

# AIRD & BERLIS LLP

Barristers and Solicitors

Fred D. Cass  
Direct: 416-865-7742  
E-mail: fcass@airdberlis.com

April 19, 2013

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.; EB-2012-0055**

---

We are writing on behalf of Enbridge Gas Distribution Inc. (Enbridge) with respect to the Draft Rate Order filed by Enbridge in EB-2012-0055.

The Board's Decision and Order in this proceeding dated March 14, 2013 provided for intervenors and Board Staff to file any comments on Enbridge's Draft Rate Order within 14 days of the filing of the Draft Rate Order. The Draft Rate Order was filed by Enbridge on March 22, 2013 and thus the final date for comments was April 5<sup>th</sup>. Enbridge received comments from Energy Probe Research Foundation (Energy Probe), Board Staff and Canadian Manufacturers & Exporters (CME) dated, respectively, April 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup>.

The intervenors in this proceeding are as listed by the Board in Appendix B to Procedural Order No. 1. Given that only Energy Probe and CME made comments in relation to the filing of the Draft Rate Order by Enbridge, it follows that more than 15 intervenors saw fit not to make any comment at all about Enbridge's filing. Seven intervenors participated in the Settlement Conference and, of these, five submitted no comments in relation to the Draft Rate Order.<sup>1</sup> Enbridge submits that it must be presumed that the many intervenors that did not submit comments do not take issue with any aspect of the filing made by Enbridge pursuant to the directions of the Board with respect to the Draft Rate Order.

---

<sup>1</sup> The five intervenors that submitted no comments are Association of Power Producers of Ontario, Consumers Council of Canada, Federation of Rental-Housing Providers of Ontario, School Energy Coalition and Vulnerable Energy Consumers Coalition. As to the intervenors that participated in the Settlement Conference, see Exhibit N1, Tab 1, Schedule 1, page 3.

Enbridge's response to the comments of Board Staff, Energy Probe and CME is set out under the headings that follow.

2011 Capacity Release Net Revenues

Board Staff agreed with the proposal in the Draft Rate Order that \$776,300 of net revenues from capacity release transactions in 2011 that had been credited to Enbridge's shareholder be recorded as a one-time credit adjustment to the transportation component of the Purchased Gas Variance Account (PGVA). Energy Probe also agreed with this adjustment and explicitly stated its support for Enbridge's proposal that the adjustment be made as part of the July 1, 2013 QRAM. Similarly, CME supported the adjustment and the manner in which Enbridge proposes to implement it.

In short, no party has disagreed with the provision of the Draft Rate Order proposing a one-time credit adjustment to the transportation component of the PGVA and Board Staff, Energy Probe and CME have all agreed with this proposal. Enbridge therefore submits that the provisions of the Draft Rate Order with respect to 2011 capacity release net revenues should be implemented as proposed by Enbridge.

2012 Capacity Release Net Revenues

In the March 14<sup>th</sup> Decision and Order, the Board directed Enbridge to discuss, in the Draft Rate Order, how it proposes to dispose of 2012 capacity release net revenues.

Pursuant to the Board's direction, Enbridge indicated that it will be filing an application for clearance of the 2012 Earnings Sharing Mechanism Deferral Account and other deferral and variance accounts, including the 2012 Transactional Services Deferral Account. Enbridge said that it will be leading evidence in the 2012 ESM proceeding to support its position that 2012 net revenues from capacity release transactions are appropriately recorded in the 2012 TSDA. Enbridge also pointed out that 2012 capacity release net revenues are beyond the scope of the 2011 ESM case.

Board Staff did not make any comment on Enbridge's points regarding treatment of 2012 capacity release net revenues. The only parties in this proceeding that made any comment on Enbridge's points were Energy Probe and CME.

Energy Probe agreed with Enbridge that 2012 capacity release net revenues should be dealt with in the 2012 ESM proceeding. It said that, if there is a significant change in the nature of capacity releases in 2012 from that in 2011, Enbridge can provide evidence of these changes and indicate why the Board's

decision for 2011 should not apply to some or all of 2012 capacity release net revenues.

CME contended that it would be inappropriate to permit Enbridge to revisit the "classification issue" on the basis of what CME called a "vague and unsupported assertion" about the evidence before the Board in the 2011 proceeding. CME went on to argue that Enbridge should be directed to "adhere to" the "classification" of capacity release net revenues as gas cost reductions when submitting its 2012 ESM application.

In the context of the annual ESM application under Enbridge's Board-approved Incentive Regulation plan, Enbridge applies for the disposition of balances in deferral and variance accounts. As appears from the evidence in this proceeding,<sup>2</sup> Enbridge's 2011 ESM application brought forward for disposition balances in approximately 20 non-commodity related accounts (including the 2011 ESM Deferral Account) and 3 commodity related accounts.

It is neither practical nor reasonable to expect that, in the annual ESM proceeding, Enbridge will pre-file highly detailed evidence about the background, methodology and nature of transactions or activities for more than 20 deferral and variance accounts. This is particularly so in the case of Transactional Services, which is an area that has been given extensive consideration by the Board in previous proceedings, including at least one proceeding devoted entirely to the subject of Transactional Services.<sup>3</sup> In short, it was a significant challenge to embark on a reassessment of Transactional Services in the context of Enbridge's 2011 ESM filing and Enbridge recognizes the importance of developing a better evidentiary record with respect to Transactional Services for the next ESM proceeding.

More specifically, it is clear that the evidence included in the 2011 ESM filing did not meet the challenge of conveying to the Board a sufficient understanding of the background, methodology and nature of Transactional Services. The Board's March 14<sup>th</sup> decision was premised on the notion that capacity release transactions differ in a meaningful way from other transactions included within Transactional Services, given the Board's assumption that capacity release transactions do not rely on temporarily surplus assets. With all due respect to the Board, the premise of the March 14<sup>th</sup> decision on capacity release transactions is not correct.

Enbridge believes that it is important that its Transactional Services methodology not go forward on the basis of an incorrect premise. At a minimum, Enbridge submits that the Board should consider the premise of the March 14<sup>th</sup> decision with

---

<sup>2</sup> Exhibit A, Tab 2, Schedule 1, Appendix.

<sup>3</sup> EB-2007-0932.

April 19, 20133

Page 4

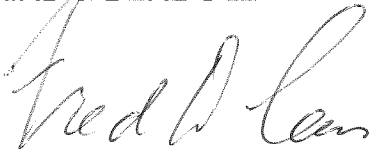
the benefit of a full record of evidence regarding the background, methodology and nature of Transactional Services and, particularly, capacity release transactions. In the circumstances, and for the reasons set out by Enbridge with its filing of the Draft Rate Order, the reasonable course of action is for Enbridge to file this evidence for the Board's consideration in the 2012 ESM proceeding.

In response to CME's argument that the Board should direct Enbridge to "adhere to" a particular "classification" when submitting its 2012 ESM application, Enbridge submits that the Board should not pre-judge Enbridge's 2012 ESM application before even seeing the evidence that Enbridge will file for that case. Further, Enbridge submits that the Board should not accede to CME's attempt to have the Board panel hearing this case fetter the discretion of a panel hearing a future case.

It is therefore respectfully submitted that the Board should leave 2012 capacity release net revenues to be considered in the 2012 ESM proceeding and should give no directions in this case regarding 2012 net revenues.

Yours truly,

AIRD & BERLIS LLP



Fred D. Cass

FDC/