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Via Facsimile & Courier

Mr. Peter O'Dell
Acting Board Secretary
Ontario Energy Board
2300 Yonge Street, 26th Floor
Toronto, Ontario
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Dear Mr. O'Dell:

Re: RP-2000-0001: Gas Distribution Access Rule ("GDAR")
Enbridge Gas Distribution Inc. Reply Submission – Draft 3

Pursuant to the Board's February 13 Notices, Enbridge Gas Distribution Inc. ("Enbridge" or the "Company") offers these comments in reply to other parties' submissions. As a general observation, Enbridge endorses the recommendation of other parties that clarification from the Board is required in order to determine the appropriate implementation timelines, and form of GDAR Agreement. Enbridge does not agree with vendors' submissions, however, that the form of GDAR Agreement filed by Enbridge (the "GA") is inadequate. On the contrary, Enbridge submits that the GA is sufficient to enable proceeding with the service transaction aspects of the GDAR.

We have grouped the vendors' submissions against acceptance of the GA into the categories of scope of the GA, and standardization, in providing our response to specific points made.

In summary, the Company's position regarding scope of the GA is:

(a) that the Board defer further discussion about the billing options until the outcome of the pending appeals of Enbridge and Union Gas Limited ("Union") on this matter is known;

(b) that the intended scope of the GA is to capture the incidents of the normal business relationship between a vendor (as principal) and a gas distributor and that these incidents are as set out in section 3.2.2 of the GDAR; and

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(c) that the Board must provide some guidance with respect to the degree of specificity that is required in order to comply with the requirements of section 3.2.2 and that, in concluding on this matter, the Board should avoid adopting the prescriptive approach that is being advocated by gas vendors but which was previously rejected by the Board.

In respect of the vendors' submissions about standardization, Enbridge submits:

(a) that the Board should reject the demands of gas vendors for a higher degree of standardization, both in terms of processes and in terms of the GA itself; to accede to the demands of gas vendors on this issue would be to revisit and reverse previous decisions of the Board; and

(b) that the regulatory process of the Board should not be used to usurp the usual commercial negotiations that precede the finalization of a commercial document, such as the GA; the Board ought to approve the form of agreement in principle and direct the parties to negotiate detailed wording changes .

Scope of the GA

(i) Billing Options

The submissions of the vendors make much of the fact that the GA does not comply with the requirement in section 3.2.2 of the GDAR to include the "terms and conditions of billing arrangements". Enbridge does not dispute the fact that the details of how it intends to accommodate the three billing options mandated by chapter 6 of the GDAR are properly within the scope of the GA. However, for the reasons set out in its letters of March 1 and March 15, and on the advice of counsel, Enbridge maintains that inclusion of billing options in the GA is inappropriate at this time, because chapter 6 of GDAR is central to the pending appeals of Enbridge and Union.

Furthermore, Enbridge submits that no parties will be prejudiced by not including billing options in the GA at this time. Enbridge understands that gas vendors have no plans to implement vendor-consolidated billing in the near term. Also, as we stated in our March 1 letter to the Board, Enbridge will continue to provide ABC-T service on the current terms and conditions.

Finally, the absence of provisions dealing with billing options in the GA should not impair implementation of the Service Transaction Requests ("STR") provisions of the GDAR, because the STR provisions are not dependent upon the availability of specific billing options. Enbridge interprets the Board's Exemption Notice as recognition of the fact that the billing provisions of the GDAR may be severed from the STR provisions.

Enbridge therefore recommends that the Board focus the industry on implementing the areas of GDAR that are not in dispute and defer discussion of the billing aspects of the GDAR until after the appeal is decided. This will allow resources to focus on the STR aspects of the GDAR. In response to Direct Energy's suggestion to defer the billing issues to allow further discussion by the GDAR working group, Enbridge believes that such discussions would not be appropriate or productive at this time and would be best accomplished following the appeal decision.

(ii) Nature of the Contractual Relationship

Direct Energy submits and Enbridge agrees that the GA is intended to govern the commercial relationship between a gas distributor and a gas vendor. Enbridge contends that the incidents of this commercial relationship are set out in section 3.2.2 of the GDAR and include the terms and conditions of the provision of the three billing options that the GDAR requires a distributor to "accommodate" pursuant to chapter 6 of the GDAR.

Direct Energy submits that the GA is also intended to include "direct purchase administration services". Enbridge does not understand what items, other than those specified in section 3.2.2 of the GDAR, are intended to be included within this description.

Direct Energy appears to be alluding to the delivery agreement (currently referred to as a "Gas Transportation Agreement" or "Direct Purchase Agreement") between Enbridge and its end-use distribution customers who also purchase gas supply services from a vendor. We are led to this conclusion by the fact that, further on its submission (p. 7), Direct Energy submits that:

- "To the extent that there remain distinct agreements between utilities and gas vendors outside of the GDAR SA, these should be expressly referred to in, and incorporated by reference in, the GDAR SA, and included as appendices to the SA."

- "The SA [should] require a representation and warranty that the gas vendor has the right to act as agent of the customer and is entitled to enter into the SA on the customer's behalf, and confirmation that the gas distributor will rely on this representation to establish that authority."

Enbridge notes that a gas vendor is not a principal under the delivery agreement between Enbridge and its end-use distribution customers. Rather, the gas vendor simply administers the agreement, as agent for and on behalf of such customers, who are the principals under the delivery agreement. A delivery agreement between a distributor and an end-use distribution customer is, accordingly, not within the scope of the GA. The GA is intended to govern the relationship

between a distributor and a vendor, the latter in its capacity as a proprietor of a gas vending business and not as agent for end-use customers.

It is clear from the GDAR, and from the various reports of the Board Panel to the Board that preceded the issuance of the GDAR, that the Board intends the GA to capture the commercial incidents between a distributor and a vendor, the latter as a principal to the agreement. This interpretation is clearly supported by paragraphs 2.5.2.3 - 2.5.2.11 of the June 19, 2002 Report to the Board in the RP-2000-0001 proceeding. In particular, the Panel of the Board noted as follows:

> 2.5.2.4 With the re-focusing of the Rule on the relationship between gas distributors and gas vendors, including changes in the definition of "Service Agreement", parties' comments requesting clarification of the need to include "customers" in the definition of "service level agreement" have been addressed. [emphasis added]
>
> 2.5.2.11 The Panel recommends that enforcement of the specific terms of a service agreement should be between a gas distributor and a gas vendor. As previously discussed, as long as the Service Agreement contains the minimum requirements as set out in the Rule, the parties are free to include additional terms and conditions (such as gas transportation arrangements, including nomination volumes and delivery points) in the Service Agreement. In addition, the parties are free to negotiate and amend the terms and conditions of their existing Service Agreements as long as there is nothing in the agreement that is inconsistent with any of the provisions contained in the Rule. Therefore, the Panel recommends that section 5.3.4 of the Proposed Rule should be deleted. [emphasis added]

For these reasons, Enbridge submits that it is inappropriate to include agency agreements in the GDAR or to allow vendors to enter into the GA "on the customer's behalf".

(iii) Level of Detail

The vendors complain about the lack of specificity in the GA, specifically in relation to STRs. We believe that the GA strikes an appropriate balance between achieving commonality between the major gas distributors on the one hand, and workable business processes on the other. Unduly detailed provisions, as called for by vendors, would require increased regulatory oversight, increased expense

(ultimately born by consumers), and would hamper business flexibility, for questionable benefit. The Board Panel that recommended (at paragraphs 2.5.2.5 - 2.5.2.10 of the June 19, 2002 Report) the current form of the GDAR to the Board took a similarly non-prescriptive approach. On that basis, Enbridge designed the GA to address the transactions identified by the Board in section 3.2.2, with the exception of billing.

Enbridge is of the view that the processing of STRs is already well-defined in the GDAR. Including all business processes and technical requirements of the related and subordinate processes in the GA would not be practical for the vendors or the utilities. These aspects are best dealt with in operational manuals, which the Company is currently preparing for circulation to the vendors. The Company recommends that this document not form part of the GA. Otherwise each change to an operating detail would require a GA amendment and regulatory approval.

Ironically, the more detail required to be contained in the GA, the less common the agreements of Enbridge and Union will necessarily become, given the underlying differences in the two companies' IT systems. More comment is made on this point under the "Standardization" heading below.

Enbridge therefore recommends that the Board confirm that the GA properly reflects the intended scope of section 3.2.2 of the GDAR, as far as the need for regulatory approval is concerned. To the extent that further refinement of more specific processes is required, Enbridge recommends that this be left to the parties to negotiate as part of the implementation and operating details.

Standardization

(i) Imposition of Common Processes and EBT Standards

As a general business principle, Enbridge supports standardization where it is feasible and economic. The Company has worked closely with Union to that end since December 2002, resulting in development of common GDAR agreements and high level GDAR business processes. Enbridge and Union have also agreed to accommodate further standardization where there is an industry need, and costs to do so are reasonable.

However, vendors' insistence on (almost) complete standardization of business processes in the GA, including electronic business transaction ("EBT") systems, ignores the non-prescriptive nature of the GDAR (explained above), and the wording of section 4.7.1. Although that section enables the Board to impose an EBT system that can transmit common format data, the very premise of the section is that such a system is not the default. Enbridge notes that this section does not mandate a common data format and there is no mention of standardization anywhere in the rule.

The vendors make unsupported assertions about how the lack of such commonality in the distributors' systems creates a barrier to entry in terms of cost and vendor administrative efforts. Enbridge submits that the perceived difficulties of dealing with two different forms of GDAR Agreement (the Enbridge and Union form of agreement and the Kingston and Kitchener form of agreement) are greatly exaggerated. Presumably, a sophisticated gas vendor entity deals on a daily basis with many different gas suppliers, without the need for standardized gas purchase agreements. MX Energy made this point in its submission to the Board.

Standardization of all processes (and contracts) is not practical or cost effective and it could, in fact, be a barrier to entry. In order to implement standard business processes and technical requirements at the level suggested by the vendors, Enbridge would have to undo the tremendous amount of work that has been done to date, both on the EnTRAC system generally, and on the GDAR functionality within EnTRAC specifically. We presume that the other gas distributors would be forced to reverse already established processes too. Moreover, consumers would be asked to bear the costs of re-deployed resources and further delay.

Imposing detailed business processes and standard EBT requirements could act as a barrier to entry if the requirements are too complex or costly for new entrants. With different service offerings, varying customer bases and different business models based on their size of operations and market segment, accommodating one vendor's needs over the requirements of another could create advantages for some and barriers for others. Even if this problem can be overcome, imposing a single detailed approach would require all vendors to transact in the same fashion, which would impede market innovation and limit service differentiation.

Enbridge notes that the current situation in Ontario does not appear to be a barrier with companies like MX Energy willing to enter the market and start transacting using existing systems. The suggestion that that lack of standardization or gas electricity symmetry is a barrier to competition is also refuted by the current operations of many of the vendors arguing this point. Most operate in gas and electric markets in various jurisdictions across North America. MX Energy operates in 11 different jurisdictions and has the flexibility to enter Ontario's current market with minimal need for change.

Consistency comes at a cost which ratepayers should not be asked to pay. So unless there is an industry or market need for the standard, the level of mandated standardization should be imposed judiciously. Without empirical justification for full standardization from a ratepayer's perspective, Enbridge would encourage the Board to maintain its current position on this issue, i.e. to avoid being prescriptive and refrain from imposing standards.

(ii) The Electricity Model

The vendors advocate a standard approach to the electric market and gas market, or at least that practices should be put in place for the gas industry that are similar to those developed for the opening of the electric market. What these submissions ignore is the fact that the gas market has been deregulated for more than 15 years and significant evolution has occurred within individual organizations to address the changing needs of the parties over this development period. As a result of this market evolution, there are significant operational differences between the electric and gas markets. Enbridge predicts that if the electric market is reopened, it is likely that similar evolution will occur. The Retail Settlement Code ("RSC") includes components to address the specific operating needs of the electric market. To expect convergence of these two markets fails to recognize their different states of maturity and their physical, technical and operating differences and the fact that the RSC requirements are largely untested.

In Enbridge's view, the GDAR recognizes the difference between the gas and electricity industries. Imposition of RSC-like provisions in the GDAR would be a substantial change to the rule's current scope and content, and would require a full re-opening of the rule, accompanied by further cost and delay. Enbridge submits that the last 15 years of history demonstrates that the current systems that gas distributors have in place are working, and entrants have not been barred from entry as a result. The STR provisions of the GDAR seek only to further clarify the relative roles of the market participants, not to dismantle the current systems and start "from scratch".

In the result, Enbridge recommends that the Board accept the practical approach to standardization that Enbridge and Union have advanced through their common forms of GDAR Agreement. This will allow maximum benefit to be achieved from existing systems' functionality, and at the same time, allow for variation where warranted by operational differences. The Board should consider endorsing alternate forms of standard agreement, such as the Kingston-Kitchener agreement, where appropriate to accommodate differences in the approaches of the municipal utilities. Such an approach would be more aligned with the Board Panel's recommendation than vendors' requests for one standard agreement for all situations.

Specific Contract Wording

Vendors have made various submissions regarding the specific wording of the GA provisions. Although Enbridge is prepared to comment on the contract language, we do not believe that this is the most appropriate or efficient way to proceed with contract drafting. As noted above, Enbridge interprets the GDAR, specifically section 3.2, to be non-prescriptive in nature. That is, whereas the Board would approve the form of GDAR Agreement pursuant to section 3.2.1, negotiation of

specific wording ought to be left to the parties. It would not be appropriate for the Board to be involved in the detailed drafting exercise. Enbridge therefore suggests that the Board provide clarification on the broader points of scope and standardization, and allow the parties to negotiate the specific terms amongst themselves.

Conclusions

Enbridge urges the Board to accept in principle the GA as sufficient to enable implementation of the STR provisions of the GDAR. Enbridge also seeks the Board's confirmation that the billing provisions are out of scope in the context of this proceeding, until the pending appeals are decided.

With respect to standardization, Enbridge submits that standardization of the GA or business processes is not necessary. Enbridge and Union have developed common agreements that enable STR processing to commence for 95 percent of the gas market in Ontario. The utilities have also established business processes that achieve this aim. To undo all of the work that has been done to date is unjustified in the absence of clear evidence that the processes established create true barriers to entry for gas vendors. To the extent that the Board sees merit in expanding the scope of the GA, or mandating standardization, Enbridge suggests that the Board convene a process through which a full evidentiary record can be developed on which to base a decision whether amendments to the GDAR are necessary.

Enbridge appreciates this opportunity to comment, and looks forward to receiving the Board's further direction on this matter.

Yours very truly,

(original signed)

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cc: "attached list" to Board's Notice