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BY EMAIL

July 4, 2007
Our File No. 2060604

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Gas IRM Applications – EB-2007-0606/615

We have seen the letters to the Board from Ms. Newland on the 28th, Mr. Warren on the 29th, and Ms. Burns on the 3rd. In our view, it is not in the Board's interest, nor indeed in the interest of either utility or their ratepayers, for the Board to deal with Union and Enbridge separately in this major rate proceeding.

It would appear to us that, if the Board accepts Union's suggestion and splits the proceeding into separate rate cases, on different schedules, the following is the result:

- The Union case will proceed fairly easily, as it has a limited number of issues that, while major, are still clearly defined and easy to digest. A decision of the Board is likely in January, 2008 or earlier. As noted below, Enbridge will have to be a very active participant in this case, and may in fact have to be the sole outlier in any settlement. It is the Union case that will be the forum for the issues of principle relating to incentive regulation for gas utilities.

- The Enbridge case, on the other hand, if filed in August, will take longer to hear because of the revenue cap structure. Because the Board will have already dealt in the Union case with the overall issues of principle relating to appropriate incentive regulation for gas distribution in Ontario, for consistency it will be strongly predisposed to apply the same rules to Enbridge unless Enbridge can show that there are extrinsic reasons why they should be treated differently. We think that unlikely, and therefore think that Enbridge will end up getting the same treatment as Union. However, a full airing of the issues will still be required (it may, in fact, take longer because they have already been decided by another panel), and the decision is not likely to arise until at least May, meaning that an issue will arise as to retroactive ratemaking in the case of Enbridge.

The Board's second option is to refuse Enbridge's request to file late, and insist on the initial schedule for a combined proceeding. Given that the two utilities will be filing on different bases, there will be a pretty thorough review of the issues, but at the earliest the Board's decision would be in February or March. Further, there is a risk that the proceeding will become unwieldy and difficult to control if one of the Applicants is unprepared to proceed at this brisk pace. The Board may be faced, down the line, with the choice of allowing a substantial delay and retrenching, or keeping to the schedule but doing a less than thorough job. The latter is, of course, unpalatable to the Board and the parties.

The Board's third option is to allow Enbridge the extra time it requests, but keep the two utilities within a combined proceeding. It is reasonable to expect that this proceeding will take longer than the Union proceeding alone, but not longer than the Enbridge proceeding alone, so a decision in April or May could be a reasonable estimate. It is true that this raises a retroactivity question, but it does so within the context of a comprehensive review and common decision, so is perhaps less likely to be of concern to ratepayers.

We therefore ask the Board to consider these scenarios in responding to the proposals of Union and Enbridge, and to continue to treat this as a combined proceeding.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

cc: Helen Newland, FMC (email)
Connie Burns, Union Gas (email)
Interested Parties (email)