

# AIRD & BERLIS LLP

Barristers and Solicitors

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March 28, 2013

## By Email, RESS and Courier

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc. Demand Side Management ("DSM") Update  
to the Multi-Year Plan for the Years 2013-2014  
Board File No. EB-2012-0394**

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We are writing as counsel to Enbridge Gas Distribution Inc. ("Enbridge") in respect of the above-noted matter. This letter relates to the intervention request filed on Friday, March 22, 2013, by Environmental Defence ("ED").

According to the intervention, ED is represented by Klippensteins, Barristers and Solicitors, and has retained Mr. Jack Gibbons as its consultant. Enbridge notes that for many years until late October 2012, Klippensteins and Mr. Gibbons have been the key people representing and advocating on behalf of another long-standing intervenor before the Ontario Energy Board ("Board"), Pollution Probe.

Specific to the EB-2012-0394 proceeding, Mr. Gibbons was the chief negotiator and contact with Enbridge for the purposes of the numerous DSM Consultative meetings which took place in 2012, which ultimately resulted in a complete settlement. As can be seen from the Settlement Agreement filed at Exhibit B, Tab 2, Schedule 9, Mr. Gibbons participated in respect of each of Enbridge's program types. In each instance, Mr. Gibbons was participating and reporting back to Pollution Probe, including in respect of the confidential settlement discussions between the Parties. While the precise wording to the Settlement Agreement had not been accepted by the Parties at the September 28, 2012 plenary session, Enbridge understood that a framework for a settlement had been reached. Subsequently, Mr. Gibbons was forwarded copies of the draft Settlement Agreement which ultimately was supported by all of the parties named in agreement, with the exception of TransCanada Energy which took no position.

Enbridge is aware that ED was granted intervenor status in the Union Gas Large Volume DSM proceeding (EB-2012-0337) and the Toronto Hydro rates case (EB-2012-0064). In normal circumstances, Enbridge would not oppose ED's intervention in a DSM proceeding. However, the circumstances here are unique, and the impact of ED's intervention under the circumstances could lead to unnecessary duplication and the expenditure of resources.

ED must have been aware of the state of the negotiations as between Enbridge and all of the participants to the DSM Consultative. It is apparent from both the Union Gas Large Volume DSM proceeding and the Toronto Hydro rates case that Mr. Gibbons was retained as the consultant for ED in late October 2012.

Despite ED becoming involved in other Board proceedings as of October 2012, it remained silent in respect of this proceeding, coming forward for the first time with its intervention request on March 22, 2013. Enbridge submits that by ED waiting until this date to engage in the process, when it knew that Enbridge was dealing with all other members of the DSM Consultative, suggests that its interests in this proceeding are only of recent origin. It does not demonstrate a real interest in the Enbridge 2013-2014 DSM Plan Update. As well, Enbridge submits that ED's letter of intervention does not show that its role will not be duplicative of the several other environmental groups which have participated in the DSM Consultative and in the confidential settlement negotiations.

Enbridge is troubled by the fact that the main contact and consultant for ED appears to be in a position of conflict having acted on behalf of another intervenor group and participated actively in confidential settlement discussions and negotiations. Accordingly, for the above reasons, Enbridge submits that intervenor status should not be granted to ED.

In the alternative, should the Board feel compelled to grant ED intervenor status in this proceeding, Enbridge requests that the Board impose appropriate conditions on ED's participation. First, the Board should make it clear that Mr. Gibbons should not actively participate in the hearing as the consultant for ED given the role he personally played leading up to the Settlement Agreement filed in this proceeding. Mr. Gibbons should not be eligible to produce evidence, appear as a witness, nor make submissions on behalf of ED.

Second, ED should be required to specifically identify in writing the issues that it wishes to raise in the proceeding. Parties to the proceeding should then be entitled to comment on the proposed issues. Based on the submissions received, the Board could then approve an issues list.

One issue which Enbridge submits should be excluded from the outset are any questions relating to the proposed GTA Reinforcement Project. Enbridge has filed no evidence in respect of this project and has no intention of producing witnesses to deal with any aspect of the project. This project is currently the subject of a leave application before the Board (EB-2012-0451). This proceeding is not the appropriate forum to raise such issues.

Third, ED appears to be advocating for a substantial increase in DSM programs and, by extension, DSM budgets. As a practical matter, it would not be possible for Enbridge to ramp up its existing programs in 2013 and/or roll out new programs in 2013 to cost-effectively generate the net savings for customers and GHG emissions reductions as advocated by ED. As there is no prospect that an increase in Enbridge's DSM Budget in 2013 could be effectively utilized, Enbridge submits that no issues in respect of the 2013 Budget should be considered.

In respect of 2014, given the time it takes to complete market potential studies, design appropriate programs, engage third party program partners, negotiate required contracts,



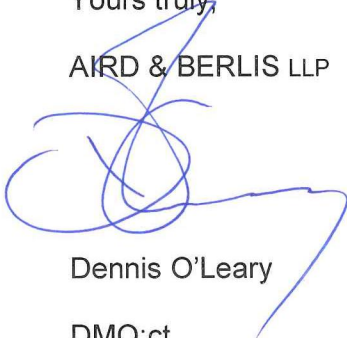
and then hire and train the staff necessary to undertake a significant ramping up of DSM programs, a large increase in the DSM Budget for 2014 could also not be cost-effectively used. It should be recalled that one purpose of proceeding with multi-year DSM plans was to provide certainty and relative continuity in the operation and growth of existing programs. Enbridge therefore submits that the appropriate time to consider whole scale increases to the DSM Budget is in respect of the next multi-year plan beginning in 2015.

Fourth, given that every member of the DSM Consultative but one (i.e., TransCanada Energy) has signed on to the Settlement Agreement, and given the nature of the several interventions by others which have been filed, it appears that the only party which will be in a position to ask questions about the appropriateness of the Settlement Agreement and the 2013-2014 DSM Plan Update is ED. Under the circumstances, Enbridge submits that it is appropriate for the proceeding to continue as proposed by the Board as a written hearing.

Enbridge also notes that the Ontario Sustainable Energy Association (OSEA) has filed an Intervention request which indicates that its expert advisor is Marion Fraser. As noted in the Settlement Agreement, Ms. Fraser was the representative for BOMA who participated in the DSM Consultatives and the settlement negotiations which resulted in the complete settlement. As of the filing of this letter, Enbridge is not aware of OSEA's intentions in respect of the proceeding. Accordingly, it reserves the right to make any appropriate submissions in respect of OSEA's Intervention request once this has been determined.

Yours truly,

AIRD & BERLIS LLP



Dennis O'Leary

DMO:ct

cc Murray Klippenstein, Klippensteins, LLP  
cc Kent Elson, Klippensteins, LLP  
cc Intervenors in EB-2012-0394

cc Enbridge Gas Distribution Inc.  
Norm Ryckman  
Trevor MacLean  
Judith Ramsay  
Suzette Mills'  
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