

April 17, 2007

**VIA FAX**

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700 - 2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms Walli:

**Re: EB-2006-0034**

I was unable to attend the reply argument of Enbridge Gas Distribution Inc., on Friday, April 13, 2007. However, counsel for IGUA was in attendance and he informs me that, based on comments made to him by a member of Board Staff, the Board may be awaiting a response to Mr. Penny's letter to the Board of April 4, 2007, from the sponsors of Dr. Booth's evidence.

This letter is our response.

The letter asserts that Union's Argument with respect to the equity ratio issue in EGD's case does not contravene the spirit and intent of the Settlement Agreement in its own 2007 Rate Case. We disagree, for the following reasons:

- (a) In its 2007 Rate Case, Union sought an increase in equity thickness on grounds which are substantively the same as those that it trumpets in the Written Argument it has submitted in EGD's case.
- (b) Union's request for equity thickening in its own case was supported by evidence from the Brattle Group, including evidence with respect to risks from Dr. Carpenter. CCC, IGUA and VECC submitted evidence from Dr. Booth in Union's case. Dr. Booth's evidence in Union's case was substantively the same as the evidence he submitted in EGD's case. An overriding theme of Union's request for equity thickening in its own case is the assertion it made in paragraph 44 of its Argument in the EGD case where Union states:

“If returns are to continue to be adjusted by a formula based on long Canada bonds, the equity component of the capital structure must increase.”

- (c) This argument, which we reject and which other regulatory tribunals have rejected, is founded upon After-Tax Weighted Average Cost of Capital (“ATWACC”) methodology, promoted by the Brattle Group in the Union application.
- (d) The equity thickening ratio in Union’s case was settled by the parties and approved by the Board at 36%. As a term of the settlement, Union agreed not to seek a change in capital structure in any future proceedings before the Board on the basis of an application of the ATWACC methodology.
- (e) From the perspective of intervenors, the equity thickening issue in Union’s case was resolved on a basis that, on a “go forward” basis, we achieved overall equity return “peace” with Union.

In the context of these facts, we reiterate that Union’s Argument in EGD’s case is incompatible with the commitments it made to intervenors in the Settlement Agreement in its own 2007 Rate Case.

In his letter to the Board, counsel for Union asserts that Union’s conduct in EGD’s case with respect to the equity return issue did not amount to “sandbagging”. We disagree, for the following reasons:

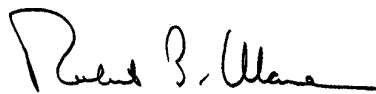
- (a) Union submitted no written interrogatories to Dr. Booth;
- (b) As far as intervenors were concerned, Union’s criticisms of Dr. Booth’s approach to the equity thickening issue were resolved by the “peace” provision of the Settlement Agreement in Union’s 2007 Rate Case;
- (c) Union did not cross-examine Dr. Booth and did not allow Dr. Booth the opportunity to respond to the criticisms Union makes of Dr. Booth in its Argument; and
- (d) Union provided no notice that it wished to support EGD’s request for equity thickening at any time before the due date for intervenors’ Arguments.

In the context of these facts, we submit that Union has not adhered to the accepted standard of procedural fairness. It is no answer for Mr. Penny to say that he was simply filing his argument in accordance with the Board's prescribed procedure. From his extensive experience, Mr. Penny knows that the appropriate procedure would have been to alert the Board, and the parties, of his intention to file argument critical of Dr. Booth's evidence and ask permission to file that argument at the same time as EGD filed its Argument-in-Chief. That would have allowed us to respond to his argument, something we now cannot do.

For all of these reasons, we reiterate that Union's Argument in EGD's 2007 Rate Case with respect to the equity thickening issue constitutes a breach of the principles of fair play. The manner in which the Board responds to the Argument submitted by Union should be dictated by considerations of fairness. On fairness grounds, those sponsoring the evidence of Dr. Booth urge the Board to strike Union's argument and to disregard anything Union has to say about the equity thickening issue in EGD's case.

Yours very truly,

**WeirFoulds LLP**



Robert B. Warren

RBW/dh

cc: Peter Thompson  
Michael Janigan  
All Intervenors

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