Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

Reply To: Thomas Brett
Direct Dial: 416.941.8861
E-mail: tbrett@foglers.com
Our File No. 133787

October 16, 2013

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

Attention: Kirsten Walli,
Board Secretary

Dear Ms. Walli:

Re: Board File No. EB-2013-0046

Please find enclosed BOMA's Submissions. Two hard copies will be sent to the Board.

Yours truly,

FOGLER, RUBINOFF LLP

Tom Brett per

Thomas Brett
TB/dd
cc: All Parties (*by email*)

K:\tbrett\wpdata\CLIENTS\Fraser & Company\BOMA - EB-2013-0046 Enbridge\Walli ltr (submission).doc

EB-2013-0046

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B), as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving the clearance or disposition of amounts recorded in certain deferral or variance accounts.

<u>BOMA Submissions</u>

1. In this case, Enbridge is suggesting that the Board would have made a different decision had it done a better job of explaining itself. This year, Enbridge says that it will make a better effort to explain itself and hopefully the decision will be different (TV1, pp 55-56). BOMA does not believe that Enbridge provided any new explanation to justify the Board changing its position.

2. In the EB-2012-0087 case, it was clearly demonstrated, and the Board agreed, that the capacity release transactions, the characterization of the revenue from which as either gas cost reductions, or transactional services revenues is the single, remaining issue in this case, were only economic because of the utilization of the FT-RAM credits that TCPL offered shippers between 2009 and early 2013. (The FT-RAM credit program was terminated by the National Energy Board in RH-003-2011, despite efforts of the Ontario LDCs to have it continue). Enbridge's experience is no different than Union's with respect to the use of FT-RAM credits. The credits make the capacity release transactions profitable. Enbridge has agreed with this point in this case (Ex. C, T1, Sch 6, p15, par 28).

3. The FT-RAM and STS-RAM ("RAM credits") were attributes of the TCPL long haul FT transportation service and its related STS service. In 2012, as in 2011, RAM credits were used to render the interruptible transportation service almost cost free (ninety percent reduction) used by the third marketer who received the assignment of capacity from Enbridge. That allowed the marketer to pay Enbridge a share of revenues earned from the subsequent transaction(s). It was for that reason that the Board decided in EB-2012-0055 to characterize the capacity release related revenue as gas cost reductions, to be passed through in their entirety to ratepayers in accordance with Enbridge's IRM Framework (EB-2012-0055, p13).

4. In the EB-2012-0055 case, the Board made several points on reaching the conclusion it did.

First, the Board noted that a capacity release transaction is enabled when Enbridge purchases gas at Empress, to serve its customers in the EDA. Enbridge could simply transport the gas over its long haul path to the Eastern Zone. But the availability of RAM credits allowed Enbridge to do a transaction with a third party which has the effect of moving the gas to its customer or to storage and then to the customer, in a less expensive manner. As Enbridge states at p6 of its Argument-in-Chief in this case:

> "Capacity release exchange transactions allow counterparties to take advantage of credits associated with unused FT capacity, which are referred to as 'FT-RAM credits'".

The capacity release transactions, as explained by Enbridge, are typically done for all or part of the summer period (measured in months), when Enbridge is moving gas to storage. Rather than use the long haul path, including STS service, to move the gas to storage, Enbridge assigns the TCPL capacity on the original path to a marketer, which allows the marketer to claim FT-RAM and STS-RAM credits generated by the now empty long haul pipe. The assignment of the transportation rights on the original TCPL path is coupled with an exchange; that is, Enbridge gives its gas to the marketer at Empress, who provides Enbridge with the same amount of gas that same day at Dawn, for injection into Enbridge storage.

Enbridge gets the gas where it needs it during that summer day, which is in storage. The marketer/counterparty benefits because, as noted above, the value of the gas which it sells at Emerson in the example provided by Enbridge, plus the value of the RAM credits it is able to use as it wishes, exceeds the extra cost of the gas purchased at Dawn plus the cost of IT transportation, reduced by the RAM credits, from Empress to Emerson. This net revenue is then shared between the marketer and Enbridge in some negotiated percentage. Enbridge's portion of the revenue provides a partial offset for Enbridge of its FT/STS toll payments on the day or month in question. In other words, it reduces the delivered cost of gas to Enbridge and its ratepayers.

As the Board noted in EB-2012-0055, these transactions are not relying on temporary surplus assets. Enbridge must get the gas it purchased for its customers at Empress either to the customer, or to storage on the day or series of days (months) in question. It uses an exchange to get the gas to Dawn. Enbridge's TCPL facilities are not empty because of warmer than forecast weather.

Second, the Board found that Enbridge's capacity release activities do not occur on a "truly planned basis", in the sense that Enbridge set aside a fixed amount of capacity for later assignment at the time they formulated the gas plan. Rather, "they are a <u>function of</u>

circumstances that arise, and factors taken into account by Enbridge's gas control group as the gas supply is implemented" (our emphasis). The decision to assign is made given the circumstances at the time, including in the case of STS-RAM credits, the amount of carried-over STS withdrawal rights Enbridge had from the previous winter, in the event it had been unusually warm. Notwithstanding that finding, the result is to lower the delivered cost of gas of the capacity release/exchange transaction (our underline).

Third, the Board found fundamental similarities between capacity release transactions and Enbridge's own use of STS-RAM credits. The Board stated:

> "In both situations, Enbridge purchases gas at Empress for delivery to Enbridge for use by its ratepayers. In the STS-RAM own use situation, Enbridge reduces the cost of the delivered gas through its use of the credits. In the case of the capacity releases, Enbridge reduces the cost of the delivered gas through the capacity release transaction. The outcome of both situations is that the landed price of the gas to be used by Enbridge's ratepayers is reduced. Therefore, the Board finds that similar treatment of the gas cost reductions from both of these types of activities is warranted."

As a result, in EB-2012-0055, the Board found that since it had concluded that the capacity release related revenues were gas cost reductions, it also concluded that section 5.1 of the existing IRM agreement required that all of those revenues be passed on to ratepayers as a negative Y-factor, and the ten percent incentive did not apply.

Enbridge capacity release practices, and use of FT-RAM and STS-RAM credits in 2012 were no different than in 2011. However, it claims to have a more complete explanation of capacity release with which it wishes to persuade the Board to reverse its EB-2012-0055 decision and designate the 2012 revenues derived from capacity release related revenues of $18.6 million, as Transactional Services Revenue (Enbridge Argument-in-Chief, Par 6).

In BOMA's view, the additional evidence does not add anything of substance to the record in the previous case. The three tests Enbridge proposes to qualify the revenues as transactional services, of unplanned, third party request, and use of temporary surplus capacity, are the same three tests the Board applied in EB-2012-0055.

The Board ruled in that case that the capacity assignments of the FT-STS capacity did not involve temporarily surplus assets, so they did not pass the third test. The transportation was required to move gas to Dawn through the summer. They were not like capacity rights that have become surplus because the weather is warmer than usual. They are assigned to a third party to reduce transportation costs, a result driven by the magnitude of STS-RAM and FT-RAM credits.

Moreover, BOMA is of the view that, given the nature of how STS withdrawal rights are a function of STS injection rights, early in the summer following a relatively mild winter, Enbridge would have a "surplus" of withdrawal rights because it would not have used the normal amount of withdrawal rights during the previous winter. Given the carried-over rights, it therefore does not have the same need to accumulate withdrawal rights for the following winter by using STS injection services throughout the summer. It is free at that point to seek out a cheaper route to Dawn, which it does via STS capacity releases. In that sense, there is an element of advance planning around the amount of STS capacity (and RAM credits) it could transfer throughout the summer (Ex. C, T1, Sch 6, p16, para 32, and footnote 3 on p17).

In any event, in BOMA's view, neither the additional information Enbridge has submitted nor changed circumstances, warrants a change in the Board's EB-2012-0055 decision that capacity assignment related revenues are gas cost reductions.