

June 12, 2013

BY COURIER (2 COPIES) AND EMAIL

Ms. Kirsten Walli

Board Secretary

Ontario Energy Board

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Dear Ms. Walli:

**Re: Environmental Defence Correspondence
EB-2012-0394 – Enbridge Gas Distribution Inc. (“Enbridge”)
2012-2014 Demand Side Management (“DSM”) Plan**

I am writing to address an argument first raised by Enbridge in its reply submissions with respect to Issue 2. As detailed below, Enbridge argues that this panel's decision should preclude the panel hearing the GTA pipeline application from considering whether an increased 2014 DSM budget could assist in avoiding or deferring all or part of that project. We submit that this would not be in the public interest and would be procedurally unfair because a key issue (i.e. whether DSM starting in 2014 could be part of a complete or partial alternative to the GTA pipeline) would be decided without an evidentiary foundation or submissions from the intervenors.

Environmental Defence requested in its submissions of June 4, 2013, that this panel's reasons and order “not preclude the panel hearing EB-2012-0451 from considering increases in Enbridge's conservation programs starting in 2014 as an alternative to the proposed GTA pipeline.” Enbridge contests this request, stating that there is “no legal basis” to support it. Enbridge argues that this panel's decision should in fact preclude the panel hearing EB-2012-0451 from considering increases in Enbridge's DSM programs and budget.

Enbridge's position is based on the principle that, in its words, “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.” Enbridge states that this is an exception to the rule that a decision of a panel is not binding on a subsequent panel. In other words, Enbridge argues that the GTA panel should not be able to consider a larger 2014 DSM budget because that would, in effect, be changing or reviewing the decision of this panel on Enbridge's 2013-2014 DSM budget.

We submit that it would be contrary to the public interest if this panel's decision were to preclude the GTA pipeline panel from considering increased 2014 DSM programs. In essence,

this panel would be deciding a vitally important issue without key evidence or submissions from intervenors on this topic. At stake is a potential means to avoid or defer a \$604 million project, which could result in *lower rates*. It is not in the public interest to decide these issues here. Instead, they are properly the subject of the GTA pipeline proceedings.

In fact, Enbridge itself acknowledged early on in these proceedings that issues relating to the GTA pipeline should not be addressed in this proceeding. In its letter of March 28, 2013 to the Board it stated as follows:

One issue which Enbridge submits should be excluded from the outset are any questions relating to the proposed GTA Reinforcement Project. Enbridge has filed no evidence in respect of this project and has no intention of producing witnesses to deal with any aspect of the project. This project is currently the subject of a leave application before the Board (EB-2012-0451). This proceeding is not the appropriate forum to raise such issues.

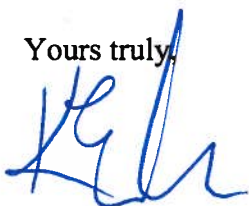
It therefore would not be in the public interest for this panel to preclude future consideration of additional conservation programs in 2014 as an alternative to the GTA pipeline.

It would also be procedurally unfair for this panel to preclude future consideration of additional 2014 DSM programs in EB-2012-0451. If that were to occur, Environmental Defence and other intervenors would be denied the opportunity to make submissions and to present evidence relating to additional 2014 DSM as a part of a complete or partial alternative to the GTA pipeline.

Environmental Defence's primary request is that the 2014 DSM plan be rejected (see our June 4, 2013 submissions for details). However, if Enbridge's 2013-2014 DSM plan is approved, all Environmental Defence is requesting as alternative relief is that the panel's decision include a statement such as that "this panel's decision does not preclude the panel hearing EB-2012-0451 from considering whether increases in Enbridge's conservation programs starting in 2014 could assist in avoiding or deferring all or part of the proposed GTA pipeline." This statement would prevent Enbridge from arguing that the GTA pipeline panel cannot, as a matter of law, consider 2014 DSM programs as part of the possible alternatives to the project.

In sum, we submit that, as a matter of public interest and procedural fairness, these issues relating to alternatives to the GTA pipeline should be decided in that proceeding, not here.

Yours truly,



Kent Elson

cc: Applicant and Intervenors