

# AIRD & BERLIS LLP

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July 25, 2013

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: EB-2012-0459; Enbridge Gas Distribution Inc. 2014-2018  
Customized IR Application**

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We are writing on behalf of Enbridge Gas Distribution Inc. (Enbridge) to respond to a letter dated July 20, 2013 that has been sent to the Board by Mr. Shepherd, counsel for the School Energy Coalition, in connection with this matter.

In his letter, Mr. Shepherd requests that the Board "designate the question of whether Enbridge should be allowed to proceed with a cost of service application" as a "Preliminary Issue". Since Enbridge has not actually made a cost of service application to the Board, it would be a meaningless exercise for the Board to entertain a question about whether Enbridge should be "allowed" to make such an application. For this and other reasons, as set out below, Enbridge urges the Board to reject Mr. Shepherd's request and instead to proceed in the normal course to the development of an Issues List without adding delay through the creation of a separate process for consideration of any so-called "Preliminary Issue".

The reasons for Enbridge's position that the Board should give no effect to Mr. Shepherd's letter are elaborated upon under the headings that follow.

## **Not a Cost of Service Application**

In his letter, Mr. Shepherd repeatedly refers to Enbridge's filing as a cost of service application, as if he can make it so simply by reiterating a bald and unsupported assertion. At no point in his letter does Mr. Shepherd make any effort to address

the numerous features of the proposed Customized IR plan that differentiate it from a cost of service application, nor does he address Enbridge's evidence<sup>1</sup> and the expert evidence<sup>2</sup> that explain how the Customized IR plan meets the objectives of the Board for an IR plan for gas distributors.

The fact that Enbridge's proposal is an IR model is apparent from many aspects of the Customized IR approach. One way this is seen is through the similarities between Enbridge's proposal and "building blocks" IR methodologies used in other jurisdictions.<sup>3</sup> Another way is through the similarities between Enbridge's proposal and the Board's new "Custom IR" model for electricity distributors. At a more detailed level, a review of the components of Enbridge's proposal makes clear that it follows a Customized IR approach rather than a cost of service approach. This is seen in the features of the proposal, such as:

- ~ the use of a revenue cap model (to set "Allowed Revenue" amounts for each year of a five year term), with annual adjustments for pass-through items;<sup>4</sup>
- ~ the opportunity for annual review of Enbridge's revenues and expenses, and for sharing of earnings above a set threshold, through the proposed Earnings Sharing Mechanism;<sup>5</sup>
- ~ the ongoing reporting and monitoring of performance measures and productivity initiatives, through the proposed performance measurement framework and annual reporting of productivity initiatives;<sup>6</sup>
- ~ the creation of new incentives for Enbridge to find and implement productivity and efficiency measures that will result in long-term savings for ratepayers and the utility, through the proposed Sustainable Efficiency Incentive Mechanism;<sup>7</sup> and

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<sup>1</sup> See Exhibit A2, Tab 1, Schedule 1 (e.g., pages 3-7 and pages 38-39).

<sup>2</sup> See Exhibit A2, Tab 9, Schedule 1 (e.g., pages 68-69) and Exhibit A2, Tab 10, Schedule 1 (e.g., page 21).

<sup>3</sup> See Exhibit A2, Tab 1, Schedule 10 (e.g., pages 3-7 and pages 38-39).

<sup>4</sup> See Exhibit A2, Tab 1, Schedule 1 (e.g., pages 4-7 and pages 30-33).

<sup>5</sup> Exhibit A2, Tab 7, Schedule 1.

<sup>6</sup> Exhibit A2, Tab 11, Schedule 2.

<sup>7</sup> Exhibit A2, Tab 11, Schedule 3.

~ the proposed continuation of Z-factor and off-ramp mechanisms that are very similar to those in Enbridge's 1<sup>st</sup> Generation IR model.<sup>8</sup>

We submit, with respect, that the Board should not accede to the notion that an application can be delayed and made subject to additional procedural steps simply because a prospective party to the proceeding adopts the expedient of characterizing the application in a manner that is not supported by the evidence. Mr. Shepherd asserts that it is "within the Board's power to determine the methodology to be used to set rates in any given situation", but surely it is not appropriate to add a preliminary phase to the Board's application process whenever a prospective intervenor seeks to put forward issues about the methodology proposed by the applicant. Instead, if an intervenor objects to a particular methodology, the objection is properly addressed in the ordinary course of the proceeding, through the Issues List, intervenor evidence (potentially putting forward alternatives), cross-examination and argument.

### **No Legitimate Preliminary Issue**

In his letter, Mr. Shepherd refers to decisions made by the Board in cases involving electricity distributors, specifically EB-2011-0144 (Toronto Hydro) and EB-2010-0131 (Horizon Utilities). These decisions do not support Mr. Shepherd's position that the Board should proceed to consider a Preliminary Issue in this case and, indeed, an understanding of these decisions helps to make clear that there is no legitimate Preliminary Issue in this case.

On April 20, 2010, the Board issued a letter to all electricity distributors indicating that a distributor seeking to have rates rebased in advance of its next regularly scheduled cost of service proceeding will be expected to justify the early rebasing. Specifically, the Board said, the distributor must clearly demonstrate why and how it cannot adequately manage its resources and financial needs during the remainder of its IRM plan term.<sup>9</sup>

In its letter of April 20, 2010, the Board provided guidance with respect to a test to be met by electricity distributors seeking early rebasing. The issue as to whether this test has been met by applicants proposing early rebasing has been considered by the Board in a number of proceedings involving electricity distributors and the Horizon Utilities case, EB-2010-0131, is one such proceeding. The test was also applied by the Board in the Toronto Hydro proceeding referred to by Mr. Shepherd. In fact, the Board's decision in that case, EB-2011-0144,

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<sup>8</sup> Exhibit A2, Tab 4, Schedule 1 and Exhibit A2, Tab 6, Schedule 1.

<sup>9</sup> See EB-2010-0131 Decision on the Preliminary Issue of Early Rebasing and Procedural Order No. 4, pages 1-2.

indicates that Toronto Hydro “agreed that the test as to whether or not an early rebasing application is justified is as outlined in the Board’s letter of April 20, 2010”.<sup>10</sup>

There is no such test that applies generally to natural gas distributors and there is no such test that applies specifically to Enbridge’s application. There is indeed no issue for consideration in this case as to whether the Customized IR methodology proposed by Enbridge does or does not meet a test or standard set forth by the Board. To the extent that parties seek to raise “methodology” issues about Enbridge’s Customized IR proposal, they can do so in the usual way through a Board-approved Issues List. Any such “methodology” issues can be addressed at appropriate points in the proceeding, including the Settlement Conference and the hearing. There is no “Preliminary Issue” regarding “methodology” in this case that stands apart for consideration by the Board in the manner of the test for electricity distributors set out in the Board’s letter of April 20, 2010.

### Delay

It is clear that Mr. Shepherd expects that the so-called “Preliminary Issue” will be considered by means of a process that essentially amounts to a proceeding in and of itself. This “proceeding within a proceeding” would include interrogatories and answers to interrogatories; a Board hearing with at least one witness panel followed by argument-in-chief, intervenor arguments and reply argument; and then a Board decision. If this process were to conclude with a decision that Enbridge’s application should proceed, there would be little or no value added to the proceeding and yet there can be no doubt that considerable cost and delay would result from the additional process.

Mr. Shepherd suggests that, if the Board were to decide after consideration of the so-called Preliminary Issue that the application should proceed, then there would be some value added because “[p]arties will focus on a review of the costs”. It surely cannot be the case, though, that, after the Board’s consideration of the Preliminary Issue as described by Mr. Shepherd, all issues about “methodology” would disappear, leaving the parties to focus only on a review of costs. This implies that there would be no issues with respect to the many different components of the Customized IR proposal, such as the proposed Sustainable Efficiency Incentive Mechanism and the proposed Z-factor referred to above.

Indeed, regardless of the outcome of the Board’s consideration of the so-called Preliminary Issue, it is not realistic to think that issues about “methodology” will simply disappear. That being so, the most efficient and effective approach is to proceed with the case in the usual fashion, such that all issues, including issues

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<sup>10</sup> EB-2011-0144 Decision with Reasons and Order on the Preliminary Issue, page 7.

about “methodology”, are addressed together in accordance with a Board-approved Issues List.

### **Importance of Hearing the Entire Application**

Not only is it most efficient for the Board to proceed to hear all issues together in the usual manner, there are also other reasons why it is important for the Board to hear the entire application rather than dealing with a so-called Preliminary Issue in isolation.

First, Enbridge's Customized IR proposal consists of a number of inter-related components that are best considered in a context where the entire case is before the Board.

Second, the “methodology” of the Customized IR proposal should be considered in the full context of the entire application, because the proposal was structured specifically to accommodate significant extraordinary capital investment requirements over the term of the proposed IR plan. The need for a “Custom IR method” to take account of “significantly large multi-year or highly variable investment commitments that exceed historical levels” was explicitly recognized in the Board's Report on a Renewed Regulatory Framework for Electricity Distributors.<sup>11</sup> It is only reasonable that, when a “custom” IR model has been proposed specifically to accommodate extraordinary spending requirements, the Board's consideration of the proposal should occur with the full context and details of the entire application.

Third, in developing the Customized IR proposal, Enbridge has been very mindful of the Board's decisions and guidance and Enbridge believes strongly that it is of real value to the Board and future “custom” IR applicants for the Board to give the entire application its full consideration.

### **Conclusion**

According to Mr. Shepherd's letter, his intent is to make a “recommendation” to the Board. For all of the reasons set out above, we respectfully submit on behalf of Enbridge that the Board should take no action on the recommendation. On the contrary, the most efficient, fair and appropriate course of action is for the Board to proceed to consider the application in accordance with its usual process and without establishing any procedure for consideration of a so-called “Preliminary Issue”.

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<sup>11</sup> *Report of the Board Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, October 18, 2012, page 19.

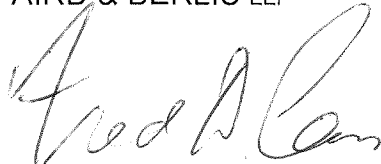
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If you have any questions in this regard, please do not hesitate to contact us.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in dark ink, appearing to read "Fred D. Cass". The signature is fluid and cursive, with the first name "Fred" being more prominent.

Fred D. Cass

FDC/

c.c. Enbridge Gas Distribution Inc.  
J. Shepherd  
All EB-2011-0354 Intervenors