



**EB-2014-0043**

**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  
rates for the sale, distribution, transmission and storage of  
gas.

**BEFORE:** Marika Hare  
Presiding Member

Allison Duff  
Member

**DECISION AND ORDER**  
**April 10, 2014**

Enbridge Gas Distribution inc. (“Enbridge”) filed an application with the Ontario Energy Board (the “Board”) on February 13, 2014 under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) for an order giving final approval for Rider C commodity unit rates that were approved on an interim basis in the Board’s EB-2013-0406 Decision and Interim Order, dated December 20, 2013.

Enbridge’s EB-2013-0406 application was filed in accordance with the Quarterly Rate Adjustment Mechanism (“QRAM”) process for a rate adjustment relating to gas costs effective January 1, 2014 (the “QRAM proceeding”). In that application, among other things, Enbridge proposed a refund of \$10.1 million from the Gas Acquisition – Commodity and the Gas in Inventory Re-valuation components of the Purchased Gas Variance Account (“PGVA”). Enbridge indicated that the \$10.1 million should have been refunded to sales (i.e. system gas) service customers in prior QRAMs but was not, due to errors in the calculation of account balances. Enbridge described the errors as “mechanical” as the formulae within Excel spreadsheet models were incorrect.

The Board's decision in the QRAM proceeding for January 1 gas costs was issued by delegated authority. The decision indicated that the proposed refund of \$10.1 million raised possible issues of rate retroactivity that were not typically dealt with by a delegated authority; therefore, a refund of \$10.1 million, contained in the commodity components of Rider C, was approved, but on an interim basis, subject to a separate application to be filed by Enbridge.

Enbridge filed this application to finalize the interim Rider C. As part of its application Enbridge filed the Decision and Order of the Board in the QRAM proceeding as well as the evidence on the record in that proceeding. The Board granted intervenor status to all intervenors in the QRAM proceeding and provided parties with the opportunity to file comments and interrogatories. All parties were invited to make submissions on whether the \$10.1 million refund constitutes retroactive ratemaking.

The Industrial Gas Users Association ("IGUA") and Board staff filed submissions on March 6, 2014. Each supported Enbridge's proposal to refund the money.

## Board Findings

Based on the facts of the case, the Board agrees with Enbridge and the parties that the money should be refunded to customers.

Enbridge has acknowledged that it committed an unintentional error which resulted in over \$10 million being incorrectly recovered from customers.

The parties support Enbridge's proposal and there is no disadvantage to customers from this approach.

The Board acknowledges that Enbridge's QRAM orders were final in EB-2012-0352 and EB-2013-0045 and that Rider C is an out-of-period adjustment. However, the Board has considered the facts of this case in the context of the *MCI Telecommunications v. Public Service Commission*<sup>1</sup>, a United States decision referenced in Board staff's submission. While the facts of the cases are distinguishable, the conclusions are the same. An out-of-period adjustment can be justified if it ensures a utility does not profit on account of its own errors.

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<sup>1</sup> *MCI Telecommunications v. Public Service Commission*, 840 P.2d 765 (Utah 1992)

**THE BOARD ORDERS THAT:**

1. The Rider C commodity unit rates approved on an interim basis in the Board's EB-2013-0406 Decision and Interim Order, dated December 20, 2013, are considered final.

**COST AWARDS**

The Board will issue a separate decision on cost awards once the following steps are completed:

1. IGUA shall submit their cost claims no later than 7 days from the date of issuance of this Decision and Order.
2. Enbridge shall file with the Board and forward to IGUA any objections to the claimed costs within 21 days from the date of issuance of this Decision and Order.
3. IGUA shall file with the Board and forward to Enbridge and response to any objections for cost claims within 28 days from the date of issuance of this Decision and Order.
4. Enbridge shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote the file number, **EB-2014-0043**, be made electronically through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, in searchable / unrestricted PDF format. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Daniel Kim at [daniel.kim@ontarioenergyboard.ca](mailto:daniel.kim@ontarioenergyboard.ca) and Board Counsel, Maureen Helt at [maureen.helt@ontarioenergyboard.ca](mailto:maureen.helt@ontarioenergyboard.ca).

### **ADDRESS**

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**DATED** at Toronto, April 10, 2014

### **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary