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May 2, 2013

VIA EMAIL and RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

**Re: Enbridge Gas Distribution Inc. (the "Company" or "Enbridge")
Update to the 2012 to 2014 Demand Side Management ("DSM") Plan
Ontario Energy Board ("Board") File No.: EB-2012-0394**

April 29, 2013 was the Issues and Process Day for Enbridge's application to update its 2012 - 2014 Demand Side Management Plan. While at the proceeding Enbridge filed a document brief which was give the exhibit number Exhibit K1.1.

The hard copies of this exhibit that were handed out in the hearing room are correct however It has come to Enbridge's attention that during the process to provide an electronic version of the brief, during the scanning process of email notes that were contained in the brief, some of the information became jumbled

A corrected copy of Exhibit K1.1 is being filed through the Regulatory Electronic Submission System and via email.

The application and evidence will be available on the Enbridge website at www.enbridgegas.com/ratecase.

If you have any questions, please contact the undersigned.

Yours truly,

[original signed]

Shari Lynn Spratt
Supervisor Regulatory Proceedings

cc: EB-2012-0394 Intervenors

ONTARIO ENERGY BOARD

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.

**DOCUMENT BRIEF OF
ENBRIDGE GAS DISTRIBUTION INC.**

APRIL 29, 2013

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1. Settlement Agreement, Enbridge DSM Update to the Multi-Year Plan for the Years 2013-2014, filed February 28, 2013, EB-2012-0394
2. Portion of Settlement Agreement in Enbridge 2013 Rate Application, filed October 26, 2012, pp. 6 – 9, EB-2011-0354
3. Portion of Enbridge Prefiled Evidence in EB-2011-0354:
 - A: B1/T2/S1 – Rate Base – Capital Budget, pp. 1, 7 – 11
 - B: B1/T2/S1 - Appendix– EGD Asset Plan, cover page, pp. 2, 34 – 38
 - C: Exh. I, Issue B1, Schedule 1.1, Board Staff IRR#1
4. Email invitations dated September 5, 24, and October 1, 2012, from Enbridge to Intervenor re October 29, 2012 information session re the GTA Project
5. Email dated December 21, 2012, from Enbridge to Intervenor re Enbridge filing of its Leave to Construct Application – GTA Project – EB-2012-0451
6. Ontario Energy Board *Rules of Practice and Procedure*, January 17, 2013, Rule 32, pp. 25 – 26
7. *Practice and Procedure Before Administrative Tribunals*, Macaulay & Sprague, pp. 6-6 to 6-8, and pp. 27A-4 to 27A-5

**SETTLEMENT AGREEMENT
ENBRIDGE GAS DISTRIBUTION INC.
DEMAND SIDE MANAGEMENT
UPDATE TO THE MULTI-YEAR PLAN
FOR THE YEARS 2013 - 2014**

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I. BACKGROUND AND CONTEXT

On June 30, 2011, the Ontario Energy Board (“OEB” or the “Board”) issued a letter (the “Letter”) and the new Demand Side Management (“DSM”) Guidelines for Natural Gas Utilities (“Guidelines”) developed in the EB-2008-0346 proceeding. The Letter provided that the natural gas utilities were expected to develop their Multi-year DSM Plans in accordance with the Guidelines. Enbridge Gas Distribution Inc. (“Enbridge” or the “Company”) filed its DSM Multi-Year Plan for 2012-2014 on November 4, 2011. Contemporaneously, Enbridge filed a Settlement Proposal with those Intervenor participants in the DSM Consultative. This Settlement Proposal which was ultimately accepted by the Board specifically contemplated that Enbridge would file a DSM Plan Update for 2013/2014, later in 2012. This Agreement relates to Enbridge’s DSM Plan Update for 2013/2014 and those outstanding matters for which Board approval is required for Enbridge to undertake its DSM activities in 2013 and 2014.

The Guidelines contemplate that gas distributors will consult with their stakeholders with respect to their DSM Plans. Accordingly, Enbridge has consulted with members of the DSM Consultative in respect of its 2013/2014 DSM Plan Update. Consistent with the Consultation for the 2012-2014 Plan, a Working Group emerged for each program type. The Consultative members who chose to serve in each of the working groups, in addition to Enbridge representatives, were as follows:

Working Group	Members
Low Income	Chris Neme (GEC) Judy Simon (LIEN) Jack Gibbons (Pollution Probe) Roger Higgin (VECC) Marion Fraser (BOMA) Dwayne Quinn (FRPO)
Market Transformation	Julie Girvan (CCC) Vince DeRose (CME) Jack Gibbons (Pollution Probe) Chris Neme (GEC) Norm Rubin (Energy Probe)
Resource Acquisition	Marion Fraser (BOMA) Julie Girvan (CCC) Vince DeRose (CME) Norm Rubin (Energy Probe) Dwayne Quinn (FRPO)

Working Group	Members
	Chris Neme and Kai Millyard (GEC) Paul Seaman (IGUA) Judy Simon (LIEN) Jack Gibbons (Pollution Probe) Jay Shepherd (SEC) Eric Nadeau (TransCanada Energy) Roger Higgin (VECC)

Meetings between Enbridge and the Working Groups took place on the following dates:

Plenary	July 11, 2012
Low Income	August 7, 24, 27, 2012
Market	July 26 and 27, 2012
Transformation	
Resource Acquisition	August 10, 14, 16, 17, 28 and 29 and September 10, 2012
Plenary	September 28, 2012

The purpose of these meetings was to allow members of each Working Group to ask specific questions and request information for review in support of Enbridge's DSM Plan Update. A further goal was to determine whether a consensus could be reached in respect of all or some aspects of the DSM Plan Update and, in particular, the allocation of budget as between program types, any permitted budgetary increases, metrics, scorecards and incentive levels. These meetings proceeded without a facilitator, which is a common practice with Enbridge Consultatives.

The Working Groups ultimately reached consensus with Enbridge on the components of the DSM Plan Update, as more particularly set out in this Agreement. These terms were then shared with the broader DSM Consultative at a meeting held on September 28, 2012, at which time the terms contained in this Agreement were presented and adopted by the following members of the DSM Consultative (Enbridge and the Intervenor listed below being hereinafter referred to as the "Parties"):

Building Owners and Managers Association (BOMA)
Consumers Council of Canada (CCC)
Canadian Manufacturers & Exporters (CME)
Energy Probe Research Foundation (Energy Probe)
Federation of Rental Providers of Ontario (FRPO)
Green Energy Coalition (GEC)
Industrial Gas Users Association (IGUA)
Low Income Energy Network (LIEN)

Pollution Probe
School Energy Coalition (SEC)
TransCanada Energy Ltd.
Vulnerable Energy Consumers Coalition (VECC)

One party, TransCanada Energy Ltd., takes no position on the whole agreement.

II. AGREEMENT PREAMBLE

In EB-2011-0295, the Company and DSM Consultative members, through a consultative process reached agreement on a “financial package” for the Company’s DSM programs in 2012 and certain other matters for the multi-year term of the plan, 2012-2014. This earlier agreement specifically contemplated Enbridge applying in 2012 for certain further approvals that would be required for it to undertake its DSM activities in 2013 and 2014. As a result of the consultative process described earlier in this Settlement Agreement, the parties have reached a complete settlement in respect of all outstanding matters requiring Board approval for the years 2013 and 2014. More specifically, there is a complete settlement in respect of the budget for each of the program types, the maximum incentive, the scorecard, and specific terms and conditions which relate to the budgets, targets and incentives for programs which the Company will undertake pursuant to each program type for each of years 2013 and 2014 and certain terms and conditions with respect to specific programs. This document is not a Settlement Agreement in the traditional sense under the Board’s Rules of Practice and Procedure, for at least three reasons. First, it was not the result of a process ordered and supervised by the Board. Second, because of the varied nature of the subject matter, the Parties determined that it would be more productive if not all Parties attended all meetings (although, in the end, all signatories agree to support all elements of the settlement). Third, Board Staff, although observers at some of the meetings, were not present at all of the meetings.

Notwithstanding that this is not a formal Settlement Agreement under the Rules, the Parties jointly present it to the Board as their binding and enforceable Agreement with respect to the issues discussed herein. The Parties request that the Board accept it as evidence of their consensus on those issues, and, subject to any further discovery or other process the Board requires to deal with its consideration of the Company’s 2013 - 2014 DSM Plan Update , deem it to be a Settlement Agreement under the Board’s Rules.

The Parties further request that the Board adopt this Agreement as part of the Board’s Decision and Order in this application. While the consultative process, under which this Settlement Agreement was reached, was not formally initiated by the Board under Rule 31 of the *Ontario Energy Board Rules of Practice and Procedure*, the parties agree that

it is appropriate that Rules 31.09, 31.10 and all of 32 apply to the consultation process and to this Settlement Agreement.

The Parties intend that this Agreement should be subject to the rules relating to confidentiality and privilege contained in the Board's Settlement Conference Guidelines. The Parties understand this to mean that all positions, negotiations and discussion of any kind whatsoever which took place as part of the Consultative meetings, and all documents exchanged during the meetings which were prepared to facilitate settlement discussions, are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any dispute that subsequently arises with respect to the interpretation of any provision of this Agreement.

Where Board Staff were present during negotiations or other discussions, or received copies of information referred to above, the rules of confidentiality and privilege apply equally to them notwithstanding that they are not parties to this Agreement.

The evidence which supports this Settlement Agreement is found in the DSM Plan Update submission. The Parties were provided with a full copy of this submission for their review prior to finalization of this Settlement Agreement. The Parties are of the view, not only that this record supports this Settlement Agreement, but that also the quality and detail of the record provide a basis for the Board to approve this Settlement Agreement. The DSM Plan Update submission is being filed contemporaneously with the filing of this Settlement Agreement.

The Parties all agree that this Settlement Agreement is a package: the individual aspects of this agreement are inextricably linked to one another and none of the parts of this settlement are severable. As such, there is no agreement among the Parties to settle any aspect of the issues addressed in this Settlement Agreement in isolation from the balance of the issues addressed herein. The Parties agree, therefore, that in the event that the Board does not accept this Settlement Agreement in its entirety, then there is no agreement unless the provisions not accepted by the Board are severed with the agreement of all Parties. If the Board does not accept this Settlement Agreement, after any determination by the Parties with respect to severability of any provisions, then all Parties will be at liberty to take such positions as they see fit in respect of this DSM Plan Update submission filing and to file such additional and further materials in support of such revised position. In addition, in the event that this Settlement Agreement is rejected by the Board, the position of each of the Parties will not be prejudiced by reason of their participation in settlement discussions and entry into this Settlement Agreement.

According to the Board's *Settlement Conference Guidelines* (p. 3), the Parties must consider whether a settlement proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. The Parties

consider that no settled issue requires an adjustment mechanism other than those expressly set forth herein.

None of the Parties can withdraw from the Settlement Agreement except in accordance with Rule 32 of the *Ontario Energy Board Rules of Practice and Procedure*. Finally, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions Parties might take with respect to the same issue in future proceedings. However, any such position cannot have the effect of changing the result of this Agreement as it applies to 2013 or 2014.

This Settlement Agreement presents the complete agreement on program budgets, metrics, scorecards and all related program terms for the Enbridge 2013-2014 DSM programs. The Parties acknowledge that Appendix A to the Settlement Agreement in EB-2011-0295 "Joint Terms of Reference on Stakeholder Engagement for DSM Activities by Enbridge Gas Distribution Inc. and Union Gas Limited" continues to apply in 2013 and 2014.

III. TERMS OF SETTLEMENT

A. Introduction

The Guidelines, at Section 8, state that the DSM budget for Enbridge for the 2012 to 2014 DSM Plan term should be \$28.1 million. This figure can be escalated annually using the previous year's Gross Domestic Product Implicit Price Index ("GDP-IPI") issued by Statistics Canada. As well, Enbridge was entitled to increase the annual low income DSM budget by up to 10%. In the EB-2011-0295 Settlement Agreement, Parties agreed that Enbridge's base budget of \$28.1 million would be increased by 10 % (\$2.81 million) and these additional monies would be applied to low income programs. The aggregate budget for 2012 was therefore \$30.91 million. For 2013, this base budget has been escalated by the GDP-IPI for 2011, which is 2%. The resulting budget for 2013 is \$31.588 million. Escalating the 2013 budget by the 2011 GDP-IPI of 2%, the aggregate budget for 2014 is \$32.158 million. Parties agree that, notwithstanding the expectations set forth in the Guidelines, these budgets will be based on the 2011 inflation figures as if they continued throughout 2013 and 2014, and will not change even in the event that the GDP-IPI for 2012 or 2013 increases or decreases.

A summary of the budget amounts by each program type and the appropriate allocation of the maximum incentive available by program type are set out below. This is followed by a detailed description of the settlement in respect of each program type.

The budget for each program type has only been agreed at the top level (i.e. resource acquisition, market transformation, low income). This Agreement does not purport to

indicate agreement on, or support for, any particular existing or proposed program. Consistent with the theme of utility responsibility for program design and implementation, with stakeholder input only as requested by the Utility, all as set out in the Terms of Reference for Stakeholder Engagement, except where expressly set forth in this Agreement the Parties have not agreed on a budget allocation to or between particular programs. Further, this Agreement does not purport to indicate agreement on, or support for, the proposed split between program spending and overhead spending, whether overall or within any program type. The Company acknowledges its understanding that the Guideline provision regarding the transfer of funds among programs applies to all program costs, including overheads in accordance with the Guidelines at page 4.

Each program type has its own scorecard which contains the various targets and metrics applicable to relevant programs for 2013 and 2014. In developing the scorecards, the Parties applied the rules set out in the Guidelines under Sections 9 and 10. The Parties have agreed that the threshold levels of achievement to be used in respect of each program (with the exception of the Home Labelling and Commercial Savings By Design programs which are set at the 50%, 100% and 150% levels), shall be set at the 75%, 100% and 125% levels. The Parties have reached agreement on the appropriate scorecard with targets and metrics for each of the program types for 2013 and 2014. As a result, the scorecards have been "tailored" to the suite of program offerings that Enbridge will be undertaking in these years.

This Settlement Agreement includes one change to the Table of Measure Assumptions filed in EB-2011-0295. Parties agree that free ridership for all low income measures both prescriptive and custom shall be set at zero. Enbridge will bring forward any other changes to measure assumptions for 2013 and 2014 through the Technical Evaluation Committee process as established in the Stakeholder Engagement Terms of Reference approved in EB-2011-0295.

As described in the 2012-2014 Multi-year Plan submission, Enbridge recognizes the value of evaluation for the calculation of results of current programs and to guide future programs and has budgeted for evaluation accordingly. Enbridge is committed to continuing with a fulsome slate of evaluation activities in 2013 and 2014 in consultation with the TEC. This is reflected in the planned budget for evaluation research, which is \$815,652 in 2013 and \$915,697 in 2014 (excluding any costs associated with supporting participation on the Technical Evaluation Committee and/or Audit Committees). The Company agrees that the evaluation research budget should not be materially decreased through diversion of evaluation research funds to either program or other overhead or administrative activities in 2013 and 2014 and that the evaluation research budget may be increased where appropriate.

The maximum incentive available by program type has been determined by calculating the budget for each program type as a percentage of the total budget. By applying this percentage to the maximum incentive payment available of \$10.659 million in 2013 and \$10.872 million in 2014, the incentive available by program type is determined.

In addition to the items detailed below, the Parties considered the potential for an On Bill Financing program. Because such a program would likely entail utilization of the existing Open Bill mechanism, the matter was referred to the settlement discussions in the 2013 rates case to be considered by the larger group discussing Open Bill (EB-2011-0343 - Issue D11). Those discussions resulted in a proposed settlement of the On Bill Financing aspect of the Open Bill issue which, if accepted by the Board, will lead to research and a consultative exercise in the coming months addressing the matter. The parties herein are in agreement with the proposed disposition of this matter that is contained in the EB-2011-0343 - Issue D11 proposed settlement.

This Settlement Agreement shall be filed contemporaneously with Enbridge filing its 2013 - 2014 DSM Multi-Year Plan Update. Enbridge agrees that the DSM Plan Update it files will be the same in all material respects as the DSM Plan Update provided to the Parties prior to the execution of this Agreement. Intervenors are entitled to ask further questions about Enbridge's DSM Plan Update, including but not limited to any programs and activities (the term activity hereinafter refers collectively to program offers, activities and initiatives) which Enbridge contemplates delivering and undertaking over the course of the Plan. Parties agree, however, that they will not take any position in respect of any program or activity which, if sustained by the Board, would necessarily result in a change to any of the terms, targets, metrics, budgets or incentives set out in this Settlement Agreement.

B. Budget and Maximum Shareholder Incentive Totals by Program Type

i) 2013 and 2014

2013	Program Costs	Program Overhead	Program Costs and Overhead (PCO)	% of PCO of Total DSM Budget	Maximum SSM per Program Type (@ Upper Band)
Total LI Costs	\$ 6,638,325	\$ 522,050	\$ 7,160,375	23%	\$ 2,416,169
Total MT Costs	\$ 5,085,000	\$ 931,872	\$ 6,016,872	19%	\$ 2,030,310
Total RA Costs	\$ 13,882,920	\$ 4,528,033	\$18,410,953	58%	\$ 6,212,521
Total	\$ 25,606,245	\$ 5,981,955	\$ 31,588,200	100%	\$10,659,000

2014	Program Costs	Program Overhead	Program Costs and Overhead (PCO)	% of PCO of Total DSM Budget	Maximum SSM per Program Type (@ Upper Band)
Total LI Costs	\$ 6,729,500	\$ 507,831	\$ 7,237,331	23%	\$ 2,446,785
Total MT Costs	\$ 4,795,000	\$ 1,327,144	\$ 6,122,144	19%	\$ 2,069,764
Total RA Costs	\$ 14,160,578	\$ 4,638,711	\$ 18,799,289	58%	\$ 6,355,631
Total	\$ 25,685,078	\$ 6,473,686	\$ 32,158,764	100%	\$ 10,872,180

C. Details of Settlement by Program Type

(A) Resource Acquisition

(i) 2013 and 2014 Budget

Budget (\$Million) (including overheads)	Budget (\$Million) (including overheads)
2013	2014
\$18,410,953	\$18,799,289

(ii) 2013 and 2014 Resource Acquisition Scorecard (Combine scorecard)

Component	Metric	Year	Weight	Lower Million m ³	Middle Million m ³	Upper Million m ³
Volumes	Lifetime cubic meters	2013	92%	729.46	972.61	1215.76
		2014	92%	744.05	992.06	1240.08
Residential Deep Savings	Number of participants with at least 2 major measures (<i>average annual gas savings across all participants must be at least 25% of combined baseline space heating and water heating usage for any incentives to be earned</i>)	2013	8%	549	732	915
		2014	8%	560	747	933

(iii) Maximum Incentive 2013 and 2014

- (a) The Parties agree that the maximum total resource acquisition incentive at the upper band for 2013 shall be \$6.212 million, determined as follows. The 2013 Resource Acquisition budget as a percentage of total budget (\$18.410 million as a percentage of \$31.588 million, equals 58 percent). 58 percent of a maximum incentive of \$10.659 million equals \$6.212 million, which is the maximum incentive for Resource Acquisition, payable if the “Upper” level for each metric on the scorecard is achieved in 2013.
- (b) The Parties agree that the maximum total resource acquisition incentive at the upper band for 2014 shall be \$6.355 million, determined as follows. The 2014 Resource Acquisition budget as a percentage of total budget (\$18.799 million as a percentage of \$32.158 million, equals 58 percent). 58 percent of a maximum incentive of \$10.872 million equals \$6.355 million, which is the maximum incentive for Resource Acquisition, payable if the “Upper” level for each metric on the scorecard is achieved in 2014.

(iv) Specific Terms with Respect to Resource Acquisition

- (c) Enbridge intends to continue to offer its Energy Compass/Run it Right (“RIR”) initiative to commercial customers in both 2013 and 2014. That initiative typically involves assessments of and support to participants to address opportunities to improve energy efficiency through both capital improvement projects and modifications to building operational procedures. Any savings from capital improvement projects resulting in a given year from the Energy Compass/RIR initiative will count towards Enbridge’s achievement of its savings goals in that year (as with capital improvement projects resulting from any other Enbridge efficiency initiative). However, because savings from operational improvements – which are expected to be the vast majority of savings from the initiative – cannot be documented for at least 12 months, such savings will, by definition, only be counted in the subsequent year. The Resource Acquisition energy savings targets documented in the scorecard table above were developed assuming that Enbridge would spend \$1.9 million of its Resource Acquisition budget on Energy Compass/Run it Right activity in both 2013 and 2014. In other words, the targets implicitly assume that there will be little direct energy savings benefits from 2013 initiative spending in 2013 (and similarly, little benefit in 2014 from spending in 2014). Thus, in the event that Enbridge shifts funds from the Energy Compass/RIR activity to any other program or activity, the “lifetime (or cumulative) cubic meter” targets at all three levels (i.e., lower, middle and upper) shall increase by 50 lifetime cubic

meters for each dollar shifted. For example, if Enbridge shifts \$500,000 to other programs or activities, the targets are increased by 25 million lifetime (or cumulative) cubic meters in 2013, i.e., to 754.46, 997.61 and 1240.61 million m³.

- (d) The Residential Deep Savings Target shall be based on the number of homes retrofitted. On average, the customers counted towards the deep savings metric must achieve at least a 25% reduction in annual gas usage for space and water heating, in aggregate (based on accredited modelling software, e.g., HOT2000), for the utility to be eligible to earn any shareholder incentive. In addition, each participant must implement a minimum of 2 major measures. The following are examples of major measures:
 - (i) Heating system replacement
 - (ii) Water heating system replacement
 - (iii) Attic insulation
 - (iv) Wall insulation
 - (v) Foundation insulation
 - (vi) Air sealing (minimum reduction of at least 10% in ACH as measured by a blower door)
 - (vii) Window replacements
 - (viii) Drain water heat recovery
- (e) Enbridge will track and report information regarding deep savings in the Commercial and Industrial sectors of its Annual DSM Report. The Company will consult with interested parties regarding the specifics of information to be reported.
- (f) Enbridge will commission a Free-Ridership and Spillover Study for custom projects in consultation with the Technical Evaluation Committee ("TEC"). Following completion of the Study, the TEC will work to develop proposed free ridership and spillover values for custom projects, if warranted. Enbridge will consult with Intervenor regarding application of these values prior to submitting an Update to the Board. The Parties acknowledge that not all parties agree that spillover, or all types of spillover, should be included in savings calculations.

- (g) In general, Enbridge will have the right, in the manner described in the Guidelines, to re-allocate budget between customer classes and groups to optimize the effectiveness of its DSM Plan. However, the Parties agree, for each of 2013 and 2014 that the total budget spent on programs and activities (including allocated overheads but excluding Low Income Allocations) for all customers in rate classes 110, 115 and 170 shall not exceed the following annual limits:

Rate Class	2013 Spending Limit	2014 Spending Limit
110	\$1.636 million	\$1.687 million
115	\$1.261 million	\$1.307 million
170	\$2.164 million	\$2.220 million

The purpose of these limits is to ensure that the maximum cost to be borne by industrial customers in these rate classes is known in advance and capped. The limits apply whether or not Enbridge has accessed the DSMVA. Further, they have no bearing on either Enbridge's ability to access the DSMVA (i.e. when it has achieved overall pre-audit Resource Acquisition performance equal to the middle band target (i.e. the 100% level)) or the calculation of the maximum amount of DSMVA funds which the Company can access and spend on Resource Acquisition efforts (i.e. 15% of the total Resource Acquisition budget). To ensure that commercial customers in the three affected rate classes are not adversely affected by the spending caps, Enbridge commits to managing spending within each of the three rate classes such that no commercial customer in any of the classes would be prevented from participating in any of the Company's DSM program or initiative offerings as a result of the annual spending caps imposed on each rate class.

- (h) Enbridge may, consistent with proper accounting methods under USGAAP, capitalize IT spending related to DSM activities provided that the amounts in the aggregate in each of 2013 and 2014 do not exceed \$1 million.

(B) Low Income

(i) Budget for 2013 and 2014

Budget (\$Million) Including overheads	Budget (\$Million) Including overheads
2013	2014
\$7,160,375	\$7,237,331

(ii) 2013 and 2014 Low Income Scorecard

	Weight	Year	Lower Band M cumulative m ³	Middle Band M cumulative m ³	Upper Band cumulative m ³
Single Family Ont. Building Code (Part 9)	50%	2013	17.3	23.1	28.8
		2014	17.7	23.6	29.5
Multiresidential Ont. Building Code (Part 3)	45%	2013	45	60	75
		2014	48.2	64.2	80.3
TOTAL		2013	62.3	83.1	103.8
		2014	65.9	87.8	109.8
Percent of Part 3 Participants enrolled in Run it Right	5%	2013	30%	40%	50%
		2014	30%	40%	50%

(iii) Maximum Incentive 2013 and 2014

- (a) The Parties agree that the maximum total Low Income incentive at the upper band for 2013 shall be \$2.416 million, determined as follows. The 2013 Low Income budget as a percentage of total budget (\$7.160 million as a percentage of \$31.588 million, equals 23 percent). 23 percent of a maximum incentive of \$10.659 million equals \$2.416 million.
- (b) The Parties agree that the maximum total Low Income incentive at the upper band for 2014 shall be \$2.446 million, determined as follows. The 2014 Low Income budget as a percentage of total budget (\$7.237 million as a percentage of \$32.158 million, equals 23 percent). 23 percent of a maximum incentive of \$10.872 million equals \$2.446 million.

(iv) Specific Terms of Agreement Relating to Low Income

- (a) The Low Income budget contemplates incurring costs to treat single family homes for health and safety issues necessary to implement energy efficiency upgrades. The actual cost depends upon need, the unique circumstances of each single family home and the actual expense to address such health and safety work. As a result, the costs will, by necessity, vary from home to home.
- (b) Enbridge agrees to comprehensively treat all cost-effective opportunities in each Part 9 single family home, provided that the customer accepts all such measures. "Cost-effective" is defined as all measures with a TRC benefit-cost ratio of at least 0.7 (as per the Guidelines). Enbridge will continue to consolidate the Low Income TAPS and weatherization activities. All low income single family homes visited for potential weatherization will, wherever possible and appropriate, receive the basic measures (i.e., showerheads and programmable thermostats) as part of the home assessment visit. Additional in-suite measures – including clothes dryer racks, cold water detergent and leak repairs – may also be provided. Stand-alone Low Income TAPS will no longer be offered.
- (c) Social and assisted housing (Part 3 of Division B, of the Ontario Building Code) buildings are eligible for equipment and retrofit measures. Enbridge and the Low Income Consultative sub-group will continue to work collaboratively, with additional resources as necessary, to develop protocols to include privately-owned Part 3 multi-unit buildings in the Low Income program. Those protocols will be finalized with a target date by the end of February 2013, with a soft launch of the privately-owned low income multi-family elements of the program in the latter part of 2013. It is

anticipated that a formalized privately-owned low income multi-family initiative will be available for 2014. The protocols for participation of privately-owned low income multi-family buildings in the Low Income program will be based on the following principles:

- (i) Eligibility: To be eligible to participate in the Low Income program, privately owned Part 3 buildings must have a high proportion of low income tenants.
 - (ii) Screening for eligibility: Will be done based on criteria such as geography/demographics and rent levels (consulting assistance may be required).
 - (iii) Impact on Rents: Participation of privately owned Part 3 buildings through building owner or management participation should not result in a rent increase to building tenants.
 - (iv) Benefits to Tenants: Retrofits of Part 3 privately owned buildings undertaken through the Low Income program must include measures that will result in tangible benefit to tenants, e.g., in suite measures that increase comfort and convenience.
 - (v) Impact on Enbridge Low Income Targets: Enbridge 2013-2014 DSM targets will not be affected by the building mix resulting from inclusion of privately owned Part 3 buildings in the Low Income program.
- (d) Thus, much of the developmental work that Enbridge and the Low Income Consultative sub-group will undertake through February 2013 will focus on the following issues:
- (i) Eligibility: Developing criteria for eligibility.
 - (ii) Impact on Rents: Developing a method for verifying that program retrofits of privately owned Part 3 buildings did not result in a rent increase for tenants.
 - (iii) Benefits to Tenants: Identifying suitable measures providing direct benefits to tenants in participating buildings, and developing processes and metrics to verify the tenant benefits.

- (e) Social and assisted housing (Part 3 of Division B, of the Ontario Building Code) buildings are eligible for equipment and retrofit measures. Enbridge agrees in principle to undertake equipment and retrofit measures with regard to Part 3, low income multi-unit buildings whether they are social housing or privately owned. The Parties have not finalized a definition of low income multi-unit buildings applicable to the private sector, and agree that, until a suitable definition is available, Enbridge's programs for Part 3 buildings can be restricted to social and assisted housing as defined in EB-2008-034 Demand Side Management Guidelines for Natural Gas Utilities. The parties agree that once such a definition is available, privately-owned multi-unit buildings will be included in the programs for Part 3 buildings. Enbridge agrees to consult with interested Parties, including but not limited to VECC, LIEN, and FRPO, with respect to the appropriate building mix (social and assisted housing vs. private sector) for these programs. Notwithstanding the inclusion of privately-owned multi-unit buildings in Part 3 programs, the targets will not change for 2013 or 2014. For Part 3 buildings, insuite measures from which Enbridge may choose are expanded to include, but are not limited to: clothes dryer rack, cold water wash detergent, and leak repairs.
- (f) The RIR activity will be offered to all program eligible Part 3 multi-residential buildings. The number of new projects enrolled in Low Income RIR in a given year will be included as an additional metric in the Low Income program, accounting for 5% of the total Low Income program scorecard for the year. The Company does not want to deny participation in RIR to low income Part 3 buildings that participated in low income DSM projects in a prior year of the current multi-year DSM plan. Therefore, Part 3 buildings which participated in another aspect of the Low Income program in a previous year may enroll in RIR in a subsequent year. For the purposes of the RIR metric, such projects will be counted towards both the total number of Part 3 projects for the year and the total number of new RIR enrolment projects for the year.

For example, for the 2014 RIR metric, low income Part 3 projects from 2012 and 2013 will be eligible to enroll in RIR in 2014. Such new enrolment projects will be counted towards the total number of Part 3 projects for 2014 and the total number of RIR projects for 2014.

Formula:

$$\text{Percent Enrolled in current year RIR} = \frac{x + y}{x + y + z}$$

where

x =	Number of new RIR buildings in the current year which have participated in another aspect of the Low Income program in a previous year of the 2012-2014 multi-year plan
y =	Number of new RIR buildings participating in current year RIR which have not previously participated in the Low Income program
z =	Number of buildings in the current year which have implemented custom projects other than RIR.

The Low Income RIR activity shall include (1) benchmarking, (2) analysis of historical consumption data, (3) development of recommendations for reducing consumption, and (4) assessment of resulting changes in consumption 12 months later based on changes in actual gas usage. Enbridge shall have the flexibility to modify the specific details regarding how those design features (and other RIR features) are implemented to reflect the needs and characteristics of low income low and mid-rise buildings.

- (g) For Low Income programs in Part 9 and Part 3 buildings, free ridership for all measures both prescriptive and custom is set at zero.
- (h) Once Enbridge has achieved overall pre-audit Low Income performance equal to the middle band target (100% level on a pre-audit basis), Enbridge may access the DSMVA to achieve Low Income program performance in excess of 100%.
- (i) All parties agree that the Low Income budget shall be used for Low Income programs only.

(C) Market Transformation

(i) Budget 2013 and 2014

Budget (\$Million)	Budget (\$Million)
(including overheads)	(including overheads)
2013	2014
\$6,016,872	\$6,122,144

(ii) Maximum Incentive 2013 and 2014

- (a) The Parties agree that the maximum total market transformation incentive at the upper band for 2013 shall be \$2.03 million, determined as follows. The 2013 Market Transformation budget as a percentage of total budget (\$6.016 million as a percentage of \$31.588 million) equals 19 percent. 19 percent of a maximum incentive of \$10.659 million equals \$2.03 million.
- (b) The Parties agree that the maximum total market transformation incentive at the upper band for 2014 shall be \$2.069 million, determined as follows. The 2014 Market Transformation budget as a percentage of total budget (\$6.122 million as a percentage of \$32.158 million) equals 19 percent. 19 percent of a maximum incentive of \$10.872 million equals \$2.069 million

2013	Program Costs	Program Overhead	Program Costs and Overhead (PCO)	% of PCO of MT DSM Budget	Maximum SSM per Program Type (@ Upper Band)
Savings by Design Residential	\$2,305,000	\$422,412	\$2,727,412	45%	\$ 920,327
Savings by Design Commercial	\$ 590,000	\$108,123	\$ 698,123	12%	\$ 235,572
Home Labelling	\$ 775,000	\$142,026	\$ 917,026	15%	\$ 309,438
DWHR	\$1,415,000	\$259,311	\$1,674,311	28%	\$ 564,973
Total (not including Overheads)	\$5,085,000	\$931,872	\$6,016,872	100%	\$2,030,310

2014	Program Costs	Program Overhead	Program Costs and Overhead (PCO)	% of PCO of MT DSM Budget	Maximum SSM per Program Type (@ Upper Band)
Savings by Design Residential	\$2,445,000	\$ 676,719	\$3,121,719	51%	\$1,055,385
Savings by Design Commercial	\$ 950,000	\$ 262,938	\$1,212,938	20%	\$ 410,068
Home Labelling	\$1,400,000	\$ 387,487	\$1,787,487	29%	\$ 604,311
Total	\$4,795,000	\$1,327,144	\$6,122,144	100%	\$2,069,764

(iii) 2013 and 2014 Market Transformation Scorecards

The scorecards for the four Market Transformation programs: 1) Residential Savings by Design; 2) Commercial Savings by Design; 3) Home Labelling; and 4) Drain Water Heat Recovery (DWHR); follow. Each of the scorecards set out the metrics applicable in 2013 and 2014. Each program scorecard is then followed by the terms specific to that Market Transformation program.

Common to all Market Transformation programs is that once Enbridge has achieved overall pre-audit market transformation performance equal to the middle band target (100% level), the Company is then able to access the DSMVA to achieve Market Transformation program performance in excess of 100%.

1. Residential Savings by Design

	Weight	Lower Band	Middle Band	Upper Band
2013				
Top 80 previously non-participating builders enrolled	60%	11	14	18
Completed Units	40%	675	900	1125
2014				
Top 80 previously non-participating builders enrolled	60%	12	16	20
Completed Units	40%	750	1000	1250

(i) Specific Terms of Agreement Relating to Residential Savings by Design

- (a) Metric: builder participation “TOP 80 previously non-participating builders enrolled”

For the purposes of assessing performance in 2013 and 2014 relative to this metric, a “top 80 previously non-participating builder enrolled” is defined as follows:

- (i) The builder must have signed a Memorandum of Understanding (MOU) containing a commitment to participate in the Energy Savings by Design program for a 3-year period
- (ii) The builder must have completed a program-approved Integrated Design Process (IDP), such as IEA Task 23 or the iiSBE developed IDP tool, including requisite energy modeling for homes the builder plans to construct in a new development which demonstrates at least 25% total energy savings relative to the Ontario Building Code.
- (iii) The builder must be new to the program. That is, the builder must have gone through the IDP for the first time in whatever year participation is being counted. For example, a builder who participated in the program in 2012 can no longer be counted towards the builder participation target for 2013 or 2014. Similarly a builder who participates in 2013 cannot count towards the builder participation target for 2014.
- (iv) The builder must be either a top 80 builder and/or a regional top 4 builder as defined below:
 - Top 80 refers to the 80 largest builders in Enbridge’s service territory who have not previously participated in the program (i.e. who have not already enrolled and completed an IDP). For example, if 16 of the top 80 builders participate in the program in 2012, then the target market for 2013 becomes the 96 largest builders (excluding the 16 who already participated) in Enbridge’s service territory.
 - A regional top 4 builder is a builder which is one of the four largest builders in each of the following eight regions of Enbridge’s service territory regardless of whether they are listed in the Top 80.

Area 1 – Metro,
Area 21 – Mississauga,
Area 35 – Richmond Hill, Markham
Area 45 – Whitby, Ajax, Oshawa
Area 47 – Peterborough
Area 53 – Barrie
Area 65 – Ottawa
Area 76 – Niagara

- Builder size is measured by the number of completed homes in Enbridge's service territory in the previous calendar year. Under no circumstances shall a builder who built fewer than 50 homes the previous year be considered either a top 80 builder (even if this means that the eligible target market is less than 80 builders) or a regional top 4 builder (even if that means that the eligible target market in a region is less than 4 builders).

(b) Metric: "Completed units"

For the purposes of assessing performance in 2013 and 2014 relative to this metric, a "completed unit" is defined as follows:

- (i) A home completed by a participating builder who has completed the IDP process for the subdivision.
- (ii) A home which, as constructed, has features consistent with the builder's IDP and that make it 25% more efficient than a new home built to the Ontario Building Code.
- (iii) Builders may complete the IDP process a second time for a second subdivision. The homes completed in the second subdivision may be counted as completed units. However, the builder can only be counted once towards the participation metric.
- (iv) All homes constructed to the standard in a builder's subdivision shall count towards the metric even if rebates were not paid for all of them. Non-rebated units will be verified by a confirmation letter from the builder acknowledging that the homes were built to the IDP standard. Enbridge rebated units will be verified using the blower door test.

2. Commercial Savings by Design

	Year	Weight	Lower Band (50%)	Middle Band (100%)	Upper Band (150%)
New Developments enrolled	2013	100%	6	8	15
	2014	100%	8	12	19

(i) Specific Terms of Agreement Relating to Commercial Savings by Design

- (a) For the purposes of assessing performance in 2013 and 2014 relative to the Market Transformation metrics for the Commercial Savings by Design program outlined above, only builders and developers who have “enrolled” in the program and completed the IDP process in 2013 and 2014 are eligible to be counted towards the 2013 and 2014 targets respectively.
- (b) Metrics in the above scorecard are based on the number of projects to which a developer commits, i.e., the same developer with different clients and different kinds of projects may be counted multiple times. A minimum 100,000 square feet requirement applies to each project. A project is defined as either a single building or multiples of the same building by the same company that add up to 100,000 square feet.
- (c) “Enrolment” is defined as a signed MOU with a builder or developer containing a commitment to participate in the Enbridge Commercial Savings by Design program for a 5-year period which will include undertaking an IDP adhering to an Enbridge approved IDP process (such as IEA Task 23 or the iiSBE developed IDP Tool) which also includes the requisite energy model, all demonstrating how to achieve at least 25% total energy savings relative to the Ontario Building Code. The builder must also commit to constructing buildings or a building to the IDP standard within 5 years.

3. Home Labelling

	Weight	Lower Band (50%)	Middle Band (100%)	Upper Band (150%)
2013				
Home Labelling	70%	N/A	Commitment from realtors collectively responsible for more than 5,000 home listings/ year	Commitment from realtors collectively responsible for more than 10,000 home listings/ year
Ratings performed by buyers and/or sellers	30%	250	500	750
2014				
Home Labelling	50%	N/A	Commitment from realtors collectively responsible for more than 5,000 home listings/ year	Commitment from realtors collectively responsible for more than 10,000 home listings/ year
Ratings performed by buyers and/or sellers	50%	750	1500	2250

(i) Specific Terms of agreement relating to Home Labelling

- (a) Commitments from realtors metric: must be from new realtors not counted towards a previous year's metric.
- (b) Ratings performed by buyers and/or sellers metric: must be either included in a listing (or related marketing materials) by the seller or made a condition of sale by the buyer.

4. Drain Water Heat Recovery (DWHR) – 2013 Only

	Weight	Lower Band	Middle Band	Upper Band
# of DWHR units installed	100%	2813	3,750	4,688
Incentive			75% of unit cost	

(i) Specific Terms of Agreement Relating to Drain Water Heat Recovery

- (a) Enbridge has committed to ramping down financial incentives for the DWHR program by the end of 2013, i.e. exiting the market altogether in 2013. The program will be discontinued and not available in 2014. Therefore, there is no budget or target, and no incentive, related to this program for 2014.

IV. EVIDENTIARY BASIS FOR SETTLEMENT

Exhibit B, Tab 1, Schedule 1	Background and Introduction
Exhibit B, Tab 1, Schedule 2	2013-2014 Update Overview
Exhibit B, Tab 1, Schedule 3	Program Types: Budget, Metrics and Targets
Exhibit B, Tab 1, Schedule 4	Program Descriptions Update
Exhibit B, Tab 1, Schedule 5	Evaluation Plan Update
Exhibit B, Tab 2, Schedule 1	System Characteristics/Rate Allocation Analysis
Exhibit B, Tab 2, Schedule 2	Avoided Costs
Exhibit B, Tab 2, Schedule 3	TRC Analysis
Exhibit B, Tab 2, Schedule 8	Lura Report
Exhibit B, Tab 2, Schedule 9	Settlement Agreement

SETTLEMENT AGREEMENT

Enbridge Gas Distribution 2013 Rate Application

October 26, 2012

PREAMBLE

This Settlement Agreement is filed with the Ontario Energy Board (the "OEB" or the "Board") in connection with the Application of Enbridge Gas Distribution Inc. ("Enbridge" or the "Company"), for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2013.

In Procedural Order No. 2, the Board established the process to address the application, and in a Decision and Order dated June 15, 2012, the Board established the Issues List for this application.

A Settlement Conference was held between September 11 and 20, 2012. Ken Rosenberg acted as the DEB-appointed facilitator for the Settlement Conference. This Settlement Agreement arises from the Settlement Conference.

Enbridge and the following intervenors, as well as Ontario Energy Board technical staff ("Board Staff"), participated in the Settlement Conference:

ASSOCIATION OF POWER PRODUCERS OF ONTARIO (APPrO)
BUILDING OWNERS AND MANAGERS ASSOCIATION TORONTO (BOMA)
CANADIAN MANUFACTURERS & EXPORTERS (CME)
CONSUMERS COUNCIL OF CANADA (CCC)
DIRECT ENERGY MANAGEMENT LIMITED (Direct Energy)
ENERCARE INC. (EnerCare)
ENERGY PROBE RESEARCH FOUNDATION (Energy Probe)
FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO (FRPO)
GREEN ENERGY COALITION (GEC)
HEATING, VENTILATION, AND AIR CONDITIONING COALITION (HVAC)
JUST ENERGY ONTARIO LP (Just Energy)
LOW-INCOME ENERGY NETWORK (LIEN)
POLLUTION PROBE (Pollution Probe)
SCHOOL ENERGY COALITION (SEC)
SUMMITT ENERGY (Summit)
VISTA CREDIT CORP. (Vista)
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

The Settlement Agreement deals with all of the issues on the Issues List. Each of these issues from the Issues List is listed in the Table of Contents, above.

All intervenors listed above participated in part or all of the Settlement Conference and subsequent discussions. Certain of the intervenors participated only in the "open bill" issue (Issue D11) and not in discussions on any other issues. Those intervenors are referred to herein as the "open bill issue participants". The "open bill issue participants" are Direct Energy, EnerCare, GEC, HVAC, Just Energy, LIEN, Pollution Probe, Summitt and Vista. (As noted in Issue D11, other intervenors also participated in Issue D11. Those other intervenors also participated in the other issues. and are therefore not listed as "open bill issue participants".)

Any reference to "parties" in this Settlement Agreement is intended to refer to Enbridge and the intervenors listed above, with one exception. That exception relates to the fact that the 'open bill issue participants' only participated in the negotiation of Issue Q11, and did not participate in the negotiation of any other issue. Therefore, within the "Issues" section of this Settlement Agreement (Issues B1 to O6), references to all parties" are intended to refer to Enbridge and all intervenors listed above, except for (and not including) the open bill issue participants. .

Board Staff takes no position on any issue and, as a result, is not a party to the Settlement Agreement. Enbridge and all intervenors listed above have agreed to the settlement of the issues as described on the following pages. The open bill issue participants have only participated in the negotiation of Issue Di 1, and take no position on any other issue.

Best efforts have been made to identify all of the evidence that relates to each issue. The supporting evidence for each issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit B1, Tab 3, Schedule 1 is referred to as B1-3-1. The identification and listing of the evidence that relates to each settled issue is provided to assist the Board.

The Settlement Agreement describes the agreements reached on the issues. The Settlement Agreement provides a direct link between each settled issue and the supporting evidence in the record to date. In this regard, the parties are of the view that the evidence provided is sufficient to support the Settlement Agreement in relation to the settled issues and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the Board to make findings agreeing with the proposed resolution of the settled issues. In the event that the Board does not accept the proposed settlement of any issue, then subject to the parties' agreement on non-severability set out in the final paragraph below, further evidence may be required on the issue for the Board to consider it fully.

According to the Board's *Settlement Conference Guidelines* (p. 3), the parties must consider whether a settlement proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. Enbridge and the other parties who participated in the Settlement Conference consider that no settled issue requires an adjustment mechanism other than those expressly set forth herein.

None of the parties can withdraw from the Settlement Agreement except in accordance with Rule 32 of the *Ontario Energy Board Rules of Practice and Procedure*. Finally, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions parties might take with respect to the same issue in future proceedings, unless explicitly stated otherwise.

The parties agree that all positions, negotiations and discussion of any kind whatsoever that took place during the Settlement Conference and all documents exchanged during the conference that were prepared to facilitate settlement discussions are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Settlement Agreement.

It is fundamental to the agreement of the parties that none of the provisions of this Settlement Agreement are severable. If the Board does not, prior to the commencement of the hearing of the evidence in this proceeding, accept the provisions of the Settlement Agreement in their entirety, there is no Settlement Agreement (unless the parties agree that any portion or the Settlement Agreement that the Board does accept may continue as a valid Settlement Agreement).

OVERVIEW

Through the Settlement Conference, and as set out in this Settlement Agreement, the parties (except for the open bill issue participants, who take no position on any issue except for D11) have reached agreement on 53 of the 56 issues in Enbridge's 2013 rate rebasing application (referred to herein as the "Settled Issues").

The overall impact of the Settled Issues is to reduce the revenue deficiency from the as-filed amount of \$92.9 million (Exhibit M2, Tab 1, Schedule 2) to an amount of approximately \$17.9 million. The revenue requirement and deficiency impact of the Settled Issues are set out in the ADR Financial Statements attached to this Settlement Agreement as Appendix A (Exhibit N1, Tab 1, Schedule 1, Appendix A, part 1).

As noted above, all parties agree that the Settled Issues are a package. This means that none of the components of the Settlement Agreement should be considered in isolation, but instead they should be considered as a complete package. All parties agree that the package of Settled Issues represents a fair and reasonable agreement that is in the public interest.

There are three outstanding issues (the "Unsettled issues").

One of these Unsettled Issues, relating to the Open Bill Access Program (Issue D11), is listed as "Partially Settled" because the aspects of the issue with ratemaking implications are settled, while one aspect of the issue with no ratemaking impact remains unsettled (related to the terms of the Open Bill Agreement for 2013).

The other two Unsettled Issues, related to equity thickness and cost of capital under a new thickness (Issues E1 and E2), have a potential revenue deficiency impact of up to \$21.9 million. This means that if Enbridge is successful in its request for an increase in equity thickness from the current 36% level to the requested 42% level, then the final 2013 revenue deficiency will be approximately \$17.9 million. If Enbridge is not completely successful in this regard, then the 2013 revenue deficiency will be reduced by up to \$21.9 million, depending on the level of equity thickness and associated capital structure approved by the Board.

All parties agree that Enbridge should implement interim rates on January 1, 2013 that reflect the impact of the Settled Issues. For the purpose of interim rate implementation, all parties have agreed that Enbridge will use the current level of equity thickness (36%). All parties agree that the agreement to use the current level of equity thickness (36%) and associated capital structure ratios for implementation of interim rates is not intended as an indication or suggestion to the Board that 36% is the appropriate level of equity thickness for Enbridge in 2013. That issue is to be determined by the Board based upon the evidence and argument presented.

The revenue requirement and deficiency impact of the agreement for interim rates is set out in the ADR Financial Statements attached to this Settlement Agreement as Appendix A (Exhibit N1, Tab1, Schedule 1, Appendix A, part 2). The overall result of the implementation of the Settled Issues is a revenue sufficiency of approximately \$4.0 million (using the current 36% level of equity thickness). This Agreement also includes Appendix B (Gas Costs) and Appendix C (Average Use Forecasts). All of the Appendices are incorporated into and form part of this Settlement Agreement.

The Appendices were prepared by Enbridge for the assistance of the Board and the other parties. The parties to this Agreement, other than Enbridge, are relying on the accuracy and completeness of the Appendices in entering into this Settlement Agreement.

All parties agree that any financial impact of the determination of the Unsettled Issues (Issues E1 and E2) should be implemented as part of Enbridge's first ☐RAM Application following the Board's decision on those matters_

THE ISSUES

B: RATE BASE

1. Is Enbridge's forecast level of capital spending in 2013 appropriate?

[Complete Settlement]

All parties agree that Enbridge's capital budget for 2013 is appropriately set at \$387 million. Amounts to be spent in relation to the GTA Reinforcement and Ottawa Reinforcement projects, which projects will be considered by the Board in separate Leave to Construct Applications, will, if approved, be in addition to the \$387 million capital budget. Those two projects have no rate impact in 2013.

This 2013 capital budget is approximately \$97 million less than the as-filed budget of \$483.9 million, to take account of the assumed \$46 million impact from the agreed-upon \$23 million property, plant and equipment related reduction to 2013 rate base (set out in Issue B2 below), as well as the fact that the forecast \$51 million to be spent in 2013 on the GTA and Ottawa Reinforcement projects (Exhibit B1, Tab 3, Schedule 3) is outside of the \$387 million budget.

Evidence: The evidence in relation to this issue includes the following:

A2-1-1	Introductory Evidence
A2-1-2	Benchmarking Study
A2-2-1	2013 Regulatory Budget Assumptions and Guidelines Directive
31-2-1	Rate Base — Capital Budget
B1-2-2	Details of Capital Budget Expenditures and Justification for Projects over \$500,000
61-2-3	Comparison of Capital Expenditures 2007 to 2013
B1-3-1	Asset Plan
61-3-2	Asset Plan and 2013 Capital Budget
31-3-3	Leave to Construct Projects

RATE BASE - CAPITAL BUDGET

1. The purpose of this evidence is to present the 2013 Budget for capital expenditures. The "6" series of exhibits provide the Ontario Energy Board (the "Board") with information and variance explanations concerning, 2011 Historic Year, 2012 Estimate Year, and 2013 Test Year capital expenditures and customer additions. Appendix 1 provides a detailed breakdown of 2007 Board Approved Budget, 2011 Historic, 2012 Estimate and 2013 Budget.

2013 Budget

2. The 2013 Capital Budget is a consolidation of the traditional 'grassroots' budget prepared by all departments within Enbridge Gas Distribution ("Enbridge" or the "Company") in accordance with the guidelines and assumptions set out in the Budget Letter. The budget was developed in consideration of the Company's key business objectives of a continued focus on safety and reliability, customer service, and adherence to legislative and regulatory requirements. The Capital Budget was reviewed and approved by the Executive Management Team (the "EMT").

At Exhibit B1, Tab 3, Schedule 1, the Company describes how it has undertaken the development of an Asset Plan which, when filed as Exhibit B2, Tab 2, Schedule 1, will identify the distribution system capital requirements to address customer growth, reinforcement, integrity and reliability, and relocation needs over a ten year period. As described in the Asset Plan evidence, the plan is a rolling plan and will be updated each year. The to be filed Asset Plan covers the period from 2012 to 2021. The Company expects to file the Asset Plan in March 2012.

Witnesses: L. Au
S. Karcherla
D. Kelly
R. Lei

- v. Other general plant requirements including structures and improvements, office furniture, transportation fleet and tools increased in 2011 compared to 2007, primarily due to new office furniture and equipment to replace aging items and to meet new requirements and on-going improvements to structures;
- vi. Capital requirements for the Technical Training Initiative; including the development of training materials for Field and Office staff, utilizing new tools and technology such as eLearning modules (Computer based training), instruction led courses and practical hands on scenarios. Gap analysis has identified over 300 training modules required to be developed to respond to development needs, remedial training requirements, changes resulting from projects and continuous improvement to ensure a safe and competent workforce; and
- vii. Capital expenditures for customer related distribution plant decreased in 2011 as compared to 2007, due to lower customer additions.

2012 Estimate Comparison to 2011 Historic

- 13. The 2012 Estimate of capital expenditures is \$404.5 million which is \$6.5 million, or 1.6% over the 2011 Historic of \$398.0 million. Detailed explanations of the variances have been provided at Exhibit 64, Tab 2, Schedule 1. The major drivers contributing to this variance are as follows on Table 3:

Witnesses: L. Au
S. Kancharla
D. Kelly
R. Lei

Table 3 - 2012 Estimate vs. 2011 Historic: Major Variance

2012 Estimate vs. 2011 Historic (\$Millions)		Related evidence
LTC (Reinforcement projects)	22.1	B1-2-2 and B2-2-1
Other system improvement and upgrades	16.3	B1-2-2/131-3-11 B2-2-1
Computer and communication requirements	6.7	B1-2-2 and B1-4-1
Storage requirements	{4.1}	81-2-2 and B1-5-1
General plant including structures furniture, fleet, tools	(4.3)	
Customer related plant (including LTC power generation)	(14.6)	B1-2-2/B1-3-3/84-2-3
Cast iron replacement program	(15.6)	B1-2-2 and B2-2-1
Overall increase	6.5	

Capital expenditures for system improvement capital increased in 2012 Estimate as compared to 2011 Historic primarily due to several Leave to Construct projects. These projects include the Greater Toronto Area ("GTA"), and the Angus and Alliston Reinforcement projects. The GTA project will address operational flexibility, pipeline integrity, security of supply and future growth requirements for the City of Toronto and GTA. The Angus and Alliston reinforcement projects will ensure that the Company meets the future capacity requirements for their respective areas;

- ii. Other system improvements are higher in 2012, primarily due to integrity management projects including Records and GPS Strategy, Asset Risk Mitigation and the Revision of Damage Prevention Standards and Process. In addition, in 2012 the Company is required to complete additional relocation and reinforcement projects;
- iii. Computers and Communication Equipment expenditures are essential to provide enhancements and required upgrades to existing hardware and software. This includes upgrades to desktop and laptop hardware, due to obsolesce, and upgrades to software as required by the vendor to ensure continued support. Infrastructure replacement of Nertel to CISCO due to

Witnesses: L. Au
S. Kancharla
D. Kelly
R. Lei

technology obsolesce, email archiving for compliance and records management and Envision upgrades, to extend and enhance it's functionality to meet evolving business needs, maintain data integrity and improve data management governance;

- iv. Storage Operations are lower in 2012 due to the completion of the pool metering upgrade for gas inventory measurement in 2011;
- v. Other general plant including office furniture, transportation, fleet and tools is also lower in 2012, primarily due to lower requirements for transportation and heavy work equipment
- vi. Customer related distribution plant is lower in 2012, primarily due to the completion of the York Energy Centre power generation project in 2011, this was partially offset by increased customer additions in 2012 relative to 2011. Customer additions are anticipated to increase 1,174 over 2011 levels given positive trends in the housing market and continued economic recovery;
- vii. The Cast Iron replacement program is expected to be complete in 2012, the remainder of the program will install 41 kilometres of new main, 5,200 new services and abandon 60 kilometres of old main. In addition, all of the remaining Bare Steel mains located in the Niagara region are scheduled to be completed by the end of 2012.

2013 Test Comparison to 2012 Estimate

14 The 2013 Capital Budget is \$483.9 million, which is \$79.4 million more than the 2012 Estimate level, Detailed explanations of the variances have been provided at Exhibit B3, Tab 2 Schedule 1. The major elements of the 2013 Capital Budget are customer related distribution plant, system improvements and upgrades, general and other plant, and underground storage facilities. The major drivers contributing to the \$79.4 million increase are shown as follows on Table 4 on the following page.

Witnesses: L. Au
S. Kancharla
D. Kelly
R. Lei

Table 4 - 2013 Budget vs. 2012 Estimate: Major Variance

2013 Test vs. 2012 Estimate (\$Millions)		Related evidence
Other system improvement and upgrades	39.3	B1-2-2/B1-3-1/B2-2-1
LTC (Reinforcement and Replacement projects)	30.0	B1-2-2 and B1-3-3
Customer related plant (including LTC power generation)	19.8	B1-2-2 /B1-3-31133-2-3
General plant including structures, furniture, fleet, tools	(1.3)	
Computer and communication requirements	(2.5)	B1-2-2 and 81-4-1
Storage requirements	(5.9)	51-2-2 and 51-5-1
Overall increase	79.4	

- i. Other system improvements include safety and integrity programs that are essential to maintain a safe and reliable distribution system. The projects reflect the continuous commitment to meeting governing codes and standards as well as industry best practices. Capital expenditures for 2013 includes the on-going integrity management initiatives such as Records and GPS Strategy, Asset Risk Mitigation and Revision of Damage Prevention Standards. This category also includes asset plan initiatives that will assist management in making optimal decisions with respect to Enbridge's distribution system assets by balancing risks, operational performance and financial performance. These initiatives include Low Pressure Delivery Meter Set Program, Records Integrity Program, Don River Bridge Crossing Replacement, and the Isolation Valve Study & Installation Program. As well, the Company expects to complete additional relocation and replacement projects;
- ii. Capital requirements increased due to three System Improvement Leave to Construct projects; the Ottawa Reinforcement, the **GTA Reinforcement** and Ottawa Innes Road Replacement Main. The Ottawa Reinforcement project allows Enbridge to meet the capacity requirements for this significant growth area, as well as pressure requirements at the Ottawa Gate Station. The **GTA**

Witnesses: L. Au
S. Kancharla
D. Kelly
R. Lei

- project will enhance network integrity, flexibility and the ability to dual-feed critical parts of the GTA. The Ottawa Innes Road Replacement project is a much needed replacement required to remove an existing system bottleneck, this replacement will facilitate other improvements in the system;
- iii. Customer related capital has increased primarily due to several potential Power Generation projects which the Company will bring forward to the Board in LTC applications. In addition, the increase is partially due to the anticipated growth of almost one thousand customer additions in 2013 over 2012 levels. The customer growth is driven by stronger housing starts. Customer related capital is derived from the customer addition forecast that was prepared utilizing EBO 188 approved investment portfolio feasibility guidelines. Forecasts of customer additions are developed at a regional level based on a review of the Company's economic forecast and business plans, consultations between field personnel and building industry representatives, and the experience of the Company's regional management;
 - iv. Other general plant decrease in 2013 primarily due to the completion of the Technical Training and Operations Centre in 2012;
 - v. Computer and communication requirements decrease in 2013 primarily due to timing of expenditures. These expenditures are driven by information technology enhancements and necessary upgrades to existing software and hardware. The 2013 budget reflects the Company's requirements needed to support critical functions such as; EnVision systems, Customer Care applications, asset management and other technologies;
 - vi. Storage Operations decrease in 2013 primarily due to the completion of several projects in 2012. These include Observation Wells, Pool Metering and Sombre Station By-Pass. Storage Operations initiatives are crucial to ensure safety, environmental compliance and to increase system reliability.

Witnesses: L. Au
S. Kancharla
□. Kelly
R. Lei

NBRID GE

EGD Asset Plan

2012-2021



May 9, 2012

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Major Reinforcements:

In addition to the routine reinforcements, from time to time major reinforcements of the extra-high pressure grid mains that form the major backbone of the distribution system are required to further support customer growth and address significant system reliability and security of supply issues. These reinforcements are characterized by their size and complexity, and do not arise as frequently as the routine reinforcements.

Analysis of the supply chain and failure risks within the supply chain has indicated the potential for significant customer outages under certain upstream and downstream upset conditions affecting areas of high population densities, including the GTA and the Ottawa region.

This has led to the identification for the need of two major reinforcements in the 10-year planning horizon of this Asset Plan:

- The GTA Project will address these concerns for the Greater Toronto Area
- The Ottawa Reinforcement will address similar concerns for the Ottawa area

While these projects have been included within this Asset Plan, further details will be provided in the Leave-To-Construct applications that will be filed for each of these projects later in 2012.

The following is a summary of the Major Reinforcements.

PROJECT	PROJECT DESCRIPTION
GTA Project	Upgrading the XHP grid system in the Greater Toronto Area to meet load growth, ensure continued reliability and enable access to lower cost natural gas supplies
	Ottawa Reinforcement Pre-Engineering
Ottawa Reinforcement	Approx. 19300m of MPS 24 ST XHP pipe from Richmond Gate Station, North easterly to Greenbank
	Ottawa Reinforcement additional construction costs

Table 4 - Major Reinforcements

Implementation Plan & Estimated Capital Investments

Based on the reinforcement requirements, an implementation schedule was developed for reinforcement projects over the term of the Asset Plan. An estimate was also developed for the capital spend required for each of the projects. The following is a summary of this schedule.

Routine Reinforcements:

[illegible]

AREA	PROJECT DESCRIPTION	Dates	MI	MA	400	291.6	1.211	III	3911	1919	Min	Fa rout 13032.Mig11 peat
Area 40	Peterborough Reinforcement Phase 1 - Install approximately 1\$ km of NPS8	2012										\$485
	Peterborough Reinforcement Phase 2 - Install approximately 2.4 km of NPS 8 on Preston from the terminus of Phase 1 north 2011 to Mount Pleasant at Hwy 7											\$1,900
	Peterborough Reinforcement Phase 3 Install 1.9 km of MPSa SR 7HP on HWY 7 from north of Mt Pleasant to Lily Lake	2014										\$1,500
	Kingston Road Reinforcement. Install 2A km of NPS 4 ST XHP born Lake ridge to Salem with Station	ant										\$1,000
	Approx 8 km NPS 12 KHP, to support OPG and Dunham EFW	1014										\$12,000
	Install 3110m of NPS 4 ST HP on Whites from south of tl WY 401 to Oklahoma Drive. Pickering	2015										\$200
	Replace 1.8 km of NPS I2 XHP main with 1.8km of NPS /6 Isom Oshawa gale to Cardin and Wilson	YAP 2016										\$3,500
	NPS BXHP reinforcement - Kawartha Ethanol Reinforcement - Phase & 3											
	install 2.8 km of P/851 HP main from ex NPS 8 HP main on at Brock & Kingston, Picketing to &PPS 6 ST HP main at Westney 2017 and Kingston Rd In Pickering											
	Alliston Reinforcement, 5 km HPS	raiz										\$4,640
Area 50	Angus Reinforcement	7011										\$1,000
	Alliston Reinforcement Phase 2, 1.5 km NPS 8	7051										
	Stayner Second source. NPS 4 Xkl P with Station	2013										\$790
	Milstein Reinforcement Phase 3. 2.8 km NPS8											51.11IS
	Install 400m of fips4 an Hwy 21. from Hwy 9 south. with %HP to HP station Schomberg	2917										1500
	Alliston Reinforcement Phase 4. 3 km PIPS 8	2019										
	Approx. 90620 OF NPS B ST KHP River Crossing @ Woodroffe & 7017 Hwy.' 16 towards Rivet Rd	IM										\$4400
	Mitch Owens Rebuild and install 2 km NPS 4 XHP	2013 - 11:11										1950
	Ottawa Innes Road Replacement - Replace. 3.0 km of NPS 8 main with NPS 12. and remove an existing system bottleneck while ensuring a mandated inspection or elimination of high Stress pipeline is completed by sec 2013	2013										Ake
	Pl essuie elevate HP net wo i k S97 feeding Richmond to %H P, approx. SA(10m of HPS n St	2017										1203
Area 10	Approx. 6700m of NPS 20 ST HP pipe from Greenbank to Rideau Heights											04000
	Chippawa Creek Road Reinforcement, lie.plazr approx. 400m of NPS 6 ST HP with NPS 12 ST HP	2011										
	Contingency for Contingency to account for additional Reinforcement Reinforcements requi d ein t s that might come up within each yeas	2012-2071										

Figure 5 - Routine Reinforcements: Implementation Schedule & Cost

Major Reinforcements:

PROJECT	PROJECT DESCRIPTION	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	10.4-0 11011 tom ISocal
GTA Project	Upgrading the XtiP grid system in the Greater Toronto Area to meet load growth, ensure Continued reliability and enable access to lower cost natural gas supply												\$541,114
	Ottawa Reinforcement Project - Engineering & Ins												\$1500
Ottawa Reinforcement	Approx. 19300, 11 of NPS 24 ST XHP pipe from Richmond Gate Station, Noah easterly to Greenhamk												530,400
	Ottawa Reinforcement additional construction costs												313,141

Figure 6 - Major Reinforcements: Implementation Schedule & Cost

The charts below depict the historic and forecast capital spend for routine reinforcements alone, and the total reinforcements within the term of the Asset Plan,

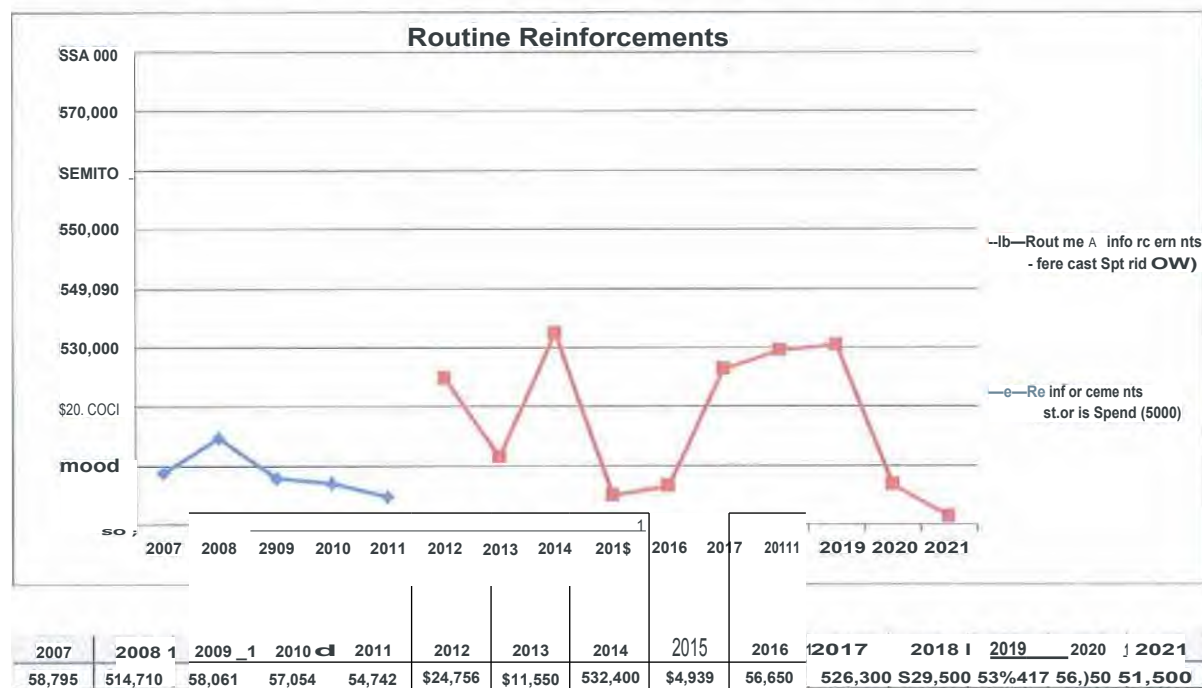


Chart 9 - Routine Reinforcements: Historic & Forecast Capital Spend



	2007	2001	2009	2010	2011	2012	IOU	2014	2015	2016	2017	2018	2019	2020	2021
Reinforcement						\$24,756	511,550	532,400	54,419	56,650	575,300	\$19,500	\$30,411	\$6,750	\$1,500
Total Reinforcement (\$000)	50,795	514,710	52,001	57,054	54,742	537,833	567,067	5129,146	5216,039	56,650	526,300	579,500	530,412	56,750	50,500

Chart 10 - Total Reinforcements: Historic & Forecast Capital Spend

At this time, the forecast of costs for the GTA project for 2014 and 2015 are still being refined, and the estimates are only available as a range. The chart above assumes the mid-point of the estimated range.

BOARD STAFF INTERROGATORY #1

INTERROGATORY

B - Rate Base

Issue 61 - Is Enbridge's forecast level of capital spending in 2013 appropriate?

Ref: 61/T3/Sch 3/para 1

For the eight Leave to Construct projects listed, what amounts are included in the 2013 capital budget for each project? What amounts were included in the 2012 capital budget?

RESPONSE

The details requested were provided at Exhibit 61, Tab 2, Schedule 2, and Exhibit 61, Tab 3, Schedule 3.

				<u>Table 1</u>			LTC Application
Item	Ref	Function / Project Name	In Service Date	Actual 2011	Estimate 2012	Test Year Budget 2013	
1.	1.	Power Generation Project A	02 2014				No planned application
2	2.	Power Generation Project B	Q1 2014				No planned application
3.	3.	Power Generation Project C	C11 2014				No planned application
		Sum of Power Generation Projects A, B and C			1,460	14,040	
4.	6	Ottawa Reinforcement	Q1 2014	79	1,500	30,000	EB-2012-0099 tiled June 28 2012. Approval expected late 2012
5.	7.	GTA Reinforcement	201512016	1,441	11,627	21,117	Application planned Q4, 2012. Approval expected 02 2013
6	'0.	Ottawa Innes Rd Replacement	04 2013			6,000	Application planned Q4, 2012. Approval expected 02 2013
	23.	Angus Reinforcement	Q4 2012		6,000		EB-2012-0013 Approved June 21 2012
B.	24.	Alliston Reinforcement	04 2012	532	4,660		EB-2011-0323 Approved Jan 23 2012
		Summary total		2,052	25,247	71,157	

Witnesses: L. Au
E. Chin
D. Kelly
N. MacNeil

Items 1.2.3

These projects are delayed.

Item 4

The total cost of this project was originally estimated at \$46 million with \$30 million to be spent in 2013. The current estimate of the total cost is \$51.2 million, and is planned to be completed in December 2013. More details on the timing can be found in Exhibit BI, Tab 2, Schedule 2, Attachment 2.

item 5

The estimated costs for 2014 and 2015 will be provided in the LTC application.

Item 7

The total cost of this project is currently estimated to be \$4.1 million.

Witnesses: L. Au
E. Chin
D. Kelly
N. MacNeil

Bonnie Adams

From: Bonnie Adams
Sent: Wednesday, September 05, 2012 10:36 AM
To: angela.wong@opg.com; bott@justenergy.com; cconway@bomatoronto.org; cneme@energyfuturesgroup.com; david.butters@appro.org; davidmacintosh@nextcity.com; dpoch@eelaw.ca; drquinn@rogers.com; elizabeth_swanson@transcanada.com; eric_nadeau@transcanada.com; ggirardi@summittenergy.ca; ian.mondrow@gowlings.com; jack@cleanairalliance.org; jay.shepherd@canadianenergylawyers.com; jfstacey@interlog.com; jgirvan@uniserve.com; jhughes@blg.com; kdullet@blg.com; jim_bartlett@transcanada.com; jmyers@torys.com; john.beauchamp@nortonrose.com; jtoffoletto@enercare.ca; jwolnik@elenchus.ca; kai@web.net; kent.elson@klippensteins.ca; laura-marie_berg@transalta.com; Lise Mauviel; mark.rubenstein@canadianenergylawyers.com; marion.fraser@rogers.com; mbuonaguro@piac.ca; mluymes@hrai.ca; newtonma@rogers.com; murray.klippenstein@klippensteins.ca; murray_ross@transcanada.com; nruzycki@justenergy.com; opgregaffairs@opg.com; paul.clipsham@cme-mec.ca; paul.kerr@shell.com; pete_serafini@transalta.com; pmcmahon@uniongas.com; pthompson@blgcanada.com; randy.aiken@sympatico.ca; rhiggin@econalysis.ca; karen.cooke@directenergy.com; rwarren@weirfoulds.com; tbrett@foglers.com; tceast_marketaffairs@transcanada.com; tce_regulatory@transcanada.com; transcanada_mainline@transcanada.com; vderose@blgcanada.com; vyoung@aegent.ca; wmcnally@opsba.org; Zora Crnojacki; lynne.anderson@ontarioenergyboard.ca; Neil McKay
Subject: GTA Project - Intervenor Community Information Session October 29, 2012
Categories: LTC-STORAGE

Enbridge Gas Distribution would like to invite you to an information session to be held on October 29, 2012 from 10:00 am to 12:00 noon at the Radisson Hotel Toronto East at 55 Hallcrown Place .

The session is intended to provide information on a Leave To Construct application Enbridge plans to bring forward regarding the Greater Toronto Area (GTA) project. Prior to finalizing and submitting our application to the OEB, we would like to take this opportunity to make a presentation on the project. (A more detailed agenda will be distributed closer to the meeting date.)

You will be reimbursed for your reasonably incurred costs to travel to and attend this information session. A light lunch will be provided after the meeting at noon.

If you are planning to attend, please RSVP to Bonnie Adams no later than Friday September 28, 2012 at bonnie.adams@enbridge.com. We hope that you are available to attend.

Please contact Edith Chin (Edith.Chin@enbridge.com) if you have any questions.

Norm Ryckman

Director, Regulatory Affairs
norm.ryckman@enbridge.com
(416) 753-6280

Malini Giridhar

Director, Gas Supply and GTA Project
Malini.giridhar@enbridge.com
(416) 495-5255

Bonnie Adams

From: Bonnie Adams
Sent: Monday, September 24, 2012 8:52 AM
To: angela.wong@opg.com; bott@justenergy.com; cconway@bomatoronto.org; cneme@energyfuturesgroup.com; david.butters@appro.org; davidmacintosh@nextcity.com; dpoch@eelaw.ca; drquinn@rogers.com; elizabeth_swanson@transcanada.com; kai@web.net; kent.elson@klippensteins.ca; laura-marie_berg@transalta.com; Lise Mauviel; mark.rubenstein@canadianenergylawyers.com; marion.fraser@rogers.com; mbuonaguro@piac.ca; mluymes@hrai.ca; newtonma@rogers.com; murray.klippenstein@klippensteins.ca; murray_ross@transcanada.com; nruzycki@justenergy.com; opgregaffairs@opg.com; paul.clipsham@cme-mec.ca; eric_nadeau@transcanada.com; ggirardi@summittenergy.ca; ian.mondrow@gowlings.com; jgirvan@uniserve.com; kdullet@blg.com; jim_bartlett@transcanada.com; jmyers@torys.com; john.beauchamp@nortonrose.com; jtoffoletto@enercare.ca; pete_serafini@transalta.com; pthompson@blgcanada.com; randy.aiken@sympatico.ca; rhiggin@econalysis.ca; rwarren@weirfoulds.com; tceast_marketaffairs@transcanada.com; tce_regulatory@transcanada.com; transcanada_mainline@transcanada.com; vderose@blgcanada.com; vyoung@aegent.ca; wmcnally@opsba.org; Zora.Crnojacki@ontarioenergyboard.ca; lynne.anderson@ontarioenergyboard.ca; neil.mckay@ontarioenergyboard.ca
Subject: GTA Project - Intervenor Community Information Session October 29, 2012 - Reminder RSVP by September 29, 2012
Categories: LTC-STORAGE

Good Morning,

Just a reminder that if you are planning to attend the upcoming information session regarding the Great Toronto Area (GTA) project scheduled for October 29, 2012, please RSVP no later than Friday September 28, 2012.

Thank You.

Sincerely,

Bonnie Jean Adams

Regulatory Coordinator, Regulatory Affairs
Enbridge Gas Distribution Inc.
500 Consumers Road - North York, ON M2J 1P8
Phone: (416)495-5499

From: Bonnie Adams
Sent: Wednesday, September 05, 2012 10:36 AM
To: 'angela.wong@opg.com'; 'bott@justenergy.com'; 'cconway@bomatoronto.org'; 'cneme@energyfuturesgroup.com';

'david.butters@appro.org'; 'davidmacintosh@nextcity.com'; 'dpoch@eelaw.ca'; 'drquinn@rogers.com';
'elizabeth_swanson@transcanada.com'; 'eric_nadeau@transcanada.com'; 'ggirardi@summittenergy.ca';
'ian.mondrow@gowlings.com'; 'jack@cleanairalliance.org'; 'jay.shepherd@canadianenergylawyers.com';
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'jmyers@torys.com'; 'john.beauchamp@nortonrose.com'; 'jtoffoletto@enercare.ca'; 'jwolnik@elenchus.ca'; 'kai@web.net';
'kent.elson@klippensteins.ca'; 'laura-marie_berg@transalta.com'; Lise Mauviel;
'mark.rubenstein@canadianenergylawyers.com'; 'marion.fraser@rogers.com'; 'mbuonaguro@piac.ca'; 'mluymes@hrai.ca';
'newtonma@rogers.com'; 'murray.klippenstein@klippensteins.ca'; 'murray_ross@transcanada.com';
'nruzycki@justenergy.com'; 'opgregaffairs@opg.com'; 'paul.clipsham@cme-mec.ca'; 'paul.kerr@shell.com';
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'tceast_marketaffairs@transcanada.com'; 'tce_regulatory@transcanada.com'; 'transcanada_mainline@transcanada.com';
'vderose@blgcanada.com'; 'vyoung@aegent.ca'; 'wmcnally@opsba.org'; 'Zora Crnojacki';
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Subject: FW: GTA Project - Intervenor Community Information Session October 29, 2012 - Reminder

Categories: LTC-STORAGE

Good Morning,

Just a reminder that if you are planning to attend the upcoming information session regarding the Great Toronto Area (GTA) project scheduled for October 29, 2012, please confirm your attendance.

Thank You.

Sincerely,

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'vderose@blgcanada.com'; 'vyoung@aegent.ca'; 'wmcnally@opsba.org'; 'Zora Crnojacki';
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(416) 753-6280

Malini Giridhar

Director, Gas Supply and GTA Project
Malini.giridhar@enbridge.com
(416) 495-5255

ONTARIO ENERGY BOARD

Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

31.04 The Board may appoint a person to chair an ADR conference.

31.05 The chair of an ADR conference may enquire into the issues and shall attempt to effect a comprehensive settlement of all issues or a settlement of as many of the issues as possible.

31.06 The chair of an ADR conference may attempt to effect a settlement of issues by any reasonable means including:

- (a) clarifying and assessing a party's position or interests;
- (b) clarifying differences in the positions or interests taken by the respective parties;
- (c) encouraging a party to evaluate its own position or interests in relation to other parties by introducing objective standards; and
- (d) identifying settlement options or approaches that have not yet been considered.

31.07 Subject to **Rule 31.08**, where a representative attends an **ADR** conference without the party, the representative shall be authorized to settle issues.

31.08 Any limitations on a representative's authority shall be disclosed at the outset of the ADR conference.

31.09 All persons attending an ADR conference shall treat admissions, concessions, offers to settle and related discussions as confidential and shall not disclose them outside the conference, except as may be agreed.

31.10 Admissions, concessions, offers to settle and related discussions in **Rule 31.09** shall not be admissible in any proceeding without the consent of the affected parties.

32. Settlement Proposal

32.01 Where some or all of the parties reach an agreement, the parties shall make and file a settlement proposal describing the agreement in order to allow the Board to review and consider the settlement.

ONTARIO ENERGY BOARD

Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- 32.02 The settlement proposal shall identify for each issue those parties who agree with the settlement of the issue and any parties who disagree.
- 32.03 The parties shall ensure that the settlement proposal contains or identifies evidence sufficient to support the settlement proposal and shall provide such additional evidence as the Board may require.
- 32.04 A party who does not agree with the settlement of an issue will be entitled to offer evidence in opposition to the settlement proposal and to cross-examine on the issue at the hearing.
- 32.05 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.
- 32.06 Where the Board accepts a settlement proposal as a basis for making a decision in the proceeding, the Board may base its findings on the settlement proposal, and on any additional evidence that the Board may have required.

33. Pre-Hearing Conference

- 33.01 In addition to technical, issues and ADR conferences, the Board may, on its own motion or at the request of any party, direct the parties to make submissions in writing or to participate in pre-hearing conferences for the purposes of:
- (a) admitting certain facts or proof of them by affidavit;
 - (b) permitting the use of documents by any party;
 - (c) recommending the procedures to be adopted;
 - (d) setting the date and place for the commencement of the hearing;
 - (e) considering the dates by which any steps in the proceeding are to be taken or begun,
 - (f) considering the estimated duration of the hearing; or

in Canada are called by their creators, "tribunals" in their mandating legislation and I believe for obvious reasons — they first and foremost are an agency of Parliament or the Legislatures, which courts (basically) are not.

Before proceeding further, however, it may be useful to identify what believe is the major factor in administrative law which has given rise to the major role played by policy-making in agency decision-making and the resulting confusion respecting rule-making. This is the legal restraint upon agencies to use their decisions as precedents, or, in other words, the inapplicability of stare decisis in administrative decision-making.

6.2 THE ROLE OF PRECEDENT IN AGENCY DECISION-MAKING (STARE DECISIS)

Unlike administrative bodies, the traditional courts are generally bound to follow their own rulings. In so doing, parties in court proceedings rely heavily on the doctrine of precedent or stare decisis to substantiate their claims. Judicial decisions are usually categorized as either authoritative or persuasive. If authoritative, they must be strictly followed; if persuasive, they may follow them. The authoritative or persuasive status of decisions depends upon the level of the court which issued them. Within a jurisdiction (e.g. a province, and one may treat the federal court as a separate province simply for the purposes of this discussion), the decisions of a higher court are authoritative (or binding) upon all lower courts. Decisions of the same level of court are persuasive (although courts generally say that they should be reluctant to depart from their own earlier decisions). Decisions of courts of other jurisdictions (e.g. courts of provinces, other than the province of the court hearing the case) of whatever level are persuasive. Decisions of the Supreme Court are authoritative everywhere in Canada. Decisions of the Privy Council prior to 1949 are also authoritative across Canada. In determining which judicial decisions are authoritative for administrative agencies one can use as a general rule of thumb that decisions of the courts of the same jurisdiction as the agency will be authoritative if the judges of that court are appointed by the federal government (i.e. courts known as s. 96 courts — referring to the appointment power set out in s. 96 of the Constitution) while decisions of courts whose judges are appointed by the provincial government will be merely persuasive. Decisions of courts of other jurisdictions, of whatever level are merely persuasive to an agency. Decisions of the Supreme Court of Canada are authoritative for all Canadian agencies.

In performing their mandates agencies should strive for continuity, consistency and a degree of predictability. Justice demands that equality of treatment and impartiality prevail when the merits of a case are considered. On the other hand, in the face of legal uncertainties and novel situations, it is not desirable to accord precedent and stare decisis a pivotal role. Facts are often not comparable. Old precedents are expanded, twisted and contorted so many times that they often

no longer stand for the same principle they originally proclaimed. Furthermore, the public interest is not served by retelling antiquated stories which change with each retelling. Precedents can become worn out and sometimes serve no useful purpose.

Decisions of administrative agencies do not create precedents for anyone, including the agency. They are, at best, persuasive. While agencies should strive for consistency they are not bound by a mechanistic application of earlier administrative decisions. Rigid adherence to consistency can discredit an agency's ability to improvise or adapt. I shall discuss the freedom of agencies from precedent in the next section.

63 THE POWER OF AN AGENCY TO DEPART FROM PREVIOUS DECISIONS

When I use the term "precedent" in this discussion I am referring to the situation when an agency is urged to interpret a law, or exercise its discretion, in a certain way because the agency had interpreted it or exercised its discretion in that way in the past?

The question as to the role of precedent for agencies most commonly arises in one of two situations: i. where an agency is empowered to consider an issue involving the same party on a regular or periodic basis (e.g. rate setting); ii. where an agency is required to adjudicate an issue similar to that in other cases. **In either case, the prevailing rule is easy to state: an agency is not bound by its prior decisions.**⁷ Stated otherwise, the notion of *stare decisis* is not applicable in the

⁷ For the effect of a statutory direction that a decision of the Ontario Labour Relations Board was to be conclusive for all purposes see the Ontario Court of Appeal decision in *C. U.P.E. Local 1394 v. Extencicare Health Services Inc.* (1993), 14 O.R. (3d) 65, 104 D.L.R. (4th) 8.64 O.A.C. 126, 93 C.L.L.C. 14,052 (C.A.). The Court held that that section did not make the Board's interpretation of a statutory provision conclusive and binding upon a subsequent decision-maker in a different matter.

7.1 See for example, *Communications, Energy and Paperworkers Union of Canada, Local 219 v. St. Anne-hackawic Pulp Co.* (1999), 212 N.B.R. (2d) 120, 541 A.P.R. 120 (N.B. Ct.), where the N.B. Court of Queen's Bench held that the New Brunswick Labour and Employment Board was not bound by precedent to follow an earlier decision of the Board as to what evidence was necessary to establish union membership (as per *United Brotherhood of Carpenters and Joiners of America, Local 1023 v. Laviolette* (1998), 199 N.B.R. (2d) 270 (C.A.)). See also *Ontario (Minister of Municipal Affairs & Housing) v. Transcanada Pipelines Ltd.* (2000), 186 D.L.R. (4th) 403 (O.N. Ct.) ("A tribunal is not bound to follow its own decisions on similar issues, although it may consider an earlier decision persuasive and find that it is of assistance in deciding the issue before it.")

To the same effect see *Quebec (Commission des affaires sociales) v. Tremblay* 1992 CarswellQue 108, [1992] 1 S.C.R. 952, 90 D.L.R. (4th) 609, 3 Admin. L.R. (2d) 173 (S.C.C.) (conflicting decisions may be given as agency develops its thinking of an issue); *United Steelworkers of America, Local 14097 v. Franks* (1990), 75 O.R. (2d) 382 (Div. Ct.) (agency not bound by *stare decisis*).

Nor does the fact that a court on judicial review may have found one panel's decision not

administrative sphere. Agencies are not only at liberty not to treat their earlier decisions as precedent, they are positively obliged not to do so.

This is clear in respect to matters where the agency has some discretionary authority which it has to decide how to exercise or a decision involves some policy element which the agency is to formulate.

In *Hopedale Developments Ltd. v. Oakville (Town)* the Ontario Court of Appeal held that the Ontario Municipal Board could not decide the case before it solely on the basis of principles enunciated in earlier decisions. As McGillivrey J.A. stated (at pp. 487488 D.L.R.):

In laying down . . . principles and stipulating that the defendant must come within them the Board has sought, one must conclude, to reduce the scope of the

to have been patently unreasonable binding other panels of the same agency to reach the same conclusion. A judicial finding that a decision is not patently unreasonable is not the same as a finding that it is correct — and other panels of the same agency may arrive at other decisions which are also not patently unreasonable. [See *Essex County Roman Catholic School Board (The Windsor-Essex Catholic School Board) v. Ontario English Catholic Teachers' Association* (2001), 56 A.R. (3d) 85 (C.A.)] See also *Dwntar Inc. v. Quebec (Commission d'appel en Matière de Lésions professionnelles)*, [1993] 2 S.C.R. 756 (fact that different agencies looking at same provision may have interpreted it differently does not in itself mean that the decisions are patently unreasonable).

See also *Myers v. Mannetre*, 2003 CarswellNS 209 (N.S. C.A.) (Board not bound by its prior decisions); *Daley v. Economical Mutual Insurance Co.*, 2004 CarswellOnt 5696 (Ont. S.C.1.), reversed on other grounds (2005), 2005 CarswellOnt 7425, 206 U.A.C. 33 (Ont. C.A.) (Court not required to follow earlier decisions of financial Services Commission of Ontario but states that reasoning in cases heard by the Commission may be of assistance in light of Commission's expertise.).

Similarly, see the decision of the Alberta Court of Appeal in *1141111 Capital Ltd. v. Alberta (Securities Commission)*, 2009 CarswellAlta 710, 2009 AHCA 186 (Alta. C.A.);

As for the second suggestion that, by imposing an administrative penalty higher than that proposed by Staff counsel, the panel had abandoned its adjudicative function, we find no authority that suggests the panel was bound by the *Securities Act* or other authority to obey the position of counsel as to sanction. On the contrary, it was ultimately the panel's duty to determine the public interest. Here the panel was certainly entitled to give weight to the issue of deterrence where, on the evidence, over 500 investors were prompted to invest in excess of \$2,500,000: see e.g. *Carraway Resources Corp. v. Re*, [2004] 1 S.C.R. 672, [2004] S.C.J. No. 22, 2004 SCC 26 (S.C.C.). at paras. 4, 45 - 70. The panel was, in service of the legislative objectives, entitled to move away from prior decisions made by earlier panels on the subject of sanction if it were satisfied that the public interest required it to do so. Earlier decisions are not carved in stone. For administrative tribunals, and where, as with sanction, the question involves mixed fact and law, and the "fact-intensive elements" are not "easily extracted" from "discretely framed questions of law", a decision is likely to be "not one that will determine future cases except insofar as it is a useful case for comparison": *Ryan v. Law Society (New Brunswick)*, [2003] 1 S.C.R. 247, [2003] S.C.1. No. 17, 2003 SCC 20 (S.C.C.), at para. 41. Accordingly, the presentation of earlier authorities by Staff counsel in its brief, which doubtless influenced the presentation of Staff counsel, could not crimp the panel's jurisdiction to require imposing those earlier more lenient levels of sanction. *A fortiori*, it could not be a denial of natural justice for the panel to exercise the jurisdiction given to it by the Legislature.

8 [1965] 1 O.R. 259, 47 D.L.R. (2d) 482 (C.A.).

4. One of the factors cited in support of agency decision-making is the fact that that process is to be speedy and expeditious (at least speedier than the courts). A reconsideration power may lead to delays in the issuance of a final decision in the matter. (In some matters, however, while speed may be important, correctness may be more so!)

Conclusion As To Wisdom Of An Agency Reconsideration Power

In light of the pros and cons listed above it quickly becomes obvious that the propriety of an authority to reconsider must be considered in light of the particular decision in question. On balance, I believe that from a public interest, expense and practical point of view there are more reasons in favour of agencies being able to reconsider their decisions. Any abuses which may arise from such a power should be capable of control through the structuring of reconsideration rules or limitations upon agency action in specific cases.

That, however, is my conclusion as to what should be. Let us look at what the law, in fact, is.

An administrative agency may be faced with having to reconsider an earlier decision in two ways. It may be asked to amend its approach to a particular question, and thereby break with one or more of its earlier decisions on the same point. I discuss this aspect of reconsideration earlier in chapter six. The discussion which follows deals with the situation where the agency is asked by one of the parties, or it may wish on its own motion, to reopen and reconsider an earlier decision to change the result reached in it.

27A.2 THE POWER OF AN AGENCY TO REHEAR OR RECONSIDER DECISIONS ALREADY TAKEN

27A.2(a) Finality of Agency Decisions (Functus Officio)

Following the decision of the Supreme Court of Canada in *Chandler v. Association of Architects (Alta.)*,⁷ and a number of other decisions which I will discuss below, administrative agencies only have the authority to reopen a decision once made:

- a. when there is legislative authority to do so, which may be found:
 - i) in an express legislative power to reconsider,
 - ii) to be implied by other provisions or from the overall structure of the legislation, or

⁷ f 1989] 2 S.C.R. 848, 40 Admin. Lk, 1213, 70 Aka. L.R. (2d) 193, 36 C.L.R. 1, [1989] 16 W.W.R. 521, 62 D.L.R. (4th) 577, 99 N.R. 277, 101 A.R. 321.

AUTHORITY OF AN AGENCY TO REHEAR DECISIONS 27A.2(a)

- iii) to be implied by the nature of the decision-making power in question.;
- b. when it is necessary to correct a clerical error, an accidental error or omission, or an ambiguity in the decision;
- c. when the decision mandated by statute has not yet been made, or the decision made is void or voidable for lack of jurisdiction (including breaches of the principles of natural justice or fairness), or there remains an issue outstanding; or
- d. where the decision in question was procured by reason of fraud, mental disability or some other circumstance which calls its integrity into question.

Otherwise, as noted in *Chandler* (at page 596 D.L.R.):

As a general rule, once a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited.

This concept is known as the principle of *functus officio*.

In *Chandler* the Supreme Court of Canada had noted that the application of the *functus* principle to agencies should be more flexible and less formalistic in respect to agencies which were subject to appeal only on a point of law. The Court stated that:

To this extent, the principle of *functus officio* applies. It is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. For this reason I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.

Accordingly, the principle should not be strictly applied *where there are indications in the enabling statute* that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation. This was the situation in *Grillas*, *supra*. (emphasis added)

This reference to flexibility has sometimes led courts to ignore the conclusions of the Supreme Court in *Chandler* in favour of a more "let justice be done!" approach.

Thus, in *Kurukkal v. Canada (Minister of Citizenship & Immigration)*, 2009 CarswellNat 2147, 2009 FC 695 (Fed. Ct.) the Federal Court noted that the text by Brown and Evans, *Judicial Review of Administrative Action in Canada* elevates the flexibility comments by the Supreme Court of Canada to a general assertion that, absent express legislative direction, courts should embark on a pragmatic