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

AND IN THE MATTER OF an application filed by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2013.

Argument of the Vulnerable Energy Consumers Coalition (VECC)

December 7, 2012

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Introduction

1. As part of its General Rates Application for the 2013 test year, Enbridge Gas Distribution Inc.(EGDI), has requested that its capital structure be altered such that the equity ratio is increased from 36% to 42%.

2. Expert evidence in support of this request from Concentric Energy Advisers was filed by EGDI. Expert evidence from Dr. Lawrence Booth opposing this request as filed by the Canadian Manufacturers and Exporters (CME), the Consumers Council of Canada (CCC), the School Energy Coalition, and the Vulnerable Energy Consumers Coalition styled the "consortium" in Procedural Order #5 herein.

3. As part of the process for the hearing of this issue, as experts conference was convened wherein Exhibit L Tab 22, the Joint Witness Statement (JWS) was prepared and filed by both Concentric and Dr. Booth. There was subsequently an oral hearing on November 19, 20, 2012 before the Board panel featuring an EGDI company panel and a joint panel of experts.

4. On Friday, November 20, 2012, EGDI filed its Argument in Chief in support of its request outlined above. In accordance with the procedures established at the hearing, VECC is filing its final argument in this proceeding.

Requirements for Changes to the Capital Structure

5. In 2009, following the holding of a consultative of stakeholders, the Board issued its Report EB-2009-0084 on the Cost of Capital for Ontario's Regulated Utilities. This report sets out the capital structure policy for the Board's gas utilities.

6. The December 2009 Report states, in Paragraph 4.3, at page 50:

> ***"For electricity transmitters, generators and gas utilities, the deemed capital structure is determined on a case-by-case basis. The Board's draft guidelines assume that the base capital structure will remain relatively constant over time and that a full reassessment of a gas utility's capital structure will only be undertaken in the event of significant changes in the company's business and/or financial risk."***

7. At the hearing, the Company's witness panel agreed that EGDI must show significant changes in its business and financial risk in order to warrant a change. (Tr. Vol 1 p.79-80)

8. VECC will examine the Company's submissions and evidence offered as to changes in business and financial risks in furtherance of VECC's position that no increase in the common equity ratio is called for.

Business Risk

9. As set out in the filed evidence of EGDI, and in the Company's Argument in Chief (para.15), significant changes in EGDI's business risks are alleged to have occurred. These include :
   (a) Changes in the volumetric demand profile
   (b) Increases in system size and complexity; and
   (c) Environmental and Technological advancements

10. Remarkably, given the significance of the alleged changes, they are relatively given short shrift in the Concentric evidence (Ex. E2-2-1), and mainly advanced by the evidence of the Company witnesses who, as the Company has conceded are not business risk experts (Ex I Issue E2 Schedule 21.3 (a) p.2). Presumably, due to the frailty of its significant change evidence, the Company urges in its Argument in Chief that a long term twenty year view be taken of Enbridge's business and financial risks, so that all new and old issues can be heaped into their risk analysis.

11. With respect, this approach makes little sense, unless the Company takes the position that the Board got it wrong on the occasions in the last twenty years when it assessed business risk, and the resultant equity thickness.

12. Furthermore, the risk assessment exercise is not simply an adumbration of every conceivable obstacle to the Company earning its allowed rate of return. It involves the consideration of the size and nature of the risk, the ability of the Company to deal with the risk and its potential for interference with the ability of the Company to earn its allowed rate of return.

13. In analyzing the first of these risks put forth by the Company, it appears that according to the Company evidence, average weather-normalized residential consumption has fallen by 1.03% per year between 1993 and 2010.

14. However, it is submitted the significance of this decline is exaggerated by EGDI. The Average Use True Up Variance Account (AUTUVA) mitigates uncertainty concerning average use. The Lost Revenue Adjustment Mechanism (LRAM) compensates for reduced use due to CDM programs. The SSM creates a positive financial incentive for the Company to engage in conservation measures. And finally, its large commercial/industrial contracts usually have minimum take up quantities further protecting EGDI (Ex.1,Issue E2, Schedule 2.2., page 4 (iv))

15. Perhaps, most importantly, EGDI forgets the nature of its own cited third risk of environmental policies discouraging natural gas use. The vast majority of customers are not using less gas because they are unhappy with the product, or are using other fuels as a substitute. Conservation programs, greater efficiency standards, and individual customer

initiative are helping customers use less gas for the same purposes. Such developments enhance the competitiveness of natural gas against other fuels making it less attractive for customers to fuel switch and less likely that natural gas becomes a target for dramatic cutbacks in use across the board.

16. EGDI maintains in its second heading of increased risk that complexity and growth in system size has made the management of the system more risky and complicated requiring considerable capital and operating expense to maintain the system. Working with power generation customers means large demand requirements and increased political risks vis-a-vis siting arrangements.

17. None of this gloom is quantified in any fashion capable of regulatory action. While we are told of system demands, there is no evidence that EGDI has been denied the resources by the Board to deal with issues of system integrity and maintenance, or that EGDI needs better qualified personnel.

18. One wonders why EGDI seems so afraid of environmental substitution of gas for electricity under its third category of increased risks when the large demand requirements for natural gas for power generation is a reality.

19. Finally, EGDI's third risk steps into the fanciful: postulating a current risk that alternative renewable energy sources, spurred by government policy initiatives, will squeeze out natural gas. While governments have experimented with alternate sources of energy, no reputable economic model could be produced showing that, in the result, natural gas is on it way out even over a relatively long time frame.

20. EGDI's three increased business risk factors are at best speculative, and at worst misleading. This becomes readily apparent when the table showing that EGDI has earned its normalised rate of return in every year since 1985 is viewed (Booth evidence Ex L -21 page 31). While EGDI alludes to a mounting tide of business risk accumulating over twenty years, the only change appears to come from random weather fluctuation.[1]

21. When one looks behind that startling rate of success, it appears evident that any real risks to EGDI not earning its allowed rate of return have been borne by either the regulatory treatment of the Company by the Board and/or the successful furnishing of resources through rates.

22. Moreover, as Dr. Booth points out, the last time that EGDI produced business risk testimony, in 2006 (EB 2005-0034), its witness, Dr. Paul Carpenter envisioned four major risks. These were fuel switching because of high prices and volatility, threat of bypass, the need for infrastructure financing for gas fired generation and uncertainty concerning the rate regulation framework. None of these potential risks are now material according to Dr. Booth (Ex.L-21, page 39), a rather non-controversial observation.

[1] EGDI has not moved to eliminate weather as a source of risk by the creation of a deferral variance account. That suggests that the current treatment and forecasting is a financial benefit to the Company.

23. In particular, Dr. Booth notes that unlike the situation that existed at the time of Dr. Carpenter's testimony in 2006, the price of natural gas has fallen from a peak of $13.42 US per million BTU in October 2005 to a futures price of $2.00 US per million BTU in April 2012. (Ex. L-21, page 42). Cost comparisons with other fuels now greatly favor natural gas, with the production of shale gas being a current and future game-changer. As Dr. Booth notes, there is over a 100 year supply of natural gas and increased production from WCSB, let alone the Marcellus basin in the US. Business risk has diminished not increased.

Financial Risk

24. EGDI's evidence on the increased financial risk borne by the Company because of its allegedly inadequate capital equity ratio is relentlessly Spartan in approach. The Company panel cites the lengthening spread required on 10 year bonds issued today vs. 2007(1Tr.77), yet there is no effort to compare these spreads with Canadian utilities with higher common equity ratios. This information is of limited value.

25. Dr. Booth notes in his evidence the fact that EGDI was able to raise $100 million in medium term notes at a yield of 4.702% showing exceptionally good bond market access as "Very few companies can issue unsecured "signature" loans for a fixed rate and a 40 year term". (L-21,p.71). As Dr. Booth observed in his testimony, there are sovereign countries that cannot do as well as EGDI in that regard (Tr. Vol. 2 p.51)

26. Most importantly, there is no evidence that EGDI must access the market for debt at less favourable rates than Canadian utilities with higher common equity ratios. This is consistent with the current bond ratings of DBRS and S&P and belies the heroic efforts on the part of Concentric to paint EGDIs regulatory circumstances with an American brush.

27. Moreover, EGDI concedes that their ambitious request for a thickened common equity will not lower debt financing costs. This is despite the fact that approval of the request passing on annual bill to ratepayers of some $22 million. One might observe that if such a measure was thought consequential and necessary in the market, it should have a beneficial effect upon the credit worthiness of the Company beyond enriching EGDI's shareholders.

Concluding Submissions

28. There is little reason to believe that EGDI is a riskier distribution utility than Union Gas and should feature a common equity ratio higher than Union's 36%. EGDI's witnesses concede that Union faces similar risks to their own company (Tr. Vol. 1 p.90), despite the somewhat amusing attempts of Concentric to exclude Union from a list of comparators as "self-referencing" or "circular" (Tr. Vol 2.p.141)

29. There is every reason to believe that EGDI is the largest, lowest risk gas utility in the Canada. It is regulated by a Board that has been generally responsive to its needs and acted to minimize risk of business failure when appropriate evidence was brought to bear.

30. In a similar fashion to Concentric attempting to change the nature of the Board's inquiry to establishing another fair return standard, EGDI in argument tries a Hail Mary pass (Company Argument in Chief , paragraph 53) with its suggestion that because Dr. Booth has found significant diminished business risk for EGDI, the Company is relieved of its obligation under the Board's 2009 policy to show significant change and can proceed to have its equity ratio determined anew. Dr. Booth's findings do not provide the means for EGDI to contest the common equity ratio.

31. In summary, the evidence brought forward in this hearing does not show any significant increase in business and financial risk of EGDI. EGDI's request should accordingly be dismissed.

All of which is respectfully submitted this 7th day December, 2012

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