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BY COURIER AND RESS

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

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.
Update to the DSM Multi-Year Plan for the Years 2013-2014
EB-2012-0394**

We are counsel to Enbridge Gas Distribution Inc. ("**Enbridge**") in respect of the above-noted DSM Multi Year Plan Update ("**Plan Update**"). These are the comments of Enbridge in respect of the question raised by the Board in Procedural Order No. 1, dated April 9, 2013. Specifically, the Board requested comments in respect of the following:

"In its letter dated April 4, Environmental Defence ("**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 (APP_{ro}) 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."

Settlement Agreements should be Honoured

As can be seen from the complete Settlement Agreement which was filed on February 28, 2013, as Exhibit B, Tab 2, Schedule 9, ("**Settlement Agreement**") Enbridge and the signatories to the agreement spent a great deal of time meeting and negotiating the terms of the settlement. In addition to the 14 meetings held ultimately leading to the acceptance of the general terms of the settlement at the plenary session on September 28, 2012, a significant amount of time was spent in the weeks following drafting the written terms of

the Settlement Agreement, receiving comments on various drafts from intervenors, and revising the draft Settlement Agreement before final sign off on the agreement was received from all parties between December 2012 and February 2013.

Enbridge submits that given the time and effort expended by all of the parties leading to the complete settlement, it would be surprising if any party to the settlement would now ask for leave from the Board to withdraw. Such a request would diminish the efforts made by all of the other parties to the settlement. As well, permitting a party to withdraw from what would otherwise be a legally binding agreement would create an unwelcome precedent. For this reason, the Board's *Rules of Practice and Procedure* create a high threshold which a party must meet to obtain leave from the Board. Specifically, Rule 32.05 states:

“Where evidence is introduced at the hearing that may affect the settlement proposal, any party may, with leave of the Board, withdraw from the proposal upon giving notice and reasons to the other parties, and Rule 32.04 applies.” [which permits a party that does not agree with the settlement to offer evidence in opposition and to cross-examine on such issues.]

The reasons for such a rule are matters of common sense. Parties should not be relieved of their obligation to support a settlement to which they voluntarily agreed and which

GEC's Contemplated Motion for Leave to Withdraw

It appears from the letter of Mr. David Poch, dated April 10, 2013, that GEC is considering a request to withdraw from the Settlement Agreement as a result of the GTA Reinforcement Pipeline Project ("**GTA Project**"), which is the subject of a leave to construct ("**LTC**") application (EB-2012-0451). Mr. Poch admits in his letter that GEC is a signatory to the Settlement Agreement, but adds that: "however, at the time of that agreement, GEC was unaware of the proposed Enbridge GTA Project (EB-2012-0451)..."

Enbridge submits that GEC does not have a basis to obtain leave to withdraw from the Settlement Agreement. There is no evidence that has been filed in the Plan Update proceeding which affects the Settlement Agreement as required by Rule 32.05 and there has been no evidence filed about the project which GEC references in its letter as the basis for its potential request to withdraw, the GTA Project.

While the Plan Update is silent in respect of the GTA Project, Enbridge has made every reasonable effort to make stakeholders aware of it. The GTA Project was specifically referenced in the pre-filed evidence Enbridge filed for its 2013 rates application (EB-2011-0354) in January 2012. The GTA Project was also specifically referred to in the settlement agreement in that proceeding which was filed with the Board on October 3, 2012. At page 9, Issue B1 of the settlement agreement (Exhibit N1, Tab 1, Schedule 1), there is specific reference to the GTA Project and the fact that the costs of the Project would be in addition to the agreed capital budget if the Project is ultimately approved by the Board in a separate leave application. GEC and APPrO were both intervenors to this rates proceeding and signatories to this provision in the settlement agreement which was the subject of a complete settlement.

Prior to the LTC application being filed with the Board in December 2012, Enbridge forwarded invitations and reminders to a long list of stakeholders, including GEC, inviting them to attend an information session on October 29, 2012 for the purposes of providing information on the GTA Project and the LTC application which Enbridge planned to bring forward. These invitations and reminders were sent to GEC and others on September 5, 24 and October 1, 2012.

Enbridge therefore submits that GEC and any other party which attempts to make a similar assertion should be denied leave to withdraw from the Settlement Agreement. The sanctity and commitment of the settlement process should be preserved.

No Practical means to Materially Increase the 2014 DSM Budget

Experience has shown that to successfully and cost-effectively plan and operate DSM programs, such work should be undertaken over a multi-year timeframe because of the work involved in the planning and roll out of new and expanded programs. For example, contracts will need to be negotiated and drafted and staff will need to be hired and trained to undertake the new and expanded programs. All of this must occur within the current framework of DSM which requires consultation with numerous stakeholders.

Budgets require time, effort and in most instances experience with existing programs to demonstrate that they are cost effective and will generate results. The 2014 DSM budget

is inextricably linked to the programs which Enbridge is operating in 2013, and which will continue as modified or amended pursuant to the terms of the Settlement Agreement. It is simply not feasible for Enbridge at this late date in its multi-year plan for its budget for 2014 to be materially increased. The situation becomes all the more impossible under any proposal to deal with the 2014 DSM budget after the Board rules on the LTC application in respect of the GTA project.

Enbridge is hoping for a decision in the LTC application in September 2013. Construction would commence the next year with an in-service date of November 1, 2015. Accordingly, not only is a material increase in the 2014 budget not feasible, the Board need not consider such an increase for 2014 should it ultimately accept in the LTC application the position of several intervenors that DSM can be a credible substitute for all or some of the benefits that will result from the GTA Project.

The Settlement Agreement is a Package

All of the parties to the Settlement Agreement support those programs which the agreement contemplates continuing over these two years. Enbridge submits that the Settlement Agreement must continue to be viewed as a "package" in that, as noted in the Settlement Agreement, individual aspects of the agreement are inextricably linked to one another, and none are severable. The parties specifically agreed that this is the case (at page 7). Accordingly, their support for the Settlement Agreement as a package should continue.

Enbridge submits that the hearing should proceed and the Board should ultimately rule on whether the settlement proposal should be approved or rejected in favour of some position put forward by ED and possibly APPRo in respect of 2014. It is also Enbridge's view that severing the two years, as contemplated in the Procedural Order, would not result in any enhanced efficiency. ED has stated that it will not challenge any aspect of the Settlement Agreement for 2013. Thus it has already limited the "Issues List" to relevant matters in 2014. Indeed, ED indicated, at page 3 of the letter to the Board dated April 4, 2013 from its counsel that the only issue the Board need consider is the appropriateness of the 2014 DSM budget, as contemplated in the Settlement Agreement.

The GTA Project is not in Issue in the Plan Update

All relevant matters relating to the GTA Project should be raised in the LTC application (EB-2012-0451) with the benefit of a full evidentiary record. ED apparently desires in the context of this Plan Update proceeding to take the position that DSM can eliminate or reduce the need for the GTA Project despite the fact that the record contains no evidence about the GTA Project. Not only is ED making the simplistic and erroneous conclusion that the only reason for the GTA Project is to provide additional volumes, it has neglected to realize that issues relating to the need, purpose, location and economics of the GTA Project are not issues before the Board in this Plan Update proceeding. The Board panel in this proceeding is not vested with the authority nor does it have the evidentiary record to make findings in respect of the GTA Project. Enbridge therefore requests that the Board state in its next Procedural Order that issues relating to the GTA Project are not relevant for the purposes of this DSM Plan Update proceeding.

Summary and Conclusion

In summary, Enbridge submits that the Settlement Agreement should continue as is, being a complete settlement package amongst all of the parties identified in the agreement. The hearing can then proceed solely in respect of those relevant 2014 DSM budget-related issues which ED, and perhaps APPrO, wish to raise. In the event that ED or APPrO do not intend to file any evidence in the hearing, Enbridge submits that the hearing could be undertaken entirely in writing.

Finally, ED proposed in the letter from its counsel to the Board dated April 4, 2013 that the Board's consideration of the 2014 DSM budget (which means, in effect, the Board's consideration of the Settlement Agreement) need not take place until after the Board has made a decision in respect of the GTA Project LTC application which is not expected until later this year. For the reasons stated earlier, not only would this make it impossible for Enbridge to rollout cost effective new and expanded programs for 2014, such a delay in approving Enbridge's DSM budget and programs for 2014 would have a prejudicial impact on its ability to successfully operate those DSM programs which all parties agree should be undertaken. To the understanding of Enbridge, ED is not opposing the nature and mix of DSM programs, it is looking for these programs to be expanded. It makes no sense therefore to put in jeopardy the successful operation of the programs slated for 2014 by delaying the approval of the 2014 DSM Budget. As a result, Enbridge submits that the Plan Update proceeding should continue forthwith.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary

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cc Intervenor

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