



EB-2012-0394

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

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. seeking approval for an update to its 2012-2014 Demand Side Management plan

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

Enbridge Gas Distribution Inc. ("Enbridge") filed an application with the Ontario Energy Board (the "Board") on March 4, 2013, seeking approval for an update to its 2012-2014 Demand Side Management ("DSM") plan.

The Board has assigned file number EB-2012-0394 to this application.

The application has been filed pursuant to the Board's DSM Guidelines that were issued on June 30, 2011. This application presents the financial package for 2013 and 2014 and any related program changes in the form of an Update to the 2012-2014 DSM Plan as filed in EB-2011-0295.

On March 13, 2013 the Board issued its Notice of Application. The Notice notified interested parties of the application and the process to apply for intervenor or observer status, or how to participate through a letter of comment. The Notice further allowed parties to seek eligibility for an award of costs.

Decision on Intervenor Status and Cost Eligibility

The Board received an intervention request from TransCanada Energy Ltd. ("TCE"). TCE did not request eligibility for an award of costs. The Board approves the intervention request of TCE.

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

Association of Power Producers of Ontario ("APPrO")
Building Owners and Managers Association Toronto ("BOMA")
Canadian Manufacturers & Exporters ("CME")
Environmental Defense ("ED")
Green Energy Coalition ("GEC")
Ontario Sustainable Energy Association ("OSEA")
School Energy Coalition ("SEC")
Vulnerable Energy Consumers Coalition ("VECC")

The Board has since been informed that OSEA is withdrawing its request for intervenor status.

The Board has determined that all of the remaining parties are granted intervenor status and that BOMA, CME, ED, GEC, SEC and VECC are eligible to apply for an award of costs in this proceeding, although ED's participation is discussed in more detail below.

By letter dated March 28, 2013, Enbridge objected to the proposed intervention of ED. Enbridge argued that ED did not participate in the consultative or pre-application settlement discussions and it did not indicate an interest in Enbridge's DSM program until after the application was filed and the notice was published. Enbridge indicated that ED represents a constituency or interest significantly different from other environmental groups participating in this proceeding. Enbridge expressed concern that ED's expert consultant was a consultant for Pollution Probe and participated in the working groups and confidential

settlement discussions. Enbridge views this as a conflict of interest in that ED's interest in this proceeding is contrary to that of Pollution Probe.

In a letter of response dated April 4, 2013, ED stated that it should be granted intervenor status as it wishes to address an issue not raised by any other party. ED intends to advocate for an increase in Enbridge's 2014 DSM budget. ED takes the position that spending more money on DSM will lead to reductions in customer bills, and may delay the need for the proposed reinforcement of the GTA's existing pipeline infrastructure. In terms of the timing of its intervention request, ED states that it sought intervention status within the time limit set in the Board's Notice.

With respect to the role of ED's consultant, ED states that he does not have any confidential information that would be relevant to the issues raised by ED. To the extent he has any confidential information, this information will not be shared with ED.

The Board finds that the issue ED seeks to address is not duplicative of any other party's position, and that ED made its request for intervenor status within the time limit set by the Board.

However, the Board will not allow this consultant to represent or otherwise act for ED in this proceeding. ED's consultant actively represented another party, Pollution Probe, a signatory to all elements of the Settlement Agreement, including the settlement of the 2013 and 2014 DSM budgets. Alternatively, ED wishes to advocate an increase in the 2014 DSM budget as settled.

The Board will not allow a person to represent two parties with materially conflicting interests in the same proceeding. Section 23 of the *Statutory Powers Procedure Act* gives the Board the power to control its own proceedings, and allows the Board to exclude a party's proposed representative in appropriate circumstances. The Board will not allow a direct conflict of interest that could bring the Board's process into disrepute. The Board has granted ED intervenor status and has decided that ED will be eligible for costs; however, its consultant will not be permitted to act for ED in this proceeding.

The Board will not grant APPrO's request for cost eligibility at the present time. In its intervention letter, APPrO notes that many of its "members are large volume customers of Enbridge (Rate 125) and may be affected by the bill impacts associated with these proposals. As a result, APPrO's members have a direct and significant interest in this proceeding". The Board notes that power producers in Rate 125 do not pay for DSM and Rate 125 customers are not included in DSM programming. The Board may find APPrO eligible for an award of costs at a later time should APPrO raise issues which are relevant to the proceeding.

Cost Claims

The cost claims must be completed in accordance with the Board's *Practice Direction on Cost Awards*. The *Practice Direction on Cost Awards* and related forms are available on the Board's website at www.ontarioenergyboard.ca, and should be referred to and adhered to in order to make sure all appropriate rules are followed and the correct forms are used when it is time to submit any cost claim.

The Settlement Agreement

In its letter dated April 4, ED indicates that it does not intend to challenge the budgets for 2013. The Board understands from this that ED has no objection to any portions of the Settlement Agreement relating to 2013. It is not clear if the other intervenor that was not a party to the Settlement Agreement (APPrO) intends to challenge the settlement for 2013.

The Board recognizes that the Settlement Agreement has been presented as a complete and non-severable agreement; it is structured such that the Board must accept the entire agreement or reject the entire agreement. However, the Board would like to hear from parties regarding whether it would be possible to sever the 2013 part of the agreement from the 2014 part of the agreement. If no parties contest any elements of the 2013 portion of the Settlement Agreement, it

might increase the efficiency of the process if the Board could consider the two years separately.

THE BOARD ORDERS THAT:

1. Parties and Board staff may file written comments on the above noted question with the Board and serve them on all other parties on or before April 16, 2013.

All filings to the Board must quote the file number, EB-2012-0394, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available you may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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

Ontario Energy Board
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27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Filings: <https://www.pes.ontarioenergyboard.ca/eservice/>

E-mail: boardsec@ontarioenergyboard.ca
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Fax: 416-440-7656

DATED at Toronto, April 9, 2013

ONTARIO ENERGY BOARD

Original Issued By

Kirsten Walli
Board Secretary

APPENDIX A
TO PROCEDURAL ORDER NO. 1 AND
COST ELIGIBILITY DECISION
ENBRIDGE GAS DISTRIBUTION INC.
EB-2012-0394
DATED: April 9, 2013
Applicant & List of Intervenors

**Enbridge Gas Distribution Inc.
Update to 2012-2014 Demand Side Management Plan
EB-2012-0394**

APPLICANT & LIST OF INTERVENORS

April 9, 2013

APPLICANT

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APPLICANT & LIST OF INTERVENORS

April 9, 2013

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APPLICANT & LIST OF INTERVENORS

April 9, 2013

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APPLICANT & LIST OF INTERVENORS

April 9, 2013

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April 9, 2013

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April 9, 2013

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