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October 13, 2015

VIA RESS, EMAIL and COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: EB-2015-0277: Mr. Ron Tolmie - Motion to Review and Vary  
Enbridge Gas Distribution Inc. ("Enbridge") and Union Gas  
Applications for Pre-Approval of the Cost Consequences of a Long-  
Term Natural Gas Transportation Contract  
Enbridge's Response**

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In accordance with Procedural Order No. 1 regarding the Notice of Motion to Review and Vary, attached please find Enbridge's response to the arguments presented in Mr. Tolmie's letter of September 29, 2015.

The submission has been filed through the Ontario Energy Board's Regulatory Electronic Submission System ("RESS").

Please contact the undersigned if you have any questions.

Yours truly,

[original signed]

Lorraine Chiasson  
Coordinator, Regulatory Affairs

Att.

cc: EB-2015-0277 Interested Parties

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** a Motion to Review and Vary by Mr. Ron Tolmie

**AND IN THE MATTER OF** Union Gas Limited and Enbridge Gas Distribution Inc. Applications for pre-approval of the cost consequences of long-term natural gas transportation contracts with NEXUS Gas Transmission

**ENBRIDGE GAS DISTRIBUTION LIMITED  
SUBMISSIONS ON MOTION**

**A. Background and Context**

1. While most of the background facts leading up to Ron Tolmie's (Mr. Tolmie) Motion to Review and Vary (the Motion) are well-known and on the public record, Enbridge Gas Distribution Limited (Enbridge) believes that it is useful to summarize the key facts, in order to provide context for Enbridge's submissions on the Motion.
2. On June 5, 2015, Enbridge filed an Application with the Ontario Energy Board (the OEB, or the Board) seeking pre-approval of the cost consequences of a long-term transportation contract with NEXUS Gas Transmission (NEXUS) commencing November 1, 2017. Union Gas Limited (Union) had filed a similar Application on May 28, 2015.
3. The Board issued Notices of Hearing for each Application and invited interested parties to intervene. On July 27, 2015, Mr. Tolmie filed a request for intervenor status.<sup>1</sup> Mr. Tolmie's request indicated that the public should have the right to raise "fundamental issues" (such as the use of "GHG-free energy sources" to "displace the use of natural gas") in the proceeding, even if these issues are not listed in the Board's *Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts*. Mr. Tolmie's letter also included a discussion of the benefits of an "exergy" system that would use local thermal energy to heat buildings instead of natural gas. He asserted that such

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<sup>1</sup>[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/488944/view/Ron%20Tolmie\\_IntrvREQ\\_Nexus\\_20150727.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/488944/view/Ron%20Tolmie_IntrvREQ_Nexus_20150727.PDF).

systems would greatly reduce peak electricity demand, but would require a reduction in the cost of nighttime electricity.<sup>2</sup>

4. On July 31, 2015, the Board issued Procedural Order No. 1, combining the two NEXUS pre-approval Applications into one proceeding (the NEXUS Pre-approval Proceeding). The Board's Registrar granted intervenor status to Mr. Tolmie, but included the following caution:

*I hereby grant intervenor status to Mr. Tolmie on the basis that at least some of the issues raised in his letter of July 27, 2015 may be within the scope of what the OEB will consider when reviewing the applications. I caution however, that the scope of the proceeding will ultimately be determined by the OEB panel assigned to hear this case. It may be that one or more of the issues raised by Mr. Tolmie are determined, in due course, not to be in scope.*

5. As part of Procedural Order No. 1, the Board created an Issues List, which “tracks” the items set out in the *Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts*. Procedural Order No. 1 set a schedule for written Interrogatories, and a two-day Technical Conference (to be held on September 8 and 9, 2015). Finally, the Board indicated that any party that wished to file evidence shall notify the OEB and all parties of such intent by September 17, 2015.
6. Mr. Tolmie asked Enbridge a number of Interrogatories. In large part, these Interrogatories related to the implications of “exergy storage” on future electricity and natural gas demand in Ontario and concerns about Greenhouse Gas (GHG) emissions associated with shale gas.<sup>3</sup>
7. Mr. Tolmie participated in the Technical Conference, and asked questions of the Enbridge witness panel. Many of Mr. Tolmie's questions related to matters of energy and environmental policy, rather than on the specifics of the long-term NEXUS contracts. For example, some questions related to the implications of what Mr. Tolmie asserted was a “broad government objective ... to stop using fossil fuels”.<sup>4</sup> Other questions related to how Enbridge would meet GHG objectives if gas supplies procured are shale gas supplies

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<sup>2</sup> Mr. Tolmie has promoted the benefits of an “exergy” system in electricity proceedings, such as Hydro Ottawa Application EB-2015-0004 (see [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/487770/view/Tolmie\\_ltr%20Comment\\_redacted\\_20150720.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/487770/view/Tolmie_ltr%20Comment_redacted_20150720.PDF) and [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/495945/view/Tolmie\\_ltr%20Comment\\_Hydro%20Ottawa\\_20150916.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/495945/view/Tolmie_ltr%20Comment_Hydro%20Ottawa_20150916.PDF)) and OPG Application EB-2013-0321 (see [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/418874/view/RTolmie\\_Comments\\_20131121\\_Redacted.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/418874/view/RTolmie_Comments_20131121_Redacted.PDF)).

<sup>3</sup> See, for example, I.T1.EGDI.Ron Tolmie.5, 6, 8, 9 and 10.

<sup>4</sup> Transcript of September 9, 2015 Technical Conference, at page 110; see also page 113.

obtained through fracking.<sup>5</sup> Mr. Tolmie also asked questions about whether alternative energy options could displace natural gas.<sup>6</sup> In Enbridge's view, as expressed during the Technical Conference<sup>7</sup>, these questions are not within scope of the NEXUS Pre-approval Proceeding. Indeed, it appears that many of these questions are issues of Federal and Provincial Government policy, and are not matters ordinarily within the OEB's jurisdiction as the economic regulator of Ontario's natural gas distributors.

8. On September 17, 2015, Mr. Tolmie filed a letter with the OEB, indicating his intention to file evidence in the proceeding.<sup>8</sup> No other party has indicated their intention to file evidence. Mr. Tolmie's letter indicated that he wished to provide a fuller explanation of "exergy storage". His letter also spoke of concerns with the transport of methane to the surface through the fracking process for shale gas. Mr. Tolmie indicated that the "significant risk" associated with the release of methane could be avoided if the OEB considers the "safer and much less expensive option of using exergy stores to meet our needs for heating, peak power and supply/demand matching".
9. Subsequently, on September 22, 2015, Mr. Tolmie filed another letter with the OEB, in which he further described the evidence he proposes to file in the NEXUS Pre-approval Proceeding.<sup>9</sup> In his September 22<sup>nd</sup> letter, Mr. Tolmie indicated that his evidence would address two items.
  - a. First, the evidence would provide the full text of the documents referred to in prior submissions and questions – this would include reports from the NEB, OEB, IESO and other government agencies, as well as "peer-reviewed papers" and data from Statistics Canada. Mr. Tolmie asserted that this evidence "should not require the testimony of expert witnesses".
  - b. Second, the evidence would "show how the use of exergy stores would be a more economical solution than building the NEXUS pipeline".
10. On September 25, 2015, the OEB issued Procedural Order No. 2, which included the OEB's Decision that Mr. Tolmie shall not file the evidence described in his September 22<sup>nd</sup> letter.

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<sup>5</sup> Transcript of September 9, 2015 Technical Conference, at pages 118-120.

<sup>6</sup> Transcript of September 9, 2015 Technical Conference, see for example pages 123-124 and 131-132.

<sup>7</sup> Transcript of September 9, 2015 Technical Conference, see for example the objections raised at pages 120-122 and 125-127.

<sup>8</sup> [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/496006/view/Tolmie\\_ltr\\_intent\\_Evidence\\_Nexus\\_20150916.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/496006/view/Tolmie_ltr_intent_Evidence_Nexus_20150916.PDF).

<sup>9</sup> [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/496991/view/Tolmie\\_Evd\\_Nexus\\_20150922.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/496991/view/Tolmie_Evd_Nexus_20150922.PDF).

The OEB declined to accept Mr. Tolmie's proposed evidence in the NEXUS Pre-approval Proceeding because it "is out of scope in the context of the issues to be considered". In this regard, the OEB made a specific finding that:

*Mr. Tolmie's issues relate largely to broader questions of the future of electricity supply and demand in Ontario and hence are policy matters beyond the OEB's mandate in the context of the particular applications before it in this proceeding.*

11. In response to the OEB's Decision, Mr. Tolmie filed an "appeal", on September 29, 2015.<sup>10</sup> Mr. Tolmie's September 29<sup>th</sup> filing asserts that the Board was wrong, and that he should be permitted to file his proposed evidence. At a high level, Mr. Tolmie's position is that his evidence is relevant, because "[i]t shows that Ontario will not need to import shale gas if it utilizes the natural thermal energy resources that are abundantly available in Ontario, and it will not need any new gas pipelines while the use of natural gas is being phased out."
12. On October 5, 2015, the Board responded to Mr. Tolmie's "appeal". The Board indicated that Mr. Tolmie's filing should be treated as a Motion to Review and Vary, under Rule 42 of the OEB's *Rules of Practice and Procedure*. The Board initiated a process (under EB-2015-0277) to consider the Motion, inviting any party who wishes to respond to the arguments in Mr. Tolmie's September 29<sup>th</sup> filing to do so by October 13, 2015, and permitting Mr. Tolmie to reply to such submissions by October 20, 2015.
13. On October 8, 2015, before any other party had made submissions on the Motion, Mr. Tolmie filed further submissions.<sup>11</sup>
14. In large part, Mr. Tolmie's October 8<sup>th</sup> filing repeats arguments that were advanced in the September 29<sup>th</sup> filing, especially around Mr. Tolmie's assertion that natural gas will not be required in the future if alternate energy sources are used instead.
15. Mr. Tolmie's October 8<sup>th</sup> filing addresses two items not raised in his September 29<sup>th</sup> filing. First, Mr. Tolmie questions whether his September 29<sup>th</sup> filing should be treated as a Motion to Review and Vary, rather than as an appeal. Second, Mr. Tolmie reiterates his desire to file "a variety of reports, mostly issued by Canadian government agencies, that should not require expert witnesses for their interpretation."

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<sup>10</sup>[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/497867/view/Tolmie\\_Motion\\_Resp\\_po2\\_20150929.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/497867/view/Tolmie_Motion_Resp_po2_20150929.PDF).

<sup>11</sup>[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/499611/view/Tolmie\\_Resp%20Motion\\_20151008.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/499611/view/Tolmie_Resp%20Motion_20151008.PDF).

16. Mr. Tolmie's October 8<sup>th</sup> filing concludes with a summary of what he says are impacts of the NEXUS Pre-approval Application. This discussion (found in the bottom paragraph of the second page of the October 8<sup>th</sup> filing), includes several factual misstatements. It is Mr. Tolmie, not Enbridge, that is asking the OEB to redefine the government's policy – as far as Enbridge is aware, there is no Ontario government policy to phase out or eliminate natural gas consumption between 2017 and 2032 (which are the dates during which the requested pre-approval would be operative). Moreover, the NEXUS pipeline will not convey a "new fuel" to Ontario. It will carry natural gas (extracted from shale) from the Marcellus and Utica basins. Enbridge already plans to procure significant supply from those basins through supply via Niagara<sup>12</sup>, which is facilitated through the OEB-approved GTA project<sup>13</sup>. As seen in the OEB's recent Staff Report on the 2014 Natural Gas Market Review, the share of total Ontario gas demand met from shale gas originating in the U.S. Marcellus region is expected to rise from 13% in 2013 to 41% in 2020.<sup>14</sup> Finally, it is not true that the NEXUS pipeline would "approximately double" the capacity for delivery of natural gas to Ontario. While the NEXUS pipeline will diversify the supply sources connected to Dawn, NEXUS is not directly connected to Dawn and the only new transportation capacity to Ontario created as a result of NEXUS will be an incremental increase (of around 0.3 PJ/day) in the capacity of the Vector pipeline into Dawn.<sup>15</sup>

**B. This is a Motion, not an Appeal**

17. The Board has clearly indicated in Procedural Order No. 1 in EB-2015-0277 that Mr. Tolmie's September 29<sup>th</sup> filing is to be treated as a Motion to Review and Vary, not an "appeal". Presumably, the reason for a new docket number (different from those assigned to the NEXUS Pre-approval Application) is to allow for a different Board panel to conduct the Motion to Review and Vary, as compared to the Board panel who issued the Decision set out in Procedural Order No. 2 in the NEXUS Pre-approval Proceeding.

18. Enbridge agrees with the Board that Mr. Tolmie's September 29<sup>th</sup> filing is properly treated as a Motion to Review and Vary. As far as Enbridge is aware, the Decision at issue (set out in

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<sup>12</sup> Enbridge's planned gas supply portfolio, with and without NEXUS, is presented in response to Board Staff Interrogatory #7 (Exhibit I.T1.EGDI.STAFF.7). This shows that whether or not Enbridge contracts with NEXUS, the Company will be obtaining approximately 26% of its gas supply at Niagara.

<sup>13</sup> As explained in Enbridge's prefiled evidence at Exhibit A, Tab 3, Schedule 1, page 29, the Board's Decision in the GTA proceeding specifically noted the supply diversity benefits that would result from the GTA Project.

<sup>14</sup> [http://www.ontarioenergyboard.ca/oeb/Documents/EB-2014-0289/Staff\\_Report\\_to\\_the\\_Board\\_2014\\_NGMR\\_EB-2014-0289.pdf](http://www.ontarioenergyboard.ca/oeb/Documents/EB-2014-0289/Staff_Report_to_the_Board_2014_NGMR_EB-2014-0289.pdf), at page 1.

<sup>15</sup> See response to APPrO Interrogatory #2(c) to Union Gas (Exhibit I.T1.Union.APPrO.2).

Procedural Order No. 2) was made by one or more Board members, not made by an employee of the Board delegated by the Board's management committee. Therefore, the appeal rights under section 7 of the *Ontario Energy Board Act, 1998*,<sup>16</sup> are not applicable. Instead, Mr. Tolmie's challenge to the Decision set out in Procedural Order No. 2 is properly considered as a Motion to Review and Vary, under Rule 42.01 of the OEB's *Rules of Practice and Procedure*.

**C. The Tests to be met on a Motion to Review and Vary**

19. Rule 42.01 of the OEB's *Rules of Practice and Procedure* provides the right, subject to other Rules, for any person to bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision. Rule 42.01(a) requires that the corresponding Notice of Motion:

[S]et out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:

- (i) error in fact;
- (ii) change in circumstances;
- (iii) new facts that have arisen;
- (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

20. Once a review motion is filed, Rule 43.01 provides the Board with the discretion to "determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits." The Board's Rules do not expressly set out the "threshold question", or "threshold test", to be applied.

21. The Board has, on a number of occasions, considered the threshold test for a review motion.<sup>17</sup> The Board's views are summarized in an August 7, 2014 Decision and Order in EB-2014-0183:

*The threshold test was considered by the Board in its Decision on a Motion to Review the Natural Gas Electricity Interface Review Decision (the "NGEIR Review Decision"). The Board, in the NGEIR Review Decision, stated that the purpose of the threshold test is to determine whether the grounds put forward by*

<sup>16</sup> <http://www.ontario.ca/laws/statute/98o15>.

<sup>17</sup> See, for example, EB-2014-0155, Decision and Order on Motion to Review and Vary, July 31, 2014, [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/445093/view/Dec%20Order\\_SEC%20Motion%20to%20Review%20EB-2013-0147%20KWHI\\_EB-2014-0155\\_20140731.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/445093/view/Dec%20Order_SEC%20Motion%20to%20Review%20EB-2013-0147%20KWHI_EB-2014-0155_20140731.PDF); and EB-2013-0308 Decision and Order on Motion to Review and Vary, October 10, 2013, [http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/412168/view/dec\\_order\\_motion\\_review\\_vary\\_Hydro%20Ottawa\\_20131010.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/412168/view/dec_order_motion_review_vary_Hydro%20Ottawa_20131010.PDF).



*the moving party raise a question as to the correctness of the order or the decision, and whether there is enough substance to the issues raised such that a review based on those issues could result in the Board varying, cancelling, or suspending the decision. Further, in the NGEIR Review Decision, the Board indicated that in order to meet the threshold test there must be an “identifiable error” in the decision for which review is sought and that “the review is not an opportunity for a party to reargue the case”.*

*Finally, the onus of proof rests with the applicant to demonstrate that the original panel made an error in fact.<sup>18</sup>*

22. In the event that the Board determines that the grounds put forward by the moving party pass the threshold test, then the Board is required to consider the merits of the review motion. In that case, the Board will determine whether the grounds asserted by the moving party raise legitimate questions about the correctness of the Order being reviewed. If so, then the Board will direct an appropriate remedy.

**D. Mr. Tolmie’s Motion does not meet the Threshold Test**

23. Mr. Tolmie’s September 29<sup>th</sup> and October 8<sup>th</sup> filings do not identify any legitimate reasons to question the correctness of the Board’s decision not to allow Mr. Tolmie to file his proposed evidence. Rather than providing an explanation of why the OEB’s determination of the scope of the NEXUS Pre-approval Proceeding is too narrow, Mr. Tolmie’s filings instead focus upon re-arguing his position that it is important for the OEB to look at whether natural gas will be phased out in the future, at least in part because of the potential benefits of “exergy systems”. Mr. Tolmie does not address how and why what the OEB identified in Procedural Order No. 2 as “broader questions of the future of electricity supply and demand in Ontario” are properly within the scope of the NEXUS Pre-approval Proceeding.
24. In Enbridge’s submission, there is not enough substance to the issues raised by Mr. Tolmie such that a review based on those issues could result in the Board varying, cancelling, or suspending the Decision not to permit Mr. Tolmie to file his proposed evidence. Enbridge therefore submits that Mr. Tolmie has failed to meet the threshold test under Rule 43.01, and the Board should exercise its discretion not to proceed to a full consideration of the merits of the Motion.

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<sup>18</sup>[http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/445662/view/dec\\_Motion%20to%20Vary\\_Council%20of%20Canadians\\_20140807.PDF](http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/445662/view/dec_Motion%20to%20Vary_Council%20of%20Canadians_20140807.PDF), citing the Motion to Review Natural Gas Electricity Interface Review Decision (EB-2006-322/0338/0340), Decision with Reasons.



**E. The OEB's Decision is correct**

25. In any event, the OEB's Decision in Procedural Order No. 2 not to permit Mr. Tolmie to file his proposed evidence is correct and ought not to be disturbed.
26. From the time that he applied to be an intervenor in the NEXUS Pre-approval Proceeding, Mr. Tolmie has sought to raise broad energy supply and environmental issues, even if these issues are not listed in the Board's *Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts*.
27. In Procedural Order No. 1, the Board cautioned that "one or more of the issues raised by Mr. Tolmie" may be deemed by the Board panel hearing the case not to be in scope.
28. Undeterred, Mr. Tolmie has consistently sought to advance broad policy questions and issues. As seen in his Interrogatories<sup>19</sup>, Technical Conference questions and Notice of Intention to File Evidence, Mr. Tolmie is intent upon having the Board consider the implications of "exergy storage" on future electricity and natural gas demand in Ontario.<sup>20</sup> He is also intent on making an issue about the implications of GHG emissions associated with shale gas.
29. In Procedural Order No. 2, the Board found that these types of broad policy questions and issues are beyond the scope of this proceeding. As Mr. Tolmie's proposed evidence relates to these out of scope questions, the Board determined that Mr. Tolmie was not permitted to file his proposed evidence. In other words, the Board found that Mr. Tolmie's proposed evidence is not relevant to the issues in the NEXUS Pre-approval Application.
30. Mr. Tolmie's September 29<sup>th</sup> filing, which is treated as a Notice of Motion under Rule 42, fails to advance grounds for the Motion that raise a legitimate question as to the correctness of Procedural Order No. 2. Most importantly, Mr. Tolmie does not provide any explanation of why and how the broad policy questions and issues that he seeks to raise are within the mandate or jurisdiction of the OEB, especially in the context of a pre-approval application under Board's *Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts*.

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<sup>19</sup> See, for example, I.T1.EGDI.Ron Tolmie.5, 6, 8, 9 and 10.

<sup>20</sup> As noted above, Mr. Tolmie has also sought to advance this topic in two different electricity rate proceedings.

31. Mr. Tolmie's October 8<sup>th</sup> filing again focuses on his contention that his evidence is necessary to show that there is no need for the NEXUS pipeline if alternative energy sources for power generation and space heating are instead used. He asserts that the "cost consequences" of approving NEXUS, rather than making use of alternative energy sources, are relevant. However, once again, Mr. Tolmie's October 8<sup>th</sup> filing fails to provide any explanation about why and how his broad policy questions are relevant in the NEXUS Pre-approval Application. Nowhere does Mr. Tolmie explain the relevance in this proceeding of "cost consequences" that would compare the overall energy system costs to Ontario from using alternative energy sources versus the "cost consequences" of Enbridge gas supply using the NEXUS pipeline (inclusive of alleged environmental costs related to GHG emissions).
32. Mr. Tolmie asserts that his evidence has a direct bearing on Issues 1, 3 and 4 of the Issues List in this case. However, a close read of Mr. Tolmie's submissions does not support that position.
33. Primarily, Mr. Tolmie argues that his evidence will show that Ontario will not need to import shale gas if natural thermal energy resources ("exergy storage") are used. As already stated (and as explained by the Board in Procedural Order No. 2), this position goes well beyond the scope of the NEXUS Pre-approval Proceeding. The Board is not charged in this case with looking at possible alternative energy options for future years, and how that might change the energy supply mix for the Province. That is an energy policy question, raising broad issues about how Ontario's energy needs will be met in the long-term future. It is not a question that is part of Issue #1 in the NEXUS Pre-approval Proceeding ("Has the applicant adequately demonstrated the needs, costs and benefits of the proposed project").
34. Much of Mr. Tolmie's September 29<sup>th</sup> filing amounts to argument about the merits of the NEXUS Pre-Approval Applications, rather than discussion about why Mr. Tolmie's proposed evidence is relevant.
  - a. For example, Mr. Tolmie argues that the applicants have not evaluated the risk that sufficient natural gas supplies from the United States will be available to fill the NEXUS pipeline. Mr. Tolmie says this is relevant to Issue #3. However, none of the

evidence that Mr. Tolmie proposes to file addresses this item. Moreover, it is not clear that Mr. Tolmie has relevant expertise to provide evidence on this item.<sup>21</sup>

- b. Mr. Tolmie also argues that the applicants have not evaluated the risk that the pipeline will not be approved by US authorities. Mr. Tolmie says this is relevant to Issue #4. Again, none of the evidence that Mr. Tolmie proposes to file addresses this item, and it is not clear that Mr. Tolmie has relevant expertise to provide evidence on this item.<sup>22</sup>

35. Mr. Tolmie's October 8<sup>th</sup> filing repeats the proposal from his September 22<sup>nd</sup> letter that he wishes to file "a variety of reports, mostly issued by Canadian government agencies, that should not require expert witnesses for their interpretation." While it is not at all clear what these "reports" may include, it is clear that they are not documents authored by Mr. Tolmie. Therefore, Mr. Tolmie will not be able to meet the requirement of Rule 13.02 of the Board's *Rules of Practice and Procedure*, to provide a statement of the qualifications of the author (or directing mind) of the evidence. More importantly, there is no indication that Mr. Tolmie plans to have the authors of the "reports" appear as witnesses. As a result, there will not be any witness available to explain the "reports" at the hearing, and there will be no way for parties to test the contents and implications of what is contained in the "reports". Finally, it is not at all clear that the "reports" noted by Mr. Tolmie will be relevant. For all of these reasons, Enbridge submits that Mr. Tolmie should not be permitted to file this proposed "evidence".

36. In sum, nothing in Mr. Tolmie's September 29<sup>th</sup> and October 8<sup>th</sup> filings raises legitimate questions about the correctness of the Board's Decision in Procedural Order No. 2. That Decision is correct, and need not be disturbed.

#### **F. Relief Sought**

37. For the reasons set out above, Enbridge submits that it is appropriate for the Board to exercise its discretion under Rule 43.01 to dismiss Mr. Tolmie's Motion at the threshold question stage.

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<sup>21</sup> In any case, Enbridge disagrees with Mr. Tolmie's assertion - the relevant risks of the NEXUS contract (including supply risks) are addressed in Enbridge's prefiled evidence and the expert evidence filed by Sussex Energy Advisors.

<sup>22</sup> In any case, this item is addressed in Enbridge's prefiled evidence. The protection that Enbridge has negotiated in the event that the NEXUS pipeline is unreasonably delayed (as would be the case if FERC approval is not granted) is explained in Enbridge's prefiled evidence, at Exhibit A, Tab 3, Schedule 1, pages 40-41.

38. In the alternative, Enbridge submits that Mr. Tolmie has failed to establish that there are legitimate questions about the correctness of the Board's Decision, and therefore the Motion should be dismissed on the merits.

39. Regardless of the Board's determination on the Motion, Enbridge respectfully requests that the Board establish an accelerated process to determine the NEXUS Pre-approval Application. While Enbridge has now received a 90 day extension from NEXUS from the deadline to satisfy the condition precedent of obtaining regulatory approval from the OEB, that extension expires on December 29, 2015. Enbridge has no contractual right to obtain a further extension. Given this timing, Enbridge requires an OEB decision by December 15, 2015, in order that the implications of the decision can be assessed sufficiently in advance of the December 29, 2015 deadline to satisfy the regulatory approval condition precedent.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 13th DAY OF OCTOBER 2015**

[original signed]

David Stevens  
Counsel for Enbridge Gas Distribution Inc.