Jay Shepherd

Professional Corporation
2300 Yonge Street,
Suite 806
Toronto, Ontario M4P 1E4

BY EMAIL and RESS

July 20, 2013
Our File No. 20120459

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0459 –Enbridge Rates – Procedural Questions

We are counsel for the School Energy Coalition. We have reviewed the above Application filed recently by Enbridge Gas Distribution, and are writing this letter to provide our client's comments and proposal for the appropriate procedure to be followed by the Board in its consideration of the Application, once the notice period has been completed.

The Issue

Our primary concern is that the Application is not in the form of an IRM methodology or proposal, but is instead based on cost of service. While it is labelled a "Custom IR" application, in fact it appears to be a three year cost of service proposal, plus a planned application in year 3 to propose more capital spending for years 4 and 5. It includes substantial rate increases, partially offset by return of certain funds to ratepayers that have been overcollected in past years. The levels of increase are well in excess of anything the Board normally sees in IRM applications.

This raises two issues:

1. ***Ratemaking Methodology.*** It is within the Board's power to determine the methodology to be used to set rates in any given situation. Our understanding is that, under the policies promulgated by the Board that affect this situation, the Board's choice of ratemaking methodology is and has been a rebasing year (2013, already done) followed by incentive regulation. That is certainly the Board's preferred option in the Natural Gas Forum Report, and has been consistently supported by many statements by the Board describing the value of incentive regulation generally. Further, in 2012 the Board commissioned an expert review of the results of the last IR period. That review found that IRM was very successful for both Union and Enbridge, and for their customers. This Application appears to be fundamentally inconsistent with the Board's general policy, and the results of the last IRM.

Tel: (416) 483-3300 Cell: (416) 804-2767 Fax: (416) 483-3305
jay.shepherd@canadianenergylawyers.com
www.canadianenergylawyers.com

2. ***EB-2011-0354 Settlement Agreement.*** The Board approved a comprehensive settlement of 2013 rates for Enbridge in its rebasing year. The Settlement Agreement, in at least seven places, specifically refers to the expectations of the parties (including Enbridge) that the 2014 application will be an application for an IRM methodology. In the event that the Application proceeds as filed, there may be a question as to whether one of the key assumptions on which 2013 rates were based was materially incorrect.

Procedural Questions

In the past, when utilities have filed rate applications that were in a form different from what was anticipated by Board policy and/or practice, the Board has considered the question of the ratemaking methodology as a threshold or preliminary issue, to be dealt with on carefully focussed evidence on that issue, followed by submissions. Examples are EB-2011-0144 (Toronto Hydro) and EB-2010-0131 (Horizon), where in both cases the question of whether COS should be allowed instead of IRM was determined as Preliminary Issue after discovery and evidence dealing only with that issue.

The alternative – hearing the Application and then determining ratemaking methodology at the end – is fraught with problems, including:

- At the most practical level, the cost of a multi-year cost of service proceeding would be largely wasted if the Board's eventual decision is to use IRM. In this case, it could easily be several million dollars. This squandering of the resources of the Board, the utility, and the intervenors is not just a financial issue. Those resources are limited. If they are tied up on an unnecessary cost of service proceeding, they are not being used for other matters where they are really needed. The Board's calendar is busy enough, without having to spent large amounts of time on something that is, in the end, not productive.

- If the Board follows its stated policies and elects to use IRM for Enbridge, it will then be faced with either starting again, or proceeding without any proposals from the utility that are based on the preferred ratemaking methodology. Intervenors may, during consideration of the Enbridge COS proposal, have to retain experts to develop IRM proposals for Enbridge, placing the Board in the unusual position of having its basic evidentiary foundation for its decision in this proceeding provided solely by the intervenors.

- Enbridge may argue, in the end, that having heard cost of service evidence, the Board is then seized with knowledge of forecast cost of service, and under the Fair Return Standard is no longer legally free to set rates on any other basis but cost of service. Without prejudging the result of such an argument, this would, if successful, effectively shift the power to decide the ratemaking methodology from the Board, where it properly resides, to the applicant utility.

There are many other potential problems, which may be why the Board, in past situations like this, elected to hear and determine ratemaking methodology as a Preliminary Issue.

Conversely, dealing with ratemaking methodology as a Preliminary Issue has a number of advantages, no matter what the Board's determination is on the question.

If the Board decision on the Preliminary Issue is that multi-year cost of service is acceptable, then all parties will deal with the Application on that basis. Parties will focus on the review of the costs, and the methods used for estimating costs in future years, rather than simply challenging the costs because they are not based on IRM concepts. Any ADR will be more productive, because parties will not be insisting

on IRM if the Board has decided otherwise. Whether the case is determined by settlement or adjudication, in either case the Board will have a fuller and more relevant record, and wasted effort will be avoided.

At the same time, an early determination allowing the cost of service methodology will allow the parties to the EB-2011-0354 Settlement Agreement to determine, in a timely manner, whether to seek a review or appeal of that decision, or to consider whether they have any other remedies relating to that agreement.

If the Board decision on the Preliminary Issue is that an IRM proposal is required, then the first result is that, early in the process, Enbridge is given the opportunity to develop a set of IRM concepts they wish to propose, and bring them back in a new or modified application. Consideration of that new application would be focused on IRM issues, not COS. Because all parties would be on the IRM page during ADR, the likelihood that some issues will be settled is also improved. The proceeding is generally likely to be more focussed and efficient.

Of course, any issue of the EB-2011-0354 Settlement Agreement will be resolved, since an IRM methodology application will in fact be filed.

Again, there are likely numerous other favourable results arising out of an early decision on the appropriate ratemaking methodology.

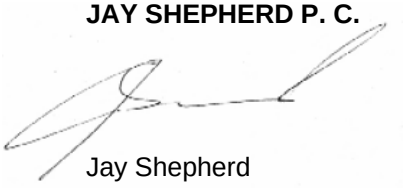
SEC Recommendation

For the above reasons, SEC is requesting that the Board designate the question of whether Enbridge should be allowed to proceed with a cost of service application in EB-2012-0459 as a Preliminary Issue. We ask that parties be allowed to ask interrogatories directed at that issue, and that the Applicant be allowed or required to lead a witness panel to deal with that issue (which would then be available for cross-examination). In these respects, we are proposing a procedure similar to the previous Toronto Hydro case cited earlier.

Then, based on that record, we would like to have the opportunity to make submissions on the Preliminary Issue, so that the Board can make a determination on ratemaking methodology prior to hearing any evidence on the Applicant's cost of service for the 2014-2016 (or 2018) years.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties