

Fred D. Cass
Direct: 416.865.7742
E-mail: fcass@airdberlis.com

VIA EMAIL and REGULAR MAIL

July 22, 2008

Kirsten Walli, Board Secretary
Ontario Energy Board
P.O. Box 2319, 26th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Walli

Re: EB-2008-0106
Commodity Pricing, Load Balancing and Cost Allocation Proceeding

We are writing on behalf of Enbridge Gas Distribution Inc. ("EGD") with respect to the proposed intervention in this proceeding by the Low Income Energy Network ("LIEN"). We have received a copy of the Board's letter to counsel for LIEN indicating that LIEN will be granted intervenor status subject to any objection that might be made by any of the gas distributors. The Board's letter indicates that any such objection should be submitted by July 22, 2008.

As stated in its letter to the Board of July 16, 2008, EGD does not object to the granting of intervenor status to LIEN in this case. EGD does object strongly, however, to the proposed "nature and scope" of LIEN's intervention.

The proposed nature and scope of LIEN's intervention is set out in a letter sent by its counsel to the Board on July 15, 2008. According to the July 15th letter, LIEN takes the view that this proceeding is a "strand" of the ratemaking process in respect of which an issue of "rate affordability" is relevant. Apparently, LIEN intends, in this case, to "seek the development of a bill assistance strategy for low-income consumers that includes the establishment of a low-income assistance rate".

EGD submits that the establishment of a "low-income assistance rate" is far beyond the scope of this proceeding and that LIEN's intervention should be restricted to issues that are properly within the scope of the case.

The scope of this case was established by the Board's Notice of Proceeding issued on May 29, 2008. The Notice of Proceeding leaves no doubt that the purpose of this proceeding is to determine the "methodology" to be used by natural gas distributors for (i) gas commodity pricing, (ii) load balancing; and (iii) cost allocation between supply and delivery functions, in relation to regulated gas supply. There is nothing in the Notice that

even remotely suggests that the development of a bill assistance strategy for low income consumers of gas is within the ambit of the case.

It is true that, in a recent decision, the Ontario Divisional Court concluded that the Board "has the jurisdiction to take into account ability to pay in setting rates". However, the Court made clear that its decision in favour of the Board's jurisdiction should not be taken to imply any preferred course of action in rate setting by the Board. The Court recognized that, although the Board has jurisdiction to take into account ability to pay, the Board may, in exercising its jurisdiction, decide that "just and reasonable rates" are those that follow from a "cost causality" approach.

While the decision of the Divisional Court says that the Board has jurisdiction to consider these issues, the Board has not yet made any decision about how ability to pay might affect rates paid by customers of the gas distributors, nor has it even made any decision that ability to pay will or should affect rates. These are important policy questions that stand far apart from the Board's consideration of the "methodology" of gas commodity pricing, load balancing and cost allocation between supply and delivery functions.

Further, as mentioned in the LIEN intervention, the Board has initiated a consultation (EB-2008-0150) to examine issues associated with low income customers in relation to their use of both natural gas and electricity. The Board issued a notice on July 2, 2008 that set out the "purpose and scope" of this consultation. The notice indicates that the consultation arises in part from the decision of the Divisional Court. The notice also confirms that the Board has made no decision about whether or how it should exercise jurisdiction to take into account ability to pay when setting rates. According to the notice, the Board's intention is to consider these issues in the context of an examination of a broader range of potential regulatory policies and measures designed to address the particular needs of low income energy consumers.

The matters to be considered in the consultation process include "targeted conservation and demand management programs". The letter of July 15th from LIEN's counsel indicates that, in addition to low income rate assistance, LIEN proposes that its intervention in this case extend into areas such as "special demand-side management programs for low-income customers" and fuel switching. In short, not only are the issues that LIEN seeks to pursue in this case outside the scope of the proceeding, they are duplicative of matters that the Board will consider in the consultation process. In contrast to the consultation process, this proceeding does not provide the appropriate context for consideration of these issues. Unlike this case, the consultation process encompasses both electricity distribution and natural gas distribution and, unlike this case, the consultation process sets a context for the Board's examination of "a broader ranges of potential regulatory policies and measures" aimed at low income energy consumers.

For all of these reasons, EGD submits that the Board should restrict LIEN's intervention to matters within the scope of the Notice of Proceeding issued on May 29, 2008 and should not allow the intervention to proceed in the areas set out under the heading "Nature and Scope of Intervention" in the letter of July 15th from LIEN's counsel.

July 22, 2008
Page 3

If you have any questions in this regard, please do not hesitate to contact us.

Yours very truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read "Fred D. Cass". The signature is fluid and cursive, with the first name "Fred" being more prominent.

Fred D. Cass
FDC/

cc: P. Hoey/N. Ryckman/R. Bourke/R. Campbell
P. Manning, counsel for LIEN
Other parties