a valid settlement.

There are several issues referred to in this Agreement that are not settled. The Board's determination of any of those issues will only affect settled issues when, and in the manner, that the Agreement expressly sets out.

Part 6 - Resource Acquisition Program

year. An example of the calculation, using 2010 projects, is annexed as Appendix D. For any Commercial/Industrial custom project, should a prescriptive measure be installed, the savings relating to that measure will be included for the purpose of calculating the normalized annual gas savings.

4. The Participating Parties, except Pollution Probe, have agreed that Union's ability to make budget changes within the overall Resource Acquisition budget, and to access DSMVA, will be restricted on a rate class basis. A shift in Resource Acquisition budget between rate classes shall be limited to an increase of 100% of the amount allocated to the rate class (includes the program budget, allocated portfolio budget and allocated Low-income costs). For example, if \$1.0 million of DSM costs are allocated to a rate class, Union is able to make budget changes or access DSMVA that cumulatively increase the resulting allocation to that rate class by \$1.0 million for a total rate class allocation of \$2.0 million, but no more. Union will notify intervenors in writing as soon as the company is aware (and, for 2013 and 2014, seek Board approval) should budget shifts and DSMVA access between rate classes exceed 100%. In recognition that Union does not have experience managing DSM spending at a rate class level, parties agree that for 2012 only, any amount in excess of 100% will be debited to the DSMVA and brought forward for disposition in Union's 2012 non-commodity deferral account disposition proceeding. The agreement to include any amounts in excess of the 100% in the DSMVA is without prejudice to the position any party may take as to the appropriateness of the recovery of the DSMVA. The 2012 allocation of Union's total DSM budget to rate classes is provided at Appendix C. For 2013 and 2014, Union will consult with the Participating Parties with respect to possible changes to the rate class allocation relative to the 2012 rate class allocation of Union's total DSM budget, if any.

Part 7 - Large Industrial

8. At its sole discretion, Union may transfer a maximum of \$0.500 million of the program budget allocated to Rate T1 to Rate 100, or transfer a maximum of \$0.500 million of the program budget allocated to Rate 100 to Rate T1 (exclusive of the 15% allowable overspend). Union will not transfer budget dollars from any other part of the overall DSM budget of \$30.091 million into Rate T1 and Rate 100.
9. In the event that Union qualifies to access the 15% allowable overspend, Union will only access the overspend for the Large Industrial Rate T1/Rate 100 program up to a maximum of 15% of the budget allocated to the Large Industrial Rate T1/Rate 100 program, i.e. \$5.095 million. This maximum 15% overspend claim, which on \$5.095 million is \$0.764 million (not including inflation), may be allocated to programming for Rate T1, Rate 100, or any combination, at Union's discretion. The maximum total budget, including program budget, allocated overheads and 15% allowable overspend, which can be allocated to Rate T1 and Rate 100 is \$5.859 million (\$5.095 million plus \$0.764 million).
10. As a result of the above restrictions, the maximum budget, including program budget, allocated overheads and 15% allowable overspend, for Rate T1 in 2012 will be \$4.831 million (\$3.567 plus \$0.500 plus \$0.764). The maximum allocation of the DSM Incentive for Rate T1 is 82.4% (\$4.831 million divided by \$5.859 million) which equates to \$1.489 million (82.4% multiplied by \$1.807 million). The maximum budget for Rate 100 will be \$2.793 million (\$1.529 plus \$0.500 plus \$0.764). The maximum allocation of the DSM Incentive for Rate 100 is 47.7% (\$2.793 million divided by \$5.859 million) which equates to \$0.861 million (47.7% multiplied by \$1.807 million). The maximum total budget, including program budget, allocated overheads and 15% allowable overspend,

Part 10.2 - DSMVA

The Participating Parties, except Pollution Probe, agree that Union will track the variance between actual DSM spending by rate class relative to the DSM budget included in rates by rate class in the DSMVA. As outlined in section 6.4 of the Agreement, the DSMVA is restricted on a rate class basis to limit shifts in the Resource Acquisition budget to an increase of 100% of the amount allocated to rate classes. The 2012 allocation of Union's total DSM budget to rate classes is provided in Appendix C.

Union is eligible to recover up to an additional 15% above its annual Board-approved DSM budget through the DSMVA, subject to the following restrictions:

1. Union has achieved its overall weighted scorecard target on a pre-audited basis for one or more of its scorecards. The DSMVA will be used to produce results against any Program scorecard(s) which have achieved the overall weighted scorecard target.
2. Any incremental funding can only be used on Program expenses (i.e. promotion and incentive costs, not additional utility overheads).
3. The maximum allowable 2012 overspend for the Large Industrial Rate T1/Rate 100 program is \$0.764 million, not including inflation (15% of the pre-inflation \$5.095 million budget allocated to Rate T1 and Rate 100 customers). It may be allocated to programming for Rate T1, Rate 100, or any combination, at Union's discretion.

EB-2011-0327

UNION GAS LIMITED

SETTLEMENT AGREEMENT

January 31, 2012

Part 6 - Resource Acquisition Program

year. An example of the calculation, using 2010 projects, is annexed as Appendix D. For any Commercial/Industrial custom project, should a prescriptive measure be installed, the savings relating to that measure will be included for the purpose of calculating the normalized annual gas savings.

4. The Participating Parties, except Pollution Probe, have agreed that Union's ability to make budget changes within the overall Resource Acquisition budget ~~and to access DSMVA~~ will be restricted on a rate class basis. A shift in Resource Acquisition budget between rate classes shall be limited to an increase of 100% of the amount allocated to the rate class (includes the program budget, allocated portfolio budget and allocated Low-income costs). For example, if \$1.0 million of DSM costs are allocated to a rate class, Union is able to make budget changes ~~for access DSMVA~~ that cumulatively increase the resulting allocation to that rate class by \$1.0 million for a total rate class allocation of \$2.0 million, but no more. Union will notify intervenors in writing as soon as the company is aware (and, for 2013 and 2014, seek Board approval) should budget shifts ~~and DSMVA access~~ between rate classes exceed 100%. ~~In recognition that Union does not have experience managing DSM spending at a rate class level, parties agree that for 2012 only, any amount in excess of 100% will be debited to the DSMVA and brought forward for disposition in Union's 2012 non-commodity deferral account disposition proceeding.~~ The agreement to include any amounts in excess of the 100% in the DSMVA is without prejudice to the position any party may take as to the appropriateness of the recovery of the DSMVA. The 2012 allocation of Union's total DSM budget to rate classes is provided at Appendix C. For 2013 and 2014, Union will consult with the Participating Parties with respect to possible changes to the rate class allocation relative to the 2012 rate class allocation of Union's total DSM budget, if any.

Part 7 - Large Industrial

8. At its sole discretion, Union may transfer a maximum of \$0.500 million of the program budget allocated to Rate T1 to Rate 100, or transfer a maximum of \$0.500 million of the program budget allocated to Rate 100 to Rate T1 (exclusive of the 15% allowable overspend). Union will not transfer budget dollars from any other part of the overall DSM budget of \$30.091 million into Rate T1 and Rate 100.
9. ~~In the event that Union qualifies to access the 15% allowable overspend, Union will only access the overspend for the Large Industrial Rate T1/Rate 100 program up to a maximum of 15% of the budget allocated to the Large Industrial Rate T1/Rate 100 program, i.e. \$5.095 million. This maximum 15% overspend claim, which on \$5.095 million is \$0.764 million (not including inflation), may be allocated to programming for Rate T1, Rate 100, or any combination, at Union's discretion. The maximum total budget, including program budget, allocated overheads and 15% allowable overspend, which can be allocated to Rate T1 and Rate 100 is \$5.859 million (\$5.095 million plus \$0.764 million).~~
10. ~~As a result of the above restrictions, the maximum budget, including program budget, allocated overheads and 15% allowable overspend, for Rate T1 in 2012 will be \$4.831 million (\$3.567 plus \$0.500 plus \$0.764). The maximum allocation of the DSM Incentive for Rate T1 is 82.4% (\$4.831 million divided by \$5.859 million) which equates to \$1.489 million (82.4% multiplied by \$1.807 million). The maximum budget for Rate 100 will be \$2.793 million (\$1.529 plus \$0.500 plus \$0.764). The maximum allocation of the DSM Incentive for Rate 100 is 47.7% (\$2.793 million divided by \$5.859 million) which equates to \$0.861 million (47.7% multiplied by \$1.807 million). The maximum total budget, including program budget, allocated overheads and 15% allowable overspend,~~

~~and DSM incentive for programs under the Large Industrial T1/R100 scorecard is \$7.666 million (\$5.095 plus \$1.807 plus \$0.764).~~

The above terms apply to 2012 only. The Participating Parties have agreed that the DSM Plan for 2013 and 2014 relating to Large Industrial Rate T1 Rate 100 will not be included in this Agreement, and Union hereby withdraws its requests for approvals of that part of its Plan as set forth in the Application. Union agrees to file a new application and evidence with the Board supporting a Large Industrial Rate T1 / Rate 100 DSM plan for 2013 and 2014 prior to September 1, 2012. Agreement to the 2012 DSM plan for T1 and Rate 100 is without prejudice to the position any party may have on Union's 2013 and 2014 Large Industrial Rate T1 and Rate 100 DSM application.

8/ **LOW-INCOME**

(Complete Settlement)

Evidence Reference:

A/p.19; A/p.28; A/Ap.A/p.69; B1.1; B1.5; B1.6; B1.7; B3.2; B4.9; B6.17; B6.18; B6.19; B8.1; B9.1; B9.3; B10.1; B10.2, B11.10; B11.11; B11.18; B12.5

For 2012 to 2014, the Participating Parties agree to a program budget of \$6.839 million related to Union's Low-income DSM programming. The budget amount of \$6.839 includes program-specific administration, evaluation, and overhead costs, but excludes inflation, general evaluation and research, and allocated overheads.

Part 10.2 - DSMVA

The Participating Parties, except Pollution Probe, agree that Union will track the variance between actual DSM spending by rate class relative to the DSM budget included in rates by rate class in the DSMVA. ~~As outlined in section 6.4 of the Agreement, the DSMVA is restricted on a rate class basis to limit shifts in the Resource Acquisition budget to an increase of 100% of the amount allocated to rate classes.~~ The 2012 allocation of Union's total DSM budget to rate classes is provided in Appendix C.

Union is eligible to recover up to an additional 15% above its annual Board-approved DSM budget through the DSMVA, subject to the following restrictions:

1. Union has achieved its overall weighted scorecard target on a pre-audited basis for one or more of its scorecards. The DSMVA will be used to produce results against any Program scorecard(s) which have achieved the overall weighted scorecard target.
2. Any incremental funding can only be used on Program expenses (i.e. promotion and incentive costs, not additional utility overheads).
3. ~~The maximum allowable 2012 overspend for the Large Industrial Rate T1/Rate 100 program is \$0.764 million, not including inflation (15% of the pre-inflation \$5.095 million budget allocated to Rate T1 and Rate 100 customers). It may be allocated to programming for Rate T1, Rate 100, or any combination, at Union's discretion.~~



DEMAND SIDE MANAGEMENT GUIDELINES FOR NATURAL GAS UTILITIES

EB-2008-0346

Date: June 30, 2011

2. TERM OF THE PLAN

The initial term of the multi-year plans should be three years (2012, 2013 and 2014). The Board may consider a review of the natural gas DSM framework during the three-year plan term to determine whether to extend its term.

3. PROGRAM AND PORTFOLIO DESIGN

The design of natural gas DSM programs and the overall portfolio should be guided by the following three objectives:

- Maximization of cost effective natural gas savings;
- Prevention of lost opportunities⁴; and
- Pursuit of deep energy savings.⁵

The natural gas utilities may pursue DSM activities that support fuel-switching away from natural gas where these activities align with the above three DSM objectives and contribute to a net reduction in greenhouse gases.

In addition to the above three objectives, guidance on the design of the natural gas DSM programs and the overall portfolio is provided through the overarching DSM framework (e.g., screening, metrics, incentives, consultation process, etc.). This level of guidance is meant to ensure that adequate flexibility in DSM program and portfolio design is maintained, while recognizing that the natural gas utilities are ultimately responsible and accountable for their actions. This flexibility should ensure that the natural gas utilities can continuously react to and adapt to current and anticipated market developments.

To help ensure that an appropriate balance among the three overarching guiding objectives is maintained and that changes to the DSM plan are consistent with the other elements of the DSM framework, the natural gas utilities should apply to the Board for approval if they decide to re-allocate funds to new programs that are not part of their Board-approved DSM plan. However, the natural gas utilities should inform the Board, as well as their stakeholders, in the event that cumulative fund transfers among Board-approved DSM programs exceed 30% of the approved annual DSM budget for an individual natural gas DSM program.

⁴ Lost opportunity markets refer to DSM opportunities that, if not undertaken during the current planning period, will no longer be available or will be substantially more expensive to implement in a subsequent planning period.

⁵ Deep energy savings refer to measures that result in long-term savings, such as thermal envelope improvements (e.g., wall and attic insulation).

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projects and commercial and industrial DSM programs in general and provide the resulting information to and consult with their stakeholders to determine whether any persistence adjustments to the savings of those programs would be warranted going forward.

There may be a trade-off between greater accuracy and the cost associated with developing persistence factors. For instance, it may be appropriate to carefully develop persistence factors for programs with significant budgets and savings, while other lower budget programs with measures that would not reasonably be uninstalled prior to the end of their useful life could be assumed to have a persistence factor of 100%. In either case, the natural gas utilities should provide a rationale for the persistence factor it is using for each of its programs. The natural gas utilities should seek guidance through its stakeholder engagement process to determine the extent to which persistence factors should be developed for each program.

8. BUDGETS

In a letter dated March 29, 2011, the Board stated the following:

The current DSM budget levels, which now represent about 2.8% and 4.1% of Enbridge's and Union's respective distribution revenues, have come to represent a sizeable portion of their business. The Board finds it appropriate at this time to limit the ratepayer funded portion of the natural gas DSM budgets to their current levels. Although the Board has been supportive of DSM activities within utilities over the years and remains supportive of DSM generally, it is concerned with the extent to which cross subsidies are appropriate within the Board's mandate of regulating gas distribution, and whether it is necessary for ratepayers to fund services which are available through a variety of channels in the marketplace.

The 2011 DSM budgets for Enbridge and Union are \$28.1 million and \$27.4 million, respectively.¹⁹ The Board has expressed the view that 2011 approved budgets should remain in effect for the 2012 to 2014 DSM plan term, subject to section 8.3. The budgets should be escalated annually using the previous year's Gross Domestic Product Implicit Price Index ("GDP-IPI") issued by Statistics Canada in the third quarter and published at the end of November.

The natural gas utilities should strive to remain on their DSM budget paths; any annual spending beyond that should be accommodated through the DSM variance account ("DSMVA") option. As further explained in section 13.2, the DSMVA "over-spend" option provides the natural gas utilities with the opportunity to spend and recover up to an additional 15% of their approved annual DSM budget, with all additional funding to

¹⁹ See the Board's Decision and Order dated September 24, 2010 in Enbridge's 2011 DSM plan application – EB-2010-0175, and Decision and Order dated September 9, 2010 in Union's 2011 DSM plan application – EB-2010-0055. See also the Board's Decisions and Orders dated December 20, 2010 on Enbridge and Union's application to amend their respective low-income weatherization plan within their approved 2011 DSM plans (Board file number EB-2010-0175 and EB-2010-0055, respectively).

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be utilized on incremental program expenses only. This option is meant to allow the natural gas utilities to aggressively pursue programs which prove to be very successful.

Budget flexibility will also be provided by the proposed funds re-allocation provisions described in section 3, regarding the re-allocation of funds for new DSM programs and re-allocation of funds amongst Board approved programs.

Actual DSM spending will be tracked in the DSMVA at the rate class level and will be used to "true-up" any variances between the spending estimate built into rates and the actual spending. The natural gas utilities should make an annual application for disposition of the balance in their DSMVA account, as further detailed in section 14.

The overall DSM budget flexibility will also be guided by expected funding levels for the three generic DSM program types as described below.

8.1 Budget for Resource Acquisition Programs

Resource acquisition programs should maintain the largest share of the natural gas DSM budget and its allocated budget should be sufficient to support the increased focus on deep measures. The natural gas utilities should consult with their stakeholders to determine appropriate budget levels for resource acquisition programs over the term of the plan.

8.2 Budget for Large Industrial Programs

The Board is of the view that large industrial customers possess the expertise to undertake energy efficiency programs on their own. As a result, ratepayer funded DSM programs for large industrial customers are no longer mandatory. If any are proposed, they will be considered on their merits. The Board defines large industrial gas customers as those in rate classes 100 and T1 for Union, and rate class 115 for Enbridge.

8.3 Budget for Low-Income Programs

The Board is of the view that the low-income DSM budget should be funded from all rate classes, to be consistent with the electricity conservation and demand management framework, as well as the LEAP Emergency Financial Assistance program.

The annual low-income DSM budget shall be no less than 15% of the natural gas utilities' total DSM budgets. Accordingly, the minimum low-income budgets for 2012 will be \$4.2 million²⁰ and \$4.1 million²¹ for Enbridge and Union respectively. The natural gas utilities' total DSM budgets may be increased by up to 10%, provided the funds are solely used to support low-income programs.²² This means the total DSM

²⁰ Enbridge's total DSM budget $\$28.1\text{M} \times 0.15 = \4.2M

²¹ Union's total DSM budget $\$27.4\text{M} \times 0.15 = \4.1M

²² This is would represent an incremental amount to the natural gas utilities total DSM budgets of 1.5%

Ontario Energy Board

year DSM plan. Therefore, the amounts in all DSM variance or deferral accounts should be recorded on an annual basis.

The natural gas utilities should use a fully allocated costing methodology for all their DSM activities. Capital assets (property, plant and equipment) associated with the multi-year DSM plan will be included in rate base, and will be treated in the same manner as distribution assets. DSM expenses incurred should be expensed in the normal course of the utility's operations.

Cost allocation in rates should be on the same basis as budgeted DSM spending by customer class. This allocation applies to both direct and indirect DSM program costs.

Any assets purchased with funds from third parties (i.e., not funded through distribution rates) will not be eligible for inclusion in rate base, nor will there be any distribution rate recovery of ongoing operating costs associated with the asset, or income taxes payable in relation to third-party funded activities. Likewise, DSM expenses funded by third parties should not be included in the natural gas utility's distribution accounts. The accounting treatment of DSM spending not funded through distribution rates is further discussed in section 13.6 below.

13.1 Revenue Allocation

Any net revenues generated by a shareholder incentive for distribution rate-funded DSM should be separate from (i.e., not used to offset) the natural gas utilities' distribution revenue requirement.

13.2 Demand-Side Management Variance Account ("DSMVA")

This account should be used to track the variance between actual DSM spending by rate class versus the budgeted amount included in rates by rate class. A natural gas utility may record in the DSMVA in any one year, a variance amount of no more than 15% above its DSM budget for that year. The natural gas utility should apply annually for disposition of the balance in its DSMVA, together with carrying charges, after the completion of the annual third party audit (see section 14).

The actual amount of the variance versus budget targeted to each customer class will be allocated to that customer class for rate recovery purposes. If spending is less than what was built into rates, ratepayers will be reimbursed for the full amount. If more is spent than was built into rates, the natural gas utility may be reimbursed up to a maximum of 15% above its DSM budget for the year. All additional funding beyond the annual DSM budget must be utilized on incremental program expenses only (i.e. cannot be used for additional utility overheads).

The option to spend 15% above the approved annual DSM budget is meant to allow the natural gas utilities to aggressively pursue programs which prove to be very successful.

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Accordingly, the natural gas utility will be permitted to recover from ratepayers up to 15% above its annual DSM budget recorded in its DSMVA provided that:

- A) It had achieved its weighted scorecard target(s) (i.e., 100%) on a pre-audited basis for the program(s) prior to additional spending being made on those programs; and
- B) The DSMVA funds were used to produce results in excess of those targets (i.e., in excess of 100%) on a pre-audited basis.

When applying for disposition of its DSMVA account, the natural gas utility will have to provide evidence demonstrating the prudence and cost effectiveness of the amounts spent in excess of the approved annual DSM budget. In considering the prudence of any spending in excess of an approved annual budget, it is expected that the information available to the natural gas utility at the time the program was implemented will be considered.

13.3 LRAM Variance Account ("LRAMVA")

The LRAMVA should be used to track, at the rate class level, the actual impact of DSM activities undertaken by the natural gas utility from the forecasted impact included in distribution rates. A natural gas utility may only record an LRAM amount in relation to DSM activities undertaken within its franchise area by itself and/or delivered for the natural gas utility by a third party under contract.

The natural gas utilities should calculate the full year impact of DSM programs on a monthly basis, based on the volumetric impact of the measures implemented in that month, multiplied by the distribution rate for each of the rate classes in which the volumetric variance occurred. LRAM amounts are only accruable and thus only recorded in the variance account until such time as the Board sets distribution rates for the utility based on a new load forecast.

The LRAM amount is recovered in rates on the same basis as the variances in distribution revenues were experienced at the rate class level. The LRAM therefore results in a true-up rate class by rate class. The natural gas utilities should apply annually for disposition of the balance in their LRAMVA, together with carrying charges, after the completion of the annual third party audit (see section 14).

13.4 DSM Incentive Deferral Account ("DSMIDA")

The purpose of the DSMIDA is to record the shareholder incentive amount earned by a natural gas utility as a result of its DSM programs. This account will come into effect at the beginning of the term of the multi-year DSM plan, which is expected to be 2012. The natural gas utilities should apply annually for disposition of the balance in their DSMIDA, together with carrying charges, after the completion of the annual third party audit (see section 14).



ONTARIO ENERGY BOARD

FILE NO.: EB-2006-0021

VOLUME: Receipt of Settlement
Proposal

DATE: July 10, 2006

BEFORE:	Pamela Nowina	Presiding Member and Vice Chair
	Paul Vlahos	Member
	Ken Quesnelle	Member

EB-2006-0021

THE ONTARIO ENERGY BOARD

IN THE MATTER OF a generic proceeding initiated by the Ontario Energy Board to address a number of current and common issues related to demand side management activities for natural gas utilities.

Hearing held at 2300 Yonge Street, 25th Floor,
Toronto, Ontario, on Monday,
July 10, 2006, commencing at 1:09 p.m.

Receipt of Settlement Proposal

B E F O R E :

Pamela Nowina	Presiding Member and Vice Chair
Paul Vlahos	Member
Ken Quesnelle	Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
MICHAEL BELL	Board Staff
STEPHEN MCCOLM	
DAVID POCH	Green Energy Coalition
CRAWFORD SMITH	Union Gas Limited
BRYAN GOULDEN	
DENNIS O'LEARY	Enbridge Gas Distribution
ROBERT BOURKE	
ROBERT WARREN	Consumers Council of Canada
VINCE DeROSE	IGUA
JULI ABOUCHAR	Low-Income Energy Network
JAY SHEPHERD	School Energy Coalition
MICHAEL BUONAGURO	Vulnerable Energy Consumers Coalition
DAVID MacINTOSH	Energy Probe Research
NORM RUBIN	Foundation
BRIAN DINGWALL	Canadian Manufacturers & Exporters
MURRAY KLIPPENSTEIN	Pollution Probe
RANDY AIKEN	London Property Management Association

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NO UNDERTAKINGS WERE ENTERED DURING THIS HEARING

1 Monday, July 10, 2006

2 --- Upon commencing at 1:09 p.m.

3 MS. NOWINA: Good afternoon. Please be seated.

4 Welcome to our new digs. I hope you like them.

5 The Board is sitting today in the matter of proceeding
6 EB-2006-0021, a hearing to address a number of current and
7 common issues related to demand side management activities
8 for natural gas utilities.

9 The Board may make orders to Enbridge Consumers Gas
10 and Union Gas as a result of this proceeding.

11 The parties have engaged in a settlement process and
12 on July 8th filed several documents regarding settlement
13 with the Board.

14 I think I would first like to note the Board's
15 pleasure at your significant efforts in trying to come to a
16 settlement in this proceeding. We know that there are
17 highly divergent opinions in it, and it must have been a
18 challenge to come to the settlement that you did, so we
19 appreciate that.

20 We sit today to hear submissions on those agreements.
21 My name is Pamela Nowina. I will be the presiding member
22 in this hearing. And joining me on the panel are Board
23 members Mr. Paul Vlahos and Mr. Ken Quesnelle.

24 May I have appearances, please.

25 **APPEARANCES:**

26 MR. MILLAR: Good afternoon, Madam Chair. Michael
27 Millar, counsel for Board Staff. With me is Michael Bell
28 and Stephen McComb.

1 MS. NOWINA: Thank you, Mr. Millar.

2 MR. O'LEARY: Madam Chair, for Enbridge Gas
3 Distribution, Dennis O'Leary, and I am joined by Mr. Robert
4 Bourke, to my right.

5 MS. NOWINA: Thank you, Mr. O'Leary.

6 MR. SMITH: Madam Chair, it is Crawford Smith from the
7 Tory law firm on behalf of Union Gas, and with me is Bryan
8 Goulden for Union Gas.

9 MS. NOWINA: Thank you, Mr. Smith.

10 MR. POCH: Madam Chair, good afternoon. David Poch on
11 behalf Green Energy Coalition.

12 MR. SHEPHERD: Jay Shepherd on behalf of School Energy
13 Coalition.

14 MS. NOWINA: Thank you, Mr. Shepherd.

15 MS. ABOUCHAR: Madam Chair, Juli Abouchar on behalf of
16 the Low-Income Energy Network.

17 MS. NOWINA: Thank you, Ms. Abouchar.

18 MR. KLIPPENSTEIN: Good afternoon, Madam Chair,
19 Members of the Panel, Murray Klippenstein for Pollution
20 Probe.

21 MS. NOWINA: Thank you, Mr. Klippenstein.

22 MR. WARREN: Robert Warren for Consumers Council of
23 Canada.

24 MS. NOWINA: Thank you, Mr. Warren.

25 MR. DeROSE: Good afternoon. Vince DeRose for IGUA.

26 MS. NOWINA: Thank you, Mr. DeRose.

27 MR. AIKEN: Randy Aiken, London Property Management
28 Association.

1 MS. NOWINA: Thank you, Mr. Aiken.

2 MR. BUONAGURO: Michael Buonaguro on behalf of
3 Vulnerable Energy Consumers Coalition.

4 MS. NOWINA: Thank you, Mr. Buonaguro. Thank you for
5 your spreadsheet. Very helpful.

6 MR. MACINTOSH: David MacIntosh for Energy Probe
7 Research Foundation, and with me is Mr. Norm Rubin.

8 MS. NOWINA: Thank you, Mr. MacIntosh.

9 MR. DINGWALL: Brian Dingwall for Canadian
10 Manufacturers & Exporters.

11 **PRELIMINARY MATTERS:**

12 MS. NOWINA: Thank you, Mr. Dingwall.

13 Is that everyone?

14 Can we get more volume on the mikes?

15 We have a couple of preliminary matters that we will
16 want to deal with today, the Board wants to deal with.

17 One is regarding the most practical way to proceed
18 with the hearing of those issues that have been, I guess,
19 described by the parties as being a partial settlement and
20 being a package of issues that the parties are looking to
21 have approved in its entirety or the settlement is no
22 longer valid.

23 So we would like to hear submissions from parties and
24 what the most practical way to hear those matters would be,
25 given that if the Board should decide, after hearing all of
26 them, that it was not going to accept all of the issues,
27 that there might be a concern that the parties who no
28 longer agreed have made the appropriate submissions or done

1 the appropriate -- I wonder who would like to speak to that
2 matter, but I would like to hear that.

3 MR. SHEPHERD: Madam Chair, can I just ask, do you
4 wish us to make those submissions in the context of
5 presenting the settlement to you, or afterwards, or before?

6 MS. NOWINA: Before, if that makes sense to everyone?

7 MR. O'LEARY: We're happy with that.

8 Madam Chair, I thought, just as a housekeeping matter,
9 would it be appropriate to mark the package of documents
10 which were filed with you as an exhibit? And Mr. Bourke
11 has circulated copies of a letter dated July 8th, 2006 from
12 Enbridge. Attached to that under the three tabs, 1, 2 and
13 3, are the settlement proposals under completely for - or
14 completely settled and not settled issues, under tab 2 is
15 the settlement proposal, which includes those which are
16 marked as partially settled, and then at tab 3 is the
17 proposal that is put forward by the intervenors, which does
18 not include the utilities.

19 I don't intend to say anything other than to alert the
20 Board to the fact that that settlement proposal was not, in
21 any way, participated in, in terms of the wording of the
22 document, by the utilities. They were not invited to truly
23 comment on the wording and the title of the document, and
24 lest there be any confusion, there is identified under
25 every issue a list of the evidence which those intervenors
26 that participated have gathered together for the purposes
27 of that document, but it should not in any way be an
28 indication to you that the evidence listed, particularly

1 as we can on that narrower issue following the proceeding.

2 So those are the two preliminary matters. If I could
3 just take a minute to confer with my colleagues here. I
4 want to stop and see if we can make a decision on it.

5 [Board members confer]

6 MS. NOWINA: We are going to take a half-hour break to
7 make a decision regarding the issue of these financial
8 issues and the partial decision. So we will adjourn for a
9 half hour. We will return at 3 o'clock to give you that
10 decision.

11 --- Recess taken at 2:30 p.m.

12 --- Upon resuming at 3:07 p.m.

13 MS. NOWINA: Please be seated.

14 A comment about these little microphones. Try to keep
15 your papers away from them because it makes a very loud
16 noise. Try not to block them, and maybe we will be able to
17 hear better if we do that.

18 **DECISION:**

19 Regarding the partial decision of the financial
20 matters. The Board appreciates the efforts that everyone
21 has gone -- has put into making this proposal. It is a
22 novel proposal and one that we had to put much thought to.

23 However, given the importance of this generic
24 proceeding, and having weighed the risk and benefits
25 regarding the timeliness of the proceeding and the fairness
26 of the proceeding, we do not accept Mr. Smith's proposal.
27 The partially heard -- the partially-agreed-to issues will
28 be fully heard before the Panel renders any decision. We

1 want to make it clear this is not a statement regarding the
2 merits of the partial settlement agreement itself; that we
3 certainly want to hear the merits of that settlement
4 agreement. It is simply a procedural decision.

5 So given that, the next thing on our agenda is to go
6 on to presentation of the completely settled matters.

7 MR. SMITH: Madam Chair, if I may ask a question of
8 clarification.

9 MS. NOWINA: Certainly.

10 MR. SMITH: When the Board indicates that the
11 partially settled issues will be fully heard, is it the
12 expectation of the Board that the utilities will lead the
13 entire case they would have led had there been no
14 settlement?

15 MS. NOWINA: I will leave that to not only the
16 utilities but also the intervenors to determine how they
17 want to present their case.

18 MR. SMITH: I asked that question because we would
19 need relief from the Rules of Practice to do that, which
20 provide that we could not lead evidence nor cross-examine
21 witnesses in respect of matters where we have reached
22 partial settlement.

23 MS. NOWINA: Mr. Smith, we often have partial
24 settlements. In the areas where there is not this proposal
25 that the settlement cannot be severed, we would be -- you
26 would be leading evidence. We often have partially settled
27 issues.

28 MR. SMITH: I don't disagree with that. For example,

1 if I return to the example I used before, the Union DSM
2 partial settlement where there was a settlement amongst a
3 broad number of parties but not with Pollution Probe.
4 Union tendered its witness panel and that panel was cross-
5 examined by Pollution Probe, who was not a party to the
6 partial settlement. The Board's Rules of Practice provide
7 explicitly for that right of cross-examination.

8 However, what it would not have been open to Union,
9 nor to the other parties who were parties to the partial
10 settlement to do, would be to lead evidence contrary to the
11 partial settlement.

12 In other words, for example, to take this case. The
13 SSM setting mechanism or the target or the budget, Union's
14 prefiled position with respect to target is that there
15 ought not to be a target for a variety of reasons.

16 If it were the Board's inclination that parties would
17 lead -- would have all evidence heard, then I would lead
18 evidence in-chief, explaining at a high level what Union's
19 prefiled position is, and then lead evidence in respect of
20 the partial settlement.

21 My friends who are parties to the partial settlement,
22 under the Board's guidelines and rules it would not be open
23 to them to cross examine the panel at all, other than in
24 support of the partial settlement. And that, of course, is
25 the trouble we were trying to resolve. So I just want to
26 understand procedurally how you would like us to proceed,
27 in light of those guidelines.

28 MR. KLIPPENSTEIN: Madam Chair, if I may make an

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



EB-2006-0021

IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF a generic proceeding initiated by the Ontario Energy Board to address a number of current and common issues related to demand side management activities for natural gas utilities.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

Paul Vlahos
Member

Ken Quesnelle
Member

DECISION WITH REASONS

August 25, 2006

CHAPTER 3- PARTIAL SETTLEMENT (FINANCIAL PACKAGE)

In addition to the completely settled issues, the Board was presented with a list of partially settled issues. Union, EGD, CCC, SEC, Energy Probe, IGUA, LPMA, and VECC (the "Partial Settlement Proponents") were parties to a complete agreement on a number of issues. Certain of these issues were presented as a package (the "Financial Package") which the parties presented as being un-severable; i.e. if the Board did not accept the entire package, the Financial Package agreement would be withdrawn. The Financial Package dealt with:

- DSM budgets (Issue 1.3),
- DSM plan targets (Issue 1.4),
- allocation of DSM budgets amongst customer classes (Issue 1.7),
- the DSM incentive mechanism (Issue 5.2),
- the DSM variance account (Issues 6.1, 6.2, 6.3),
- market transformation and lost opportunity program budgets and utility incentives related to them (Issues 10.2, 10.4, 10.8), and
- targeted programs for low income customers (Issues 13.1, 13.2, 13.3).

The Partial Settlement Proponents explained that the individual elements of the Financial Package were tied together, and that to change one element would have repercussions on other elements. On the opening day of the hearing, the Board explained to the parties that it would hear whatever evidence the parties chose to lead; however, if at the conclusion of the hearing the Board determined that it did not wish to accept the Financial Package in its entirety, it would not re-open the hearing to hear fresh evidence on any of the issues. The Partial Settlement Proponents subsequently informed the Board that they would continue to exclusively support the Financial Package, and would not present any evidence to be considered in the event that the Board did not accept the entire Financial Package.

DECISION WITH REASONS

In addition to the Financial Package, the Partial Settlement Proponents reached a partial settlement on a number of other issues that could be considered individually. This chapter deals only with the Financial Package; the remaining partially settled issues will be addressed in Chapter 4.

The chief proponents of the Financial Package in the hearing were the utilities through their witness panels. The other Partial Settlement Proponents did not present witnesses in support of the Financial Package, but did conduct what was described as “friendly” examinations of the utility witnesses on these issues. The parties opposed to the Financial Package cross-examined the utility witnesses and, in some cases, filed their own proposals.

The Board will accept the Financial Package as presented by the Partial Settlement Proponents. As the Board explained when considering the meaning of a partial settlement on July 10, the Board has considered all of the issues in the Financial Package on an issue by issue basis. Taken individually and as a whole, the Board finds all of the proposals contained in the Financial Package to be reasonable.

The Board is pleased that the Financial Package amounts to what is largely a “rules-based” approach. Many of the major elements of the three year DSM plans will essentially be locked in for the term of the plan, and will not require further review by the Board during this period. This should result in significant regulatory savings for the parties, the Board, and, ultimately, for ratepayers.

The Board finds that the Financial Package strikes an appropriate balance between advancing DSM forward through higher budgets and ultimately higher TRC savings targets, while not forcing the utilities to try to spend money that they indicated they would have trouble spending in a cost effective manner. The Board is also satisfied that the Financial Package will not cause undue rate

impacts to ratepayers given the relatively modest nature of the proposals, in light of the overall revenue requirement of the respective utilities.

In addition to the overall comments above, the Board has the following remarks on the individual issues that comprise the Financial Package.

How should the financial budget be determined? (Issue 1.3)

The Partial Settlement makes the following proposal.

“Parties in agreement with this partial settlement accept that a DSM budget cap should be developed using the following formulaic approach in each year of a multi-year DSM plan. For the first year, the budget for EGD will be \$22.0 million, an increase of \$3.1 million or approximately 16% from its 2006 budget. For Union, the 2007 budget will be \$17.0 million an increase of \$3.1 million or approximately 22% from its 2006 budget.

In the second and subsequent years of a multi-year DSM plan, the DSM budget for each year of the plan will be determined by applying an escalation factor of 5.0% for EGD and 10% for Union to the budget developed for the immediately preceding year. The purpose of the application of different escalation factors for EGD and Union is to address the desire by some parties that the difference between the level of spending by EGD and Union be narrowed. The parties agree that this formula results in budgets of \$23.1 million and \$24.3 million for EGD in 2008 and 2009 respectively, and budgets of \$18.7 million and \$20.6 million for Union in 2008 and 2009 respectively.

Parties to this partial settlement agree that the Utilities remain obligated to develop, and spend monies on, cost-effective DSM programs up to the budget amount developed by this methodology.”



ONTARIO ENERGY BOARD

FILE NO.: EB-2007-0606
EB-2007-0615

VOLUME: 2

DATE: February 1, 2008

BEFORE:	Gordon Kaiser	Presiding Member and Vice Chair
	Paul Sommerville	Member
	Cynthia Chaplin	Member

EB-2007-0606

EB-2007-0615

IN THE MATTER OF the Ontario Energy Board
Act, 1998, S.O. 1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by
Union Gas Limited for an Order or Orders
approving a multi-year incentive rate
mechanism to determine rates for the
regulated distribution, transmission and
storage of natural gas, effective January
1, 2008;

AND IN THE MATTER OF an Application by
Enbridge Gas Distribution Inc. for an
Order or Orders approving or fixing rates
for the distribution, transmission and
storage of natural gas, effective January
1, 2008;

AND IN THE MATTER OF a combined
proceeding Board pursuant to section
21(1) of the Ontario Energy Board Act,
1998.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario, on Friday,
February 1, 2008,
commencing at 9:36 a.m.

Volume 2

BEFORE:

GORDON KAISER	Presiding Member and Vice Chair
PAUL SOMMERVILLE	Member
CYNTHIA CHAPLIN	Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
VINCE COONEY	Board Staff
RUDRA MUKHERJI	
LAURIE KLEIN	
JERRY FARRELL	Enbridge Gas Distribution Ltd.
HELEN NEWLAND	
MICHAEL PENNY	Union Gas Ltd.
VINCE DeROSE	Industrial Gas Users Association (IGUA)
RANDY AIKEN	Building and Owners and Managers Association of the Greater Toronto Area, London Property Management Association, and Wholesale Gas Service Purchasers Group
MICHAEL BUONAGURO	Vulnerable Energy Consumers Coalition
JAY SHEPHERD	School Energy Coalition
RICHARD STEPHENSON	Power Workers' Union
DAVID MacINTOSH	Energy Probe Research Foundation
ROBERT WARREN	Consumers Council of Canada
MURRAY KLIPPENSTEIN	Pollution Probe
DAVID POCH	Green Energy Coalition

A P P E A R A N C E S

PETER SCULLY	City of Timmins
JASON STACEY	Intervenor; Sithe Global Power Goreway
RICHARD KING	Association of Power Producers of Ontario (APPrO)
VALERIE YOUNG	Ontario Association of Physical Plant Administrators
ROBERT FRANK	Coral Shell Energy TransAlta Energy Cogeneration LP TransAlta Energy Corp.

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NO UNDERTAKINGS WERE FILED DURING THIS PROCEEDING

1 Friday, February 1, 2008

2 --- On commencing at 9:36 p.m.

3 MR. KAISER: Please be seated. Mr. Millar.

4 **PRELIMINARY MATTERS:**

5 MR. MILLAR: Good morning, Mr. Chairman. I think
6 there are a couple of preliminary matters. I know people
7 wanted to talk about schedule, and Mr. Shepherd wished to
8 address the letter that he filed with the Board last night.

9 MR. KAISER: Yes. Mr. Shepherd.

10 MR. SHEPHERD: Mr. Chairman, I sent a letter to the
11 Board last night in which we've advised that the School
12 Energy Coalition is no longer opposing the contested issues
13 that we were opposing. We're now taking no position on
14 those. So that partial settlement on those issues - not
15 the issues that GEC and Pollution Probe are concerned with,
16 but on those issues - is now, I believe, a complete
17 settlement to be presented to the Board.

18 If you have any questions -- you have the letter, I
19 think, and if you have any questions, I'll be able to
20 answer them.

21 MR. KAISER: I wonder if we could ask counsel, I
22 suppose. I could ask Mr. Farrell. Could we file an
23 amended settlement agreement reflecting the letter?

24 MR. FARRELL: Yes, that's what we propose to do. And
25 I should say that we have begun tracking down the agreeing
26 parties with a view to getting their consent, and we're
27 just giving its consent to severing the Y factor issue that
28 Green Energy Coalition and Pollution Probe are opposed on.

1 So that your decision on the accepting, or not, the
2 other issues in the settlement agreement, now you don't
3 have to consider the package concept. That issue will be
4 severed. We've talked to many of the agreeing parties, but
5 we haven't tracked them all down yet. And we'll advise
6 when we do so, sir.

7 MR. KAISER: That will be helpful. Thank you for
8 doing that. Mr. Penny, ready to go?

9 MR. PENNY: I am, Mr. Chair.

10 MR. KAISER: Mr. DeRose.

11 MR. DeROSE: Mr. Chair, two points. First of all, Mr.
12 Warren on behalf of CCC and Mr. Buonaguro on behalf of VECC
13 are not here today. They ask that I speak on their behalf
14 on this one point. We just wanted to put on the record,
15 and all three of our clients are hopeful, that in no way is
16 Mr. Shepherd's change of position at the last minute to
17 reflect badly upon him or his client.

18 In our view, this is a very complex issue and Mr.
19 Shepherd -- I don't think we are giving anything away
20 saying even though this settlement process, the formal
21 settlement conference, had ceased some time ago, there have
22 been continued discussions throughout.

23 And so we just wanted to put our support on the
24 record, and just to indicate that in no way should this
25 reflect badly on him or his client, on behalf of all three
26 of those parties.

27 On a procedural question, I'm wondering if I could ask
28 the Board's -- request that in terms of the Y factor cross-

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2007-0615

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 or fixing
rates for the distribution, transmission and storage of natural
gas, effective January 1, 2008.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Paul Sommerville
Member

Cynthia Chaplin
Member

DECISION

Enbridge Gas Distribution Inc. ("Enbridge") filed an Application on May 11, 2007 under section 36 of the *Ontario Energy Board Act*, 1998, S.O. c.15, Sched. B, as amended, for an order of the Ontario Energy Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2008.

On January 29, 2008 Enbridge filed a Settlement Agreement in this matter. On January 31 and February 1, 2008 the Board heard submissions on the Enbridge Settlement Agreement. Enbridge filed a Revised Settlement Agreement on February 4, 2008, which is attached as Schedule A. The parties who participated in the Settlement Agreement are set out in Schedule B.

The Revised Settlement Agreement is comprehensive although there is one unresolved matter: the treatment of customer additions under incentive regulation. The parties to the Revised Settlement Agreement agree that the Revised Settlement Agreement is not contingent on the outcome of this contested matter.

The Incentive Regulation Plan described in this Revised Settlement Agreement is a five year plan under which any rate adjustment will be limited by a revenue per customer cap. The annual distribution revenue per customer is adjusted by multiplying the inflation factor by the inflation coefficient. The parties to the Plan agree that the Plan is expected to put downward pressure on Enbridge's rates by encouraging new levels of efficiency and providing the regulatory stability needed for Enbridge's anticipated investment in Ontario assets. The parties also agree that the Plan ensures that the benefits of this efficiency will be shared with customers during the term of the Incentive Regulation Plan.

The parties agreeing to the Plan are experienced intervenors in these proceedings who represent the major stakeholders with an interest in Enbridge's rates. These parties have given this Plan careful consideration over many days of negotiation. It is anticipated that the average annual rate increase from the implementation of this Plan will be less than 2% for residential customers.

In the Natural Gas Forum the Board set out the relevant criteria for an acceptable incentive rate plan. The Report stated that an acceptable plan must:

1. establish incentives for sustainable efficiency improvements that benefit customers and shareholders;
2. ensure appropriate quality of service for customers; and
3. create an environment that is conducive to investment, to the benefit of customers and shareholders.

The Board finds that this Plan meets these criteria and is in the public interest. It is an important step forward in establishing long term rate stability in a manner that will promote efficiencies for the benefit of both ratepayers and shareholders.

The Board accepts the Revised Settlement Agreement dated February 4, 2008.

- 3 -

The Board will issue a further decision on the outstanding issue in due course.

Given the timing of this Decision, the Board expects that the new rates would be implemented with the billing cycles commencing July 1, 2008. Accordingly, the Board requires Enbridge to file a draft rate order by April 2, 2008. Intervenor wishing to comment on the draft rate order are to file their submissions by April 16, 2008.

DATED at Toronto, February 11, 2008.

Original signed by

Gordon Kaiser
Presiding Member and Vice Chair

Original signed by

Paul Sommerville
Member

Original signed by

Cynthia Chaplin
Member



ONTARIO ENERGY BOARD

FILE NO.: EB-2007-0606
EB-2007-0615

VOLUME: 1

DATE: January 31, 2008

BEFORE:	Gordon Kaiser	Presiding Member and Vice Chair
	Paul Sommerville	Member
	Cynthia Chaplin	Member

EB-2007-0606
EB-2007-0615

IN THE MATTER OF the Ontario Energy Board
Act, 1998, S.O. 1998, c.15 (Sched. B);

AND IN THE MATTER OF an Application by
Union Gas Limited for an Order or Orders
approving a multi-year incentive rate
mechanism to determine rates for the
regulated distribution, transmission and
storage of natural gas, effective January
1, 2008;

AND IN THE MATTER OF an Application by
Enbridge Gas Distribution Inc. for an
Order or Orders approving or fixing rates
for the distribution, transmission and
storage of natural gas, effective January
1, 2008;

AND IN THE MATTER OF a combined
proceeding Board pursuant to section
21(1) of the Ontario Energy Board Act,
1998.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario, on Thursday,
January 31, 2007,
commencing at 9:40 a.m.

Volume 1

BEFORE:

GORDON KAISER	Presiding Member and Vice Chair
PAUL SOMMERVILLE	Member
CYNTHIA CHAPLIN	Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
VINCE COONEY	Board Staff
RUDRA MUKHERJI	
LAURIE KLEIN	
JERRY FARRELL	Enbridge Gas Distribution Ltd.
HELEN NEWLAND	
MICHAEL PENNY	Union Gas Ltd.
VINCE DeROSE	Industrial Gas Users Association (IGUA)
RANDY AIKEN	Building and Owners and Managers Association of the Greater Toronto Area, London Property Management Association, and Wholesale Gas Service Purchasers Group
MICHAEL BUONAGURO	Vulnerable Energy Consumers Coalition
JAY SHEPHERD	School Energy Coalition
RICHARD STEPHENSON	Power Workers' Union
DAVID MacINTOSH	Energy Probe Research Foundation
ROBERT WARREN	Consumers Council of Canada
MURRAY KLIPPENSTEIN	Pollution Probe
DAVID POCH	Green Energy Coalition

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PETER SCULLY	City of Timmins
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VALERIE YOUNG	Ontario Association of Physical Plant Administrators
ROBERT FRANK	Coral Shell Energy TransAlta Energy Cogeneration LP TransAlta Energy Corp.

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U N D E R T A K I N G SDescriptionPage No.

NO UNDERTAKINGS WERE FILED DURING THIS PROCEEDING

1 Thursday, January 31, 2008

2 --- On commencing at 9:40 a.m.

3 MR. KAISER: Please be seated. The Board is sitting
4 today in connection with an application filed by Enbridge
5 Gas Distribution Inc. on May 11th with respect to incentive
6 rate mechanism for the purpose of setting distribution
7 rates effective January 1st, 2008, and, in particular, with
8 respect to a settlement agreement filed by the parties on
9 January 29th in this matter.

10 Can we have the appearances, please?

11 **APPEARANCES:**

12 MR. MILLAR: Good morning, Mr. Chair, Michael Millar
13 for Board Staff. With me are Mr. Vince Cooney, Ms. Laurie
14 Klein and behind me, Mr. Rudra Mukherji.

15 MR. KAISER: Thank you.

16 MR. PENNY: Mr. Chairman, Michael Penny for Union Gas
17 Limited.

18 MR. KAISER: Mr. Penny.

19 MR. POCH: Good morning, Mr. Chairman. David Poch for
20 Green Energy Coalition.

21 MR. KAISER: Thank you.

22 MR. KLIPPENSTEIN: Murray Klippenstein for Pollution
23 Probe.

24 MR. KAISER: Mr. Klippenstein.

25 MR. SHEPHERD: Good morning, Mr. Chairman. Jay
26 Shepherd on behalf of the School Energy Coalition.

27 MR. KAISER: Mr. Shepherd.

28 MR. WARREN: Robert Warren for the Consumers Council

1 of Canada.

2 MR. KAISER: Mr. Warren.

3 MR. FARRELL: Good morning, Mr. Chair. Jerry Farrell
4 and Helen Newland for Enbridge Gas Distribution.

5 MR. KAISER: Mr. Farrell.

6 MR. SCULLY: Good morning, Mr. Chairman. Peter Scully
7 for the City of Timmins.

8 MR. KAISER: Mr. Scully.

9 MR. STACEY: Good morning. My name is Jason Stacey.
10 I'm an intervenor and also representing Sithe Global Power
11 Goreway.

12 MR. KAISER: Thank you.

13 MR. MACINTOSH: David MacIntosh for Energy Probe
14 Research Foundation.

15 MR. KAISER: Mr. MacIntosh.

16 MR. DeROSE: Good morning. Vince De Rose for
17 Industrial Gas Users Association.

18 MR. KAISER: Mr. DeRose.

19 MS. YOUNG: Good morning. Valerie Young for the
20 Ontario Association of Physical Plant Administrators.

21 MR. KAISER: Ms. Young.

22 MR. AIKEN: Good morning. Randy Aiken for the
23 Building Owners and Managers Association of the Greater
24 Toronto Area, the London Property Management Association,
25 and the Wholesale Gas Service Purchasers Group.

26 MR. KAISER: Thank you, Mr. Aiken.

27 MR. BUONAGURO: Michael Buonaguro, counsel for the
28 Vulnerable Energy Consumers Coalition.

1 MR. KAISER: Mr. Buonaguro.

2 MR. KING: Richard King for the Association of Power
3 Producers of Ontario.

4 MR. KAISER: Mr. King.

5 MR. FRANK: Robert Frank for Coral Shell Energy and
6 TransAlta.

7 MR. KAISER: Mr. Frank.

8 MR. STEPHENSON: Good morning, Mr. Chair. Richard
9 Stephenson for the Power Workers' Union.

10 MR. KAISER: Mr. Stephenson. Mr. Millar, how do you
11 want to proceed?

12 **PROCEDURAL MATTERS:**

13 MR. MILLAR: Mr. Chair, I think the first order of
14 business is probably going to be discussing the process
15 that the Board establishes to deal with the partial
16 settlement that has been filed. However, I am not sure if
17 there were any preliminary matters to that. I hadn't heard
18 any, but I thought before we got into that, I would see if
19 anyone had anything to discuss.

20 MR. KAISER: Mr. Farrell --

21 MR. POCH: Sorry, Mr. Chair. Just to inform you, Mr.
22 Chair, if we do get through the procedural matters,
23 including presentation of the settlement, and there is time
24 left in the day, I have spoken to counsel for the two
25 companies and they're prepared -- I am able to proceed with
26 my cross-examination on that. I understand Mr.
27 Klippenstein won't be able to before tomorrow, but I can
28 proceed and the companies are willing to put their panels

1 up on that issue for me to cross one after the other, and
2 then do it again for Mr. Klippenstein in the morning.

3 That would be hopefully valuable to the Board's use of
4 time, and certainly conveniences me and my car awaiting a
5 snow storm in Kingston. I don't know if we will get there.

6 MR. KAISER: We'll try. Mr. Farrell how do you want
7 to proceed?

8 MR. FARRELL: I would like to start with the
9 settlement proposal.

10 MR. KAISER: All right. Any objection, Mr. Shepherd?

11 MR. SHEPHERD: Yes. Mr. Chairman, I think that before
12 you hear the settlement proposal, we should perhaps discuss
13 the question of how it should be handled by the Board. As
14 Mr. Millar has suggested, I don't know --

15 MR. FARRELL: Mr. Shepherd, can you speak a little
16 louder? I'm having difficulty hearing you.

17 MR. SHEPHERD: I'm coming off an illness. I am trying
18 my best.

19 MR. FARRELL: Okay. Can I come and stand by you?

20 MR. SHEPHERD: I will try to lean forward. It seems
21 to me it is better if we figure out what the process should
22 be before we launch into what could be a lengthy discussion
23 of the partial settlement, if that is acceptable to the
24 Board.

25 MR. KAISER: That would probably make sense. We have
26 your letter, Mr. Farrell -- it's Ms. Newland's letter.
27 That's the letter of January 30th. Do you want to take us
28 through that and we will let Mr. Shepherd respond, or

1 others?

2 **PRESENTATION OF SETTLEMENT PROPOSAL BY MR. FARRELL:**

3 MR. FARRELL: All right. I will just go right to page
4 2 of the letter, Mr. Chair. The top of page 2 refers to
5 the settlement conference guidelines and the Rules of
6 Practice and Procedure. So we believe that the
7 presentation complies with both of those documents.

8 So we would start by presenting the settlement
9 agreement to the Board. We will have four members of the
10 Enbridge team, Rick Campbell, Kevin Culbert, Patrick Hoey
11 and Anton Kacicnik, who will be available to assist me in
12 presenting the report and handling the technical or
13 detailed questions, if there are any.

14 Then we come to -- point 2 is a cross-examination of
15 those people, and if they do want to have a cross-
16 examination, then we will swear them. I will have a short
17 examination-in-chief, and then parties can cross-examine.

18 The third point is there will be re-examination, if I
19 so choose, and then we come to the fourth point, which is
20 that we propose that any of the opposing parties - and the
21 opposing parties, as defined, are School Energy Coalition,
22 Pollution Probe and the Green Energy Coalition - and they
23 will offer evidence, if they have any, on the settlement
24 agreement.

25 We say, as you see in the last couple of lines of item
26 number 4, that they have the burden of leading at the close
27 of our case whether -- whatever evidence they feel is
28 necessary to support their position. If they elect not to

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1 offer any evidence, then we say it is fair that they
2 describe to us the positions they intend to take in
3 argument so we know the case we have to meet, rather than
4 being ambushed.

5 Then we will present our argument in support of the
6 settlement agreement. That's point 6. Opposing parties
7 will present their argument, and then we will present our
8 entire argument, and then the Board will deliberate and
9 issue a decision.

10 Point 8 goes to the package issue. If the Board
11 decides to accept -- or, excuse me, not to accept one or
12 more components of the package, which is the package of
13 partially settled issues, then the people who support the
14 partial settlement will advise everyone whether we can
15 accept the Board's disallowance of one component or
16 another.

17 If we can't reach an agreement to accept the Board's
18 decision, then under the terms of the settlement agreement,
19 there won't be one and the Board will proceed to hear all
20 of the issues on the issues list.

21 If we get that far, where there is no settlement
22 agreement, Enbridge is suggesting that there may be a
23 better way than just going to all of the issues,
24 considering the number of completely settled issues in the
25 agreement, to see whether we might be able to convene an
26 issues conference before the Board resumes the hearing, to
27 see if we can narrow the areas of dispute so that we're not
28 -- the Board doesn't have to hear absolutely everything.

1 MR. KAISER: Thank you. Can we hear from any parties
2 opposing this proposal? Mr. Shepherd.

3 **SUBMISSIONS BY MR. SHEPHERD:**

4 MR. SHEPHERD: Mr. Chairman, some of us in this room
5 will remember a TV show called I Love Lucy, in which one of
6 the key characters, Desi Arnaz, had a line which some of us
7 will remember, Lucy, you've got some explaining to do.

8 And I really understand that we have some explaining
9 to do. Why are we, the School Energy Coalition, taking
10 this whole case to hearing by ourselves? Why us, when
11 everybody else agrees and we don't?

12 You can imagine that -- I am going to get to procedure
13 in a second. I think the Board is entitled to understand
14 why we've got everybody here to argue about this. You will
15 be, I guess you will understand that I have had some
16 lengthy discussions with my clients about this, and my
17 clients in fact wanted me to pass on the message to you
18 that they wanted to actually attend today so that they
19 could sort of present to you that they have not taken this
20 lightly.

21 Unfortunately, they were unable to deal with their
22 schedules to come here. Mr. Williams, the coordinator of
23 the School Energy Coalition, is a province-wide labour
24 negotiator and he is in the -- I think it is the support
25 staff negotiation this morning. So we probably would want
26 him there rather than here. Ms. Anderson, who is, who
27 initiated the School Energy Coalition in the first place,
28 is committed to multi-party policy debate this morning.

1 **DECISION:**

2 The Board today has heard submissions from interested
3 parties with respect to the settlement agreement filed in
4 this proceeding. That's the agreement of January 29th,
5 which is marked as Exhibit N1, tab 1, schedule 1.

6 This is a settlement agreement between Enbridge and
7 various parties. Some 19 parties participated in this
8 settlement conference. That's set out at page 3 of that
9 document. The settlement agreement, of course, relates to
10 the application filed by Enbridge Gas Distribution Inc. on
11 May 11th for the approval of rates effective January 1st,
12 2008, and, in particular, a plan for the setting those
13 rates through an incentive rate mechanism.

14 The specific issue we are dealing with right now is
15 this: What is the proper procedure the Board should follow
16 in determining whether to accept this settlement agreement?
17 This Settlement Agreement is a Partial Agreement.

18 There are a number of parties supporting Enbridge
19 known as the Agreeing Parties. And there are three parties
20 who do not agree, known as the Opposing Parties. The major
21 one is the School Energy Coalition that opposes the
22 settlement agreement on a number of points. Pollution
23 Probe and Green Energy Coalition oppose the settlement
24 agreement on some narrow points.

25 The starting point in this analysis is, of course, the
26 Board's Rules Of Practice and Procedure, and, in
27 particular, section 32 of those Rules. Rule 32.01 provides
28 that:

1 "Where some or all of the parties reach an
2 agreement, the parties shall make and file a
3 settlement proposal describing the agreement in
4 order to allow the Board to review and consider
5 the settlement."

6 That's been done. That's Exhibit N1 that I just
7 referred to. The next rule, 32.02, provides that:

8 "The settlement proposal should identify, for
9 each of those issues, those parties that agree
10 with the settlement on that issue and any parties
11 who disagree."

12 That has also been done.

13 Rule 32.03, which had some relevance to the discussion
14 this morning, provides that:

15 "The parties shall ensure that the settlement
16 proposal contains or identifies evidence
17 sufficient to support the settlement proposal and
18 shall provide such additional evidence as the
19 Board may require."

20 That has also been done. In Exhibit N1 the Applicant
21 refers to a substantial amount of evidence which is already
22 in the record.

23 The next rule provides, 32.04:

24 "A party who does not agree with the settlement
25 of an issue will be entitled to offer evidence in
26 opposition to the settlement proposal and to
27 cross-examine on the issue at the hearing."

28 That is what we have been discussing this morning. I

1 don't know that anyone takes issue with that.

2 Rule 32.05 provides that:

3 "Where evidence is introduced to the hearing that
4 may affect the settlement proposal any party may,
5 with leave of the Board, withdraw from the
6 proposal upon giving notice and reasons to the
7 other parties."

8 The last rule, 32.06, provides:

9 "Where the Board accepts a settlement proposal as
10 the basis for making a decision in a proceeding,
11 the Board may base its findings on the settlement
12 proposal and on any additional evidence that the
13 Board may have required."

14 There are also some general principles, and those have
15 been referred to by Mr. Farrell and others. One is the
16 introductory paragraph of the Board's Settlement
17 Guidelines, which states follows:

18 "The Ontario Energy Board is committed to the
19 settlement conference process as part of its
20 objective of achieving greater regulatory
21 efficiency and effectiveness. A successful
22 settlement conference will result in the Board
23 decisions that are made in the public interest
24 and that are accepted by the parties while, at
25 the same time, achieving savings and time and
26 money to all participants."

27 There is another principle that was raised by Mr.
28 Farrell. He referred to a recent decision, the Hydro

1 Ottawa case of January 24th at page 42, where the Presiding
2 Member stated as follows:

3 "It is the overall cost consequences or rate
4 outcome that the Board accepts, not necessarily
5 the results of specific methodologies or
6 proposals that may or may not deviate from the
7 Board's regulatory instruments that may otherwise
8 apply."

9 With those general principles, we turn to what are
10 really the main issues. It is worth noting, and no one
11 contests this, that our obligation is to make findings that
12 are in the public interest with a view to achieving just
13 and reasonable rates. Secondly - and this has been the
14 subject of much discussion - we must develop a process
15 which is a fair process that doesn't prejudice any of the
16 parties.

17 It is significant in considering these matters, that
18 the parties agreeing to this Plan are experienced
19 intervenors. They have a long-standing interest in these
20 proceedings and represent a wide array of interests with
21 various customer perspectives.

22 I should add that in addition to the substantial
23 number of parties, a lengthy period (at least 20 days), of
24 serious negotiation has taken place to bring us to where we
25 find ourselves today.

26 We come next to the issues that the Board faced in the
27 submissions this morning. There are three. No one
28 contests that those opposing have the right to cross-

1 examine the applicant on its evidence in support of this
2 proposal. No one contests that they have a right to call
3 evidence. The Rules make that perfectly clear.

4 One new issue that has arisen, however: What evidence
5 may the parties rely on? Mr. Warren for the Consumers
6 Council of Canada takes the view that the opposing parties
7 must rely on evidence that is produced in these
8 proceedings, in response to the evidence Mr. Farrell
9 intends to call today.

10 Mr. Shepherd, for his client, the School Energy
11 Coalition, refers us to the Rules, particularly Rule 32.03,
12 that states:

13 "Parties shall ensure that the settlement
14 proposal contains or identifies evidence
15 sufficient to support the settlement proposal and
16 shall provide such additional evidence as the
17 Board may require."

18 The Applicant's material, the settlement proposal,
19 identifies volumes of evidence in the record. Mr. Shepherd
20 or any Opposing Party, for that matter, is also entitled to
21 rely on the same record.

22 Mr. Shepherd and any other Opposing Party is also
23 entitled to call evidence. We will come to that shortly.

24 Another point we should determine is this: What is it
25 that the Panel is deciding in this matter, today? We
26 believe we are deciding whether to accept or not accept the
27 settlement proposal. We have no intention, regardless of
28 what the evidence is, of substituting our view of some

1 specific factor for the view that is contained in the
2 settlement proposal. That is to say we are not going to
3 substitute some different value for the X factor or the Y
4 factor. The decision before us is to accept the settlement
5 proposal, or not accept it.

6 The other issue which has drawn submissions from Mr.
7 Penny and others is the non-severability clause. We don't
8 believe it is necessary to make a ruling on that at this
9 time. It is clear that the Board has departed in the past
10 from that Rule. Non Severability is not part of the Rules.

11 I referred to the Hydro Ottawa decision of February
12 3rd, 2006 as an example. There are good reasons for non-
13 severability - we have heard them this morning. And there
14 are reasons why, in certain circumstances, that rule might
15 work an unfairness. But the Board can depart from the rule
16 when it determines the rule is not in the public interest.
17 We will make that determination when we have heard the
18 evidence in this case. Not at this point. That, then,
19 takes us to the next question, What do we do next? We are
20 prepared to hear Mr. Farrell's panel. The parties, of
21 course, are free to cross-examine. We are prepared to let
22 cross examination start tomorrow. Mr. Shepherd and any
23 other Opposing Parties of course may call evidence. If
24 they intend to do so they should notify the Applicant and
25 Board Counsel by five o'clock today. We will then
26 determine what to do in terms of scheduling should that
27 occasion arise. Following the hearing of evidence, we will
28 have argument. We are inclined, contrary to Mr. Shepherd's

1 submissions, to proceed to oral argument as quickly as we
2 can. Of course it will depend how we make out tomorrow.
3 The order as set out in Ms. Newland's letter of January
4 30th is acceptable and straightforward: The Applicant,
5 followed by the Agreeing Parties, followed by the Opposing
6 Parties, followed by Reply by the Applicant. But we will
7 leave the scheduling of argument to tomorrow. We don't
8 need to deal with that right now. But we do not believe
9 that it is necessary to have a long extended process. This
10 record has been known to all of the parties for some time.

11 So with that, Mr. Farrell ...

12 MR. PENNY: Mr. Chairman, may I...

13 [Board Panel confers]

14 MR. KAISER: Ms. Chaplin reminds me I was a bit
15 unclear. We will hear your argument -- your evidence
16 today, if that's acceptable, if you are ready to go. If
17 the parties are not ready to cross-examine until tomorrow,
18 we will adjourn until tomorrow morning.

19 MR. PENNY: Mr. Chairman, may I just add one
20 additional issue which was not addressed in the issues this
21 morning because it relates to Union. It has nothing to do
22 with the Enbridge settlement per se. But we have one
23 outstanding matter which it was agreed by all parties would
24 proceed a week or two ago when the hearing was originally
25 scheduled. We have one witness, it is Mr. Birmingham, the
26 vice president who has been hanging around on tenterhooks
27 for a while. We were hoping that we could design the
28 process in a way that enabled us to have him give his

1 evidence on the customer addition issue, which is the
2 outstanding issue we have with Mr. Klippenstein and Mr.
3 Poch, at an early stage in the process, if not this
4 afternoon -- preferably this afternoon, but if not, perhaps
5 first thing tomorrow morning, something of that nature. I
6 don't know if that fits with the concept that --

7 MR. KAISER: I leave it up to you, Mr. Penny and Mr.
8 Farrell. It doesn't matter to us which panel goes first.
9 What is your choice, Mr. Farrell?

10 MR. FARRELL: I have a question, if I might, that will
11 govern my response. The plan was for counsel to take the
12 Board at a high level through the settlement proposal and
13 to provide the four people to assist if the Board has
14 questions of clarification. And the evidence that they
15 would be providing would speak to the settlement agreement,
16 per se. So we could either do the walk through the
17 settlement proposal, or, if that is not necessary, then Mr.
18 Penny and I can have a brief chat and I don't think it...

19 MR. KAISER: What is your choice, Mr. Penny? Do you
20 want to go now?

21 MR. PENNY: If Mr. Farrell wants to take you through
22 the settlement agreement just for the purposes of
23 presenting it, that is fine with us.

24 MR. KAISER: How long will your people be in-chief?

25 MR. PENNY: Well, probably five to ten minutes, and
26 Mr. Poch has indicated he has roughly an hour of cross-
27 examination and Mr. Klippenstein, I am not sure.

28 MR. KAISER: What's your choice, Mr. Poch?

1 MR. POCH: I am in the Board's hands, Mr. Chair. I
2 think it would be helpful for the Board perhaps if you
3 heard Union's panel then Enbridge's panel, which I gather
4 is a separate panel from their main one, seriatim just so
5 you have it in one place on the record. That would
6 obviously be convenient for those of us who are just here
7 for that, but I am in your hands, Mr. Chairman.

8 MR. KAISER: Mr. Klippenstein.

9 MR. KLIPPENSTEIN: As I mentioned to my friend, I have
10 a little difficulty proceeding today with Mr. Birmingham,
11 so I have a problem on that route.

12 [Board Panel confers]

13 MR. KAISER: Mr. Penny, could Mr. Birmingham being on
14 hand 9:30 tomorrow?

15 MR. PENNY: Absolutely.

16 MR. KAISER: Let's do that, and we will proceed with
17 the high-level overview at this point.

18 MR. KAISER: Thank you.

19 MR. SHEPHERD: Mr. Chairman, just before you get to
20 Mr. Farrell, in light of your ruling -- which as I
21 understand it is essentially a two-stage process. In light
22 of your ruling, I will have to get instructions of course
23 from my client as to how we want to proceed. I am not sure
24 that I can get detailed instructions by five o'clock today,
25 particularly with respect to witnesses, because I have to
26 take them through all of the issues. I wonder if I could
27 beg the court's indulgence to have until 9:30 tomorrow
28 morning for that.

1 MR. KAISER: That's fine. Is that all right with you?

2 MR. FARRELL: Yes, it is.

3 MR. KAISER: All right. You are up. I presume we
4 should swear the witnesses?

5 MR. FARRELL: Yes, please.

6 **ENBRIDGE GAS DISTRIBUTION INC. - PANEL 1**

7 **Kevin Culbert; Sworn**

8 **Richard Campbell; Sworn**

9 **Patrick Hoey; Sworn**

10 **Anton Kacicnik; Sworn**

11 **EXAMINATION BY MR. FARRELL:**

12 MR. FARRELL: Gentlemen, for the record, could each of
13 you state your name and title with Enbridge.

14 MR. KACICNIK: Anton Kacicnik. I am the manager of
15 rate research and design.

16 MR. HOEY: Patrick Hoey, I am the director of
17 regulatory affairs.

18 MR. CAMPBELL: Richard Campbell, manager of regulatory
19 research.

20 MR. CULBERT: And Kevin Culbert, manager of regulatory
21 accounting.

22 MR. FARRELL: So this panel is speaking to the
23 settlement agreement, and I think their evidence, plus my
24 presentation -- which isn't evidence but just to take you
25 through -- we think fits within the "such additional
26 evidence" phrase as used in Rule 32.03.

27 So, as you mentioned, Mr. Chair, Enbridge, 19
28 intervenors and Board Staff participated in the settlement