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BY EMAIL and COURIER

April 13, 2007
Our File No. 2060022

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

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Enbridge Gas Distribution – EB-2006-0034 – Reply Argument

We are counsel for the School Energy Coalition. In its Reply Argument in the above matter, Enbridge Gas Distribution has purported to interpret for the Board the meaning of a Paragraph 3.15 of the main Settlement Agreement in this matter. This paragraph, which agrees to the establishment of the 2007 Income Tax Rate Change Variance Account, says that the account will capture:

“the impact of any corporate income tax rate changes against Fiscal 2007 Board Approved taxable income (versus the Company’s forecast of corporate income tax rates) that occur in 2007 as a result of Provincial and Federal budgets that are passed in the test year.”

School Energy Coalition, in its Final Argument, noted at paragraph 3.15.2 that the Federal budget of March 19, 2007 significantly increased the capital cost allowance rates for most gas distribution assets, and that this change in rates would significantly decrease 2007 taxes payable by EGD. We noted, however, that the deferral account set up in the Settlement Agreement is specifically designed to deal with this.

The Company has taken the position, in its Reply Argument, that the “rates” referred to in the Settlement Agreement are limited to the percentage “rates” of 22.12% and 14% applied to calculate the final stage of corporate tax. The account would not capture the change in the percentage “rates” of capital cost allowance allowed to the Company.

With respect, this is not consistent with the purpose or content of the Settlement Proposal, and is not a correct interpretation. The purpose of the provision, which is plain on the face of the Agreement,

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is to ensure that changes to the taxes payable by the Company would be a flow-through to ratepayers. It is sensible to limit it to “rates”, so that the amount is readily calculable.

We note that the Company was aware, at the time of the Settlement Agreement, that it along with other gas distribution utilities had lobbied the federal Minister of Finance to change CCA rates for gas distribution assets. Intervenors were not aware of this at the time that the Settlement Agreement was drafted. Therefore, it is submitted that if there is any ambiguity in the wording of the Settlement Agreement, it should be resolved in favour of the ratepayers, given that the Company had relevant information that it did not share with the ratepayers.

It is therefore submitted that the Company’s after-the-fact re-interpretation of the Settlement Proposal should be rejected by the Board.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

cc: Patrick Hoey and Fred Cass, Enbridge Gas Distribution (email)
Richard Battista and Michael Millar (OEB Board Staff)
Interested Parties (email)