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BY EMAIL

February 14, 2012

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: Board Staff Submission
Enbridge 2012 Rate Adjustment Application
Board File No. EB-2011-0277

Dear Ms. Walli:

Please find attached the Board Staff Submission for the above proceeding. Please forward the submission to Enbridge and all intervenors in this proceeding.

Yours truly,

Original Signed By

Colin Schuch
Case Manager

/ attach.

ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSION

Enbridge Gas Distribution Inc.

2012 Rates Application

Board File No. EB-2011-0277

February 14, 2012

Introduction

Enbridge Gas Distribution Inc. ("Enbridge" or the "Company" or the "Applicant") filed an Application on September 1, 2011 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2012. The Board assigned file number EB-2011-0277 to the Application.

The Application is for rates for 2012 to be set under the guidance of the multi-year Incentive Regulation plan methodology as approved by the Board under File No. EB-2007-0615 (the "IR Plan"). 2012 is the fifth and final year of the five-year plan. The rates under the plan are adjusted each year by the application of a Distribution Revenue Requirement per Customer Formula.

A Settlement Agreement was filed on November 29, 2011 that indicated that a settlement had been reached among the parties on most of the issues in the proceeding, with the exception of the following for which there was no settlement:

- Y factor - Gas Cost & Carrying Cost (Issue 9)
- Z factor – 2012 Pension Funding (Issue 10)
- Z factor – 2012 Cross Bores / Sewer Laterals (Issue 11)
- Variance account for Z factor - 2012 Pension Funding (Issue 13)
- Variance account for Z factor - 2012 Cross Bores / Sewer Laterals (Issue 14)
- Transition Impact of Accounting Changes Deferral Account (Issue 15)
- Cost allocation of Z factors (Issue 17)

The Board accepted the Settlement Agreement and issued an Interim Rate Order on December 9, 2011 which gave effect to the proposed rates on an interim basis beginning January 1, 2012. The Interim Rate Order excluded the revenue requirement impact of the two Z factors noted above.

The Board held an oral hearing on the unsettled issues on January 24 and 25, 2012.

Enbridge filed its Argument-in-Chief on February 3, 2012.

Board staff is making submissions on all of the unsettled issues. The submissions are set out below.

Y factor - Gas Cost & Carrying Cost (Issue 9)

The Board approved a System Reliability Settlement Agreement in its EB-2010-0231 Decision and Order dated August 26, 2010 (the "SRSA"). The SRSA was the product of a lengthy consultation process that Enbridge undertook with its stakeholders. The SRSA was designed to address Enbridge's concerns about the reliability of direct purchase gas deliveries showing up on its system on peak winter days. There had been an observed trend towards direct purchase gas delivery arrangements struck on a "non-firm" delivery basis (as opposed to a "firm" delivery basis which is more reliable). Although the SRSA addressed other matters, the "non-firm" delivery trend was at the heart of the utility's system reliability concern.

The SRSA allowed the Company to place greater emphasis on TransCanada Pipeline Limited's ("TCPL") firm transportation service in its system supply portfolio. Firm gas delivery arrangements are generally a more expensive transportation option than non-firm arrangements. This means that shifts in the system supply mix towards a greater percentage of firm supplies renders the overall system supply portfolio more expensive. Ultimately, the cost of system gas supply is recovered in the regulated rates charged to Enbridge's ratepayers.

In this proceeding, on September 30, 2011 the Company filed its 2012 gas supply plan, as it typically does, as part of its pre-filed evidence package. The gas supply plan revealed that the Company modified its gas transportation plans for 2012 by acquiring an additional 75,000 Gj/day of TCPL STFT ("Short Term Firm Transportation") capacity for three winter months. This was over and above the additional firm amounts already introduced by the SRSA. This was done because Enbridge had concerns about the reliability of its peaking supply contracts and decided to drop some of these contracts for 2012. Effectively the 75,000 Gj/day of TCPL STFT replaced, in part, what was previously a peaking supply source. The evidence indicates that the cost associated with Enbridge's decision in this respect may be upwards of $7.8 million in 2012.[1]

[1] J1.1

Each year, the Company undertakes a planning process to develop its gas supply and demand plan for the upcoming year. The Company witnesses testified that this process looks at number of factors and considers the specific circumstances of each year in isolation.[2] The gas supply plan is a basic component of its annual budget and an important element of its annual regulatory rate filing to the Board. It is also the foundation of the quarterly commodity QRAM process.

Is there a Breach of the SRSA?

There is a suggestion by some intervenors that Enbridge may have breached its commitments regarding the "Material Change" provision of the SRSA. That provision requires Enbridge to report to the parties on the implications of a material change in circumstances that affects the security of supply to Enbridge's franchise area. The suggestion was that the changes introduced into the 2012 supply plan may represent such a breach. The SRSA offers three inclusions (see below), but is neither exhaustive nor definitive as to what precisely constitutes a "Material Change". Enbridge testified that it did not consider the 2012 supply plan a "Material Change".[3]

The material change wording appears as follows:

> IV. MATERIAL CHANGE IN CIRCUMSTANCES
>
> In the event of a change in circumstances that affects security of supply to Enbridge's franchise area and/or the Long Term Resolution in any material way ("Material Change"), Enbridge will review the implications of the change and, within a reasonable period of time after the change has become known, will report to the parties to this Settlement Agreement regarding the implications of the change on system reliability and/or the Long Term Resolution. For this purpose, a Material Change will include, but not be limited to, the following:
>
> - construction of new facilities that increase the availability of short haul firm transportation service to Enbridge's franchise area
> - a material change in the availability of TCPL discretionary services
> - the conclusion from any future Board process that addresses matters relevant to Enbridge's system reliability.

[2] Tr.1 76
[3] Tr.1 79

> While Enbridge will be responsible to monitor market or regulatory developments for a Material Change, nothing in this agreement precludes any party from bringing its concerns regarding a Material Change to the Board for consideration of any impact on the Long Term Resolution.[4]

Board staff submits that the 2012 supply plan is not a material change to the SRSA and hence should not trigger the review contemplated in the SRSA. The SRSA is now operational and its provisions are incorporated into the base supply plan. Board staff notes that the base SRSA plan is not a static scenario. The supply planning undertaken by Enbridge is a process, not an end state fixed at some point in time and changes are expected. Board staff's view is that the 2012 plan represents a relatively minor modification as opposed to a response to a material change in circumstances. It would be unreasonable to suggest that relatively minor modifications should trigger a material change review.

Enbridge must take into account of each year's requirements, on top of the SRSA, and work these plans into the base model of the SRSA. Board staff would expect some change each year, depending on demand. In planning its requirements for 2012, Enbridge determined that it needed to contract for additional STFT. In Board staff's submission, its reasons for doing so appear to be prudent and valid.

There was much discussion at the hearing about Enbridge's annual supply planning process. Board staff submits that the development of the 2012 supply plan was no different, in any fundamental respect, than the development of any supply plan for any given year. Indeed, Enbridge called it "normal business".[5] Board staff agrees.

Some parties seem to suggest that the 200,000 GJ/day TCPL STFT "Peaking day replacement" provision that is referenced in section 2 (page 9 of 16) of the SRSA is a fixed amount that cannot be changed without parties approval. Board staff does not interpret such a requirement in the SRSA.

[4] SRSA p.15 EB-2010-0231
[5] Tr.1 66

Enbridge Needs Flexibility

Board staff submits that Enbridge needs to retain the flexibility to plan its gas supply. Enbridge is accountable for reliably delivering gas to the franchise and must therefore use its judgement to decide what is prudent to include in its plans for Board approval.

However Enbridge must also balance reliable gas supplies with reasonable costs to ratepayers. Board staff has observed Enbridge's commentary on system gas planning as almost entirely focussed on reliability, with much less attention on the cost effectiveness side of the equation. Board staff submits that Enbridge may be inclined to allow reliability concerns to outweigh cost reasonableness – especially given the fact that gas costs are a pass-through cost to ratepayers.

Consultation Practices

Board staff submits that there is an issue concerning the Company's communications practices with stakeholders during its annual supply and demand planning process. In practice, there appears to be neither pre-consultation nor any opportunity for input at the planning stages. It is only when Enbridge files its supply plan that it is available for public review. Given the typical time constraints of the rate order approval process, there is only limited opportunity for a thorough review and understanding of the supply plan. This is particularly true during the IR Plan rate-setting process which has been established as an expedited Board process.

In light of these circumstances, Board staff's submission is that interested stakeholders and, ultimately the Board, would benefit if the Company consulted with the parties during its planning process. Importantly – this should happen **before** it files its annual gas supply plan for approval with the Board.

Some of the benefits might include the following:

- Stakeholders can better understand the demand/supply planning process, the options considered and rejected, and the reasons why the plan chosen by the Company is the best plan.
- All parties could understand if there is a Material Change to the SRSA and discuss how to approach it.
- Stakeholders may introduce valuable new options or approaches that the Company hadn't considered.

- Ratepayers may benefit if cost effectiveness is brought into greater focus as part of the planning process.
- Ratepayers will get a system supply plan that reflects meaningful engagement by parties other than just the Company planners.
- The hearing process would be more efficient with a more informed stakeholder community.

To be clear, Board staff's proposal does not impair the right of Enbridge to put forward its preferred plan: the proposal would merely require Enbridge to consult prior to finalizing its plans.

Enbridge said it is very much opposed to any sort of stakeholder consultation.[6] In response Board staff submits that system supply is an important area undergoing changes, and is one that has very significant cost consequences for ratepayers. It is not well understood by stakeholders. Its importance is growing due to the decline of the direct purchase markets. It will also face changes due to new supply sources and new transportation options for natural gas into the province.

Z factor – 2012 Pension Funding (Issue 10)

Enbridge has requested a Z factor in the amount of $16.6 million to fund a deficit in its pension plan. The deficit arose as a result of changes to Ontario pension regulations; notably, changes introduced to the *Pension Benefits Act* of Ontario on June 23, 2009. Actuarial valuations are typically done every three years, and Enbridge's most recent valuation was done as of December 31, 2009. At that time, it showed the Company's pension plan to be in a surplus position.

The new regulations require pension plan sponsors who are currently enjoying a contribution holiday to file an annual cost certificate with the Financial Services Commission of Ontario ("FSCO") to prove that their plans remain in a surplus position. If the cost certificate shows that the pension plan is not in a surplus in any year, then contributions must be made to cover the annual services cost of the plan. Enbridge has been on such a contribution holiday and accordingly, had to prepare the required cost certificate. In preparation last October, Enbridge prepared an estimate of its pension plan position at year end 2011. The estimate showed that its plan was in a deficit

[6] Arg in Chief p4

position in 2011, mostly due to financial market conditions, and most particularly due to low interest rates. The funding requirement is for a contribution equal to the annual services cost in 2012. Enbridge estimated this at $16.6 million for 2012, the amount of the requested Z factor. The final cost certificate is expected to be available to be filed in late February or early March. The witnesses testified that they did not expect the annual services cost to be materially different than what appears in the estimate of $16.6 million.[7]

Board staff accepts that the pension legislation requires that evaluations be performed from time to time. Further, Board staff accepts that the annual cost certificate being prepared for this year shows that Enbridge, as the plan sponsor, is required by the legislation to provide the funding in the amount of $16.6 million. The calculation of the required funding amount is related to the number of members receiving benefits and the estimated costs to service those members in 2012. Board staff understands that the calculations are performed by an actuarial consulting firm. In view of these facts, Board staff accepts the calculations as filed. Board staff also accepts the nature of the costs in question (i.e. that they are limited to plan member services costs for 2012).

However, setting aside the calculations, the main question is: Should the ratepayer or the plan sponsor pick up the cost of the funding requirement? Enbridge says that it is a 100% ratepayer responsibility on the basis that it is a legitimate cost to support the service to customers. Board staff disagrees. We submit that it is **not** 100% a ratepayer responsibility; rather, it is a **shared** responsibility. Board staff's reasoning is outlined below.

In Board staff's submission, the Board should assess the pension funding requirement in the context of what happens to firms operating in the non-regulated world. In the non-regulated world, companies finding themselves in a similar position to Enbridge in relation to their pension obligations must provide the required pension funding from internal sources (i.e., it is a shareholder responsibility and it is shareholder funded).

Operating in a competitive environment, non-regulated companies must pay close attention to not only their own prices, but also the prices of their competitors. The point is that competitive firms cannot immediately pass through 100% of costs such as this in their prices. Enbridge on the other hand operates in a rate-regulated environment where

[7] Tr.1 146

100% of Board-sanctioned costs can be reflected immediately in prices without any consequence in terms of a competitive reaction (because there are no competitors).

Board staff submits that it is reasonable to assume that the non-regulated firms may eventually be able to recover some portion of the required funding through price increases, but this will be constrained by competition and is not likely to be a 100% recovery. This is because some firms will have no pension funding requirement and, all else being equal, the cost structure of such firms will be more competitive. The point is that firms with new costs operating in competitive markets must absorb some portion of these costs: In other words, these are costs that the shareholder must bear.

Enbridge is proposing to do exactly what the non-regulated world cannot: immediately pass through pension cost increases in its prices. Board staff submits that in order to emulate the non-regulated world, the pension funding matter for Enbridge should be neither 100% ratepayer recoverable nor should it be zero percent ratepayer recoverable. Board staff would suggest that a shared cost recovery of 50:50 on the pension underfunding would be reasonable. Sharing of the costs would also generate an incentive for Enbridge to manage its pension fund closely in an effort to minimize or prevent any future funding obligations.

Variance account for Z factor - 2012 Pension Funding (Issue 13)

Board staff submits that the requested variance account treatment of the Z factor is a reasonable approach to ensure that only the final amounts for the Z factor, once they become known, are accounted for in rates. This would obviously be adjusted for any sharing that the Board may order.

Z factor – 2012 Cross Bores / Sewer Laterals (Issue 11)

Enbridge has requested a Z factor in the amount of $3.8 million in 2012 to cover the cost of ensuring the safety of any cross bores on its service lines.

A cross bore is the penetration of sewer lines by a natural gas pipeline during trenchless installation. A cross bore will present a safety issue if a person attempts to clear a blocked sewer line and in so doing ruptures the gas line. In this scenario, gas could seep into the building through the sewer line and create an explosion risk should the gas ignite (through a pilot-light for example).

The Technical Standards and Safety Authority of Ontario ("TSSA") issued a directive on August 31, 2011 to gas distributors which required the preparation of an action plan to deal with cross bore issues. The action plan for addressing cross bores was required to be submitted to the TSSA by October 30, 2011. Enbridge's action plan is included in the evidence at B-2-6 Appendix B. The action plan will cost $5.8 million, but only $3.8 million is proposed in the Z factor for 2012 recovery (this amount represents the revenue requirement impact of addressing cross bore issues in 2012). Enbridge has requested a variance account around the Z factor to true-up to the actual amount expended on cross bore related work in 2012.

Enbridge has known about the cross bore issue since at least 2004 and had its first recorded incident at Innisfil, Ontario in May 2007.[8]

The concerns of the intervenors appear to be related to whether Enbridge has met the test for a Z factor as set out in the IR Plan Settlement Agreement, in proceeding EB-2007-0615. In particular, parties appear to be suggesting that the following Z factor test was not met:

> "the cost must be beyond the control of the Company's management and is not a risk in respect of which a prudent utility would take risk mitigation steps" [9]

Several intervening parties seem to suggest that the costs are voluntary, largely controllable, and are related to a known risk in respect of which a prudent utility would take risk management steps. The suggestion seems to be this: "You have known about the risk for some time; you took action; you spent money on it; therefore this is a risk that, under the rules, should be disqualified for Z factor treatment."

Board staff disagrees with this notion.

Board staff supports Enbridge's request for this Z factor. Board staff submits that the actions of the Company in the years leading up to the 2011 TSSA requirement for an action plan demonstrate that its actions are prudent for a utility facing such a known safety risk. On this point, Board staff notes that no party has yet suggested that the Company's actions were **not** prudent. Enbridge embarked on a program to understand and mitigate the risks. Board staff notes that Enbridge has been financing this expense

[8] Tr.2 90
[9] IR Plan Settlement Agreement p.21 EB-2007-0615

under the IR Plan revenue model in recent years and has not received incremental ratepayer funding.[10] The evidence shows that Enbridge has thus far "found the money" to finance cross bore research and investigations.

After several years of study, it is only relatively recently that the industry understands how to systematically tackle the issue. Now that the TSSA has launched its 2011 mitigation program, the costs of mitigation and hence the Z factor, has come to fruition in a formal sense before the Board. Board staff submits that these expenditures are not voluntary – rather they are both required and consistent with prudent utility practice in the presence of a known safety risk.

Board staff submits that the Board may find it helpful to consider the following statement from Enbridge with regards to interpreting the subject Z factor language around "risk and prudent utility practices":

> The second part of this Z factor criterion was established to ensure that the utility cannot claim a cost increase as a Z factor when that cost increase could have been avoided if the utility's past actions had been prudent.[11]

The key point here is that consideration should be given to whether the cost increase could have been avoided. In Board staff's submission, Enbridge's evidence shows that it acted prudently, but could not avoid the cost increase.

Enbridge is incurring costs due to the nature of its program to understand, and ultimately mitigate, the cross bore safety risk. These costs are safety related costs and they meet the Z factor test criteria. Board staff submits that they should be recoverable as a Z factor in 2012.

Variance account for Z factor - 2012 Cross Bores / Sewer Laterals (Issue 14)

Board staff submits that the requested variance account treatment of the Z factor is a reasonable approach to ensure that only the final amounts for the Z factor, once they become known, are accounted for in rates.

[10] There was a similar cross bore Z factor request in October 2009 but it was withdrawn in the context of a settlement agreement in the same proceeding (2010 rates proceeding, file no. EB-2009-0172).
[11] Argument in Chief, Enbridge page 20.

Board staff submits that if the actual amount for the cross bore safety program is below the Z-factor materiality threshold of $1.5 million, the amount recorded in the variance account should not be eligible for recovery as the materiality threshold has not been met.

Transition Impact of Accounting Changes Deferral Account (Issue 15)

Background

Enbridge has requested that the Board approve the establishment of a Transition Impact of Accounting Changes Deferral Account ("TIACDA") in 2012.

At Exhibit C, Tab 1, Schedule 5, the Company explained that a TIACDA is needed to recognize and record the financial impacts which will occur in 2012 in relation to the Company's required transition from Canadian Generally Accepted Accounting Principles ("CGAAP") to US Generally Accepted Accounting Principles ("USGAAP") pending the Board's full consideration of the matter in the 2013 rates proceeding.[12]

In response to Board staff's interrogatories, Enbridge confirmed that it will adopt USGAAP for financial reporting purposes effective January 1, 2012.[13] Enbridge also clarified that it expects to record only the impacts related to Other Post Employment benefits ("OPEB") in the 2012 TIACDA.[14] In the oral hearing, however, Enbridge stated that the account should not be restricted to just differences associated with OPEB expenses. This is because the Company's analysis of the differences associated with transitioning away from CGAAP has not been finalized and the purpose of the account is to capture all differences.[15]

Regarding the accounting differences in relation to OPEB as currently identified, Enbridge stated that it accounted for OPEB expenses on a cash basis in its financial reporting until year-end 2008 under CGAAP, which was consistent with how OPEB expenses were collected in rates.[16] Commencing in 2009, the exemption available to rate-regulated utilities was removed from CGAAP. As a result, Enbridge had to convert

[12] See Enbridge Gas Distribution, EB-2011-0277, Application and Evidence, Ex C/ Tab 1 / Schedule 5 / Page 2
[13] See Enbridge Gas Distribution, EB-2011-0277, Interrogatory Responses, Ex I/ Tab 1 / Schedule 13 / a)
[14] See Enbridge Gas Distribution, EB-2011-0277, Interrogatory Responses, Ex I/ Tab 1 / Schedule 13 / b)
[15] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 75
[16] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 7& 8

to the accrual method of accounting for OPEB.[17] However, under the conceptual framework of CGAAP, Enbridge was able to set up a regulatory offset and effectively recognize the OPEB expenses on a cash basis in its financial reporting until the date that it would make a transition from CGAAP to USGAAP. Enbridge clarified in the oral hearing that the regulatory offset which was shown on its financial statements for 2009 and 2010 was not prescribed or set up by the Board. Rather, it was an account established on the conceptual framework of the asset in accounting terms under CGAAP.[18] Enbridge stated that as a result of its transition to USGAAP, the regulatory offset it recorded under CGAAP related to OPEB expenses had to be removed.[19] This is because under USGAAP, the set up of a regulatory asset for OPEB expenses is more prescriptive in that USGAAP strictly prohibits the set up of a regulatory asset without a rate order.[20] In addition, the rate order needs to state that the entity can collect the amount of the regulatory asset over a period of time.[21]

Enbridge noted in its examination in chief that the following would be recorded in the TIACDA [22] :

- the charge to Retained Earning in its 2010 USGAAP financial statements resulting from the removal of the regulatory offset account and the setting of the OPEB liability in accordance with USGAAP. This amount is estimated to be approximately $84 million; and
- the difference between the cash amount to be paid out by Enbridge and the OPEB expense calculated in accordance with the accrual basis of accounting for each of the 2011 and 2012 fiscal years. This amount is estimated by Enbridge to be approximately $3 million in each of two years.

Enbridge further confirmed that the total estimated amount of $90 million to be recorded in the TIACDA represents the cumulative difference in the accrual method vs. the cash method of accounting for OPEB.[23] The $84 million represents an amount for which the Company's employees have earned themselves that Enbridge needs to pay in the

[17] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 8
[18] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 8 & 9
[19] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 9
[20] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 82
[21] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 31
[22] See Enbridge Gas Distribution, EB-2011-0277, Examination in Chief, K2.2, Page 3
[23] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 35

future upon the transition from CGAAP [24] to USGAAP. However, Enbridge confirmed in the oral hearing that without the setting up of the TIACDA, the $3 million difference in each of 2011 and 2012 will be borne by Enbridge's shareholders because Enbridge went into this IRM term on a cash basis for OPEB expenses, but had to switch to the accrual basis without the benefit of a regulatory offset.[25]

Enbridge said that it is merely seeking the establishment of the TIACDA in this rate application and that disposition will be requested in its 2013 rate application.[26] Enbridge explained that the reason it is requesting the establishment of the account now is to match its regulatory records with its financial records.[27]

Enbridge explained that if the TIACDA is not approved in this rate application, it must charge the amount to retained earning in its financial statements.[28] However, in the response to BOMA's cross-examination in the oral hearing, Enbridge indicated that there is no regulatory concept of out-of-period costs.[29]

In its argument in chief, the Company cited the Board's approval of Hydro One Transmission's impact to USGAAP deferral account in EB-2011-0268 as evidence to support the establishment of the TIACDA in this rate application.[30]

Submission

Before providing its submission on the establishment of the TIACDA, Board staff submits that Enbridge's reference to the Hydro One transmission rate case EB-2011-0268 in its argument-in-chief is not an appropriate comparison for at least two reasons. First, Hydro One's impact to USGAAP deferral account was approved by the Board in the EB-2011-0268 proceeding along with the Board's approval of USGAAP rate regulation for Hydro One Transmission. Second, the Government of Ontario passed a regulation which requires Hydro One to conduct its financial reporting in the USGAAP format.[31] Enbridge has no such regulation.

[24] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 23
[25] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 24 & 25
[26] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 5
[27] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 85
[28] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 37
[29] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 28
[30] See Enbridge Gas Distribution, EB-2011-0277, Argument in Chief, Page 12 & 13
[31] See Hydro One Networks Inc. – Transmission, EB-2011-0268, Decision with Reasons, Page 11

Board staff submits that the request to establish the 2012 TIACDA should be denied for the following reasons:

- The Board does not regulate Enbridge's internal accounting processes or its external financial reporting. It is entirely up to the individual utility to decide how it wants to track the amounts that arise due to a transition in accounting standards and how it wants to meet its own financial reporting requirements. Board staff submits that it has not been the Board's practice or policy in the past to approve the establishment of a deferral account for the utility to match the regulatory costs with the financial records. Board staff notes that Enbridge set up a regulatory offset under CGAAP commencing in 2009 without the Board's approval. However, Enbridge now requires Board approval to establish a deferral account so that it can create a regulatory offset on its financial statements under USGAAP because USGAAP requires prescriptive rules[32] in terms of setting up a regulatory asset for OPEB expenses recorded in the financial statements. In Board staff's view, the deferral account is a regulatory tool that the Board uses for regulated entities to recover/refund Board-sanctioned regulatory costs from/to ratepayers. The Board has its own processes and criteria for the establishment and recovery of such an account irrespective of how prescriptive the accounting standards. Therefore, aside from whether Board approval will achieve Enbridge's objective of matching regulatory costs and financial costs, Board staff submits that the Board should place little weight on the requirements of the utility's external financial reporting regime.

- Like Union's recent request in its 2012 IRM rate application EB-2011-0025, the establishment of the TIACDA for Enbridge is directly associated with Enbridge's request for and the Board's determination of Enbridge's proposed transition to USGAAP in its 2013 cost of service ("COS") application. The Board has not yet determined whether it will allow Enbridge to use USGAAP for the purposes of rate regulation. Board staff submits that the Board should make its decision regarding Enbridge's request for the TIACDA after it has made its decision on the use of the USGAAP standard for ratemaking purposes in Enbridge's 2013 COS rate application proceeding.

[32] See Enbridge Gas Distribution, EB-2011-0277, k2.4

- Board staff notes that there is increased complexity in the current rate application since the amount identified to date to be recorded in the TIACDA represents the cumulative difference between the cash basis of accounting for OPEB expenses that Enbridge has been recovering from ratepayers and the accrual basis that Enbridge will be proposing to switch to for ratemaking purposes in 2013.[33] Board staff notes that a number of questions asked by Board staff including the costs and benefits and the rate impacts of switching to the accrual basis to recover the expenses from ratepayers were not answered by Enbridge in this rate application, but rather were postponed to its 2013 COS rate application.[34] Board staff notes that Enbridge stated that it still expects to collect the $84 million from ratepayers if Enbridge remains on the cash basis for regulatory purposes; even though it would use the accrual method for accounting purposes. Enbridge stated that it would be a "pay-as-you-go" for regulatory purposes while the outstanding liability is actuarially determined.[35] Board staff submits that Enbridge may not need the deferral account to recover the $84 million if the cash basis remains for regulatory purposes for OPEB expense.

- Board staff notes that Enbridge stated that the account is not needed for 2012 rate-making purposes and not needed to reflect any uncontrollable costs being incurred in 2012.[36] Enbridge indicated that the $3 million in each of 2011 and 2012 years will be borne by Enbridge's shareholders without setting up the TIACDA. Board staff submits that the $3 million difference in each of 2011 and 2012 years should be borne by the shareholders since the rates in this IRM had been set on the cash basis under CGAAP. This was the basis in Enbridge's last Cost of Service rate proceeding (2007) and the recovery of $3 million could be regarded as a retroactive change to the rates. Board staff notes that the $84 million, which represents the cumulative difference between the cash and accrual basis upon the transition to USGAAP, should be dealt with in Enbridge's first cost of service rate application under USGAAP as per the Addendum Report of the Board: Implementing Financial Reporting Standards in an Incentive Rate Mechanism Environment.[37] Therefore, Board staff submits that there is no harm

[33] See Enbridge Gas Distribution, EB – 2011- 0277, Interrogatory Response, Ex I / Tab 1 / Schedule 16 / h)
[34] See Enbridge Gas Distribution, EB – 2011- 0277, Interrogatory Response, Ex I / Tab 1 / Schedule 16 / h)
[35] See Enbridge Gas Distribution, EB – 2011- 0277, Oral Hearing Transcript Volume 2, Page 52
[36] See Enbridge Gas Distribution, EB-2011-0277, Oral Hearing Transcript Volume 2, Page 74
[37] Page 34 of the Addendum Report states "Utilities that file and report under USGAAP should in general, read references to IFRS and MIFRS in the Board Report, amendments to it and this Addendum to include USGAAP.

to Enbridge if the Board defers its Decision on the establishment of the proposed TIACDA to the 2013 COS rate proceeding.

Should the Board be inclined to grant Enbridge approval to establish the TIACDA in the current proceeding, Board staff submits that the Board should note in its findings that the establishment of the deferral account:

- Provides no indication at all of recovery of any of the balances recorded in the account; and
- Approval of the establishment of the deferral account is in no way indicative or predeterminitive of the Board's decision with respect to whether Enbridge will receive approval to adopt USGAAP for regulatory accounting purposes in Enbridge's 2013 COS proceeding.

Cost allocation of Z factors (Issue 17)

Board staff submits that the cost allocation methodology proposed for both the pension funding Z factor and the cross bore Z factor is appropriate given the evidence that in both cases, the methodology follows current Company practice for the allocation of similar types of costs. Board staff is not aware of any party in opposition to the proposal.

Rate Implementation

Board staff submits that the Board, in its Decision, should consider how a final rate order might be constructed and implemented. The Settlement Agreement has a statement at page 16 that any impact from the Decision be reflected in final rates and be implemented in conjunction with a subsequent QRAM. This indicates the need for a draft rate order process.

The 2012 rates are now interim, per the Board's December 9, 2011 Interim Rate Order. Board staff suggests that in the Decision, the Company be directed to prepare a draft final rate order with a view to implementation, if practical, in the next available QRAM.

All of which is respectfully submitted.