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June 10, 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 Reply Submission in the above noted proceeding.

The Reply Submisison 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.

Reply of Enbridge Gas Distribution Inc. to the Submissions of Environmental Defence

1. These are the reply submissions to the Argument of Environmental Defence ("ED"). Before turning to the two issues in this proceeding specifically, it is appropriate to make some general observations in respect of ED's position and the record before the Ontario Energy Board ("OEB" or "Board").

ED has filed no evidence

2. The Board is required as a matter of law to base its decisions upon the evidence filed or received in testimony at an oral proceeding. It is for this reason that Enbridge Gas Distribution Inc. ("Enbridge"), like all applicants, goes to great lengths to ensure that the record filed with the Board is complete and fully supports the relief sought in a particular application. As noted in Enbridge's Argument in Chief with specific reference to the Settlement Proposal filed in this proceeding, all parties to the Settlement Proposal acknowledged that the evidence filed in this proceeding by Enbridge is complete and fully supports the request that the Board approve the Settlement Proposal. The evidence filed contains detailed particulars of the programs which Enbridge will continue to operate for the balance of 2013 and in 2014. It includes all of the required supporting materials and clearly demonstrates that a great deal of thought, experience and planning went into the evidence filed.

3. By contrast, ED is asking the Board to reject the Settlement Proposal in favour of some unknown, solely on the basis of its final argument. Enbridge submits that ED has, out of necessity, because of the lack of evidence, argued that its inclusion of isolated quotes from the Governor of the Bank of Canada or some general objectives expressed by a collection of senior executives, all of which are not specific to this proceeding, constitutes admissible evidence. These statements are not admissible evidence. Evidence which is admissible in an administrative proceeding must be presented in an admissible form, either through the generation and filing of an expert's report or in testimony which may then be subject to cross-examination or written challenges to test its validity. General observations or statements about laudable policy objectives by non-witnesses do not constitute evidence. Stated plain and simply, there is no evidence before the Board in this proceeding upon which the Board may make a finding in support of ED's position. The evidence adduced by Enbridge has not been contradicted by any admissible evidence. Evidence submits that on this basis alone, the Board is in a position to simply approve the Settlement Proposal without considering the matter further.

Issue 1: Increasing the DSM Budget

4. Turning to the position advocated by ED under Issue 1, it is important to note that ED has not attempted to indicate the magnitude of the DSM budget which Enbridge should be directed to include in a further 2014 filing. ED is asking the Board to order Enbridge to develop a budget for DSM in some unknown amount. There is no evidence about whether Enbridge could cost-effectively increase its DSM budget in 2014 by any material amount. ED's request is simply that Enbridge should be sent back and asked to pursue the unknown. Enbridge submits that ED's request should be rejected based in part on its vagueness and uncertainty.

5. It should also be noted that ED does not argue that increasing the DSM budget by a material amount will generate the same savings per dollars spent at the higher budget levels. Indeed all of the evidence adduced over the years in the numerous DSM proceedings is that much of "low hanging fruit" has been harvested and it is increasingly difficult to generate savings.

6. ED also does not contemplate in its argument the impact of requiring Enbridge to undertake the significant exercise of developing a substantially expanded set of programs for 2014. This task will necessarily require the attention and time of Enbridge's DSM staff. This will, unquestionably, have a negative impact on its ability to successfully continue with its existing programs in 2013 and 2014. Changing direction in a material fashion mid-course will have negative consequences and cost implications.

7. The vagueness of ED's request is most evident with its limitation on the amount of DSM which Enbridge should be ordered to pursue. ED proposes that Enbridge pursue all cost-effective DSM which will not result in undue rate increases. ED does not acknowledge in its argument that the Settlement Proposal is supported by all ratepayer groups. They have, by their participation, in the settlement, indicated their view of the reasonableness of the rate increases due to the proposed DSM activities in 2014. By definition, this means that any rate increase over and above those contemplated by the Settlement Proposal are undue rate increases from the perspective of ratepayer groups. The Settlement Proposal is evidence of the fact that ratepayer groups consider any increase over the 2014 budget proposed by Enbridge in the Settlement Proposal that results in a further rate increase as being undue. The ceiling proposed by ED has therefore already been reached.

8. ED does recognize that not all ratepayers share in the bill savings generated from Enbridge's DSM activities. Non-participating ratepayers that do not

participate in DSM programs would only incur the rate increases. This fact is recognized by all of the ratepayer groups and is a factor that goes into each group's consideration of the level of rate increases acceptable to its members.

9. ED suggests that the objectives set out at Sub-section 2.2(2) of the OEB Act which references the price of gas in some way supports its position. The objectives must always be read in light of the Board's statutory obligation to ensure that rates are just and reasonable (ss. 36(2) of the OEB Act). In the end, even if Enbridge was capable of preparing a new budget for 2014 which included all cost-effective DSM, there is no certainty that this budget could be approved by the Board because the rates it impacts might not be just and reasonable. Accordingly, ED is asking the Board to order Enbridge to embark on an uncertain exercise which will lead to unknown and likely unacceptable results.

10. In the end, ED is, in effect, proposing that the Board implement a policy shift in the midst of a proceeding to a program built upon a multi-year timeframe. Enbridge filed and received Board approval for its Multi-Year 2012-2014 filing (EB-2011-0295) on February 9, 2012. This filing was the subject of a Complete Settlement which included all ratepayers and environmental groups. To now require Enbridge to, in effect, disregard this settlement and set aside its multi-year planning would not be prudent.

11. This is not the time nor the appropriate forum for such a mid-course change. As well, such a policy shift is not clearly supported by the government of Ontario. ED suggests that the government's greenhouse gas ("GHG") emissions goal and conservation and efficiency policies support what it is advocating. If ED's interpretation of the government's intentions and goals was correct and the government currently wants all natural gas distributors to pursue all cost-effective DSM, ED would have been able to point to some piece of legislation, Regulation or a Directive from the Minister to this effect. ED cannot point to such an

authoritative policy or legal directive because none exists. The Board is therefore limited to considering the evidence filed in this proceeding which clearly supports approving the Settlement Proposal.

12. In terms of the establishment of the budgets for the years 2012 through 2014, the evidence demonstrates that Enbridge undertook the development of the budget from the grassroots upwards and negotiated with all DSM stakeholders the budget levels, program allocations and other details. Certainly its decision was informed in part by the Guidelines, but the budget was also the subject of settlement discussions and compromises as between all of the DSM consultative members. Not only did Enbridge give the budget and its implications a great deal of thought, so did each of the signatories to the Settlement Proposal. ED is, in effect, asking the Board to simply disregard the time and effort which each of these parties has put into achieving a settlement in respect of activities which do benefit ratepayers but which also impact rates.

Issue 2: Potential Avoidance of $604 Million GTA Pipeline

13. It is trite law to state that an administrative law panel, once the panel has made a decision, is *functus*. This means that the decision of the panel is not and cannot be binding on any subsequent panel. The sole exception to this rule is that absent a review or appeal of the decision made which is sustained, the decision of a panel is final and binding and not open to change or review by a subsequent administrative panel. These are the rules by which each administrative body must operate. These rules are binding on the Board as a result of a long line of decisions of the Courts most notably the Supreme Court of Canada in *Chandler v. Association of Architects* [1989] 2 SCR 848. There is, plain and simple, no legal basis to support what ED is requesting under Issue 2.

14. In this proceeding, the decision before the Board is whether it accepts the Settlement Proposal in its entirety or rejects it. The Settlement Proposal does

not offer the alternative of "deferral." Accordingly, the only means by which a deferral can be achieved is by the rejection of the Settlement Agreement in its entirety, in which case all of the time, effort, thought and compromise invested in the Settlement Proposal by its signatories will be forfeited and devalued. This is not in the public interest. This is clearly not in the interest of future regulatory proceedings.

Conclusion

15. Enbridge submits that the Settlement Proposal for its DSM Plan Update for 2013 and 2014 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 Settlement Proposal is fully supported by a broad range of stakeholders including those representing ratepayers and environmental groups. 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 a settlement reached with intervenors that represent virtually all stakeholders. To reject the Settlement Proposal would devalue the extensive time and effort which parties have invested in reaching a compromise. It would also set a negative precedent in respect of all future proposed settlements creating a level of uncertainty that is not in the interests of any stakeholder. There is no evidence in this proceeding that draws into question the reasonableness of the Settlement Proposal. Enbridge therefore request that the Board approve the Settlement Proposal as soon as possible.

All of which is respectfully submitted.

[original signed]

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Dennis O'Leary