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May 24, 2013

VIA COURIER, 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**

In accordance with the Board's Procedural Order No. 3, attached please find Enbridge's Argument-in-Chief in the above noted proceeding.

The Argument-in-Chief is being filed through the Board's Regulatory Electronic Submission System and the complete application and evidence are 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

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.

ARGUMENT IN CHIEF

Introduction

1. This is the Argument in Chief of Enbridge Gas Distribution Inc. (“Enbridge” or the “Company”) which is filed pursuant to Procedural Order No. 3 in the above-noted proceeding.
2. Enbridge filed its Multi-Year 2012-2014 DSM Plan (“Plan”) on November 4, 2011 (EB-2011-0295). This Plan was the subject of a complete settlement (“Settlement”) with the exception of two unsettled issues which are not relevant for the purposes of this proceeding. The Settlement was accepted by the Board.
3. While the Plan provided for a three-year horizon and included provisions applicable during the duration of the term of the Plan such as the Joint Terms of Reference for Stakeholder Engagement, the Settlement included the financial package for 2012 only. Accordingly, the Settlement specifically contemplated that Enbridge would file a 2013-2014 DSM Plan Update (“Plan Update”) which would include the financial package for these years. The Settlement also specifically noted that it was the expectation of parties to the Settlement, given the contemplated significant changes in direction and inclusion of new initiatives

and programs, that the Plan Update would be materially informed by Enbridge's 2012 DSM activities which were the subject of the Settlement.

4. As contemplated by the Settlement, the Company prepared a Plan Update which was filed on February 28, 2013. Prior to this, the Company was once again able to reach a complete settlement in respect of the Plan Update and a complete Settlement Agreement (the "Update Settlement") was filed contemporaneously with the evidentiary record supporting the Plan Update and the Update Settlement.
5. Despite the Update Settlement being reached with all of the intervenor groups that have historically been involved in DSM Consultatives and who have taken an interest in prior DSM proceedings, subsequent to the filing of the Plan Update and the Update Settlement, two intervenors requested status in this proceeding – Environmental Defence ("ED") and the Association of Power Producers of Ontario ("APPRO"). As neither of these intervenors is a signatory to the Update Settlement, and in particular because of ED's concerns in respect of the DSM Budget for 2014, the Board has proceeded with a hearing into the two issues raised by ED. The Board is now required to decide whether the Update Settlement is in the public interest and should be approved.

The Update Settlement

6. As noted in the Update Settlement, a significant amount of time was expended by Enbridge and all of the members of the DSM Consultative in the summer and

fall of 2012. A total of 14 meetings were held which considered all issues relevant to this proceeding, including DSM budgets, scorecard metrics, incentives, the allocation amongst program types, and the specifics of how certain individual programs would be operated. Communications between the Company and intervenors continued subsequent to these numerous meetings, and each of the parties to the Update Settlement were provided with a complete copy of the Plan Update filing prior to this evidence being filed with the Board. The Update Settlement specifically notes, at Exhibit B, Tab 2, Schedule 9, page 7 that:

“The evidence which supports the 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 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.”

7. The Update Settlement then went on to specifically provide (at page 7) that:

“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.”

8. Accordingly, in the event that the Update Settlement is not approved by the Board as a result of ED’s objections to the 2014 budget, then there is no settlement in respect of the Plan Update. All parties to the Update Settlement will then be at liberty to take whatever position they consider appropriate for the purposes of seeking Board approval in respect of the Company’s DSM plans for 2013 and 2014. While it is noted that ED is only objecting to the DSM budget for 2014, if the Board accepts ED’s submissions, it will have a negative impact on Enbridge’s 2013 and 2014 DSM programs and operations as both years of the Plan Update will not be approved. Such a determination would create a significant degree of uncertainty, both within the Company and with each of the DSM program partners.
9. It should be recognized that the Update Settlement represents a compromise on the part of all of the parties to the settlement in respect of a wide range of issues and aspects of the Plan Update. While settlement discussions between the Parties are confidential, it is fair to assume that trade-offs have been made between the parties in terms of budgetary increases and associated rate impacts, the prioritizing of program types, the specifics of scorecard metrics, and the allocation or limitation of funds directed at specific groups or rate classes through various programs.

10. Enbridge submits that the Update Settlement should be approved as it is clearly in the public interest. Aside from being fully supported in evidence and consistent with the Board's DSM Guidelines issued June 30, 2011, the Update Settlement is fully supported by a broad range of stakeholders including those representing ratepayers and environmental groups. This insures that the full spectrum of the public interest has been represented. Enbridge submits that the Board should set an extremely high onus in situations where a special interest intervenor, such as ED, advocates that the Board should reject any settlement when the public interest as broadly represented by the signatories to Update Settlement have openly declared their support. To reject the Update Settlement would devalue the extensive time and effort which parties have invested in reaching a compromise and it would set an unwelcome precedent. The Company submits that it is only in extraordinary circumstances where a complete settlement, particularly one made amongst all known intervenors at the time, should not be approved.
11. While the specifics of ED's proposal are not known at this time and Enbridge will accordingly respond in its Reply Submission to any detailed submissions made by ED, it is clear that ED will be proposing an increase in the DSM budget for 2014 and that for the DSM budget to be increased for 2014 it will necessarily require the Board to reject the Update Settlement.

12. Enbridge submits that a rejection of the Update Settlement would not be in the public interest for a number of reasons. First, there is absolutely no evidence filed in this proceeding which in any manner casts doubt upon the prudence of the Plan Update and whether it is in the public interest. There is simply no evidentiary basis to reject the Update Settlement.
13. Second, there is also no evidence about the impact of whatever proposal ED ultimately makes in its final argument. It is likely that ED will submit that more money spent on DSM programs in 2014 will generate additional bill savings but such a submission does not constitute evidence which would allow the Board to determine that an increase in the DSM budget for 2014 is in the public interest. There will, for example, remain no evidence about the impact of the budget increase on affected ratepayers, whether the Company can actually undertake expanded programs on a cost-effective basis, and whether it is even possible to expand or roll out new programs of a material nature in 2014, given that it is already May 2013. Looking at past years, it should be noted that the Company has not fully utilized the additional 15 percent available through the DSMVA historically. It is submitted that this fact alone should raise concerns about whether a material increase in the 2014 budget should be considered, particularly at this late stage.
14. Third, while it appears that while ED may limit its opposition to the Update Settlement and the DSM budget for 2014, the fact that it does not challenge the

2013 budget nor any of the scorecard metrics, incentives, or allocations between programs in respect of 2013 and 2014, does not limit the impact of a material change to the 2014 budget on the Plan Update in its entirety. An increase in the 2014 Budget will require material changes to DSM programs and this will necessitate a review of each of the scorecard metrics, incentives and allocations between program types. In short, while there is no evidence as to the impact of whatever ED proposes and therefore no evidentiary basis to reject the Update Settlement, it must be recognized that the rejection of the settlement will have far reaching consequences for the Company's DSM programs in each of 2013 and 2014.

Issue No. 1 – *Is the 2014 DSM Budget (\$32.2 million) reasonable and appropriate? Should the Board determine that the DSM budget for 2014 should be increased, what are the implications and required next steps.*

15. Enbridge submits that given the breadth of support for the 2014 DSM budget, as evidenced by the Update Settlement, and its consistency with the DSM Guidelines, the 2014 DSM budget of \$32.2 million is reasonable and appropriate for the reasons set out above. This budget is fully supported by the evidence filed by the Company in this proceeding and, in 2014, represents the third and last year of the current Multi-Year DSM Plan. If there is to be any consideration of a material increase in the DSM budget, it should be considered for 2015 and beyond and be built in a bottom up fashion in consultation with stakeholders. This would allow the Company and all stakeholders sufficient opportunity to

consider all of the impacts and ramifications of such increased expenditures and to once again attempt to reach a settlement which is in the public interest.

16. The implications of the Update Settlement not being approved are discussed above but stated succinctly, it would, in effect, send all of the parties to the Update Settlement back to “square one”. There would be no agreement in respect of both 2013 and 2014, and the Board would be in no position to approve any aspect of the Plan Update for either or both years. The rate implications for 2013 would not be known.
17. While ED may propose a materially higher DSM budget for 2014, given the lack of any evidence about the reasonableness and appropriateness of an increased budget for 2014, it is assumed that the Board would not be in a position to immediately make an order providing for a specific budget amount for 2014. Instead, the Board would be required to order a second phase to this proceeding which would consider, as a preliminary issue, the appropriate size of the budget for 2014 as a general matter so as to provide direction to the Company.
18. Once a new maximum budget amount is determined by the Board, it would next be necessary to require Enbridge to carefully consider how it could expend monies up to the new budget limit through the expansion of existing programs and/or the roll out of new programs. The Company would have to prepare a new proposed plan for 2014 which would include a proposal for how these monies would be allocated between program types, revised scorecard metrics and

incentives that would be applicable at the accelerated budget levels and the many other changes to programs that would be required. The extent of the adjustments could ultimately require yet another phase to this proceeding to obtain Board approval. In the end it is conceivable that even with the option of a much higher budgetary ceiling limit, the Company might not be able to prove that it could cost effectively spend much more than what is currently proposed for 2014.

19. Given the timing of matters, it would not be possible to hold the same number of detailed consultative meetings with intervenors as were held in 2012. The assistance and participation of intervenors in the development of the new DSM plan generally and in regard to DSM programs specifically would be lost. In short, the 2014 DSM plan which would ultimately be generated would be rushed, not fully considered by all stakeholders, and therefore not likely in the public interest. It is difficult to envision how any final Order approving DSM plans for 2013 and 2014 could be received from the Board before late 2013.

Issue No. 2: *Should the 2014 DSM Budget be conclusively determined prior to the Board's decision regarding Enbridge's \$604 million application to construct new pipelines in the GTA in EB-2012-0451?*

20. The Company's DSM programs have been in operation since the early 1990s and have not been linked to or dependent upon any capital project. In this proceeding, the Plan Update relates to the continuation of the Company's Multi-Year Plan as approved by the Board in EB-2011-0295. This is consistent with the Board's DSM Guidelines which provide for natural gas utilities to undertake

DSM programs on a multi-year basis. In other words, it appears that under the Guidelines it was never contemplated that the approval of DSM plans would be specifically linked to any particular capital project but rather they should be designed and undertaken on a multi-year basis.

21. While there is no evidence filed in this proceeding which relates to the GTA Project (EB-2012-0451), it is understood that the Issues List in that proceeding does include the consideration of DSM as a potential alternative. The apparent likelihood that additional DSM may be considered as an alternative to a proposed capital project in a separate proceeding before an entirely different Board panel should not act as a basis to delay approval for the Plan Update. The fact is, that ratepayers will benefit from the DSM programs which Enbridge proposes to undertake in 2013 and 2014 pursuant to the Plan Update. They will and should realize bill savings that will be generated under these programs, regardless of what occurs in the GTA Project proceeding. There is no justification for any delay in the approval of programs which are currently being operated and which will continue into 2013 and 2014. The Plan Update is a live issue before the Board Panel in this proceeding. Approval is required to proceed with the proposed DSM programs now and for the balance of 2013 and into 2014. No party is advocating that anything less than these programs should be undertaken. Accordingly, Enbridge submits that the Update Settlement should be approved without delay.

All of which is respectfully submitted.

Dennis M. O'Leary
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Counsel to Enbridge Gas Distribution Inc.