



By E-mail

October 31, 2006

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Dear Ms Walli

Enbridge Gas Distribution Inc. 2007 Test Year Rate Case

Board File No.: EB-2006-0034

Our File No.: 302701-000398

This letter contains the submissions of our client, the Industrial Gas Users Association (“IGUA”), pertaining to the Board’s jurisdiction to hear and determine the issue which LIEN wishes the Board to address.

LIEN’s issue is described in the Board’s Decision and Procedural Order No. 2 dated October 20, 2006, as follows:

“Should the residential rate schedules for EGD include a rate affordability assistance program for low income consumers? If so, how should a program be funded? How should eligibility criteria be determined? How should levels of assistance be determined?”

IGUA submits that a “rate affordability assistance program for low income consumers”, its funding and its eligibility criteria are elements of a social welfare program. They are not matters which can reasonably be characterized as methods or techniques for approving or fixing just and reasonable rates.

A determination of the level of “affordability assistance” to be provided to any particular “low income” user of gas distribution services is not a function that can reasonably be characterized as approving or fixing just and reasonable rates. Such a determination is an act in administering a social welfare program.

The Board’s rate making jurisdiction under s.36 of the *Ontario Energy Board Act* (the “*OEB Act*”) is broad, but nevertheless confined in scope to making “orders approving just and reasonable rates for the sale of gas and for the transmission, distribution and storage of gas”. Further, the Board’s power under s.36(3) of the *OEB Act* to “adopt any method or technique that it considers appropriate” in approving or fixing just and reasonable rates cannot reasonably be construed to empower the Board to establish a rate affordability

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social assistance program for low income consumers. A transfer of resources from one ratepayer class to a social welfare fund to be administered by the Board on the basis of the income level of gas consumers is not a method or technique for fixing just and reasonable rates. Funding of social assistance programs is an area of activity that falls well outside of the Board's rate making jurisdiction. Administering a social assistance program based on affordability, including the determination of eligibility criteria, the selection of those entitled to assistance, and the level of assistance to be provided are all matters which fall well outside the Board's rate making jurisdiction.

IGUA submits that a plain reading of the statutory provisions pertaining to the Board's jurisdiction to approve or fix just and reasonable rates leads inevitably to the conclusion that the social assistance program LIEN asks the Board to establish, fund, and administer lies well outside the parameters of the Board's statutory mandate. IGUA urges the Board to find that the Board lacks jurisdiction to consider the issue which LIEN raises. The Board should decline jurisdiction and direct LIEN to take its proposals to Queen's Park.

In the event that the Board declines, on jurisdictional grounds, to consider the issue LIEN raises, then, as an eligible intervenor, IGUA requests that it be awarded 100% of its reasonably incurred costs for its participation in these proceedings with respect to this jurisdictional issue.

Yours very truly

Peter C.P. Thompson, Q.C.

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c. Interested Parties EB-2006-0034
Peter Fournier (Industrial Gas Users Association)

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