

17 April 2013

Ontario Energy Board
2300 Yonge St., 27th Floor
Toronto, ON
M4P 1E4

Attn: Ms Kirsten Walli
Board Secretary

By electronic filing and e-mail

Dear Ms Walli:

Re: EB-2012-0394 EGDI 2012-14 DSM update – GEC reply to Enbridge comment

We are in receipt of Mr. O’Leary’s correspondence to the Board of April 16th sent on behalf of Enbridge. As Mr. O’Leary appears to be asking the Board to make a determination with respect to GEC’s rights in anticipation of a motion by GEC, a motion that has not in fact been made at this time, we feel it appropriate to respond in regard to that process question and offer a further, hopefully constructive, suggestion.

GEC has indicated that it may wish to seek leave to withdraw from the settlement agreement depending on the Board’s response to the ED request for a deferral of the Board’s consideration of the 2014 aspects of the settlement. Enbridge has offered lengthy submissions for its resistance to any request for withdrawal. As indicated, GEC has not brought such a motion at this time and has not put before the Board its reasons, evidence and legal position in that regard. Accordingly, we ask the Board to ignore Enbridge’s submission at this time. GEC remains confident that a solution to the potential conflict between the 2014 proposed settlement and the position of parties in the GTA case can be found that avoids the need for any withdrawal and expedites the Board’s consideration of the DSM case. If we are proven wrong Enbridge will have ample opportunity to comment on our possible request if and when it is made.

It is apparent that ED’s proposal to defer consideration of the 2014 aspects pending the GTA case outcome is not an agreeable approach to Enbridge. BOMA has also indicated a concern in that regard. We have sympathy for that view as we agree that it is desirable for Enbridge to have the certainty of multi-year approval so it can fully commit to those programs. That said, the possibility of additional, focussed local DSM arising in the context of local IRP (i.e. in the facilities discussion) need not place the general application programs in the proposed settlement in jeopardy. Accordingly, GEC wishes to propose a further alternative that may

offer a solution. Assuming that APPrO does not wish to seek a hearing in this case, if the panel herein is inclined to accept the settlement and was to include in its reasons the observation that such acceptance is without prejudice to the question of whether a targeted local IRP approach that includes DSM starting in 2014 may (or may not) be part of a preferred alternative in the GTA Project, GEC would have no difficulty. We assume that this approach would also address BOMA's and ED's concerns.

In GEC's view the proposed settlement is pursuant to the Board's DSM Guidelines and was not intended to address local planning goals that must be considered in a local IRP framework along-side local supply issues, as may be applicable in the GTA case. Accordingly, such an observation by the Board would in our submission neither conflict with the settlement nor colour the facilities panel's considerations. However, if the Board is concerned that including such an observation could be interpreted as a departure from the settlement then the approach suggested by Mr. DeRose for CME, to briefly resume settlement discussions, recommends itself. This would also allow ED and APPrO to participate in any refined settlement.

It might be suggested that the GTA-Project panel is in any event not bound by this panel's decision on DSM. In our submission that may be true as a pure matter of law but ignores the realities of the regulatory process and would offer insufficient comfort to GEC. We would risk Enbridge or another party seeking to exclude 2014 conservation efforts from the consideration of that panel and that would then precipitate a dispute about the nature of the 2014 settlement and approval in a case where all settlement parties are not present.

Finally, in its comments Enbridge makes several assertions about the implications of the GTA facilities case for DSM and *vice versa*. Notably, Enbridge asserts that 2014 DSM has no relevance for the GTA project. The very fact that Enbridge, in response to TCPL's recent announcements, has now indicated that it views the GTA project as urgently needed in 2015 should be evidence enough that any DSM response might need to start in 2014. However, in our submission, the Board should not make any assumption about the role that DSM in 2014 or otherwise may or may not play in the scope and alternatives for the GTA project. All parties appear to agree that the issue is properly one to be determined by the panel seized with that case. Accordingly, the panel herein should be cautious not to accept Enbridge's unsupported assertions about the role that DSM might or might not play in that matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Poch', with a stylized flourish at the end.

David Poch
Cc: all parties