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### **BY EMAIL and RESS**

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Our File No. EB-2013-0046

Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2013-0046 – Enbridge ESM and D/V Clearance – Final Submissions**

We are counsel for the School Energy Coalition. This letter constitutes SEC's final argument with respect to the one issue remaining to be determined in this matter.

SEC is conscious that one interpretation of Transactional Services results in all customers – including school boards - sharing in the benefit of capacity release exchanges, while another interpretation shifts that benefit to the gas cost Y factor, and thus effectively allocates it to different customers. As well, the overall amount to go to ratepayers changes depending on the interpretation.

Notwithstanding these pragmatic considerations, SEC believes that getting to a "correct in principle" answer in this case, as in other cases, benefits all ratepayers and the utility in the long run. Therefore, we look at this interpretation question not on the basis of short-term benefit, but on the basis of principle. Having seen the draft submissions of other intervenors, it appears to us that they also take a similar approach, although not all agree on the result.

Of course, seeking a principled result requires identification of the appropriate principle to apply. It is on that issue that SEC has had some difficulty.

We start with the following logic:

1. Enbridge is responsible for developing a gas supply plan that acquires gas, brings gas to the Enbridge franchise area, stores it as required, and makes it available to customers when needed. Part of that responsibility is to ensure that the gas supply plan is at the lowest reasonable cost given the need to ensure that customers have gas where and when it is needed.

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2. The ratepayers pay all of the costs associated with the gas supply plan, on a flow-through basis. Enbridge is not at risk.
3. When Enbridge develops the gas supply plan, it knows that the combination of transportation and storage capacities of various types in the plan will not exactly match what actually happens. This is for two reasons. First, the plan is based on a forecast, and reality will be different. Second, the plan must necessarily be conservative, planning for peak day demand even though most of the time that is more capacity than is necessary.
4. As a result, the actual needs of the customers will always vary from the gas supply plan, and that variance will on average be asymmetrical, with the needs usually being somewhat less than the capacity available.
5. Part of Enbridge's responsibility in managing gas transportation and storage is to ensure that, as the gas supply plan is implemented, it is implemented as efficiently as possible. That is, if the actual cost to meet the needs of the customers could be lower as events unfold, it is Enbridge's responsibility to obtain that lower cost, if it can, through the choices it makes during the year in implementing the plan.
6. Enbridge's responsibility to optimize the implementation of the gas supply plan is an active responsibility. Enbridge cannot simply do the minimum to ensure that gas is available where and when needed. It must also actively seek out opportunities to keep the net cost of that transportation and storage as low as possible.

Just stopping there, it would appear to us that this applies to many types of transactions, some of which have traditionally be treated as TS. For example:

7. If Enbridge has excess transportation capacity, for which it has paid \$2 million on behalf of the ratepayers, and it knows it doesn't need it, then if there is a market to assign that capacity at \$1 million Enbridge has an obligation to seek out that transaction and get that money. The result of that transaction – without any further complications – is to reduce the overall cost of transportation by \$1 million.
8. Similarly, in the same situation if Enbridge is aware that there may be third parties who would pay Enbridge \$1.2 million to have their gas shipped using that surplus capacity, Enbridge has a positive obligation to seek out that transaction and credit the \$1.2 million to reduce overall transportation costs.
9. Even if the transportation capacity is not surplus, Enbridge has an obligation to use it as efficiently as possible. For example, if Enbridge needs to use that capacity, but knows that on the day it is needed it can be acquired cheaper, it has an obligation to see if there is a transaction that will allow Enbridge and its ratepayers to get the benefit of the cheaper cost. If the most cost-effective transaction is to sell the existing firm transportation capacity (which cost \$2 million in this example) to a third party for \$1.5 million, and then transport the gas Enbridge needs using cheaper transportation capacity costing \$0.5 million, Enbridge has a positive obligation to seek out and complete that transaction. The net cost of getting that gas where it needed to be, which was budgeted at \$2 million, can be reduced to \$1 million. Keeping the actual cost down is part of Enbridge's responsibility.
10. Alternatively, in the example used in the proceeding, if Enbridge has transportation capacity to EDA, but actually needs gas at Dawn on a given day, it has an obligation to seek out a transaction that trades that capacity for gas at Dawn, if such a trade can produce a cheaper net



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cost to the ratepayers. This could be a capacity release exchange, for example.

Once we go through these examples, it becomes clear to us that there may be no category of transactions that - as a matter of basic principle - should be treated as TS. In virtually every case, the essence of the transaction is optimization of the gas supply plan, which should be for the benefit of the customers.

Without further facts, capacity release exchanges, base exchanges, and any other transactions, would be reductions to the costs of the gas supply plan. They are all simply ways of implementing the gas supply plan to reduce its overall net cost. However, then we have to consider the added construct of Transactional Services.

The genesis of the Transactional Services concept is that Enbridge (and Union) have an obligation to optimize the implementation of their gas supply plans, but there is a limit to the level of activity and risk that the Board and the ratepayers can expect of them, given that they make no profit from their gas supply activity. If the ratepayers want the utilities to focus on, and maximize, their optimization activities, an incentive will help achieve that result. TS has largely been driven by that concept for many years.

SEC thus concludes that the “principle” to be identified in this case is not which transactions are inherently gas supply in nature, and which are inherently transactional services. That appears to us to be a false distinction. The appropriate question to be asked, and thus principle to be identified, is “What transactions or class of transactions should be incented to maximize ratepayer benefit?”

The possible answers to that question appear to be the following:

- No transactions should be incented, because Enbridge has a responsibility to achieve the best possible optimization of its gas supply plan. This would be inconsistent with the very existence of Transactional Services, which were part of the rules applicable to Enbridge in 2012, so in our view this option is outside of the scope of this proceeding.
- Individual transactions should not be incented, but Enbridge should receive an overall incentive for developing a strong gas supply plan and implementing it at the lowest possible cost. This might be a future approach for the Board to consider, but it is clearly outside of the scope of this proceeding, which is looking at how to clear transactions from a past year.
- Some individual transactions should be incented, but others should not. In our view, this response is also not viable, because in our view all optimization of the gas supply plan should be considered normal activities for Enbridge to pursue. There is no principled distinction between third party optimization transactions that should be incented, and those that should not.
- All individual transactions that were not contemplated in the gas supply plan, and have the effect of optimizing the implementation of the gas supply plan, should be incented. This would mean many day to day activities would not be incented (shifting gas to storage when it is not needed by customers, for example), but any time the utility reached out to the third party to get paid for the sale or use of surplus assets, or to find a cheaper way to implement the gas supply plan, the utility would be incented through the TS structure. It is this activity of seeking out third parties to minimize overall ratepayer costs that is the reason for the incentive.

Our conclusion is that only the fourth choice, above, can reasonably be applied by this Board panel for transactions in the 2012 year.



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It would remain possible to argue the niceties of what categories of transactions are “contemplated in the gas supply plan”, but given the specific question before the Board this year, that would not appear to be necessary. On the evidence before the Board in this proceeding, SEC believes that capacity release exchange transactions are no more contemplated in the gas supply plan than are base exchanges, or any of the other categories of transactions that are included in TS.

SEC thus would not look at considerations such as whether assets are “temporarily surplus”, or whether a surplus asset is lent or rented out for someone else’s use, or sold, or bartered, or turned to account in some other way. If an asset acquired as part of a reasonable gas supply plan is used to generate value in any way by a transaction with a third party, that transaction should be considered part of TS, and Enbridge should receive their agreed incentive for implementing it.

While it may be true that either providing no incentive, or providing an overall incentive for good gas supply planning and implementation, may be a better policy choice, in our view those options are not available on a retrospective basis. In 2012, there was a category of transactions for which Enbridge was entitled to an incentive. That is the set of rules within which the Board should make its determination on capacity release exchange transactions.

In the end, SEC concludes that capacity release exchange transactions are transactions not contemplated in the gas supply plan, but actively sought out during the year by Enbridge to reduce the overall cost of implementing the gas supply plan. Given the concept of Transactional Services the Board has accepted for past years including 2012, these transactions fall within the category of activity by the utility that should be incented. Therefore, they should be treated as Transactional Services for the 2012 year.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**

Jay Shepherd

cc: Wayne McNally, SEC (email)  
Interested Parties