EB-2012-0459

Ontario Energy Board

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 or fixing rates for the sale, distribution, transmission and storage of gas commencing January 1, 2014.

FINAL ARGUMENT OF
ENERGY PROBE RESEARCH FOUN DATION
("ENERGY PROBE")

April 21, 2014

I. INTRODUCTION

On July 3, 2013 Enbridge Gas Distribution Inc. ("EGD") filed an Application seeking approval on an Incentive Regulation ("IR") mechanism for the purposes of establishing the methodology for setting rates over a five year period. EGD called this proposal a Customized IR plan and described it as a methodology under which allowed distribution revenue amounts would be established for the years 2014 through 2018.

In addition, the EGD application requested approval of the setting of final rates commencing January 1, 2014.

This is the Final Argument of Energy Probe Research Foundation ("Energy Probe").

This Final Argument has been organized, to the extent possible, based on the approved Issues List as set out in the Decision on Issues List and Decision on Motion dated November 5, 2013. In addition, Energy Probe has provided general comments in the following section on the Application and the proposed Customized IR approach.

II. GENERAL COMMENTS

A. Site Restoration Costs ("SRC")

Energy Probe notes that EGD has tried to combine the issue of site restoration costs with its Customized IR plan. The net result of this is to try and masquerade the true impact of the Customized IR plan by incorporating the reductions due to the SRC proposal in the rate impacts. Energy Probe submits that by combining these two issues, EGD has made the proceeding more difficult than it needed to be.

Energy Probe submits that the Board should separate the SRC over collection issue from the Customized IR plan proposed by EGD and deal with it as a completely separate issue.

Energy Probe has had the opportunity to review the extensive and comprehensive submissions of the School Energy Coalition ("SEC") with respect to this issue. Energy Probe supports those submissions in their entirety.

Energy Probe notes that EGD converted to USGAAP, with the Approval of the Board. As discussed by Mr. Shepherd, Mr. Culbert and Mr. Kennedy (TR. Vol. 9, pages 33-48), there are specific rules for asset retirement obligations, but there are no rules dealing with future site restoration costs that do not qualify as asset retirement obligations.

EGD has confirmed that it believes it has no legal obligation to restore sites when assets are no longer used (TR/ Vol. 9, pages 41-42) and that it has no asset retirement obligations (TR. Vol. 9, page 48).

Energy Probe agrees with the submissions of SEC that, under USGAAP, EGD can only establish a reserve for site restoration costs and collect money from ratepayers to fund that reserve based on an Order of the Ontario Energy Board.

The end result is that in the absence of an order from the Board, EGD must expense removal and site restoration costs as incurred on a year to year basis.

Energy Probe submits that there is no reason for the Board to deviate from the USGAAP accounting rules. EGD has not provided any evidence as to a regulatory reason to depart from them.

Furthermore, Energy Probe is concerned with the intergenerational inequity that results from the continued recovery of site restorations costs that are well in excess of the costs actually incurred in any year. This difference is highlighted both historically and over the IR plan term in the response to Exhibit I.E40.EGDI.Staff.77.

Current ratepayers are paying substantially more than the current costs associated with removal and site restoration costs. Based on the response to the interrogatory noted above, ratepayers paid more than $53 million per year in 2009 through 2013 in excess of the actual site restoration costs incurred in those years. Even with the reduction in the recovery of these costs in 2014 through 2018, ratepayers would still be paying more than $34 million per year in excess of the costs forecast.

Energy Probe supports the SEC recommendation that SRC costs should be treated as operating costs and expensed as they are incurred.

Energy Probe has also had the opportunity to see the preliminary submissions of the Canadian Manufacturers & Exporters ("CME") with respect to this issue. Energy Probe notes the similarities between this issue and accumulated deferred taxes and current taxes. The Board directed Union Gas to convert to the current tax methodology in the late 1990's and ordered Union to refund the accumulated deferred tax balance in varying annual amounts over a fixed number of years. This deferred tax drawdown has been reflected in the EB-2013-0202 Union Gas Limited Settlement Agreement dated July 31, 2013 as part of their 2014-2018 IR plan (Section 1.2.1).

Energy Probe submits that the Board should approve a similar approach to refund the $905 million of accumulated over collection from ratepayers as of the end of 2013. Energy Probe has reviewed the SEC proposal for a declining rebate over 10 years and believes it is acceptable and appropriate given the considerations of rate impacts, rate stability and intergenerational inequity.

B. Customized IR

"In the current case, in addition to filing a plan which gives the Board very little evidence on which to rely to satisfy itself that the forecasts of costs and revenues are reasonable or at least within a range of reasonableness, Enbridge has asked for new deferral and variance accounts, one of which Enbridge has admitted is asymmetrical in favour of the utility, an expanded definition of what would qualify for Z-factor treatment, annual adjustments for a significant number of variables affecting revenues, projected ROE which changes annually, WACC that changes in every year of the plan, and variance account treatment for the large "extraordinary" capital items within the plan term." (Board Staff Submission dated April 15, 2014, page 33).

Energy Probe submits that the above summary by Board Staff, which Energy Probe agrees with, illustrates the extremely conservative and risk averse corporate culture at EGD.

a) Balance of Risks and Rewards is Skewed

Energy Probe concurs with the conclusion of Board Staff and their expert Dr. Kaufmann that there is not an appropriate balance of risk and reward in the Customized IR plan as proposed. Energy Probe submits that the plan shifts more risk to ratepayers and away from EGD; the potential rewards to ratepayers have been reduced while at the same time increasing the potential rewards to EGD. Neither is appropriate and neither should be accepted by the Board by approving the Customized IR plan as filed.

EGD's proposal gives the company significant protection through the numerous variance and deferral accounts requested. EGD's proposal gives the company significant protection through the use of only its internal capital and O&M expenses rather than through external third party analysis or benchmarking. EGD's proposal gives the company significant upside potential through the first 100 basis points of any over earning generated, which amounts to between $21 and $29 million per year (see Issue 10c).

What do ratepayers get under the proposed EGD plan? They get rate increases in excess of those expected for Union Gas ratepayers. They get an opportunity to share in earnings in excess of 100 basis points over the Board's ROE, which EGD believes is a stretch to hit. Ratepayers get productivity increases built into the allowed revenue requests of EGD that are, in fact, only the differences between forecasted costs at different points in the budget setting process. They also get vague and unsubstantiated promises of other efficiency gains.

Energy Probe submits that the Customized IR plan as proposed by EGD reflects on the company very accurately. EGD is an extremely conservative company that seeks to transfer risk to ratepayers and transfer rewards to itself. This results in a skewing of the risks and rewards in favour of the distributor.

b) Corporate Culture Change Needed

In this type of corporate and management environment, Energy Probe submits that it is very difficult to generate benefits for ratepayers under an IR plan. Generating benefits for ratepayers requires EGD to take risks by investing (time, money and/or creativity) in new processes and changing the way things are done. To a risk averse company like EGD, change is terrifying. Why change when you can continue to earn a great return for your shareholder and your customers cannot go anywhere else?

Energy Probe submits that the culture of the organization has to be changed at EGD. It has become obvious through this proceeding that this cultural change must be imposed on EGD by external forces. The Customized IR plan is a plan that EGD is comfortable with. The Board needs to push EGD beyond its comfort zone in order for ratepayers to benefit from efficiency measures and productivity initiatives.

c) Capital Expenditure Driver - Not

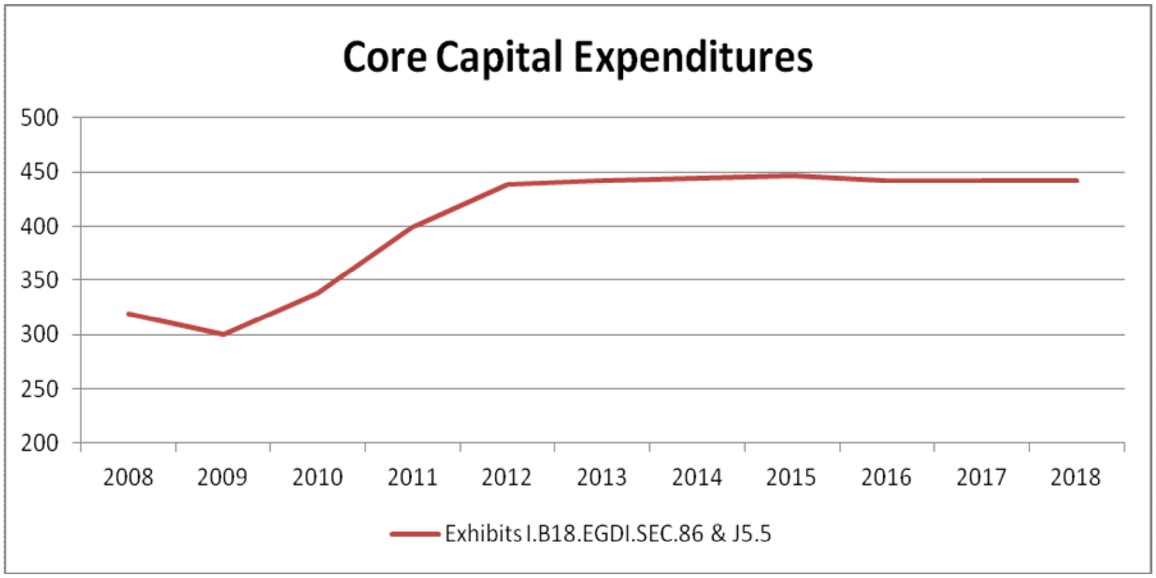
Energy Probe notes that the EGD witnesses and their evidence indicate that the fundamental driver of why an I-X approach does not work and why they need the Customized IR plan is because of the increase in capital costs and the lumpiness of those costs through the IR period (TR. Vol. 5, pages 8-10).

For example, EGD used the graphs provided in the response to Exhibit I.A1.EGDI.SEC.7 to support the claim that the level of the capital spend in 2014 through 2018 was higher than in previous years and to show the lumpiness, which was defined as the difference over the mean for two distinct periods, 2008 to 2012 and 2013 to 2016, was increasing. The increase in the spend in 2014 through 2018 was highlighted in the first graph that showed a trend line for 1994 through 2013 and a different trend line for 2014 through 2018. While the slopes of these lines was similar, EGD used the fact the trend line for 2014 through 2018 was at a higher level to illustrate their contention that the level of proposed spending was significantly different than in the past.

Energy Probe submits that the EGD position with respect to the capital drivers for the need for the Customized IR plan are not supported by the evidence. If anything, the evidence supports the conclusion that the capital expenditures forecast for 2014 through 2018 are lower than would be expected.

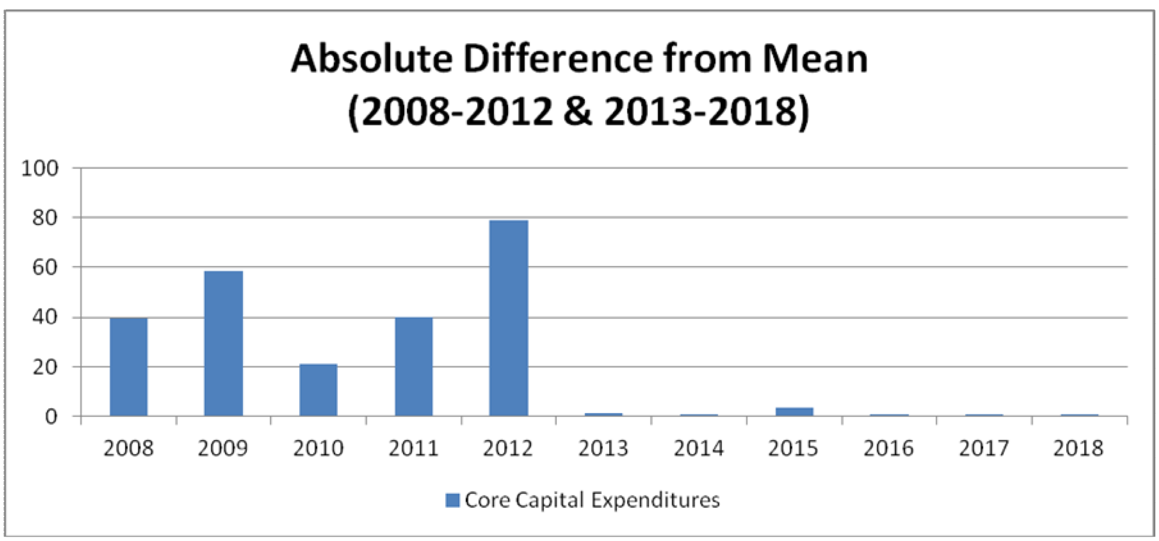
First, Energy Probe notes that EGD proposes to deal with the GTA project through a variance account. This is not reflected in the graphical analysis provided in the response to SEC #7.

Second, a review of the core capital, which EGD defines as the total capital expenditures less the CIS/WAMS project, the GTA project and the Ottawa reinforcement project fails to show the significant increase in the level of these expenditures. This is illustrated in the following graph using core capital expenditures taken from Exhibit I.B18.EGDI.SEC.86 updated with 2013 actual expenditures taken from Undertaking J5.5.

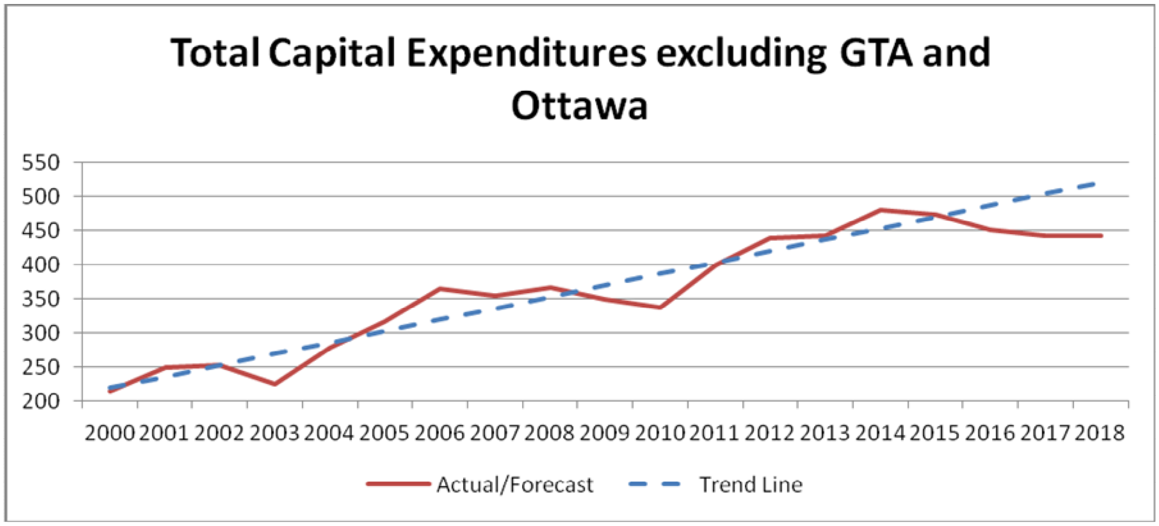


As the above graph illustrates, core capital expenditures are forecast to remain at 2012 and 2013 levels throughout the IR period.

Third, with respect to the lumpiness of the capital expenditures, the opposite of what EGD says is actually true for the core capital expenditures. As illustrated in the following graph, the absolute difference from the mean for the 2013 to 2018 period is virtually zero compared to the significant deviations from mean shown for 2008 through 2012.



Finally, with respect to the total capital expenditures excluding the GTA project and the Ottawa reinforcement project (but including CIS/WAMS), Energy Probe estimated the trend line using actual data for 2000 through 2013 and then extended this line out for the 2014 through 2018 period. These lines are shown on the following graph.



As is clearly illustrated in this graph, the forecast capital expenditures excluding the GTA and Ottawa projects are actually below the trend line for 2000 through 2013. In fact, on an aggregate basis for the 2014 through 2018 period, the forecasted capital expenditures are $147 million below that based on the trend.

Based on the foregoing analysis, Energy Probe concludes that the need for a Customized IR plan is NOT based on capital expenditures that are signicantly out of line with past expenditures or when considering the lumpiness, or lack thereof, in the IR years.

Energy Probe notes that the treatment of large capital projects, such as the GTA project and the Ottawa reinforcement project as Y-factors under an I-X plan, as is being done with Union Gas eliminates any issues with these large projects. The remaining capital expenditures are not out of the ordinary.

Energy also notes that the Custom IT option available as a result of the RRFE is for distributors that have lumpy or higher capital expenditures than can be accomodated through the incremental capital module ("ICM"). As shown in the response to Exhibit TCU2.16, on page 7, the ICM threshold has been calculated for each of 2014 through 2018 and range from a high of $449.6 million to a low of $447.1 million. Of interest is the fact that the forecasted core capital is lower than the threshold in each and every year, again illustrating the gact that EGD should be able to live with an I-X framework with Y factors for its major capital projects.

<u>d) RRFE Objectives</u>

EGD relies on some aspects of the RRFE report and the Custom IR option in support of its proposal. However, the EGD proposal does not address deviations from the Board's express requirements or preferences in other areas.

Energy Probe has reviewed the submissions of Board Staff with regards to the failure to address the many deviations from the Board's express requirements and preferences related to the Custom IR option available through the RRFE. Energy Probe agrees with these submissions.

In the October 18, 2012 Report of the Board on the Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, the Board makes a number of comments on the Custom IR on pages 18 to 20. The following is a summary of what the Board concluded with respect to the Custom IR and how EGD has not addressed the specific deviation.

* "Rates are set based on a five year forecast of a distributor's revenue requirement and sales volumes". EGD proposes to update the sales volumes forecast through its annual rate setting process.

* "The Custom IR method will be most appropriate for distributors with significantly large multi-year or highly variable investment commitments that exceed historical levels". As demonstrated in the previous section, the core capital expenditures do not exceed historical levels and based on the trend since 2000 are lower than expected. Similarly, the variability of these investments is significantly lower during the IR plan than in the previous years.

* "The Board expects that a distributor that applies under this method will file robust evidence of its cost and revenue forecast over a five year horizon...". EGD did not file any external total cost benchmarking evidence and relied solely on internal forecasts to justify its costs. EGD certainly has not filed robust evidence to support its capital expenditures or O&M costs for the fourth and fifth years of the IR term as both are based on the forecasts for the third year of the plan.

* "...as well as detailed investment plans over that same time frame". EGD filed an asset management plan, but as noted in the Board Staff submission, the budgets are not directly linked to the asset management plan and not all assets are incorporated into the asset management plan.

* "The Board has determined that a minimum term of five years is appropriate". While the EGD plan was amended to extend for a term of five years, Energy Probe submits that the Customized IR plan is really only a three year plan. There is no evidence to support the level of capital expenditures estimated for the fourth and fifth years, as they have simply been set at the 2016 level. There is no evidence that the O&M costs that have been put forward for the fourth and fifth years are relevant, given that these figures are based on increasing the 2016 forecast by the annual average increase in these costs between 2013 and 2016. As noted above, these estimates certainly cannot be said to be robust evidence in any sense of the concept.

* "The allowed rate of change in the rate over the term will be determined by the Board on a case-by-case basis informed by empirical evidence including: the distributor's forecasts (revenues and costs, including inflation and productivity); the Board's inflation and productivity analyses; and benchmarking to assess the reasonableness of distributor forecasts". EGD did not include specific inflation and productivity estimates in the evidence, other than a reference to 2.24% inflation used for O&M costs, and vague references to embedded productivity estimates. EGD did not use the Board's inflation and productivity in the preparation of any of its evidence. EGD did not provide any benchmarking to assess the reasonableness of its forecasts. The benchmarking it did provide was flawed. Energy Probe agrees with the submissions of Board Staff on this.

* "There will not be an ICM in the Custom IR method". As noted under Issue 20b below, Energy Probe submits that the two capital expenditure related variance accounts requested by EGD are, in effect, a substitute for the ICM. EGD is also requesting a variance account for the GTA project. If EGD had filed a plan under the 4th Generation IR methodology, the GTA would have qualified for inclusion in rates through the ICM. However, as noted by the Board there is no ICM available in a Custom IR plan. As a result Energy Probe submits that if the Board approves the Custom IR model it should deny the request for the GTA variance account.

e) Summary

Energy Probe submits that if the Board were to accept the EGD Customized IR proposal as is or with minor changes, it would be doing a disservice not only to ratepayers but also to EGD in both the short and long run. Ratepayers will continue to see rate increases higher than for other distributors. EGD will decline in performance measures relative to other distributors.

Ratepayers deserve a plan that pushes their monopoly service provider to do better now and in the future. In the RRFE, the Board labelled this as continuous improvement. EGD has not provided any evidence to support continuous improvement that will result from its proposal.

In fact, in one glaring instance, EGD is proposing a reward for itself if it comes up with some sustainable efficiency improvements which it had not identified in putting together this application, even if its service quality indicators fall below historical levels. Where is the customer focus in this bizarre twist?

EGD has not demonstrated the need for the Customized IR plan that it has proposed. EGD has not addressed the Board's express requirements and preferences with respect to the use of a Custom IR plan. Energy Probe submits that the Board should reject the Customized IR plan.

C. Alternatives for the Board to Consider

As part of the submissions provided by Energy Probe under various issues below, Energy Probe has provided a number of alternatives for the Board's consideration regardless of whether or not the Board approves the Customized IR plan as proposed, with modifications, or if it is rejected by the Board.

These alternatives include methods to set rates for 2014, Z factors, deferral and variance accounts, off-ramps, earnings sharing, treatment of the cost of capital, and so on.

III. THE ISSUES

A. Enbridge's Customized IR Plan

1. Is Enbridge's Proposal for a Customized IR Plan for a 5 year Term Covering its 2014 Through 2018 Fiscal Years Appropriate?

Energy Probe submits that the answer to this issue is no for the reasons noted in Section II, Part B above. There is no compelling need for the Customized IR plan and there is no compelling reason why EGD should not be able to operate under an I-X plan similar to that being used by Union Gas.

2. Does Enbridge's Customized IR Plan Include Appropriate Incentives for Sustainable Efficiency Improvements?

EGD has provided evidence on what they call its Sustainable Efficiency Incentive Mechanism ("SEIM") that they indicate would provide them with appropriate incentives for sustainable efficiency improvements. Energy Probe makes its submissions on this mechanism under Issue 10f below.

3. Does Enbridge's Customized IR Plan Ensure Appropriate Quality of Service for Customers?

Energy Probe submits that one of the incentives for customers of an IR plan is improvements in, or at least the maintenance of, current service quality requirements ("SQRs"). Energy Probe submits that the continuous improvement in SQRs should be a requirement for any IR plan approved by the Board.

Specifically, Energy Probe submits that the Board should approve an IR plan that stipulates the improvement in, or at a minimum the maintenance of, SQRs in each year of an IR plan. This would ensure that customers receive real tangible benefits under an IR plan.

Energy Probe notes that one of the requirements proposed by EGD in order to qualify for its Sustainable Efficiency Incentive Mechanism is that it would need to establish that its overall SQR performance is maintained at or above the 2013 level for at least three of the five years of the IR term (Exhibit A2, Tab 11, Schedule 3, Updated 2013-12-11).

Energy Probe submits that from the perspective of customers, this proposal is completely unacceptable. EGD would only have to maintain 2013 service quality for 60% of the IR plan term in order to qualify for the SEIM reward. Energy Probe submits that, at a minimum, EGD should be required to maintain all SQRs at or above the 2013 level over each and every year of the IR plan term. EGD should not be rewarded for a reduction in service quality.

Energy Probe submits that there should be a penalty imposed on EGD if any of the SQR's fall below the 2013 level during the IR term. The penalty, which would be calculated annually, should be incremental in nature, with the consequence increasing for each incremental failure to meet the minimum SQR. For example, failure to meet a SQR target should attract a penalty of $100,000. Failure to meet a second SQR in the same year would result in a penalty of $250,000, a third failure would be a penalty of $500,000, and so on with a doubling of the penalty for each subsequent failure to meet a SQR target in any given year. These penalties would reset at the beginning of each year of the IR plan term.

This quality of service requirement ("QSR") would be an incentive to EGD to maintain service quality for customers over the IR plan term. In addition to the penalties noted above, failure to meet the QSR in any given year would affect the SEIM reward, as discussed under Issue 10e below.

Finally, Energy Probe takes exception to EGD's request to lower the standard for the time to reschedule missed appointments from 100% to 90 to 95% (Exhibit A2, Tab 11, Schedule 11, pages 2-3). Instead of focusing on improving their performance, EGD simply wants to reduce the standard so they can meet it.

Energy Probe submits that this is not appropriate under an IR plan. The SQR targets were set by the Board and for EGD to propose a change as part of an IR plan is misguided and disrespectful of ratepayers concerns.

4. Does Enbridge’s IR Plan Create an Environment That is Conducive to Investment, to the Benefit of Customers and Shareholders?

Energy Probe submits that a proper environment that is conducive to investment must be focused on the timing of the need for the investment. There is no question that a distributor should be provided the opportunity to earn an appropriate return on the investment. Similarly, there is no question that customers require investments to ensure safe and reliable service at a reasonable cost. Generally there is no conflict between customers and shareholders with regards to the need for capital investments.

However, the one area where there is friction between customers and shareholders is the timing and level of the investments. Customers are more than willing to start to pay for a capital investment when it is needed to ensure safety and reliability. On the other hand, shareholders are encouraged to build as soon as possible and to over build since this is how they generate their return on equity. The role of the Board and the regulatory process is to ensure that investments that take place are balanced to benefit both customers and shareholders. This means, in the submission of Energy Probe, doing what is needed when it is needed.

Energy Probe submits that the EGD IR plan fails to create this balance between the needs of customers and the wants of the shareholder. This can be illustrated with a couple of simple examples on the timing of investments.

Under the EGD proposal, rates for each of 2014 through 2018 will include allowed revenues associated with a forecast of capital expenditures and associated cost of capital for those investments. These forecasts will not be changed over the term of the IR plan.

If the actual cost of capital is higher than that forecast by EGD and included in rates, the distributor will be incented to reduce its capital expenditures. EGD may have non-utility, non-regulated investments that it could make and earn a higher return than the regulated rate. More significantly, Enbridge Inc., the parent company, may have other investments on which it believes it could make a greater return, and direct the limited capital resources away from EGD. As well EGD and/or Enbridge Inc. may be incented to defer investments until closer to rebasing. From the shareholders point of view, why should it invest now, get a lower return and then get the higher return on rebasing after the investment has been depreciated for several years. For every year the investment can be deferred, the net assets that will attract the higher return will be higher, resulting in an overall increase in the return generated by those assets to the shareholder.

Similarly, if the actual cost of capital is lower than that forecast by EGD and included in rates, the distributor will be incented to maximize its investment, up to the forecast level, even if from an operational perspective it does not need to do so. The distributor is simply allocating the most capital it can to the investment that provides the highest yield. If the shareholder believes that the actual cost of capital will continue to be lower than that forecast by EGD, it may be incented to invest more quickly than originally forecast simply because it would get the benefit of the first 100 basis points of over earning. As noted elsewhere in this submission, this amounts to between $21 and $29 million per year over the 2014 to 2018 period.

The same shareholder incentives could result from over building of facilities or not pursing technologies or contracting practices, as examples, that would result in reduced capital investments.

The purpose of the above examples is to illustrate that the shareholder can be incented to deviate from what is best for customers, which is to only invest in what is required when it is required and at the lowest cost.

As a result, Energy Probe submits that EGD's Customized IR plan does not create an environment that is conducive to investment to the benefit of both customers and shareholders.

5. Is the Methodology Within Enbridge's Customized IR Plan for Determining Annual Allowed Revenue Amounts Appropriate?

Energy Probe submits that the methodology in the EGD Customized IR plan for determining the annual allowed revenue amounts is not appropriate. All of the components of the allowed revenue amounts, such as salaries and wages, FTE's, and the capital related costs (depreciation, taxes), which are based on the capital expenditures, are all based on internal factors, rather than external factors.

Elsewhere in these submissions, Energy Probe provides alternatives to the forecasts provided by EGD that are based on external factors or reflect methods to reduce the forecast bias of the applicant.

6. Is the Methodology Within Enbridge's Customized IR Plan for Updating the 2017 and 2018 Annual Revenue Amounts Within the 2016 Rate Adjustment Proceeding Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant.

Energy Probe submits that if the Board accepts the Customized IR plan as proposed by EGD or with some modifications, it should not approve the establishment of the requested variance accounts.

7. Is the Methodology Within Enbridge's Customized IR Plan for Determining Final Rates for 2014 Appropriate?

The methodology used by EGD to determine final rates for 2014 consists of an approach that is identical to that of a cost of service proceeding. EGD has estimated the costs associated with O&M expenses, depreciation, cost of capital and income taxes just as they would under a cost of service application. Similarly, the forecast of customer additions, volumes, cost of gas in inventory, transactional services revenues and other revenues are also forecast just as they would be under a cost of service application. Cost allocation and rate design are based on same inputs as they would be under a cost of service application. In short, the Customized IR plan is identical to a cost of service application when viewed with respect to the determination of final rates for 2014.

Energy Probe submits that this approach to setting rates in 2014 is not appropriate under an IR plan. Energy Probe submits that the 2013 rates, as set through the cost of service rebasing application are the appropriate rates that should be adjusted under an IR plan.

Energy Probe submits that an IR plan should be based on inflation, productivity and other benchmarking measures based on information that is primarily external to the circumstances of a distributor. The approach undertaken by EGD relies almost exclusively on internal factors for arriving at a forecast of each of the components of the revenue requirement. For example, EGD's forecast of O&M expenses is heavily dependent on the internal forecast of increases for wages, salaries and benefits and the forecasted level of FTE's. Similarly, an internal forecast of capital expenditures drives the capital related costs.

EGD states that their approach decouples revenues from future costs (TR. Vol. 1, pages 10, 14, 119). At pages 163-164 of the same transcript, the EGD witness states that *"I think as I was speaking with Mr. Shepherd this morning, I indicated that certainly there is an incentive in an incentive regulation format, where costs are decoupled from revenues to run the business efficiently."*

However, as is clearly evident in the setting of 2014 rates, costs are not decoupled from revenues. Revenues are directly based on the rates needed to cover the forecasted costs for 2014.

If the Board were to accept that the Customized IR model as proposed by EGD were appropriate for setting 2014 rates, the Board would be implicitly saying that a cost of service application is a form of incentive regulation. Energy Probe would disagree. Clearly the costs are not decoupled from the revenues. While it is true that revenues are not directly tied to actual costs, this would only be the case in a historical test year methodology. Energy Probe notes that the Board has not employed this type of regulation in Ontario for many decades. The costs under review are forecasted costs. The revenues under review are forecasted revenues. Neither will end up being actual.

8. Is the Methodology Within Enbridge's Customized IR Plan for Setting Final Rates for 2015 Through 2018 Through Annual Rate Adjustment Proceedings, Including Cost Allocation and Rate Design, Appropriate?

If the Board approves the Customized IR plan as proposed by EGD or with some minor modifications, Energy Probe submits that the plan for setting final rates for 2015 through 2018 through the annual rate adjustment proceedings should be changed based on the submissions related to various issues that are summarized here. Further details related to the submissions can be found in the related issue.

* Customer additions (Issue 18c)

* Capital additions/opening rate base (Issues 18a,b & d)

* Other Revenues (Issue 17f)

* Depreciation Rates (Issue 17a & 39).

9. Are the Cost of Capital Parameters for 2014 to 2018 (ROE, Debt Rates) Within Enbridge's Customized IR Plan Appropriate?

Energy Probe submits that the answer to this is no, the cost of capital parameters for 2014 to 2018 within the Customized IR plan are not appropriate. Please see the submissions of Energy Probe under Issue 10d dealing with the cost of capital parameters under an incentive regulation plan.

10. Are the Following Components Within Enbridge's Customized IR Plan Appropriate?

Assuming that the Board were to adopt the EGD Customized IR plan as proposed or with minor modifications, then Energy Probe provides the following submissions on each of the following components.

a. Z Factor Mechanism

Energy Probe opposes the wording for the Z factor mechanism proposed by EGD. Energy Probe also submits that the materiality threshold of $1.5 million as proposed by EGD is too low.

The EGD proposal indicates that "unexpected, non-routine cause" is a more appropriate requirement for the wording rather than linking the costs to a particular "event" (Exhibit A2, Tab 4, Sch. 1).

EGD also states that the requirement for the cost associated with the Z factor request must be beyond the control of the utility management makes it unreasonably difficult to qualify for Z factor recovery.

Energy Probe submits that the eligibility criteria for EGD should be consistent with that of Union Gas, as set out in Section 8 of EB-2013-0202 Settlement Agreement dated July 31, 2013. This includes a materiality threshold of $4 million.

The Union Gas Z factor criteria not only reflect a previous Board Decision (EB-2011-0277), but also align with the Renewed Regulatory Framework for Electric Utilities ("RRFE") Report dated October 18, 2012.

In that Report, the Board states that the treatment of unforeseen events would continue under all three methods of IR, including Custom IR, as set out in the July 14, 2008 EB-2007-0673 Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors.

In the Appendix to the EB-2007-0673 Report, the Board defined Z factors as **events** that are not within management's control. The Board also concluded the threshold must be met on an individual event basis in order to be eligible for potential recovery.

Energy Probe submits that the EGD proposal and the associated wording are not consistent with the Board's policy with respect to Z factors. As for the adoption of a $4 million threshold, Energy Probe submits that EGD has not provided any evidence why they require a significantly lower threshold than Union, a distributor in the same business and same province as EGD, which is also of similar size to EGD.

Energy Probe further submits that the eligibility for any Z factor recovery should take into consideration the level of any over earning by the utility. It would not be reasonable to expect ratepayers to pay for a Z factor event at the same time when the utility has over earned due to other factors that could include bad forecasting on the part of the utility.

Energy Probe notes that EGD proposes that there would be no tax sharing mechanism in the Customized IR plan (Exhibit I.A10.EGDI.EP.7). This is a change from the previous IR mechanism where the impacts of tax changes were shared between ratepayers and the shareholder on a 50-50 basis.

Energy Probe supports the elimination of this sharing and putting the shareholder at risk for any changes. Given the fact that so much of the expenses of the company are trued up through variance accounts (such as pension & OPEB costs, DSM costs, CIS costs, the GTA variance account, and so on), EGD should be expected to take on some risk.

b. Off-ramp Condition

EGD proposes to continue the off-ramp provision from their previous IR plan, which is triggered on the occurrence of a 300 basis point or greater variance in weather normalized utility earnings, above or below the amount calculated annually by the application of the ROE formula (Exhibit A2, Tab 6, Sch. 1). EGD stressed the ROE formula to be used is the ROE formula set out in the Board's 2009 Cost of Capital report.

Energy Probe notes that in the Union Gas Settlement Agreement in EB-2013-0202, parties agreed that no off-ramps were required. This was based on the settlement of an earnings sharing that provided significant ratepayer protection if earnings were in excess of 200 basis points over the allowed ROE.

Energy Probe submits that the Board should consider whether an off-ramp is needed for EGD. Energy Probe submits that the ratepayer protection derived from the earnings sharing proposal provided in the following section negates the need for an off-ramp if the utility significantly over earns.

If the utility significantly under earns in any given year, Energy Probe submits that this represents a powerful incentive and opportunity for efficiency improvements at the utility. The shareholder will expect management to come up with a plan that would improve the bottom line in short order.

Energy Probe submits that an appropriate off-ramp would be one that protects the utility from a situation in which the utility under earned by more than 300 basis points for two years within the IR plan term. There would be no off-ramp the first time this threshold was met because this would be an incentive for EGD to find efficiency improvements. However, the second occurrence within the IR plan term might suggest a fundamental flaw with the plan, which the Board and intervenors need to review.

Energy Probe further submits that regardless of what type of off-ramp is ultimately approved for EGD, the calculation of the basis point differential should not be tied to the ROE formula set out in the Board's 2009 Cost of Capital report.

Energy Probe submits that the basis point differential should be based on the difference between the weather normalized actual ROE and the ROE built into rates for each year. The rationale for this is simple and straight forward as illustrated in the following example.

If the ROE built into rates for any given year is 10% and the weather normalized actual ROE was 9%, there would be no triggering of the off-ramp under the Energy Probe proposal. The basis differential is only 100 points. However, under the EGD proposal there could be. The off-ramp would be triggered if the ROE formula from the 2009 Cost of Capital report for the particular year was 12.5%. In this case the basis differential is 350 points. In this situation EGD is rewarded with an off-ramp based on their forecast error. Removing the risk of this forecast error from EGD defeats the purpose of the Custom IR plan.

Similarly, in the situation where the forecasted ROE built into rates was still 10%, but the utility had a weather normalized actual ROE of 12% and the Board formula was 8.5%, the basis differential would again be 350 basis points and the off-ramp would be triggered. If this over earning, or a significant portion of it, is based on productivity improvements achieved, triggering the off-ramp defeats the purpose of the IR plan, not only in the short term but also in the long term.

c. Earnings Sharing Mechanism

EGD proposes to continue the earnings sharing mechanism ("ESM") that was in place in the previous IR plan. In particular, it would be non-symmetrical, such that ratepayers would not be responsible for sharing (paying for) any level of under earnings. There would be a deadband of 100 basis points. EGD would retain all of the over earnings up to this level. Any earnings over this amount would be shared equally between the ratepayers and the shareholder. The calculation of the difference would be based on weather normalized actual ROE in relation to the level established by the Board's 2009 ROE formula.

Energy Probe submits that the ESM proposed by EGD is not appropriate. While Energy Probe believes that the ESM should remain non-symmetrical, there should be changes to the deadband, the level of sharing and the methodology of calculation the base for the determination of the sharing.

i) Deadband

First, with respect to the deadband, Energy Probe notes that the EGD proposal to keep the first 100 basis points of over earnings results in a substantial amount accruing to the shareholder. Mr. Culbert estimated that this would be about $20 million a year (TR. Vol. 2, pages 88-89) and noted it would change every year.

Energy Probe notes that the calculation of this amount is fairly simple. It is based on the equity component of rate base (36%) times 1% grossed up for taxes. Based on the updated evidence filed in Exhibit M1, Tab 2, Schedules 2 through 6 (updated 2014-03-24), the rate base is forecast to grow from $4,397.5 million in 2014 to $5,962.3 million in 2018. The 100 basis point deadband translates into amount of more than $21 million in 2014 to more than $29 million in 2018.

Energy Probe submits that if the Board accepts the Custom IR plan as proposed by EGD there should be an adjustment to the deadband to reflect the lack of independent third party benchmarking with respect to the forecasts of OM&A and capital expenditures, as well as the forecasts for the ROE and long term interest rates used by EGD.

Energy Probe submits that the Board should include a safeguard for ratepayers based on the Custom IR methodology employed by EGD. This methodology rewards EGD for over forecasting costs and under forecasting revenues. Whether this bias is explicit or implicit, the end result is that EGD's shareholder benefits first by the tune of $21 to $29 million a year if actual costs are lower than forecast or normalized actual revenues are higher than forecast.

Rather than spending a lot of time looking at the individual capital expenditures or OM&A expenses over a multiple year horizon and reducing these figures to reflect more reasonable figures, Energy Probe submits that the Board could provide a level of ratepayer protection from the forecast bias issue by adjusting the deadband as follows.

ii) Level of Sharing

Energy Probe submits that the first 100 basis points of over earnings should accrue to the ratepayers. This provides a buffer of approximately $21 to $29 million for forecast bias that EGD has not dealt with or rectified through the use of benchmarking studies.

The next 100 basis points of over earnings (i.e. 100 to 200) would accrue to EGD. This would provide the same absolute incentive to EGD to pursue further efficiencies as does the EGD proposal, but it would push them a little harder since their share starts to accrue after the first 100 basis points instead of at 0.

Beyond the first 200 basis points of over earnings, Energy Probe submits that the ESM should converge to that approved for Union Gas as part of the EB-2012-0202 Settlement Agreement. In particular, Energy Probe submits that any earnings in excess of 200 basis shared 90:10 in favour of ratepayers.

iii) Calculation of Base ROE

Energy Probe submits that the base ROE should be set equal to the ROE used in the determination of the allowed revenue for each year of the Custom IR plan, or any other plan ultimately approved by the Board.

The basis for this submission is that the earnings sharing should be based on weather normalized actual results compared to what is embedded in rates. If EGD is able to increase the actual ROE above the level embedded in rates, then this amount is the amount that should be subject to earnings sharing, subject to the deadband noted earlier.

If the comparison is normalized actual ROE to the Board's formula ROE, then much of the difference which would be subject to earnings sharing would be independent of what productivity was achieved, and it would even be independent of the difference between forecasts and actuals.

For example, consider rates that have embedded a forecast ROE of 10% and the actual normalized ROE was 12%. In this situation, the difference of 200 basis points would be subject to the ESM sharing. Energy Probe submits that this appropriately reflects the intention of an ESM mechanism - to share in the gains made.

Under the EGD proposal, if the Board's ROE formula yielded a figure of 11%, the sharing would be reduced to 100 basis points and if the Board's ROE formula yielded a figure of 9%, the sharing would be increased to 300 basis points. Both scenarios would be based on the same actual results noted in the previous paragraph. In other words, the sharing would be significantly impacted by the forecast error in the ROE.

In other words, the earnings sharing could reduce or even eliminate the sharing of productivity gains achieved (for example, the increase in weather normalized actual ROE relative to the ROE built into rates is partially or entirely offset by the increase in the ROE from the Board's formula relative to that built into rates), or share gains that did not actually occur (for example, the increase in weather normalized actual ROE relative to the ROE built into rates is augmented by the decrease in ROE from the Board's formula relative to that built in rates).

Energy Probe submits that the appropriate amount to be shared can only be appropriately calculated based on the ROE that has been built in to rates in each of IR plan years.

d. Treatment of Cost of Capital

EGD proposes to use the forecasts for short term debt, long term debt, preference share costs and the return on equity to set the cost of capital for each of 2014 through 2018. In addition the EGD proposal, while keeping the equity ratio fixed at 36% through the term of the IR, forecasts changes in the composition of the debt ratio of 64%. For example, as shown in Exhibit M1, Tab 1, Schedules 2 through 6, EGD has forecast the long term debt ratio at levels higher in four out of the five years in the IR term than the Board approved set for 2013. The impact of this is that the ratio for the remainder of the debt (short term debt and preference shares), which have lower rates, are lower than the Board approved levels in 2013. This change in the forecasted capital structure results in higher costs and rates to ratepayers.

The only incentive in changing the capital structure on a forecast basis is for EGD to forecast a higher proportion of long term debt and then, on an actual basis, have more short term debt or preference shares. This allows EGD to pocket the difference in the costs without having to do anything to earn it. Energy Probe submits that this is not appropriate in any type of incentive regulation plan. The incentive to reduce the overall cost of capital should be based on the last Board approved starting point.

Energy Probe submits that the same is true for the rates of the various types of debt and the return on equity. Basing rates on forecasts of these rates does not do anything to incent the company to improve its overall cost of capital. All the EGD proposal does is incent it to beat its forecasts. The easiest way to come in under forecast (and pocket the difference) is to forecast high.

EGD has stated in many places that its Customized IR plan is based, at least in part, on the Custom IR option available for electricity distributors as indicated in the RRFE report. Energy Probe notes that the RRFE does not provide any guidance on the return on equity cost component of any of the three IR options available.

Energy Probe also notes that EGD characterizes its proposal as a building block approach that calculates an allowed revenue amount and that it is not the same as the cost of service approach that the Board and parties are familiar with in Ontario. For example, Mr. Fischer indicated that the approach brought forward by EGD was not a cost of service (TR. Vol. 1, pages 31-32). Mr. Coyne confirmed that in his opinion, the approach was not a cost of service application, but rather a revenue cap plan (TR. Vol. 3, pages 22-23). Mr. Coyne was even more emphatic when he stated that "This is not a cost of service proposal" (TR. Vol. 3, page 27). Ms. Frayer indicated that she considered the EGD proposal as a building blocks approach, which was different from a cost of service application (TR. Vol. 3, pages 52-55).

Some parties to this proceeding are likely to argue that the EGD proposal is nothing but a five year cost of service application. Energy Probe respectfully disagrees and agrees with EGD and both of their experts that this is **not** a cost of service application.

Energy Probe submits that the time frame of the application evidence is not relevant. A cost of service application is not limited to one year. The Board has experience with multiyear cost of service applications with both Hydro One and Natural Resource Gas Limited as far back as 1998 (EBRO 496). A cost of service application, while typically based on a one year period, can be for any length of time, including a quinquennium. There is no magic to limiting a cost of service application to the number of times the planet circles the sun.

As noted above, Energy Probe submits that the EGD proposal is not a cost of service application. This is not based on the five year time frame, but rather based on what is being sought in this application. In particular, EGD is asking for the approval of rates for only 2014, not 2014 through 2018. Secondly, and most importantly, a cost of service application relies on forecasts for all costs and revenues. The EGD Customized IR plan is not relying on the volumetric and revenue forecast included in the evidence for the setting of rates for 2015 through 2018. This is different from a cost of service application where these elements would be forecast, reviewed and adjusted and approved by the Board in the setting of rates for the term of cost of service application. That is not part of the EGD proposal.

As a consequence of this not being a cost of service application, Energy Probe submits that the Board's policy as set out in the EB-2009-0084 Report of the Board on the Cost of Capital for Ontario's Regulated Utilities dated December 11, 2009 needs to be reviewed.

As set out in the first paragraph of Section 6.1 of the above noted Report of the Board the Board indicated that it would *"apply the methods set out in this report annually to derive **the values for the ROE** and the deemed long-term and short-term debt rates **for use in cost of service applications**."* (emphasis added)

Energy Probe submits that the EGD proposal to vary the ROE and debt rates (long term, short term and preference shares) based on forecasts is not consistent with the Board's policy as set in the EB-2009-0084 Report of the Board and should be denied by the Board.

e. Performance Measurement Mechanisms, Including Service Quality Requirements (SQRs)

As noted earlier, Energy Probe submits that one of the incentives for customers of an IR plan is improvements in, or at least the maintenance of, current SQRs. Energy Probe submits that the continuous improvement in SQRs should be a requirement for any IR plan approved by the Board.

Specifically, Energy Probe submits that the Board should approve an IR plan that stipulates the improvement in, or at a minimum the maintenance of, SQRs in each year of an IR plan. This would ensure that customers receive real tangible benefits under an IR plan.

Energy Probe notes that one of the requirements proposed by EGD in order to qualify for its Sustainable Efficiency Incentive Mechanism is that it would need to establish that its overall SQR performance is maintained at or above the 2013 level for at least three of the five years of the IR term (Exhibit A2, Tab 11, Schedule 3, Updated 2013-12-11).

Energy Probe submits that from the perspective of customers, this proposal is completely unacceptable. EGD would only have to maintained 2013 service quality for 60% of the IR plan term in order to qualify for the SEIM reward. Energy Probe submits that, at a minimum, EGD should be required to maintain all SQRs at or above the 2013 level over each and every year of the IR plan term. EGD should not be rewarded for a reduction in service quality.

Under Issue 3 above, Energy Probe has submitted that there should be a penalty mechanism (QSR) in place to help ensure that customers do not experience a reduction in the SQR's. In addition to the penalty, Energy Probe submits that if the Board approves a SEIM mechanism for EGD, the level of the SEIM, should be reduced from what it would otherwise be if EGD had met all of the SQR targets over each of the five years in the IR plan term. A mechanism for this reduction is provided in the following section.

f. Sustainable Efficiency Incentive Mechanism ("SEIM")

Energy Probe submits that the Board should not approve the SEIM at this time. While Energy Probe believes that some sort of mechanism to incent sustainable efficiencies is desirable, the SEIM proposed by EGD is not it. Energy Probe notes the tacit agreement that the SEIM proposal needs more work by EGD in its Argument in Chief where it is suggested that a consultative approach could be undertaken during the next year to discuss and design an appropriate SEIM that could be presented to the Board for its approval.

Energy Probe has reviewed the submissions of Board Staff on this issue and agrees with them.

However, if the Board were to approve a SEIM as part of this proceeding, Energy Probe submits that a number of changes should be made to the proposal.

Energy Probe submits that several adjustments should be made to the calculation of the potential SEIM reward.

First, the comparison of the actual normalized ROE should not be to the Board Approved ROE as proposed by EGD (as illustrated in Undertaking TCU1.13). Energy Probe submits that the proper difference that should be calculated is based on the ROE built in rates each year. This is true regardless of whether the ROE changes year by year as proposed by EGD or whether it remains at the level embedded in 2013 rates for the full term of the plan.

The SEIM is to provide a reward for sustainable efficiency improvements and the cap on the amount should not be based on a rate that is not embedded in rates. If the ROE formula yields a higher figure than that embedded in rates, the cap will be smaller. Similarly, if the ROE formula yields a lower figure than that embedded in rates, the cap will be larger. Neither case should influence the level of the sustainable efficiency reward available since in both situations, the change in the ROE from the Board's formula is totally independent of what EGD does or does not accomplish. Using the embedded ROE in rates provides a valid comparison point.

Second, the embedded ROE to which the normalized actual ROE is compared should be adjusted upwards to reflect the earnings deadband. If the Board approves the deadband of 100 basis points for the shareholder as proposed by EGD, Energy Probe submits that this is the proper starting point. If the Board approves the first 100 basis points of over earnings accruing to ratepayers (as proposed by Energy Probe in Issue 10c), it is submitted that this is the proper starting point as well. In either case, the potential SEIM reward should only reflect performance that benefits ratepayers in over and above the dead band for earnings sharing. In the example provided in Undertaking TCU1.13, the average over earning is 0.81%, which is lower than the 100 basis point deadband. Energy Probe submits that this is a perfect example of the inappropriate calculation of the potential SEIM, which in the example is $8.2 million. Why does EGD expect ratepayers to pay an additional cost of more than $8 million for performance that on average did not result in any earnings sharing for ratepayers?

Third, the Board may want to consider a weighting of the ROE's based on the rate base associated with each year. With the growth in rate base expected for the IR term, this would add greater weight to the later years in the IR plan, which would encourage sustainable efficiencies to be pursed late in the IR term.

Fourth, Energy Probe submits that the ROE premium should not be applied to the rebasing year equity component of rate base, but rather to the average value of the equity component of rate base over the IR plan term. Energy Probe sees no reason why EGD should get a bigger reward based on a higher rate base than existed in the IR term.

Fifth, as noted in the previous section of these submissions, Energy Probe submits that if the Board approves a SEIM mechanism for EGD, the level of the SEIM should be reduced from what it would otherwise be if EGD had met all of the SQR targets over each of the five years in the IR plan term.

A simple approach would be to simply add up the number of times a SQR target was not achieved over the five year plan period and subtract this number from twenty and then divide this figure by twenty to get a percentage. This percentage would then be applied to the calculated SEIM to get to the allowed SEIM. For example, if EGD failed to meet a SQR target a total of four times over the five year period, the percentage would be 80% ((20-4)/20). If the calculated SEIM was $10 million, the reward potential for EGD would be $8 million.

Sixth, the reward potential should be capped at 0.25% rather than the 0.5% per year of ROE as proposed by EGD. Based on the example in Undertaking TCU1.13, if the cap of 0.5% was hit, the potential reward is more than $20 million. Energy Probe submits that a potential of one-half of this amount is more appropriate.

Seventh, and most importantly, Energy Probe submits that a third party verification system should be adopted to address the verification and measurement of any claimed efficiencies. Energy Probe concurs with Board Staff that this would create a new "DSM-like" regulatory construct that could be costly and time consuming. However, given the potential large dollar amounts that could be claimed, this verification should be a requirement.

g. Annual Reporting Requirements

Energy Probe submits that the annual reporting requirements should be equivalent to what parties would see as part of the historical year filings in a cost of service application. This would include variance analyses between actual (weather normalized actual where applicable) and the Board approved figures stemming from this application and the future proceedings to determine volumes that were/will be used to set rates.

This level of detail will be required by the Board and all parties to track the progress against the plan that was approved by the Board. Without this information parties will be unable to evaluate the Customized IR plan.

h. Rebasing Proposal

EGD has indicated (Exhibit A2, Tab 8, Schedule 1) that it will file a full cost of service application for a 2019 test year, including three fiscal years of information for the Board's review, being a 2017 historical year, a 2018 bridge year and the 2019 test year.

Energy Probe submits that this proposal is sufficient, assuming EGD files complete historical information for each of 2014 through 2016 as part of the annual reporting requirements noted in part (g) above. In the absence of providing this information through the annual reporting requirements, Energy Probe submits that not only should EGD provide the information for these years as part of the rebasing proposal, but it should also provide variance schedules to explain the difference between actual (weather normalized where applicable) and the forecasts that were used to set rates in each of the years.

i. Treatment of Pension Expense and Employee Future Benefits Costs

In the EB-2011-0354 proceeding, parties agreed that EGD should recover only its actual pension and OPEB costs over the coming IR term. This resulted in the establishment of a new variance account (Post-Retirement True-Up Variance Account ("PTUVA")) to true-up both pension and OPEB costs in 2013. EGD proposes to continue this approach and to use this account for 2014 through 2018.

Energy Probe supports the continuation of the PTUVA over the IR plan period. This ensures that ratepayers only pay the actual costs in an area where costs have been growing rapidly over the last few years and is subject to considerable variation on a year to year basis.

j. Treatment of DSM Costs

DSM costs have in the past been dealt with through a separate regulatory process with the associated costs treated as a pass through item.

Energy Probe notes that the Board has initiated a consultation process for developing a new DSM framework for natural gas distributors (EB-2014-0134) that will be applicable to natural gas distributors from 2015 through 2020.

Energy Probe submits that the treatment as a pass through item is appropriate for this future period, just as it has been in the past.

k. Treatment of Customer Care and CIS Costs

Energy Probe supports the continuation of the EB-2011-0226 Board approved mechanism to establish the costs associated with the CIS system for each year 2013 to 2018. There has not been any change in circumstances to warrant a change to this mechanism.

11. Is the Proposal to Continue Enbridge's Current Deferral and Variance Accounts Through the IR Term Appropriate?

Energy Probe supports the continuation of EGD's current deferral and variance accounts through the IR term with one exception. That exception is the continuation of the Ontario Hearing Costs Variance Account. This account is described in Exhibit D1, Tab 8, Schedule 1, Updated 2014-03-24, on page 18.

Energy Probe submits that EGD has not provided any rationale for the continued existence of the account. EGD stated, subject to check, that no other distributors in Ontario have a similar account (TR. Vol. 11, page 30). Energy Probe submits that even if a few other distributors in Ontario have a similar account, the onus is on EGD to support the need for such an account. Energy Probe submits that EGD has not met that requirement. Mr. Culbert indicated that other than the fact that the account has been around for a number of years, there was really no other reason for the account given its absence from other distributors (TR. Vol. 11, page 37). Mr. Culbert also indicated that the fact that the account has been around for a number of years was not necessarily a good rationale to keep it.

Should the Board decide to maintain this account, Energy Probe submits that some clarification around the amount embedded in rates is required. On page 18 of Exhibit D1, Tab 8, Schedule 1, Updated 2014-03-24, the account is labelled 2014-2018 Ontario Hearing Costs Variance Account, but in the description that follows the variance to be recorded is based on budgeted levels of $8 million for 2014 and $6 million for each of 2015 and 2016. There is no budgeted level identified for 2017 or 2018.

Since the total O&M budgets for 2017 and 2018 are based on percentage increases based on the previous years, Energy Probe submits that the 2017 and 2018 budgeted levels for Ontario hearing costs should be explicitly identified by EGD based on the same percentage increase for O&M in total and applied to the $6 million level budgeted for 2016.

12. Is the Proposal for the Creation of the Following New Deferral and Variance Accounts Appropriate?

a. Greater Toronto Area Project Variance Account ("GTAPVA")

If the Board approves the EGD Customized IR plan or some variation of it, Energy Probe does not support the need for a variance account associated with the Greater Toronto Area Project.

EGD updated its evidence with respect to the costs associated with this project on April 3, 2014. EGD should be expected to take on the risk associated with this project, just as they have proposed to take on the risk of their forecast for the core capital expenditures. EGD has not provided any evidence to suggest that the risk associated with this project, which is at an advanced stage compared to other expenditures forecast by EGD over the 2015 to 2018 period, is greater than the risk associated with the other core capital expenditures.

If the Board were to adopt an IR plan similar to that of Union Gas or that used by EGD in 2008 through 2012, Energy Probe would support the costs associated with the GTA project being treated as a Y factor.

b. Constant Dollar Net Salvage Adjustment Deferral Account ("CDNSADA")

As indicated elsewhere in this Final Argument, Energy Probe does not agree with the EGD proposal related to the site restoration costs. However, Energy Probe submits that under any proposal to return these amounts to customers and independent of how much is to be returned to customers and how quickly, a deferral account is likely to be needed as the means of recording and clearing amounts to ratepayers over the coming years.

c. Customer Care Services Procurement Deferral Account ("CCSPDA")

Energy Probe supports the establishment of this account for the reasons outlined in Exhibit D1, Tab 8, Schedule 4, but submits that the Board should establish a cap on the account of $5 million. This is the upper end of the range estimated by EGD that will be spent in the procurement process. By instituting a cap on the amount that can be included in the deferral account, EGD will be incented to manage these costs, as they should be incented under an IR plan.

d. Greenhouse Gas Emission Impact Deferral Account ("GGEIDA")

Energy Probe supports the establishment of the GGEIDA as a replacement for the Carbon Dioxide Offset Credit Deferral Account ("CDOCDA") which EGD is requesting be discontinued for 2014 (Exhibit D1, Tab 8, Schedule 5). Energy Probe has previously supported the need for the CDOCDA. Given the potential impacts of any government program related to the reduction in greenhouse gas emissions, Energy Probe submits that the new account is appropriate given that any credits or cost related impacts of carbon dioxide will continue to be dealt with through the new account.

13. Is the Proposal to Permit Enbridge to Apply for Changes in Rate Design and New Energy and Non-energy Services During the IR Term Appropriate?

Energy Probe submits that the EGD proposal related to the ability to apply for changes in rate design and new energy and non-energy services during the IR term are appropriate. This flexibility is needed to respond to changing marketplace and customer needs.

Energy Probe further submits that any such changes proposed by EGD should be included as part of the annual rate setting filing unless the changes are significant in which case a separate application may be warranted. In either case, Energy Probe submits that Board approval is required.

14. Is Enbridge's Proposal to Continue the RCAM Methodology During the IR Period Appropriate?

Energy Probe does not support the proposal to continue the RCAM methodology during the IR period. Energy Probe submits that the RCAM amounts forecast for 2014 through 2018 should be considered in conjunction with the forecasts levels of Other O&M as discussed in Issue 17b below.

15. Is Enbridge's Proposal to Continue the Current Methodologies to Cost and Price Other Service Charges and Late Payment Penalties Appropriate?

Energy Probe supports the proposal to continue the current methodologies to cost and price other service charges and late payment penalties.

16. Are the Overall Levels of Allowed Revenue, Rates and Bill Impacts for Each of the Years of the IR Plan Reasonable Given the Impact on Consumers?

Energy Probe submits that the rates and bill impacts for the years 2015 through 2018 under the Customized IR plan are not known at this time since they are dependent on changes to the volumetric forecasts in each of these years. The volumetric forecasts will be updated and provided by EGD in each of the future year filings. As a result, Energy Probe cannot comment on whether or not the rates and bill impacts for 2015 through 2018 of the IR plan are reasonable given the impact on consumers.

As for the impacts on consumers and whether the rates and bill impacts for 2014 are reasonable, please see the submissions under Issue 7 above.

B. Allowed Revenue and Rate Base

17. Is the Allowed Revenue Amount for Each of 2014, 2015 and 2016 Appropriate, Including:

The following comments are relevant if the Board accepts the Customized IR plan as proposed by EGD, or some variation of it. Please also note that given EGD's updated proposal for dealing with 2017 and 2018, the comments that follow under this issue apply to each of 2014 through 2018.

a. Is the Depreciation Amount Appropriate?

Energy Probe submits that the depreciation rates used by EGD are appropriate, with the exception of the rates associated with the site restoration costs. As indicated elsewhere in this Final Argument, Energy Probe supports the treatment of removal costs as a current expense. This would result in lower depreciation rates.

Energy Probe submits that the Board should direct EGD to file the depreciation rates excluding site restoration costs and these rates should be used to calculate the depreciation amounts in each year of the IR plan.

Any changes to the capital additions in any of 2014 through 2018 ordered by the Board should also be reflected on the direct and indirect (continuity schedule basis) depreciation costs.

b. Is the Operating Costs Amount Appropriate?

The O&M costs forecast by EGD for 2014 through 2018 are shown in Exhibit TCU2.3. These costs are divided into five categories. Three of these categories (customer care/CIS service charges, demand side management and pension and OPEBS) are covered by variance accounts that resulted from other proceedings. Energy Probe agrees with this treatment for these costs.

The regulatory cost allocation methodology ("RCAM") is the method by which corporate costs from Enbridge Inc. are allocated to the gas distributor for rate regulation purposes. As noted in the Board Staff submission the intervenor consultative has not been active for some time. In late 2013 the Board accepted an implicit RCAM figure of $32.1 million that was included within an expense envelop as part of the comprehensive settlement of the issues in the 2013 COS proceeding, EB-2011-0354.

Energy Probe agrees with the submissions of Board Staff that the Board should not view the implicit amount from 2013 as being indicative of an official Board approved amount. It was part of the larger O&M expense envelop that was approved.

Energy Probe, therefore, submits that the RCAM costs should be added to the Other O&M costs as these are the O&M costs for which EGD is seeking approval in this application for 2014 through 2018 and are not subject to variance account protection and true up.

As shown in Section 1of the following table, the forecasted increase for the sum of these two categories of O&M spending is about 3.1% per year, including an increase of 4.78% over the 2013 Board Approved level.

	2013 BA	2014	2015	2016	2017	2018	Total
Section 1							-
Other O&M	219.2	228.0	231.5	241.0	248.5	256.3	
RCAM	32.1	35.3	34.0	33.8	34.8	35.9	
Total Other & RCAM	251.3	263.3	265.5	274.8	283.3	292.2	
Percent Change		4.78%	0.84%	3.50%	3.09%	3.14%	
Section 2							
I.A2.EGDI.CME.6		2.22%	2.23%	2.26%	2.24%	2.24%	
Total Other & RCAM	251.3	256.9	262.6	268.5	274.6	280.7	
Difference		-6.4	-2.9	-6.3	-8.7	-11.5	-35.8
Section 3							
Updated 2014		1.70%	2.23%	2.26%	2.24%	2.24%	
Total Other & RCAM	251.3	255.6	261.3	267.2	273.2	279.3	
Difference		-7.7	-4.2	-7.6	-10.1	-12.9	-42.6
Section 4							
Updated 2014		1.70%	2.00%	2.00%	2.00%	2.00%	
Total Other & RCAM	251.3	255.6	260.7	265.9	271.2	276.6	
Difference		-7.7	-4.8	-8.9	-12.1	-15.6	-49.1

In its evidence EGS states that the budgeting process was modified to ensure that budget owners' forecasts of O&M did not exceed specified inflation targets (Exhibit A2, Tab 1, Schedule 2, Updated 2013-12-11). In the response to Exhibit I.A2.EGDI.CME.6, EGD provided the inflation targets used in the budgeting process. These rates are shown in the above table in Section 2.

The EGD witness agreed that if the correct inflation rate is around 2.24%, that would be the correct figure to use to inflate the other O&M cost of $219.2 million which was the 2013 Board approved amount (TR. Vol. 7, pages 108-110). Energy Probe submits that this is a reasonable approach, but that the inflator should also be applied to the RCAM amounts.

Section 2 of the above table shows the impact of applying the inflation rates EGD said it used in coming up with its O&M forecasts. The net result, is a reduction in O&M costs over the 2014 through 2018 period of $35.8 million. Energy Probe submits that this is the minimum reduction in O&M costs that the Board should approve.

With respect to the inflation rates used, Mr. Kancharla indicated that these were based on the two component inflation of the Ontario hourly labour wages rate and the GDPIPIFDD developed by Concentric Energy Advisors (TR. Vol. 7, page 109).

Energy Probe submits that at a minimum, the Board should replace the 2014 forecast of 2.22% with the Board's forecast of 1.70% that was calculated for 2014 in Appendix C of the EB-2010-0379 Report of the Board: Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors issued on November 21, 2013 and as corrected on December 4, 2013.

Energy Probe notes that this figure for 2014 (1.7%) is based on the same two component inflation index as used by Concentric, but uses the most recent information available. The components of the 1.7% increase include a 1.8% increase in the GDPIPIFDD and a 1.5% increase in the Ontario hourly labour wages.

Using this 2014 inflation rate increases the overall reduction in O&M costs over the 2014 through 2018 period from $35.8 million (Section 2 in the above table) to $42.6 million (Section 3 in the above table). Energy Probe submits that the Board should accept this incremental reduction, since the 2014 inflation rate is consistent with that used for the electricity distributors in the setting of their 2014 rates.

Energy Probe recommends a further reduction in the O&M component of the allowed revenue as shown in Section 4 of the above table. The incremental change is related to the inflation rates used for 2015 through 2018. Energy Probe submits that a reasonable forecast of inflation (based on the two components noted above) is 2.0% per year.

Between 2008 and 2013 the average increase in the GDPIPIFDD was about 1.77%, while the average increase in the Ontario hourly labour wages was about 1.98%. Using the 70/30 weighted the Board uses for the electric utilities, the overall average is about 1.83%.

Energy Probe further submits that there is no evidence that inflation is expected to increase significantly over the term of the IR plan. In fact, most forecasts are calling for inflation to remain low and in the 2% range for many years to come as the economy operates significantly below capacity. As a result, Energy Probe submits that a 2% inflation factor for 2015 through 2018 is reasonable.

As shown Section 4 of the table, the resulting decrease in O&M totals $49.1 million in 2014 through 2018.

Energy Probe believes that the above approach is reasonable in that it starts with a recent Board approved figure, and makes adjustments based on the same inflation methodology proposed by the applicant. The difference reflects an updated estimate for 2014 by taking into account the Board's inflation analysis. The changes for 2015 through 2018 are based on current expectations that the next 5 years are not likely to be significantly different from the past 6 years.

c. Is the Allocation of O&M Costs Between Utility and Non-utility (unregulated) Operations Appropriate?

Energy Probe makes no submissions on this issue. Energy Probe submits that the 2014 through 2018 forecasts for O&M costs (Other & RCAM) should be based on the 2013 Board Approved costs. These costs already reflect an appropriate allocation between utility and non-utility operations. Applying an escalator to the costs allocated to the utility in 2013 results in no need to review the allocation in each of 2014 through 2018.

d. Is the Amount for Income and Municipal Taxes Appropriate?

Subject to any changes in capital expenditures/additions and the refund of site restoration costs to customers approved by the Board, Energy Probe submits that the methodology used to calculate income taxes is appropriate.

Energy Probe has no issue with the municipal tax forecast for 2014 through 2016, which are based on tax inflation rates of 1.39% to 1.72% along with increased taxes resulting from the growth in new mains, reinforcement mains, replacement mains and new service additions.

However Energy Probe believes the forecasts for 2017 and 2018 are too high. As noted in Exhibit D1, Tab 6, Schedule 1, EGD used the 2012 actual calendar year costs as its benchmark and made adjustments going forward to calculate the 2014 through 2016 figures taking into account the factors noted in the previous paragraph. This results in municipal taxes increasing from $37.7 million in 2012 to $45.5 million in 2016, an annual compound increase of 4.8% per year over this period.

However, as can be seen in Exhibit D6 and D7 at Tab 2, Schedule 1, the increase in forecasted municipal taxes is 5.3% in 2017 and 5.2% in 2018. EGD has not provided any evidence to support an accelerating growth in the costs associated with municipal taxes. In fact, their evidence states that the increases reflect the average rate of change on the municipal tax rate.

Energy Probe submits that the increases should be limited to the same 4.8% growth that is forecast over the 2012 through 2016 period. This would reduce the 2017 municipal tax by $0.2 million and the 2018 municipal tax by $0.4 million.

e. Is the Cost of Capital Amount Appropriate?

Energy Probe has made submissions with respect to the cost of capital in 2014 through 2018 under Issue 10d above.

f. Is the Other Revenues Amount Appropriate?

Energy Probe submits that the other revenue amounts forecast for 2015 through 2018 are not appropriate and illustrate the classic under forecasting of revenues that allows EGD to over earn in an IR plan without any effort on its part.

As shown in Table 1 of Exhibit C1, Tab 1, Schedule 1, Updated 2-13-12-11, EGD forecast a reduction from the Board approved level for 2013 of $45.0 million to $40.6 million 2014. There is a small increase forecast for 2015 of $0.4 million and a further $0.3 million in 2016, both of which are driven primarily by the increase in the number of NGV customers. There is no growth whatsoever forecast in other revenues for 2017 and 2018.

Energy Prove submits that the Board should not approve the level of other revenues for 2015 through 2018 as requested by EGD as part of this proceeding.

If the Board accepts an IR plan that requires EGD to provide volume and revenue forecasts associated with distribution revenues as part of an annual filing, Energy Probe submits that the company should also provide updated revenue forecasts for the other components such as LPP and NGV that reflect the most recent information available. This would add little complexity to the annual filing and would ensure all revenues were treated equally within the IR plan. It is further submitted that the fact that the forecast for 2016, 2016 and 2017 are identical is a reflection of the tendency to under forecast revenues and another reason for the Board not to approve the forecasts as reasonable.

If the Board does approve the forecasts as part of this proceeding, then Energy Probe submits that the forecasts for each of 2015 through 2018 should be increased by $2.2 million per year. This figure is derived based on the submissions for the 2014 forecast found in Issue 22b. The 2014 forecast was based on 2012 actuals and the decline forecast was primarily the result of expected lower late payment penalty revenues due to the change in customer service rules. However, as shown in Exhibit J1.2, total other revenues came in at $42.8 million in 2013, $2.2 million higher than that forecast by EGD. Energy Probe submits that this is a reasonable increase to be applied to all the years.

18. Is the rate base for each of 2014, 2015 and 2016 appropriate, including:

The following comments are relevant if the Board accepts the Customized IR plan as proposed by EGD, or some variation of it. Please also note that given EGD's updated proposal for dealing with 2017 and 2018, the comments that follow under this issue apply to each of 2014 through 2018.

a. Opening Rate Base;

Energy Probe accepts using the 2013 Board approved closing rate base as the correct starting point for determining the 2014 rate base.

The Board could consider making adjustments to the opening rate base in each of 2015 to 2018 to reflect actual capital additions each year in place of the forecasted additions. This would be similar to the application of a capital variance true up account.

However, Energy Probe submits that the Board should not do this. Such adjustments could end up having a perverse and unwanted impact on capital expenditures. This is because EGD would be incented from a total return perspective to ensure that they do not under spend as it would impact on their rates and absolute return in the following years.

b. Forecast Level of Capital Expenditures;

Energy Probe believes the level of capital expenditures are inherently too high due to the forecast bias that may be built into the estimates.

Energy Probe has proposed deadband in the earnings sharing mechanism where the first 100 basis points of over earnings would go to the ratepayers rather than the shareholder. The primary purpose of that proposal is to safeguard against over forecasting of capital expenditures.

If the Board adopts the Energy Probe proposal with respect to the earnings sharing, then it is submitted that the forecast level of capital expenditures decreases in importance.

c. Forecast Customer Additions;

Energy Probe has provided submissions with respect to 2014 forecast of customer additions under Issue 21 below.

As the submissions under Issue 21 illustrate, there can be a significant difference in the actual number of customer additions from those forecast on a one year ahead basis, as evidenced by the actual additions in 2013 as compared to the forecast.

Over a five year period, the accumulated difference could be substantial and have a multimillion dollar impact on revenues, which would have a significant impact on rates.

Energy Probe submits that since EGD will have an annual rate setting process where it will provide forecasted volumes, it should also provide updated forecasts for customer additions. The forecast of customers taking gas should reflect the most recent historical data available, and forecasts for the "bridge" and "test" years. Volumes are simply the product of average use per customer and customers. Forecasting one based on the most recent information available while not doing so for the other half of the equation does not make sense to Energy Probe.

d. Proposed Capital Additions;

If the capital expenditure forecast is accurate, there is still significant room for EGD to change the timing of the forecasted in-service dates for the projects that can have a significant impact on rate base in any year.

Please see the submissions under part (b) above. The earnings sharing mechanism proposed would also mitigate this forecast risk and bias.

e. Allocation of the Cost and Use of Capital Assets Between Utility and Non-utility (unregulated) Operations;

Energy Probe makes no submissions on this issue.

f. Working Capital Allowance; and

Energy Probe notes that EGD identified errors to the working capital allowance calculations (Exhibit I.B18.EGDI.EP.22). These errors were corrected in TCU3.21. As shown in that response, the resulting impacts are substantial. Rate base has been reduced by amounts that range from $34.1 million in 2014 to $42.1 million in 2018. The corresponding reduction in the deficiency is $14.1 million for the 2014 to 2018 period.

Energy Probe has reviewed the corrections and believe they are reasonable when compared to the lag days used in the 2013 COS application.

g. All Other Components of and Adjustments to Rate Base.

Energy Probe submits that the other components of and adjustments to rate base, such as materials and supplies, customer security deposits, prepaid expenses and gas in storage are appropriate as forecast.

19. Is the Preliminary Allowed Revenue Amount for Each of 2017 and 2018 Appropriate, Including:

The comments of Energy Probe under parts (a) through (f) under this issue are applicable if the Board accepts the EGD customized IR plan as filed or with some modifications.

a. Is the Preliminary Depreciation Amount Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that the allowed revenue amount for 2017 and 2018 should be treated the same way as for 2014, 2015 and 2016 under Issue 17a.

b. Is the Operating Costs Amount Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that the operating costs for 2017 and 2018 should be treated the same way as for 2014, 2015 and 2016 under Issue 17b.

c. Is the Allocation of O&M Costs Between Utility and Non-utility (unregulated) Operations Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that the allocation of O&M costs for 2017 and 2018 should be treated the same way as for 2014, 2015 and 2016 under Issue 17c.

d. Is the Preliminary Amount for Income and Municipal Taxes Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that the costs associated with income and municipal taxes for 2017 and 2018 should be treated the same way as for 2014, 2015 and 2016 under Issue 17d.

e. Is the Preliminary Cost of Capital Amount Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that the cost of capital for 2017 and 2018 should be treated the same way as for 2014, 2015 and 2016 under Issue 17e.

f. Is the Other Revenues Amount Appropriate?

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that amount of other revenues for 2017 and 2018 should be treated the same way as for 2014, 2015 and 2016 under Issue 17e.

20. Is the Preliminary Rate Base for Each of 2017 and 2018 Appropriate, Including the Method for Establishing That Preliminary Level?

a) General Comments

The comments of Energy Probe under this issue are applicable if the Board accepts the EGD customized IR plan as filed or with some modifications.

Based on the updated proposal from EGD, Energy Probe submits that this issue is no longer relevant. Energy Probe submits that rate base for each of 2017 and 2018 should be determined in the same manner as for 2014, 2015 and 2016 under Issue 18.

b) Proposed Variance Accounts

EGD is proposing variance accounts related to the capital costs from relocations and replacement mains activity in both 2017 and 2018. Energy Probe submits that if the Board accepts the Customized IR plan as proposed by EGD or with some modifications, it should not approve the establishment of the requested variance accounts.

As shown in Exhibit D1, Tab 8, Schedule 1, Updated 2014-03-24 on pages 28 and 29, EGD describes the need for the Relocation Mains Variance Account ("RLMVA") and the Replacement Mains Variance Account ("RPMVA") for 2017 and 2018 *"to address the unpredictable costs"*. In other words, EGD believes the accounts are required for address incremental capital investment needs that may arise in 2017 and 2018. EGD says it cannot forecast these costs with any degree of certainty that far out.

Energy Probe believes that the request for these variance accounts is comparable to the use of an incremental capital module ("ICM") by the electricity distributors. The ICM is *"intended to address incremental capital investment needs that may arise during the IR term"* (Report of the Board Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach dated October 18, 2012, page 18).

Energy Probe submits that this is exactly the reason why EGD has proposed these variance accounts. EGD has replaced the initials ICM with RLMVA and RPMVA.

As noted elsewhere in this Final Argument, EGD has, in part, fashioned its Customized IR plan based on the Custom IR plan available to electricity distributors as a result of the

RRFE report noted above. However, EGD apparently has only selected the portions of the Custom IR approach that they like.

The Board clearly states on page 20 of the RRFE report that *"There will not be an ICM in the Custom IR method. Under this method, distributors will be expected to operate under the Board-determined multi-year rates."* Energy Probe submits that given the striking similarity between the ICM and RLMVA and RPMVA, the Board should deny both accounts.

Another reason for denying these accounts is that they are effectively asymmetrical in that they can only benefit EGD and they cannot benefit ratepayers. As indicated in the response to Undertaking TCU1.16, EGD confirmed that because of the $1.5 million revenue requirement threshold, no level of under spending would be returned to ratepayers. Again, Energy Probe submits this reflects the shift of risk away from EGD and to ratepayers in the overall Customized IR plan.

C. 2014 Rates

21. Is the 2014 Forecast of Customer Additions Appropriate?

Energy Probe submits that based on the increase in customer additions in 2013 relative to Board approved, the customer additions forecast for 2014 should be increased.

EGD has forecast an increase in Rate 1 customers of 33,098 and increase for Rate 6 of 1,081 customers (Exhibit C3, Tab 2, Schedule 1).

Energy Probe submits that the Board should make two adjustments to both rate classes for 2014. First, for both the Rate 1 and rate 6 classes, customer additions should be based on the actual 2013 figures as a starting point rather than the Board approved figures. This ensures that the increase in customers that has actually taken place in 2013 relative to forecast are reflected in the 2014 forecast. It is interesting to note that for the Rate 6 class the updated 9+3 forecast for 2013 is 159,555 customers as shown in the response to Energy Probe Technical Conference Question #8 (Exhibit TC3.3), which is only one customer less than the forecast of 159,576 for 2014 as shown in Exhibit C3, Tab 2, Schedule 2.

The second adjustment proposed by Energy Probe is to increase the additions forecast for 2014 by the following amounts. For Rate 1 customers, the 33,098 should be increased by 1,386 to 34,484. This would reflect the under forecast of 1,386 in 2013. This would reflect a housing market that has strengthened more than forecast by EGD when it did its forecasts in early 2013. For Rate 6 customers, the 1,081 additions forecast for 2014 is barely more than the variance in 2013 of 1,060 customers. Energy Probe notes that the forecast for Rate 6 customer additions in 2015 through 2018 averages about 1,500 per year. Given the significant under estimation for 2013, a 2014 figure of 1,500 is more reflective of the longer trend forecast of EGD.

22. Is the 2014 Revenue Forecast Appropriate?

a) Distribution Revenues

Energy Probe submits that the distribution revenue forecast for 2014 should be adjusted to reflect the submissions related to the forecast of customer additions (Issue 21), the gas volume forecast (Issue 23) and the average use forecast (Issue 25).

In addition to the above, Energy Probe submits that the distribution revenue forecast should be updated to reflect the fact that customer additions were higher than forecast in 2013. This higher customer forecast should be reflected in higher volumes (see Issue 23) and in higher fixed monthly charges since these customers will be on the distribution system for the entire 2014 test year.

As shown in the response to Energy Probe Technical Conference Question #8 (Exhibit TC3.3), the 9+3 forecast for Rate 1 customers in 2013 is 1,386 higher than the Board approved forecast, while the Rate 6 forecast, based on the 9+3 update, was 1,060 higher than the Board approved forecast.

Energy Probe submits that a reasonable increase in 2014 revenues due to higher customer additions in 2013 than forecast is $4.8 million. This figure is taken from page 5 of Exhibit J1.2 and shows the increase in sales margins due to higher number of average unlock customers than forecast.

b) Other Revenues

EGD is forecasting a decrease in other revenues from the 2013 Board approved level of $45.0 million to $40.6 million in 2014 (Exhibit C1, Tab 1, Schedule 1, Updated 2013-12-11). EGD says the primary driver of this $4.4 million decrease is related to lower late payment ("LPP") penalties which it has held at the 2012 levels. EGD explains that the 2013 Board approved level underestimated the LPP reduction resulting from the implementation of customer service rules.

Energy Probe notes that there is no reason to estimate the reduction in other revenues and LPP revenues in order to arrive at a forecast for 2014. This is because the actual 2013 other revenues have been provided on page 4 of Exhibit J1.2. In particular, the total is $42.8 million, consisting of $41.2 million in Other operation revenue and $1.6 million in Other income.

Energy Probe submits that a reasonable forecast for 2014 is $42.8 million, the actual 2013 figure. This actual level reflects the impact on the LPP revenue and the implementation of the customer service rules. This results in an increase of other revenues of $2.2 million.

As noted in Issue 17f above, Energy Probe does not believe that the forecast for other revenues should be approved by the Board in this proceeding for 2015 and subsequent years.

23. Is the 2014 Gas Volume Forecast Appropriate?

Energy Probe submits that the gas volume forecast for the general service classes should be increased to reflect the increase in the customer base at the end of 2013 (Issue 22), the increase in customer additions proposed (Issue 21) and the increase in average use per customer (Issue 25).

With respect to the contract volumes, Energy Probe submits that the forecast should be increased by the volumes and revenues noted for the two customers added since the forecast was done as noted in Exhibit J7.1.

Energy Probe further submits that the Board should direct EGD to include in their contract forecast an allowance for potential new contract customers in subsequent proceedings for 2015 through 2018. This was discussed by the EGD witnesses and Mr. Wolnik on behalf of APPrO (TR. Vol. 7, pages 5-15).

EGD does not include any customers or volumes for potential customers that have not yet signed contracts with EGD. Energy Probe submits that this is a flaw in the grassroots forecasting methodology used for the large customers. Energy Probe submits that this flaw can be rectified if the company provided a forecast of the volumes and contract demand for each of these potential customers and then assigned a probability to each customer that would reflect the potential that they will begin taking gas in the test year. This probability would also reflect the timing in the year they are expected to begin taking service. The Board is familiar with this approach, as it has been used by Union Gas for many years.

24. Is the 2014 Degree Day Forecast for Each of the Company's Delivery Areas (EDA, CDA and Niagara) Appropriate?

As indicated in the response to I.C24.EGDI.EP.27, the 2014 degree day forecast for each of the company's delivery areas would be calculated using the methodologies determined to be appropriate under Issue 37 below. EGD proposes to apply the forecast methodologies approved under Issue 37 for the entire IR term. Energy Probe supports this approach and submits that the 2014 degree day forecast should be determined by the methodologies approved under Issue 37.

Energy Probe further notes that the application of the methodology is only applicable under certain types of IR mechanisms, such as that proposed by EGD in this proceeding and in their previous revenue per customer cap approach. It would not be relevant in other approaches, such as the price cap approved by the Board for Union Gas.

<u>25. Is the 2014 Average Use Forecast Appropriate?</u>

As shown in Table 3 of Exhibit C1, Tab 2, Schedule 1, Appendix A, the average use per Rate 1 customer is forecast to decline by 2.21% in 2014. This compares to an average decrease forecast for 2015 and 2016 of about 0.8% and a historical average annual decrease of 1.3% based on the figures shown for the last five years (2008 through 2012). Energy Probe submits that the decrease forecast for 2014 is out of the ordinary in that it is significantly higher than the historical decreases or the future decreases forecast by the company.

Energy Probe submits that a reasonable Rate 1 average use forecast for 2014 would be to decrease the Board Approved 2013 figure by 1.3%. This results in a 2014 figure of 2,456 m^3.

With respect to the Rate 6 class, the average use per customer shown in the same schedule has actually increased over historical period and is forecast to remain relative flat in 2015 and 2016. Again, however, EGD has forecast a significant decline in 2014, of 2.81%. Energy Probe again submits that this is a not a reasonable forecast based on either the historical trends or the future forecasts.

Energy Probe submits that an appropriate average use per customer for the Rate 6 class is to keep the 2014 level at the 2013 Board Approved level of 29,204 m^3. This captures both the slowdown in the increase in the average use historically and the flat forecast for the years beyond the 2014 test year.

<u>26. Is the 2014 Level of Unaccounted For (“UAF”) Volume Appropriate?</u>

EGD is forecasting an increase of about 6% in the level of UAF in 2014 relative to the 2013 Board approved level and about 4% relative the actual 2012 level (Exhibit D3, Tab 4, Schedule 1, Table 4.

Further, based on the response found in Exhibit I.C26.EGDI.ApprO.5, the UAF% of total delivery throughput is forecast to be 0.69% compared to 0.63% for 2013 Board approved and 0.71% for 2012. Moreover, the average ratio over the six year period from 2007 through 2012 was approximately 0.67%.

Based on the review of the historical figures, Energy Probe submits that the forecast level of UAF for 2014 is appropriate.

<u>27. Is Enbridge’s Forecast of Gas, Transportation and Storage Costs for 2014 Appropriate?</u>

Energy Probe has no issues with the forecast of gas, transportation and storage costs for 2014 except to note that these costs will change as the result of any changes to the volume forecast, based on the submissions under Issue 23 above.

28. Is the Allowed Revenue Deficiency or Sufficiency for the 2014 Fiscal Year Calculated Correctly?

Based on the calculations shown in the evidence for the 2014 test year, Energy Probe submits that the deficiency/sufficiency has been correctly calculated. If the Board makes any changes to any of the components of the deficiency/sufficiency, Energy Probe notes that EGD will be required to make any corresponding changes necessary to reflect the impact on the revenue requirement and/or the revenues at existing rates.

29. Is the Overall Change in Allowed Revenue Reasonable Given the Impact on Consumers?

Energy Probe submits that the overall change in the allowed revenue is not reasonable, given the impact on consumers.

As is illustrated in the Final Submissions of SEC, the impact on consumers of the EGD proposal, excluding the impact of the SRC, is a larger increase in rates than those expected to be incurred by Union Gas customers.

Energy Probe submits that EGD has not provided sufficient justification that they cannot function within the parameters of a plan similar to that approved by the Board for Union Gas in EB-2013-0202. The rate impacts of the EGD Customized IR plan, excluding the impacts of the SRC, which is independent of the IR plan, are demonstrably higher than those for Union.

30. Is Enbridge's Utility Cost Allocation Study, Including the Methodologies and Judgments Used and the Proposed Application of That Study with Respect to 2014 Fiscal Year Rates, Appropriate?

Energy Probe accepts the cost allocation study, as filed by EGD, as appropriate.

Energy Probe further notes that APPrO may be arguing for changes to the cost allocation methodology for Rate 125. Energy Probe submits that any changes, at this time, are not appropriate. The allocation of costs is a complex exercise. Focusing on potential changes that would benefit one rate class is, in the view of Energy Probe, misguided. There is no evidence in this proceeding of whether the changes recommended by APPrO should only be applied to the assets used to serve Rate 125. For example, there is no evidence on whether or not the same approach could be applied to other assets and what the impact would be on other rate classes, including Rate 125.

31. Are the Rates Proposed for Implementation Effective January 1, 2014 and Appearing in Exhibit H, Just and Reasonable?

Energy Probe submits that this issue is independent of whether or not the Board accepts the customized IR plan as proposed by EGD. As discussed in Issue 35 below, the Board has the ability to approve 2014 rates without accepting the customized IR plan.

Elsewhere in this argument Energy Probe has made submissions with respect to components of the allowed revenue for 2014. In the absence of these proposed adjustments and those adjustments that will be proposed by other parties, Energy Probe submits that the proposed rates for 2014 are not just and reasonable.

32. How Should the Board Implement the Rates Relevant to This Proceeding if They Cannot be Implemented On or Before January 1, 2014?

Energy Probe submits that the rates should implemented as soon as possible following the Board's decision in this proceeding, and that the rates should be effective January 1, 2014.

Further, Energy Probe submits that the implementation of the new rates should not be delayed to coincide with the next change related to the QRAM. As the Board is aware, the average residential customer is facing an increase of about $400 due to increases in the cost of gas as a result of the April 1, QRAM. A noted by EGD in their Argument in Chief dated March 31, 2014 at page 78 of 81, the average residential customer will see a decrease in rates along with a decrease associated with the SRC proposal. Even though these decreases are relatively modest, Energy Probe submits it would be counter intuitive to delay this reduction to ratepayers for distribution related rates at the same time they are facing a significant increase in costs for the commodity.

In addition, to help offset the commodity cost increases, Energy Probe submits that the Board should order EGD to reflect the impact of the refund to ratepayers calculated based on the difference between the effective date of January 1, 2014 and the implementation date as one-time credit on the first customer invoice following the implementation date. Again this reflects a common sense approach to help ratepayers deal with the increased cost of gas.

D. Alternative Proposals

33. With Respect to Any Alternative IR Plan Proposed for Enbridge, Does That Proposal Meet the Board's Objectives for Incentive Regulation for Gas Distributors and is it Appropriate?

Please see the comments under Issue 35 below.

34. With Respect to Each of the Components of Any Alternative IR Proposal, are Those Components Appropriate?

Please see the comments under Issue 35 below.

E. Other

35. What are the Regulatory Alternatives to the Board Approving the Enbridge Rate Proposal? Are Any Alternatives to Approving the Rate Proposal Appropriate?

Energy Probe submits that if the Board does not accept the Customized IR plan as proposed by EGD it has a number of alternatives that could be implemented. Energy Probe has divided these alternatives into two components. The first component would be alternatives to setting 2014 rates. The second component would be related to an IR plan for the 2015 through 2019 period.

a) 2014 Rates

The first alternative with respect to setting 2014 rates is that the Board could direct EGD to file a new IR plan for implementation in 2014. Energy Probe does not support this option for a number of reasons. It is unlikely that EGD would be able to provide a new plan for review by the Board in a timely manner. Coupled with the time for the Board and intervenors to review the plan, it is unlikely that new rates would be able to be put in place for any of 2014. As well, there is no compelling reason that 2014 rates need to be set as the first year in a multi-year IR plan at this point.

The second alternative would be for the Board to replicate EGD's revenue per customer cap IR plan that was in place for 2008 through 2012 for 2014, using the 2013 Board approved rates as the starting point and the X factor for 2012 and the same inflation factor used for Union Gas. Energy Probe believes that all of the relevant information required for this alternative is on the record, such as customer and volume forecasts, and as a result, could be implemented in a reasonable amount of time. The impact of the SRC would be implemented in addition to the above.

The third alternative would be to approve no rate change for 2014, other than the change related to the SRC.

The fourth alternative is to approve 2014 rates based on the evidence in this proceeding, as adjusted by the Board for its findings on the various components of the allowed revenue. Energy Probe notes that, in effect, the building blocks approach used by EGD for 2014 through 2018 defaults to a cost of service approach if the Board only takes into consideration the 2014 information. While this is not an appropriate approach to setting rates under an IR plan, in the view of Energy Probe, it would set base rates for a subsequent IR plan as discussed in part (b) below.

The fifth alternative would be to impose the same plan on EGD that the Board approved for Union Gas in EB-2013-0202. In approving this plan, the Board found that the resulting rates are expected to be just and reasonable. There is no reason why a plan that results in just and reasonable rates for Union Gas would not result in the same outcome for EGD.

Energy Probe submits that the best alternative is the fifth alternative. Energy Probe submits that there are no compelling reasons provided by EGD in its evidence, interrogatory and undertaking responses or oral submissions, to believe that it could not operate within the parameters of that agreement with the GTA and Ottawa projects treated as Y factors, similar to the treatment of the Parkway West and Kirkwall projects for Union gas as Y factors.

One change that Energy Probe submits that the Board may want to make to the Union Gas IR plan for EGD would be the inclusion of an off-ramp of 300 basis points. This would provide assurance to EGD that if they cannot succeed under the Union IR plan, it could be modified or terminated before the end of the five year term. This would also provide assurance to ratepayers, which could be adversely impacted if the return on equity were to fall below this level for an extended period.

b) 2015-2019 IR Plan

If 2014 rates are not approved as part of the customized IR plan, then the Board could direct EGD to file a new plan for its consideration as soon as possible, with a five year term effective January 1, 2015 through to the end of 2019. This has the advantage from a regulatory work load perspective of putting EGD on a different five year plan than Union Gas (2014-2018).

36. Is Enbridge's Proposal for Transactional Services ("TS"), Including the Classification of Transactions Within TS and the Treatment and Sharing of TS Revenues, Appropriate?

EGD is proposing a change to the TSDA methodology and scope as part of this application.

EGD continues to include a forecast of $12 million in transactional services ("TS") revenue as an offset to rates. This is unchanged from that approved for 2013. Similarly, there is no proposed change in the event that the ratepayer share of 2014-2018 TS net revenue exceeds $12 million, in which case the amounts over $12 million would be credited to the TS Deferral Account ("TSDA") and shared 90/10 in favour of ratepayers.

However, EGD is proposing a change if the TS net revenue is less than $12 million. Currently the maximum credit to EGD is $4 million, resulting in a guarantee to ratepayers of $8 million. EGD proposes to eliminate this guarantee and credit itself with the difference between the actual ratepayer share of the 2014-2018 TS net revenue and the $12 million included as an offset to rates. This results in no cap on the amount that would be credited to EGD if the ratepayer share of TS net revenues be less than $12 million.

Energy Probe submits that the Board should deny this change. The current sharing was part of the 2013 settlement agreement in EB-2011-0354. Energy Probe submits that an IR plan application is not the type of case where such a change would ordinarily be raised as it effectively constitutes a change in base rates.

EGD has not provided any credible evidence that it needs further protection beyond the $4 million it had in 2013.

While Energy Probe submits that the Board should deny the change proposed by EGD, it also submits that if the Board were to accept the change and eliminate the guarantee to ratepayers of the $8 million that they had in 2013, then there needs to be an adjustment to the sharing mechanism to compensate ratepayers for the loss of this guarantee.

In particular, Energy Probe submits that the sharing should be adjusted from 90/10 in favour of ratepayers to 95/5 in favour of ratepayers for all TS net revenues in excess of $12 million. This would ensure that ratepayers have at least the potential to receive more of the TS net revenues as compensation for the loss of the $8 million guarantee.

37. Is the Proposal to Introduce a New Hybrid 50/50 Forecasting Methodology for the Determination of a Heating Degree Day ("HDD") Forecast for the Company's "Central Delivery Area", and to Retain the Existing Forecasting Methodologies for the EDA and Niagara Areas, Appropriate?

The Board approved an evaluation framework for selecting the degree day forecasting methodology in each of the Central, Eastern and Niagara delivery areas in EB-2006-0034 for the 2007 test year. This evaluation framework involved the assessment of nine different forecasting methodologies to determine the most appropriate method based on a consistent set of criteria. The methodology that ranks best is then used to produce the degree day forecast.

Energy Probe continues to support this evaluation framework and notes that EGD has not provided any evidence to discontinue this approach. In fact, EGD continues to support this framework.

However, EGD is proposing a change to the methodology used for the Central delivery area. Based on the close results of two methodologies over a number of years - 10-year moving average and 20-year trend - EGD says it was prompted to carry out the evaluation framework beyond only the test year to determine the long term consistency of each methodology's ranking over time.

As illustrated in Table 7 of Exhibit C2, Tab 1, Schedule 2, both of these two methodologies ranked first based on the approved evaluation criteria nine times in the 2013 through 2014 period. Based on analyses undertaken by EGD, it undertook the addition of a 10th methodology to the evaluation framework. This added methodology, which EGD calls the 50:50 Hybrid, is the straight average of the 10-year moving average and the 20 year trend.

As shown in Table 8 of Exhibit C2, Tab 1, Schedule 2, this hybrid methodology ranks best. Further, Table 9 in the same evidence shows that this hybrid methodology has ranked no worse than second since 1998 and in the last 15 years it ranked first 9 times.

As a result, Energy Probe submits that the Board should accept the proposed hybrid methodology for the Central delivery area. It is demonstrably better than either of the two next best ranking methodologies, being the 20-year trend and 10-year moving average.

As indicated in their evidence at Exhibit C2, Tab 1, Schedule 2, page 6, paragraph 8, the addition of 2012 actual degree days for the Eastern and Niagara regions did not result in any change from the methods previously approved for 2013 (de Bever with trend for the Eastern delivery area and 10-year moving average for the Niagara delivery area). As a result, EGD did not carry out any further validation for these regions, based on the consistent results.

Energy Probe submits that the continued use of the de Bever with trend methodology for the Eastern delivery are and the 10-year moving average for the Niagara delivery area, both as proposed by EGD, is appropriate based on the evidence provided in this proceeding.

38. Is the Proposed Implementation, Treatment and Cost Recovery Related to the Change in the Peak Gas Day Design Criteria, Approved by the Board in the 2013 Rate Application (EB-2011-0354), Appropriate?

Energy Probe supports the proposed implementation, treatment and cost recovery related to the change in peak gas day design criteria as approved by the Board in EB-2011-0354 as being appropriate. Energy Probe is not aware of any new information that would require or result in a change or modification to that approved by the Board.

39. Are the Proposed Depreciation Rate Changes, to be in Use Beginning in the 2014 Fiscal Year, Related to a Reduction in the Annual Level of Site Restoration Cost/Asset Retirement Obligation ("SRC/ARO") Collected, Appropriate?

As indicated under Issue 17a, Energy Probe submits that the depreciation rates to be in use beginning in the 2014 fiscal year should be adjusted to reflect the removal of the site restoration costs in their entirety.

Site restoration costs should be treated as a current expense, as noted in the submissions of SEC, which Energy Probe adopts. Further detail on the submissions of Energy Probe with respect to SRC costs are contained in part B. Site Restoration Costs of Section II. General Comments above.

a. Is Enbridge's Proposal to Continue With All Other Depreciation Rates Established in the EB-2011-0354 Proceeding, Throughout the IR Period Appropriate?

Energy Probe submits that the proposal to continue with all other depreciation rates established in the EB-2011-0354 proceeding throughout the IR period is appropriate, as adjusted for the removal of site restoration costs.

Energy further submits that the Board should direct EGD to file a comprehensive depreciation study as part of its next rebasing application using the most recent actual year of data available.

40. Are the Proposed Amounts to be Returned to Ratepayers Over a 5 Year Period Related to the Estimated Reduction to the Amount of SRC/ARO Previously Collected, Appropriate?

As noted elsewhere in these submissions, Energy Probe supports the Final Argument of the SEC with respect to the amounts to be returned to ratepayers and the timing of the return of these amounts associated with the SRC/ACO amounts previously collected.

41. Is the proposal for the Open Bill Access Program Appropriate?

As indicated in Exhibit A1, Tab 3, Schedule 1, page 5, EGD filed a separate application for the continuation of its Open Bill Access program (EB-2013-0099). Energy Probe supports EGD's expectation that the decision in that proceeding would be reflected in the outcome of this proceeding.

42. Are the Proposed Changes to Rate 100 and Rate 110 Appropriate?

Energy Probe makes no submissions on this issue.

43. Are the Proposed Changes to the Rate Handbook Appropriate?

Energy Probe makes no submissions on this issue.

44. Is Enbridge's Rate Design for the Proposed Rate 332 Appropriate?

Energy Probe makes no submissions on this issue.

45. Is the Rate of Return on the Natural Gas Vehicle ("NGV") Program Appropriate?

As indicated in the table shown in Exhibit C3, Tab 4, Schedule 1, EGD has forecast a sufficiency in the rate of return on the NGV program in each of 2014 through 2016. The 2017 and 2018 forecasts are in line with the forecast for 2016.

Energy Probe notes that much of the sufficiency is the result of a reduction in income taxes which, in turn, is the result of increased capital cost allowances that result from the significant increase in capital expenditures in this area where the net utility investment is forecast to grow from $5.4 million in 2014 to $16.4 million in 2015.

Energy Probe submits that the Board should accept the forecast of a sufficiency in the rate of return on the NGV program. Energy Probe does have some issues with the forecast of NGV revenues for 2017 and 2018. These submissions can be found under Issue 17f above.

46. Has Enbridge Responded Appropriately to All Relevant Board Directions From Previous Proceedings, Including Commitments From Prior Settlement Agreements?

Energy Probe submits that EGD has responded appropriately to all relevant Board directions from previous proceedings and settlement agreements.

47. Are Enbridge's Economic and Business Planning Assumptions Appropriate?

Energy Probe has no significant issues with the economic and business planning assumptions, except for those noted elsewhere in this submission.

Energy Probe is concerned with the apparent lead time needed by EGD in order to do its load volume forecast. Since this forecast will be renewed as part of the filings each year for 2015 through 2018, and given that it is the only significant forecast that will be provided each year, Energy Probe submits that the forecast should be able to be done closer to the relevant forecast period.

48. Is Enbridge's Updated Asset Plan Appropriate?

Energy Probe is aware that an asset plan can be changed at any time due to changes in circumstances such as market growth, government regulations or changes in focus by management. However, as indicated by the EGD witnesses, there is no direct link between the asset plan and the capital expenditure budgets that EGD is requesting the Board to approve (TR. Vol. 5, pages 73-74).

In order for the Board and other parties to be able to evaluate an IR plan Energy Probe submits that EGD should have filed a robust asset management plan, particularly in light of their contention that the high level and lumpiness of the capital expenditures is the primary driver for their requested Customized IR plan and that a standard I-X IR mechanism does not work for them. EGD failed to provide this and, as a result, Energy Probe submits that the Board cannot approve the Customized IR plan as filed since it lacks one of the key requirements for a Custom IR plan.

In addition, Energy Probe submits that the Board should direct EGD to file a report annually throughout the IR plan term that shows and explains the adherence and divergence from the asset plan/budgeted expenditures that has been relied on in this proceeding that, to a great extent, has influenced the level and timing of capital expenditures.

49. Is Enbridge's Proposal to Increase Firm Transportation for 2014 Appropriate? What are the Implications, if Any, of That Proposal on the Gas Supply and Transportation Strategy for 2015-2018? What is the Appropriate Process to Develop, Review and Approve the Gas Supply and Transportation Strategy for 2015-2018?

Energy Probe has had the opportunity to see the draft submissions on this issue from the Federation of Rental-Housing Providers of Ontario ("FRPO"). Energy Probe supports those submissions.

IV. COSTS

Energy Probe requests that it be awarded 100% of its reasonably incurred costs associated with its participation in this proceeding. As a result of overlapping timing constraints with other proceedings before the Board, Energy Probe was unable to participate directly in the oral proceeding, but availed itself of the transcripts to be informed on the cross-examination that took place. In addition, as is standard practice, Energy Probe worked closely with the other ratepayer groups throughout the application process to avoid duplication.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 21, 2014

Randy Aiken

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