



**EB-2008-0219**

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

**AND IN THE MATTER OF** an Application by Enbridge Gas  
Distribution Inc. for an Order or Orders approving or fixing  
just and reasonable rates and other charges for the sale,  
distribution, transmission and storage of gas commencing  
January 1, 2009.

**BEFORE:** Pamela Nowina  
Presiding Member

Paul Sommerville  
Member

David Balsillie  
Member

## **DECISION AND ORDER**

### **Phase 2**

**July 14, 2009**

## **BACKGROUND**

Enbridge Gas Distribution Inc. (“Enbridge” or the “Applicant”) filed an Application on September 26, 2008 (the “Application”) with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998 c.15, (Sched. B), as amended, for an order or orders of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2009. The Board assigned file number EB-2008-0219 to the Application and issued its Notice of Application on October 20, 2008 (“the Notice”).

In Procedural Order No. 1 the Board bifurcated the case into two phases: Phase 1, which is now concluded, established the rates for 2009 pursuant to the Incentive Rate Mechanism (“IRM”) established under EB-2007-0615; and Phase 2, which deals with matters other than the IRM rate adjustment included in the Application by Enbridge. In Phase 1 the Board approved a full settlement of all the issues in its order dated December 18, 2008. The Board issued its Rate Order for Phase 1 on February 23, 2009.

## **THE PROCEEDING**

The Board approved the Issues List for Phase 2 in its Decision on Issues List and Procedural Order No. 6 dated February 17, 2009. The Final Issues List contains 8 issues and is attached as Appendix “A” to this Decision.

The Board held a Technical Conference to allow parties to further understand the evidence. The conference was held on April 22 and April 23, 2009.

The Board held a Settlement Conference to allow parties to consider the Phase 2 issues on April 26 and 27, 2009. The Settlement Proposal was filed with the Board on May 5, 2009. The Settlement Proposal documented a complete settlement of 6 of the 8 issues on the Issues List. Issue 7, the upstream transportation issue was not settled, and an oral hearing was scheduled to deal with it. Issue 8, which concerned the timing of the next IRM filing (2010 rates), was not settled either, however the Board determined that it should be addressed as a matter for written argument only.

The Board heard the Settlement Proposal in an oral hearing on May 7, 2009 and approved it from the bench on the same day. The Settlement Proposal is attached to this Decision as Appendix “B”.

The oral hearing of Issue 7 proceeded on May 7, May 8 and May 14, 2009. Witness panels appeared for Enbridge, Direct Energy Marketing Limited (“Direct Energy”) and TransCanada Pipelines Limited (“TransCanada”).

Enbridge and the parties filed their written arguments on May 21 and June 2, 2009 respectively. Enbridge’s Reply was filed on June 5, 2009.

Hearing transcripts and all documents associated with the proceeding are available on the Board’s website.

## **FIRM UPSTREAM TRANSPORTATION (ISSUE 7)**

**Issue 7:** Is Enbridge’s request for approval of a change in the requirements for the contracting of upstream transportation that would require direct purchase bundled service customers to contract for firm upstream transportation appropriate?

### **Enbridge’s Proposal**

Enbridge filed a proposal to change the terms and conditions of its Rate Handbook to address Enbridge’s concerns about the reliability of gas deliveries by direct shippers. Direct shipper volumes constitute approximately 45% of average daily natural gas deliveries to Enbridge’s franchise area and up to 15% of peak day demand.

The current Rate Handbook places no specific obligation on direct shippers regarding firm transportation arrangements. The proposed wording for the new requirement in the Rate Handbook is as follows: (Part IV terms and Conditions – Direct Purchase Arrangements, Section B – Obligation to Deliver).

Unless otherwise authorized by the Company in writing, each Applicant taking service pursuant to an agent type Gas Delivery Agreement must meet its obligation to deliver gas to the Company on any given day by Firm Transportation for at least 90% of the Applicant’s MDV [Mean Daily Volume]. The

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Applicant must provide to the Company, by November 1 of each year that the Applicant is taking service, or such other date that the Company may reasonably require, sufficient proof of the Applicant's Firm Transportation arrangements.

The proposal would specifically apply to customers who are agents that provide gas supply and transport primarily to small, mostly residential, consumers collectively grouped as Ontario Transportation Service - Agency Billing and Collection customers ("OTS-ABC"). There are approximately 442,000 end consumers served under agent OTS-ABC arrangements. Enbridge said that the larger volume direct shipper customer subset served under an OTS arrangement would be exempt from the requirement for the time being because they are fewer in number (3,000) and amenable to curtailment.

Enbridge explained that under its proposal all OTS-ABC arrangements would be required to demonstrate firm transport procurements equal to 90% of the MDV obligation underpinning the arrangement annually on November 1 beginning in 2009. According to Enbridge, the 90% requirement would provide the direct shippers the flexibility to deal with customer migration after term pool renewals, while underpinning most of their delivery obligation with firm transportation.

The proposal to amend the rate handbook is prompted by an observed decline in the use of firm upstream transportation arrangements to its franchise area by direct shippers, and Enbridge's concern that there is an increased risk of non-delivery with a resulting increased risk to the system's reliability.

The direct shippers are using non-firm arrangements, which are placed in a lower priority queue on transportation systems, such as that of TransCanada. TransCanada is the main facility that delivers gas to Enbridge's franchise.

Firm transportation, on the other hand, has a higher priority and thus gives Enbridge greater assurance that the gas will be delivered on the coldest days. Although no system outage has occurred to date, Enbridge is of the view that the decline in firm transportation contracts increases the likelihood of an outage, particularly on the coldest days of the winter when demand for gas is at its peak.

The decline in firm transportation is a result of the changing contracting patterns of direct shippers who are now relying less on TransCanada's firm transportation<sup>1</sup> to deliver their commitments of gas to Enbridge's franchise. In recent years, the direct shippers have placed greater reliance on transportation arrangements other than FT. There have been no instances of gas delivery default as a direct result of the changing contracting practice. Enbridge agreed that on the coldest days of the winter of 2009, in mid January, all gas deliveries from direct shippers were made to Enbridge's system.

Enbridge gave evidence that the cost consequences of a system outage due to failed gas deliveries could be very significant, and provided an estimate of \$12 million as the cost to the utility of a system restoration following an outage for 100,000 gas customers. The economic cost to customers in terms of loss of business, damages due to freezing, relocation, etc. would raise the total much higher than \$12 million.

Enbridge said that its proposal would address its system reliability concerns by increasing firm transport to the franchise by an estimated 200,000 GJ/d for the upcoming winter. As a result, the percentage of firm transport underpinning direct shipper delivery obligations would increase from 8% to 52%.

### **Stakeholders' Response to Enbridge's Proposal**

The Board heard from 14 individual parties on the proposal. The parties consisted of basically two groups: the direct shipper community including those that have OTS-ABC arrangements with Enbridge, or provide gas purchasing services and expertise to customers ("direct shippers") and parties representing customer or consumer groups ("consumer groups")<sup>2</sup>. TransCanada was an active participant and filed and presented evidence and witnesses, and information about its system and service offerings.

The direct shippers and consumer groups argued that Enbridge had not discharged its burden to prove its case and therefore had not demonstrated that a risk to system reliability exists. They cited deficiencies in Enbridge's evidence which included:

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<sup>1</sup> The contracted service being referred to here is Firm Transportation or FT service on TransCanada.

<sup>2</sup> Many parties presented similar, although not identical, viewpoints. For ease of reference this decision will refer to one or more of these groups as being generally representative of a viewpoint or position. The intention is to capture directionality and general group concurrence and not to assign a precise characterization of a position to an individual party in the group. Where a specific reference is more appropriately attributable to a party, the decision will cite and refer to that party.

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- No convincing evidence of insufficient upstream capacity on TransCanada on a peak day
- No evidence that the tools currently in place, including penalties for non-delivery, are ineffective at achieving the risk reduction sought
- No evidence to suggest that direct shippers have not performed within the terms of their service with the utility under normal and peak day operating conditions
- No quantitative evidence of risk in terms of probabilities
- No economic evidence of pipeline capacity constraints

CCC pointed out that despite Enbridge being aware that an issue may have existed as early as April 2007, it failed to take any steps to mitigate the risk for two winters (2007/08 and 2008/09) which, CCC argued, indicates that it could not have considered the risk to be particularly acute.

Despite the criticisms that Enbridge did not substantiate its contention of a significant risk, many parties noted the importance of maintaining Enbridge's system reliability and Enbridge's obligation to ensure system reliability.

In its Reply, Enbridge refuted many of the criticisms by arguing that a number of the parties had either overlooked, or did not understand, the evidence. Enbridge reiterated that as a system operator, it has an ongoing obligation to ensure system reliability. Acknowledging that no system outage had occurred, Enbridge pointed out that the hallmark of a well run system is one which perceives and removes risk before outages occur. To ensure continued reliability, Enbridge argued it is necessary to take preventative steps, such as the proposed amendment to the rate handbook.

## **BOARD FINDINGS**

While the Board agrees with the direct shippers and consumer groups that Enbridge has not established that a reliance on services other than firm transportation has resulted in a material risk to system reliability to date, other parties have not established that there is no material risk to reliability in the future. It is the Board's view that in a

matter of such importance, which affects so many stakeholders in the natural gas industry, Enbridge should have provided more thoughtful and thoroughly crafted evidence and demonstrated an understanding of the impact of its proposal on stakeholders. However, the Board accepts that *any* issue of system reliability is a serious matter, and one which the Board is required to consider.

In carrying out its responsibilities under the Act, the Board is guided by statutorily mandated objectives, one of which is to protect the interests of consumers with respect to the reliability of gas service.<sup>3</sup> The Board notes that the risk to the reliability of the system arises on the coldest days of the year, when reliable access to gas is of paramount importance to all consumers. While the direct shippers and Enbridge have worked together to ensure that an outage has not occurred, the possibility of such an outage remains. The Board agrees with Enbridge that a prudent system operator does not wait for the system to fail but rather manages with a view to preventing outages, and to containing or removing any foreseeable risk to system reliability.

Many parties acknowledged the important role played by Enbridge in ensuring system reliability. Parties have also acknowledged that system reliability is absolutely crucial not only for gas customers but also to the continuing integrity of the de-regulated gas marketplace in Ontario.

The Board is aware that another statutorily mandated objective requires it to facilitate competition in the sale of gas to users. In their submissions, several parties urged the Board to refrain from taking any steps to address the system reliability issue raised by Enbridge, arguing that the market had and would continue to meet all supply demands, and that anything short of a dismissal of the application would be viewed by current and potential market participants as unwarranted interference in a competitive market place.

While the Board must support and encourage competition in the market place, that requirement cannot supersede the need to ensure that all system users will have continuous and reliable access to gas at all times, including peak days. The Board therefore concludes that the system reliability issue raised by Enbridge must be addressed.

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<sup>3</sup> *Ontario Energy Board Act, 1998*, S.O. 15, as amended, section 2 (2)

Anticipating that the Board might reach such a conclusion, many parties suggested interim and permanent resolutions of the system reliability issue. The Board has found merit in such suggestions, and will direct Enbridge to amend its rate handbook in a manner which will enhance system reliability for the upcoming winter, and to undertake consultations with all stakeholders to fashion a permanent resolution.

## **Interim Resolution of System Reliability Issue**

### *Proposed Interim Solutions*

Many parties suggested options which could address the system reliability issues for the winter of 2009/2010, if the Board were to find that it was necessary to do so. Notably, Enbridge put forward an option for the upcoming winter which differed from its main proposal.

Direct Energy proposed an interim solution, endorsed by a number of parties, which recognizes that the direct shipper community contributes firm volumes to Enbridge's system. Direct Energy's interim solution is as follows:<sup>4</sup>

A suitable temporary solution for the coming winter, if the Board finds that one is required, would be for all marketers to contract the same proportion of firm transportation (whether Firm or Short Term Firm) they required during the 2008/09 winter for non-Ontario landed supplies. Enbridge could then contract for any shortfall of the requested 200,000 GJ/day that is not addressed through direct shipper FT or STFT contracting, and treat such costs as a load balancing expense (and thus socialized among all distribution customers).

For clarity, Enbridge should only contract for those volumes up to 200,000 GJ/day that are not already met by direct shippers. For example, Exhibit HD3.8 demonstrates that over 800,000 GJ/day of STFT capacity was contracted for the Enbridge CDA last January.

Although Enbridge's original proposal required November 1 notification of FT service, in the course of the hearing, and in its Reply, Enbridge indicated that an acceptable interim solution could also include the use of another of TransCanada's firm services,

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<sup>4</sup> Direct Energy Final Argument, May 29, 2009, page 12.

Short Term-Firm Transportation (STFT). This creates some alignment between the Direct Energy proposal and the Enbridge proposal.<sup>5</sup>

Other proposed interim solutions were requiring direct shippers to obtain STFT for 90% of their MDV<sup>6</sup>; requiring Enbridge and the stakeholders to develop a peaking-type back-stop arrangement for a number of winter days<sup>7</sup>; having Enbridge determine if additional transportation was needed and if so, purchasing additional STFT and recording the costs in a deferral and variance account<sup>8</sup>; and taking no immediate steps but directing Enbridge to monitor the availability of STFT, and report to the Board periodically.<sup>9</sup>

### *The Board's Interim Resolution of the System Reliability Issue*

The Board's interim resolution of the system reliability issue ("interim resolution"), outlined below, will be in place for the upcoming winter and will remain in place until a permanent resolution has been approved by the Board.

The Board will order the amendment of the rate handbook to require the direct shippers to underpin a certain percentage and volume of their gas deliveries with firm transport (which in this decision is both long term firm transportation and short term firm transportation). Direct shippers will be required to confirm to Enbridge their gas delivery plans to Enbridge's CDA and EDA for the winter period of January 1 to March 31 of each year, including the amounts to be underpinned by firm transport, no later than November 1 of each prior year, beginning November 1, 2009. The direct shippers affected by this order are those served under an OTS-ABC arrangement with Enbridge.

The amounts to be underpinned by firm transport shall be expressed in both volumetric and percentage terms. For the percentage amount, each direct shipper will calculate its annual percentage of deliveries for each of the past three winter periods (Jan 1 to March 31) that were underpinned by firm transport, and using the average of these three years' percentages<sup>10</sup>, the direct shipper will then add ten percentage points to the average (e.g., if the average of the past three years is 50% then the addition of ten

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<sup>5</sup> Enbridge Reply Argument, June 5, 2009, page 28.

<sup>6</sup> BOMA Argument June 1, 2009, page 6.

<sup>7</sup> BP Argument, June 2, 2009, page 13.

<sup>8</sup> CME Argument, June 3, 2009, para. 50.

<sup>9</sup> IGUA Argument, June 3, 2009, para. 44.

<sup>10</sup> If a direct shipper had no deliveries for a given year, then the calculation should exclude that year; if a direct shipper has less than three winter periods, the calculation will be the average of the periods in which deliveries occurred.

points will yield 60%<sup>11</sup>). In summary, the direct shippers will provide the proportional average of the percentage of the firm transport they have used for the past three winter periods plus ten percentage points.

The resulting percentage will be used to calculate the firm transportation commitment to Enbridge, based on the direct shipper's delivery volumes for the upcoming winter. These amounts will represent the minimum amount of firm transport to be used by each direct shipper for the upcoming winter period. This information will be provided to Enbridge in confidence, and is to be used by Enbridge for system planning purposes only.

In the Board's view, this information will assist Enbridge in planning for its upcoming winter as it will provide information on the direct shippers' firm transport commitment in advance of the winter season. The Board is bolstering the amount of firm transport underpinning the direct shippers' volumes by ten percentage points to provide additional assurance that peak day demand will be met.

In determining its interim resolution, the Board considered the excess capacity currently available on TCPL's pipeline and is persuaded that extra capacity is likely to be available in the coming winter to support any additional firm transport required by the direct shippers.

In arriving at its interim resolution, the Board considered the position of Enbridge that it is "pipeline constrained" due to its reliance on the TCPL system<sup>12</sup>. Certain of the parties, including Direct Energy, took issue with Enbridge's characterization of its Ontario operations as constrained. Direct Energy gave evidence that in constrained markets the forward pricing typically includes substantial premiums for the peak winter months. While the forward pricing in the CDA clearly establishes that Enbridge is a winter-balanced utility, the difference between the winter and summer forward pricing

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<sup>11</sup> The amount shall not exceed 100%.

<sup>12</sup> "Enbridge is pipeline constrained because its distribution system physically requires a certain quantity of gas to flow through Enbridge's CDA and EDA delivery areas on the TCPL systems. In the event that non-firm deliveries are restricted on the TCPL system, Enbridge only has limited ability to flow additional volumes of gas into its distribution system via the Union Parkway interconnect." (Ex. I-11-17, Response to IGUA IR)

does not reveal the substantial difference that marks a constrained market. Based on the evidence of all the parties, the Board is not persuaded that Enbridge operates in a significantly constrained market; rather, the evidence suggests that there is excess capacity on the TCPL mainline which gives the Board additional confidence that peak day demands can be met with the interim resolution in place.

### **Long Term Resolution of System Reliability Issue**

The Board is of the view that a long term resolution of the system reliability issue is needed. While the Board is comfortable that the Board's interim resolution will meet reliability requirements for the coming winter, it is not assured that the appropriate long term resolution has been found. The Board therefore directs Enbridge to file an application which puts forward various options for the Board's consideration, including that of allocating a "vertical slice" of Enbridge's transportation, and perhaps storage, to the direct shippers.<sup>13</sup> This approach was suggested by several parties during the proceeding and was, at least in part, supported by Enbridge. The application should be brought forward with the intention of having the resolution implemented in time for the 2010/11 winter season.

During the oral hearing, the direct shippers and consumer groups pointed to the absence of any meaningful consultation with affected parties prior to this Application being filed. The end result was an application which demonstrated a lack of understanding of the impact of the proposal on direct shippers.

The Board agrees with parties that Enbridge's efforts at stakeholder consultation were insufficient in this case. For the hearing of the long term resolution, the Board expects evidence of stakeholder consultation to be brought forward in the form of a thoughtful application which identifies the impacts of the resolution on direct shippers, their customers and other stakeholders.

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<sup>13</sup> Enbridge and a number of the parties proposed the use of what is commonly called 'vertical slice' as an appropriate longer term solution. Broadly speaking, the concept of vertical slice is that the utility acquires the required upstream transportation capacity and allocates it in 'vertical slices' to the direct shippers. Union Gas has had a similar arrangement in place for a number of years.

## SUSPENSION OF TURN BACK ENTITLEMENTS

Enbridge's terms and conditions of service set out in the Rider A -Transportation Service Rider of its Rate Handbook provides for turn back of TCPL FT capacity. Paragraph 2 states:

The Company will accommodate all TCPL FT capacity turn back requests in a manner that minimizes stranded and other transitional costs. The Company is committed to maintaining the integrity of its distribution system and the sanctity of all contracts.

Turn back of TCPL transportation capacity began in 1999, as Ontario gas customers and suppliers availed themselves of the option to turn back long term firm TCPL capacity that had been assigned to them by Enbridge. This turn back was particularly significant in 2003, with almost 500,000 GJ/d of transportation capacity turned back by direct shippers.

Enbridge advised direct purchasers via email that it had suspended the turn back provided for in its Rate Handbook pending the resolution of the current application before the Board. IGUA objected to Enbridge's unilateral suspension of the turn back entitlements. Enbridge based its unilateral suspension of turn back on the phrase: "The Company is committed to maintaining the integrity of its distribution system..."

IGUA disagreed with Enbridge's position and pointed to the record, which indicated no immediate threat to the integrity of Enbridge's distribution system from turn back of any part of the remaining 36,000 GJ/d of direct purchase firm long-haul capacity. IGUA argued that Enbridge requires Board approval to suspend turn back, and can not do so unilaterally.

**BOARD FINDINGS**

The Rate Handbook requires the approval of the Board. Among the terms and conditions of service previously approved by the Board is the requirement that Enbridge accommodate the turn back of TCPL FT capacity:

The Company will accommodate all TCPL FT capacity turn back requests in a manner that minimizes stranded and other transitional costs.

The Board notes that language is mandatory and does not permit the Company to deny turn back requests although, clearly, all requests must be balanced against the need to maintain system reliability.

The Board is of the view that the interim resolution provides sufficient assurance that system reliability will be maintained in those months when peak days are most likely to occur, and directs Enbridge to comply with the Rate Handbook, and specifically to accommodate turn back requests in the manner approved by the Board and set out in the Rate Handbook.

Going forward, if Enbridge is of the view that compliance with a term or condition of service will compromise system reliability, the Board expects Enbridge to file an application, with supporting evidence, demonstrating why system reliability has or will be compromised by compliance, and to seek an order from the Board amending or removing the term or condition of service from the Rate Handbook

**IRM FILING TIMELINE (ISSUE 8)**

The Settlement Agreement for Enbridge's 5-Year Incentive Regulation plan provided for an annual rate setting process. The Settlement Agreement mentioned a timeline as follows:

The Company shall file the following information, by October 1<sup>st</sup>, for the purpose of receiving a Board-approved rate order by December 15<sup>th</sup>, stipulating new rates in each rate class, in time for implementation on January 1<sup>st</sup> of the following year. (IRM settlement proposal, EB-2007-0615, page 30)

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Enbridge submitted that all reasonable efforts should be made to preserve the timelines in the agreement, or at least the spirit of the agreement. No party disagreed that reasonable efforts should be made to preserve the dates, to the extent possible. Several parties pointed out that there may be a need for an oral hearing which might jeopardize the December 15<sup>th</sup> date of the rate order.

Enbridge suggested that if the rate order is delayed after December 15<sup>th</sup> and into the next calendar year, then interim rates could be implemented as of January 1<sup>st</sup>, with final rates implemented at a later date to reflect the full year impact of any rate change. In response, some parties said that retroactive recovery in rates would have to be considered with regard to the circumstances of the case.

BOMA submitted that it would be more efficient to isolate the formulaic annual IRM rate adjustment in one proceeding and have any other (i.e., non-IRM) issues brought forward under a separate application.

With a view to expediting the IRM rate adjustment exercise, Enbridge proposed the following timelines (using 2009 dates) to allow for 2010 IRM rates to be in place by January 1<sup>st</sup>. Enbridge made accommodations for the January 1<sup>st</sup> QRAM process, which is intertwined and overlaps with the IRM rate setting process. Enbridge also preserved the three dates set out in the IRM Settlement Agreement. Enbridge's suggested timeline is as follows:

- September 1 – Enbridge files Rate Adjustment Application (inclusive of an approximate rate and bill impact), with supporting evidence to be filed later
- September 4 – the Board issues its Notice of Application (NOA)
- September 5 -12 – Enbridge publishes NOA as required
- By October 1 – Enbridge files annual rate adjustment evidence to support the Application (this allows the use of the most up-to-date inputs for the IRM Adjustment Formula)
- October 5 – the Board issues Procedural Order No. 1
- By October 23 – Technical Conference to answer questions on Enbridge's Application and evidence (any undertakings to be answered within a week)
- By November 10 – Settlement Conference (with Settlement Proposal to be filed within a week)

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- December 1 – Enbridge files January 1st QRAM Application inclusive of the annual IRM rate adjustment
- By December 15 – the Board issues Final Rate Order re: annual rate adjustment
- By December 23 – the Board issues January 1st QRAM decision

No parties were opposed to Enbridge's proposed timelines.

Enbridge noted that its proposal encompasses only the determination of rates under the IRM Adjustment Formula (as in Phase 1 of this proceeding). Enbridge further explained that the proposal assumes that any other issues would be addressed on a separate timeline (as in Phase 2 of this proceeding) or in a different proceeding.

## **BOARD FINDINGS**

The Board's view is that Enbridge's proposed timetable is a helpful attempt to schedule and manage the annual IRM rate adjustment proceeding. The Board approves of the timetable but notes, as others have, that circumstances of the day may not allow the timetable to be met. The Board also notes that there will be a new hearing panel struck to consider the 2010 IRM application and that panel may have its own view as to how to proceed with the case. There may be compelling arguments put forward at the time to depart from the original plan.

There is, of course, the possibility that a rate order would not be available until after the start of the new rate year and there would then be a need to consider the recovery of foregone revenues. The Board will not now pronounce on any future retroactive revenue recovery. The 2010 IRM rates panel will decide this issue should it arise.

## **THIS BOARD ORDERS THAT:**

1. Effective immediately, Enbridge's current Rate Handbook (Part IV Terms and Conditions – Direct Purchase Arrangements, Section B – Obligation to Deliver) is amended to include the following paragraphs:

Unless otherwise authorized by the Company in writing, each Applicant taking service pursuant to an OTS-ABC Gas Delivery Agreement shall meet its obligation to deliver gas to the Company by underpinning a minimum percentage and

volume of their gas deliveries with firm transport (which in this section is both Firm Transportation and Short Term Firm Transportation) for the winter period commencing January 1 and ending March 31 (the “winter period”).

The minimum amounts to be underpinned by firm transport shall be expressed in both volumetric and percentage terms. For the percentage amount, each Applicant shall calculate the annual percentage of gas deliveries to the Company for each of the immediate past three winter periods which were underpinned by firm transport, and taking the average of these three years’ percentages<sup>14</sup>, add ten percentage points to the average to establish the minimal amount of gas deliveries that must be underpinned by firm transport for the winter period (e.g., if the average of the past three years is 50% then the addition of ten points will yield 60%<sup>15</sup>).

No later than November 1 of each year and beginning November 1, 2009, each Applicant shall provide written confirmation to the Company of their gas delivery plans for the winter period, including the amounts to be underpinned by firm transport (expressed in both volumetric and percentage terms) as calculated above.

2. Enbridge shall immediately serve a copy of the amended Part IV (Terms and Conditions – Direct Purchase Arrangements, Section B – Obligation to Deliver) on all of its OTS-ABC customers.
3. Enbridge shall file an application proposing various options for a long term resolution of the system reliability issue raised in this proceeding, including that of vertical slice, for the Board to consider. The application shall be filed in a timely manner and after consultation with stakeholders.
4. Enbridge shall comply with paragraph 2 of the Rider A -Transportation Service Rider of its Rate Handbook forthwith.
5. The timetable proposed by Enbridge for its 2010 IRM application shall be adopted.

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<sup>14</sup> If a direct shipper had no deliveries for a given year, then the calculation should exclude that year; if a direct shipper has less than three winter periods, the calculation will be the average of the periods in which deliveries occurred.

<sup>15</sup> The amount shall not exceed 100%.

**DATED** at Toronto, July 14, 2009

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

APPENDIX "A"  
Issues List

## **Final Issues List**

### **Enbridge 2009 Rates - EB-2008-0219**

#### **Phase 2**

1. Is Enbridge's request for approval of a new deferral account to record the incremental costs of complying with new International Financial Reporting Standards (IFRS) guidelines appropriate? (Ex. C/1/2)
2. Is Enbridge's request for approval to change some of the non-energy service charges listed on Rider G appropriate? (Ex. C/1/3)
3. Is Enbridge's request for approval of some revisions to wording in the rate handbook in respect of late payment penalties, the "force majeure" clause, and some other areas appropriate? (Ex. C/1/4)
4. Is Enbridge's request for approval of the discontinuation of an Alternative Dispute Resolution (ADR) commitment stemming from the EB-2006-0034 proceeding requiring the submission of an EnVision benefit report on an annual basis appropriate? (Ex. C/1/5)
5. Is Enbridge's request for approval of a revision to the GDAR IVA fee, from a percentage of the absolute value of the adjustment, to a flat transaction fee appropriate? (Ex. C/1/6)
6. Is Enbridge's request for approval of an In-Franchise Title Transfer fee, to account for additional costs for the provision of this service after the new CIS software becomes operational appropriate? (Ex. C/1/7)
7. Is Enbridge's request for approval of a change in the requirements for the contracting of upstream transportation that would require direct purchase bundled service customers to contract for firm upstream transportation appropriate? (Ex. C/1/8)
8. What should be the timing of the next IRM filing (2010 rates)?

APPENDIX "B"  
Settlement Proposal

**SETTLEMENT PROPOSAL**  
**PHASE II**

**MAY 5, 2009**

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## PREAMBLE

This Settlement Proposal is filed with the Ontario Energy Board (the "OEB" or the "Board") in connection with Phase II of the application of Enbridge Gas Distribution Inc. ("Enbridge" or the "Company"), for an order or orders approving or fixing rates for the sale, distribution, transmission, and storage of gas for 2009. Phase II of this proceeding addresses issues from Enbridge's Application that are not directly related to the setting of rates for 2009 under Enbridge's approved incentive regulation ("IR") rate adjustment mechanism.<sup>1</sup>

A Settlement Conference to consider Phase II issues was held on April 29 and April 30, 2009. Ken Rosenberg acted as facilitator for the Settlement Conference. This Settlement Proposal arises from the Settlement Conference and subsequent discussions.

Enbridge and the following intervenors (collectively, the "parties"), as well as Ontario Energy Board technical staff ("Board Staff"), participated in the Settlement Conference:

ASSOCIATION OF POWER PRODUCERS OF ONTARIO (APPrO)  
BP CANADA ENERGY COMPANY (BP)  
BUILDING OWNERS AND MANAGERS ASSOCIATION OF THE  
GREATER TORONTO AREA (BOMA)  
CANADIAN MANUFACTURERS & EXPORTERS (CME)  
CONSUMERS COUNCIL OF CANADA (CCC)  
DIRECT ENERGY MARKETING LIMITED (DE)  
ECNG ENERGY LP (ECNG)  
ENERGY PROBE RESEARCH FOUNDATION (Energy Probe)  
INDUSTRIAL GAS USERS ASSOCIATION (IGUA)  
ONTARIO ASSOCIATION OF PHYSICAL PLANT ADMINISTRATORS (OAPPA)  
SCHOOL ENERGY COALITION (SEC)  
SHELL ENERGY NORTH AMERICA (CANADA) INC. (Shell Energy)  
TRANSCANADA PIPELINES LIMITED (TCPL)  
VULNERABLE ENERGY CONSUMERS COALITION (VECC)

The Settlement Proposal deals with all of the issues listed at Appendix "B" to the Board's Procedural Order #6, dated February 17, 2009 (the "Issues List").

The description of each issue assumes that all parties participated in the negotiation of the issue, unless specifically noted below. Board Staff takes no position on any issue and, as a result, is not a party to the Settlement Proposal. BP, DE, Shell Energy and TCPL did not participate in the discovery or settlement processes of any of the settled issues (Issues 1, 2, 3, 4, 5 and 6) and therefore take no position with respect to those issues. OAPPA did not participate in the discovery or settlement processes of Issues 1,

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<sup>1</sup> Phase I addressed the rate adjustment under Enbridge's IR rate adjustment mechanism. On December 18, 2008, the Board approved a complete settlement of all issues in Phase I.

3, 4 and 5 and therefore takes no position with respect to those issues. IGUA did not participate in the discovery or settlement processes of Issues 3 and 5 and therefore takes no position with respect to those issues.

Best efforts have been made to identify all of the evidence that relates to each settled issue. The supporting evidence for each settled issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit C, Tab 1, Schedule 1 is referred to as C-1-1. Where appropriate, references are also included for the pages of the transcripts from the April 22/23, 2009 Technical Conference where issues were addressed by Enbridge and other parties. The identification and listing of the evidence that relates to each settled issue is provided to assist the Board.

The Settlement Proposal describes the agreements reached on the issues. The Settlement Proposal provides a direct link between each settled issue and the supporting evidence in the record to date. In this regard, the parties are of the view that the evidence provided is sufficient to support the Settlement Proposal in relation to the settled issues and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the Board to make findings agreeing with the proposed resolution of the settled issues.

The parties agree that all positions, information, documents, negotiations and discussion of any kind whatsoever which took place or were exchanged during the Settlement Conference are strictly confidential and without prejudice, and inadmissible.

According to the Board's *Settlement Conference Guidelines* (p. 3), the parties must consider whether a settlement proposal should include an appropriate adjustment mechanism for any settled issue that may be affected by external factors. Enbridge and the other parties who participated in the Settlement Conference consider that no settled issue requires an adjustment mechanism other than those expressly set forth herein.

None of the parties can withdraw from the Settlement Proposal except in accordance with Rule 32 of the *Ontario Energy Board Rules of Practice and Procedure*. Finally, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions parties might take with respect to the same issue in future proceedings, including future proceedings during the term of Enbridge's current five year IR plan.

## THE ISSUES

### 1 Is Enbridge's request for approval of a new deferral account to record the incremental costs of complying with new International Financial Reporting Standards (IFRS) guidelines appropriate? (Ex. C/1/2)?

All parties agree that Enbridge's request for a new deferral account for 2009 and future years to record the incremental costs of complying with new International Financial Reporting Standards (IFRS) should be determined as part of the Board's IFRS Consultation (EB-2008-0408) where issues associated with the transition to IFRS, including the recovery of associated costs, are being considered.

All parties agree that transferring the consideration of this issue to the EB-2008-0408 proceeding is done on a without prejudice basis to Enbridge's request for an IFRS Conversion Cost deferral account for 2009. No party will rely upon the transfer of this issue to the EB-2008-0408 proceeding as a basis for precluding Enbridge's request for an IFRS Conversion Cost deferral account for 2009. In all other respects, all parties will be free to take any position in respect of this issue in the EB-2008-0408 proceeding.

If after the release of a Board Report on IFRS issues, which is expected in the summer of 2009, Enbridge is of the view that a separate application for its own IFRS Conversion Cost deferral account is necessary, then Enbridge may re-file an application in respect of this issue. If this occurs, all parties will be free to take any position in that proceeding.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-2	International Financial Reporting Standards Conversion Costs Deferral Account ("IFRSCCDA")
I-2-8	APPPrO Interrogatory #8
I-3-10	BOMA Interrogatory #10
I-4-10	CME Interrogatory #10
I-7-13	VECC Interrogatory #13
I-8-9 to 11	CCC Interrogatories #9 to 11
1 Tr. 17-29 and 30-35	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 17-29 and 30-35)
TCU2.1 to 2.2	Technical Conference Undertakings 2.1 and 2.2

### 2 Is Enbridge's request for approval to change some of the non-energy service charges listed on Rider G appropriate? (Ex. C/1/3)

No party opposes Enbridge's request to change certain of its Rider G charges, as described in Table 1 of Ex. C-1-3.

All parties have relied on section 12.4.1 of the EB-2007-0615 Settlement Agreement, which addresses charges for non-energy services during the IRM plan period, and states as follows:

"The Parties agree that miscellaneous, regulated non-energy service charges shall be handled outside the Adjustment Formula. If Enbridge proposes any changes to the miscellaneous non-energy service charges during the term of the IR Plan, it will provide the Board with evidence that supports the change. The Parties agree to the principle that non-energy service charges should not generate incremental revenue in excess of any related incremental costs."

**Evidence:** The evidence in relation to this issue includes the following:

C-1-3	Schedule of Other Service Charges
I-1-10	Board Staff Interrogatory #10
I-3-11	BOMA Interrogatory #11
I-4-11 to 13	CME Interrogatories #11 to 13
I-7-14	VECC Interrogatory #14
I-11-1	IGUA Interrogatory #1
1 Tr. 39-43	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 39-43)

**3 Is Enbridge's request for approval of some revisions to wording in the rate handbook in respect of late payment penalties, the "force majeure" clause, and some other areas appropriate? (Ex. C/1/4)**

No party opposes Enbridge's request for approval of wording changes in the Rate Handbook, as set out at B-3-2 and C-1-4.

In respect of the proposed wording changes to the late payment penalty ("LPP") wording, Enbridge acknowledges that issues related to LPPs are being considered in the EB-2008-0150 proceeding and that, as a result of that proceeding, further changes to the wording related to LPPs may be required at a later date, depending on the Board's decision in that proceeding.

In respect of the wording on the Enbridge bill, set out in response to VECC Interrogatory #15, which provides that LPPs may be imposed on third party water heater rental charges<sup>2</sup>, Enbridge agrees that it will implement changes to the bill wording, as soon as is practical after its new CIS has been implemented, so that the relevant provision will essentially read as follows:

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<sup>2</sup> The current wording in this respect reads as follows :

**Late Payment Charge**

A late payment charge equal to 1.5% per month or 18% per annum (for an effective rate of 19.56% per annum) multiplied by a total of all unpaid charges excluding any unpaid Direct Energy Essential Home Services charges that are not rental water heater charges, will be added to your bill if full payment is not received by the late payment effective date below.

### **Late Payment Charge**

An OEB-approved late payment charge equal to 1.5% per month or 18% per annum (for an effective rate of 19.56% per annum) multiplied by a total of all unpaid Enbridge Gas Distribution charges will be added to your bill if full payment is not received by the late payment effective date below. A late payment charge, calculated and assessed in the same manner, will also be added to your bill in respect of all other unpaid charges on your bill excluding any Direct Energy Essential Home Services charges that are not rental water heater charges.

**Evidence:** The evidence in relation to this issue includes the following:

B-3-2	Rate Handbook
C-1-4	2009 Rate Handbook Revisions
I-2-9 and 10	APPRO Interrogatories #9 and 10
I-4-14 to 20	CME Interrogatories #14 to 20
I-7-15	VECC Interrogatory #15
I-11-3	IGUA Interrogatory #3
1 Tr. 6-17 and 29	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 6-17 and 29 and 187-192)
TCU 2.13	Technical Conference Undertaking 2.13

### **4 Is Enbridge's request for approval of the discontinuation of an Alternative Dispute Resolution (ADR) commitment stemming from the EB-2006-0034 proceeding requiring the submission of an EnVision benefit report on an annual basis appropriate? (Ex. C/1/5)**

Enbridge agrees to withdraw this request, and as a result all parties agree that it is not necessary for the Board to consider this issue.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-5	EnVision update for 2006 and 2007
I-1-11	Board Staff Interrogatory #11
I-7-16	VECC Interrogatory #16
I-8-12 to 13	CCC Interrogatories #12 to 13
I-11-4	IGUA Interrogatory #4
1 Tr. 57-64 and 66-70	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 57-64 and 66-70)
TCU 2.3	Technical Conference Undertaking 2.3

### **5 Is Enbridge's request for approval of a revision to the GDAR IVA fee, from a percentage of the absolute value of the adjustment, to a flat transaction fee appropriate? (Ex. C/1/6)**

No party opposes Enbridge's request to revise its GDAR IVA fee to a charge of 30 cents per transaction.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-6	Gas Distribution Access Rule
I-1-12	Board Staff Interrogatory #12
I-4-21	CME Interrogatory #21
I-7-17	VECC Interrogatory #17
1 Tr. 71-73	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 71-73)

**6 Is Enbridge's request for approval of an In-Franchise Title Transfer fee, to account for additional costs for the provision of this service after the new CIS software becomes operational appropriate? (Ex. C/1/7)**

No party opposes Enbridge's request to charge a new In-Franchise Title Transfer ("ITT") fee to account for additional costs of providing the services. In response to suggestions made by certain stakeholders, Enbridge has agreed to modify the charge from what was proposed in evidence. Enbridge will charge an ITT fee of \$169 per transaction to apply only to the seller side of ITTs between pools with dissimilar points of acceptance (transfers from Western T-Service pools to Ontario T-Service pools, and vice versa), to be effective on the date that Enbridge's new CIS is brought into service. There will be no charge for ITTs between pools with similar points of acceptance (transfers between two Western T-Service pools and transfers between two Ontario T-Service pools). Parties agree that these changes will result in a fee structure that properly reflects the nature and drivers of the costs that Enbridge is seeking to recover.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-7	In-Franchise Title Transfer
I-1-13 to 15	Board Staff Interrogatories #13 to 15
I-2-11	APPrO Interrogatory #11
I-4-22 to 24	CME Interrogatories #22 to 24
I-11-5	IGUA Interrogatory #5
1 Tr. 43-57 and 64-66	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 43-57 and 64-66)

**7 Is Enbridge's request for approval of a change in the requirements for the contracting of upstream transportation that would require direct purchase bundled service customers to contract for firm upstream transportation appropriate? (Ex. C/1/8)**

There is no settlement of this issue.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-8	Firm Capacity on Upstream Transportation
C-1-9	Report for Enbridge Gas Distribution
	Tariff Provisions for Transportation and other Miscellaneous Provisions
C-1-10	Firm Capacity on Upstream Transportation
	Supplemental Evidence
L-7	DE evidence
L-21	TCPL Evidence
I-1-16	Board Staff Interrogatory #16
I-2-12	APPo Interrogatory #12
I-3-12 and 13	BOMA Interrogatories #12 and 13
I-4-25 and 26	CME Interrogatories #25 and 26
I-8-14 to 16	CCC Interrogatories #14 to 16
I-9-1 to 27	DE Interrogatories #1 to 27
I-10-1 to 15	BP Canada Interrogatories #1 to 15
I-11-6 to 22	IGUA Interrogatories #6 to 22
I-12-1 to 14	Shell Energy Interrogatories #1 to 14
I-13-1 to 10	Enbridge Interrogatories of DE #1 to 10
I-14-1 to 17	DE Interrogatories of TCPL #1 to 17
I-15-1 to 7	Shell Energy Interrogatories of TCPL #1 to 7
I-16-1 to 4	TCPL Interrogatories of DE #1 to 4
I-17-1 to 3	CME Interrogatories of DE #1 to 3
I-18-1 to 7	CME Interrogatories of TCPL #1 to 7
1 Tr. 73-203	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 73-203)
TCU2.5 to 2.15	Technical Conference Undertakings 2.5 to 2.15
2 Tr 1- 66	Evidence at April 23 <sup>rd</sup> Technical Conference (pp. 1-66 )
TCU 3.2 to 3.6	Technical Conference Undertakings 3.2 to 3.6

## **8 What should be the timing of the next IRM filing (2010 rates)?**

There is no settlement of this issue. Parties agree that the issue can be addressed in written argument, and that there is no need for a witness panel to address any evidence for this issue.

**Evidence:** The evidence in relation to this issue includes the following:

C-1-11	Timing for EGD's 2010 Rate Adjustment Proceeding
I-1-17 to 18	Board Staff Interrogatories #17 and 18
I-3-14	BOMA Interrogatory #14
I-7-18	VECC Interrogatory #18
1 Tr. 35-37	Evidence at April 22 <sup>nd</sup> Technical Conference (pp. 35-37)