EB-2008-0219

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. 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.

ARGUMENT OF THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF THE GREATER TORONTO AREA ("BOMA") (PHASE 2 ISSUES)

A. INTRODUCTION

This argument deals with the two issues that were not settled as part of the Phase 2 Settlement Agreement in this proceeding. These issues deal with the upstream contracting requirements associated with agents, marketers and brokers and the appropriate timeline for future IRM filings.

BOMA Toronto represents more than 350 companies serving the commercial real estate market. Member companies manage over 150 million square feet of industrial, commercial and institutional properties throughout the Greater Toronto Area and beyond. Most member companies are direct purchase customers and would be impacted by the proposed recommendations of EGD regarding the need for firm upstream transportation.

B. UPSTREAM CONTRACTING REQUIREMENTS

i) The Threshold Question

EGD has raised the issue of declining firm transportation arrangements to its franchise area by direct purchase customers (both small and large volume) as a significant risk to distribution system reliability.

EGD relies on direct shipper volumes for daily natural gas deliveries, including peak day demand deliveries, to meet its obligation to provide firm distribution service including design day deliveries.

EGD is proposing a solution that treats the deliveries for small volume direct purchase customers, such as those of BOMA members, differently from large volume direct purchase customers. This is because, as EGD states, that are significantly fewer large volume direct shippers to deal with and these customers are potential candidates for curtailment in the even that they fail to deliver. Small volume customers are too numerous and too widely dispersed geographically to be considered for curtailment.

The EGD solution is to change the Rate Handbook to require that customers taking service pursuant to an agent type Gas Delivery Agreement meet their obligations to deliver gas to EGD on any given day by FT service for at least 90% of the mean daily volume (Argument-in-Chief, pages 3-4).

EGD currently requires direct purchase customers to commit to firm daily deliveries. EGD now wants to add a further condition of firm upstream transportation capacity (or at least 90% of the MDV for some direct purchase customers).

The threshold question, in the view of BOMA, is whether or not EGD has met the burden of proof that there is a problem. It is the submission of BOMA that EGD has failed to provide adequate evidence of a problem. In addition, BOMA submits that EGD has failed to provide the Board and other parties with any meaningful discussion of potential alternative solutions other than long term FT service from TCPL.

BOMA agrees with EGD that it would have been irresponsible for a gas distributor to ignore risk to the reliability of its system unless and until they actually give rise to a system failure. However, EGD can and should be criticized for not bringing this to the attention of the Board and parties in a timely manner. Instead of a filing a separate application where this issue could be dealt with immediately, EGD chose to combine it with a mechanistic rate application.

Further, EGD has done all parties in this proceeding a disservice with their meager evidence that there is a problem at all. EGD has provided no technical evidence of their peak day design requirements. EGD has provided no detailed operational evidence of how they meet their peak day design requirements. Instead, EGD continually relied on the statement that:

> *"All customers are currently paying for firm transport, and it's a very reasonable expectation on Enbridge's part to expect that the compensation for firm transport that is then turned over to the direct purchase community is in fact back-to-back firm transport." (Tr. Vol. 1, pages 44-45).*

With all due respect, BOMA submits that this is irrelevant for the coming winter. As the EGD witness confirmed this will no longer be a relevant issue when the new Enbridge billing system is in place (Tr. Vol., 2, pages 48-50). The new Enbridge billing system is schedule to come online in September of this year.

EGD has provided no evidence related to the impact of demand destruction in the current recession or the ongoing demand side management savings upon the winter requirements of the utility or on demand day design.

Finally, EGD has not provided any convincing evidence that there would be insufficient upstream transportation capacity on TCPL on a peak day. EGD has not taken into consideration the potential reduction in demand downstream of EGD due to the recession. It has not attempted to determine if additional M12 capacity would be available on the Union Gas system due to lost volumes from the recession. In short, EGD has not made a convincing argument that there is a potential problem, especially for this coming winter.

In addition, BOMA is concerned about the lack of alternatives provided by EGD to the long term FT service from TCPL. At a minimum, BOMA would have expected a distributor as sophisticated as EGD to provide an analysis of alternatives and why they would not be acceptable or why they would not work. These alternatives range from short term FT service on TCPL to increased M12 capacity on the Union Gas system, a vertical slice of EGD transportation capacity, an allocation of storage capacity and so on. While many of the potential options are long term solutions, EGD is proposing a long term solution of FT capacity on TCPL without looking at or evaluating other solutions.

ii) Need for a Comprehensive Review

BOMA submits that the Board should direct EGD to do a comprehensive review of the situation to determine if there is a problem and, if so, the extent of the problem. The review should involve the marketers, TCPL, Union Gas, and all other parties that may be affected. It is clear that EGD cannot do the review in isolation as it does not have the information, for example, of how TCPL operates, or the expertise of the marketers in getting firm deliveries using non-firm transport.

EGD is essentially asking the Board to determine that the gas transportation market as it exists today has failed (or will fail). The marketers, on the other hand, indicate that the market works and works well. BOMA has no evidence to indicate that one party or the other is correct. All that is known, is that both parties cannot be correct.

It would not be prudent, however, for the Board to determine that the market has failed or could fail without a comprehensive industry wide analysis for the Ontario marketplace.

BOMA submits that the Board should initiate a comprehensive review of the marketplace that involves all the parties involved to determine if there needs to be wide ranging and fundamental changes to the way the market works, as is being requested by EGD in this proceeding.

The Board should consider whether changes should be made to the Union Gas contracting practices as well as those of EGD. It is not clear to BOMA that Union Gas requires firm upstream transportation capacity to underpin firm deliveries from direct purchase customers delivering at Parkway. There is some evidence on the record that Union Gas is better situated because of the Dawn storage hub in the event that some direct purchase volumes failed to be delivered. However, it is the understanding of BOMA that the failure of firm deliveries at Parkway, for example, may not impact on the ability of Union to serve the demand of its in-franchise customers, but it may impact on its ability to meet its firm delivery requirements downstream of Parkway to EGD and others. Thus it would appear that the issue EGD has with the lack of firm deliveries off of TCPL into its distribution system could also be an issue for EGD if there is a lack of firm deliveries off TCPL to Union at Parkway that subsequently impact on the deliveries from Union to EGD.

As part of the review, the Board should consider all potential options ranging from the status quo to requiring all deliveries (system and direct purchase) to be underpinned with contracted firm transportation capacity. Transportation capacity alternatives such as storage allocations and increased incentives for large customers to be interruptible should be taken into consideration as should the potential impact on Ontario of east cost LNG developments. The Board may also want to consider whether it is time to investigate the need for an independent system operator given the divergent views of EGD and the marketers.

iii) Interim Solution for the Current Winter

BOMA realizes that the Board may determine it prudent to impose an interim solution for the coming winter to ensure that there is no outage this winter, while the longer term review is underway.

BOMA submits that such an interim solution should be exactly that, interim. It should not require long term commitments by either the marketers or EGD. Requiring marketers to hold long term FT capacity on Union is, in the view of BOMA, not an interim solution. Nor is it a cost effective solution. The estimated cost of this solution to the market place is approximately $87 million for the year, less the cost of current upstream transportation arrangements in place (Tr. Vol. 2, pages 83-85).

A more appropriate interim solution would be the requirement for marketers to acquire STFT service for a number of months this winter. The cost of the STFT option for a three month period would be approximately $21 million if EGD were to acquire the capacity (Tr. Vol. 2, page 83-84). It would be presumably less if the marketers acquired it, as it would replace other contractual arrangements that would be in place.

BOMA submits that if the Board determines that an interim solution should be in place for the winter of 2009/2010, then requiring the marketers to obtain STFT for the 90% of their mean daily volume would appear to be the least costly and most efficient approach to take.

BOMA submits that if EGD remains concerned about a shortfall in transportation to meet demand and it contracts for additional firm transportation for subsequent temporary assignment, the Board should set the expectations in advance of how these costs would be recovered from customers, and from which customers these costs would be recovered from.

iv) Who Pays and Why

BOMA is concerned about the potential for cross subsidization between system gas customers and Western transportation service customers on one hand and Ontario transportation customers on the other hand. Firm deliveries for system gas customers and Western transportation customers are underpinned by firm transportation capacity 365 days of the year (Tr. Vol. 2, pages 172-173).

In its Final Argument dated May 290, 2009, Direct Energy suggests that a suitable temporary solution for the coming winter, if the Board determines that one is required, would be for all marketers to contract the same proportion of firm transportation (whether Firm of Short Term Firm) they required during the 2008/2009 winter for non-Ontario landed supplies (paragraph 32).

The Direct Energy argument then goes on to state:

> *"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)."*

BOMA strongly opposes this recommendation. System gas and Western transportation service customers are already paying for firm deliveries. They should not be required to pay higher load balancing costs because Ontario transportation service customers are providing potentially less reliable form of deliveries to EGD.

EGD appears to agree with Direct Energy on who should pay for any additional firm transportation services that they contract for. At paragraph 11 of their Argument-in-Chief, EGD states that:

> *"... in the event that Enbridge remains concerned about a shortfall in firm transportation to meet demand, it proposes that it will contract for (and recover in rates the costs of) additional firm transportation for subsequent temporary assignment.*

This appears to indicate that all customers would pay for these costs in their rates. In fact, Ms. Giridhar confirmed that the $21 million in costs associated with EGD acquiring STFT would be recovered over all distribution volumes and that it would be considered a system reliability cost (Tr. Vol. 1, pages 46-47). Ms. Giridhar does, however, indicate that this would be a cost allocation issue and that EGD would 'be happy to lay out some options there'.

Under further examination from Mr. Buonaguro (Tr. Vol. 2, pages 182-183) Ms. Giridhar indicated that it was not her proposal that the costs associated with EGD obtaining the firm transportation capacity to deal with the lack of firm capacity contracted for by the marketers would be treated as a system reliability cost. Rather, it would be a cost allocation issue that would have to be resolved.

BOMA submits that the Board should make a clear statement in this proceeding that any costs incurred by EGD going out and procuring firm transportation capacity in lieu of the marketers doing it themselves should not be allocated to all customers. Rather, it should be allocated to the marketers (and/or their customers) that have not contracted for firm capacity up to the 90% of the MDV, or whatever level the Board deems to be necessary for the upcoming winter. This would assign costs to those whose caused those costs to be incurred and would be consistent with cost causality principles.

Of course, this issue could be avoided if the Board directs the marketers to obtain the required firm transportation capacity as an interim solution for the 2009/2010 winter and keep EGD out of incurring any costs that would have to be allocated. BOMA submits that this would be the preferred solution for the interim period until a longer term solution can be determined, assuming that it is adequately demonstrated that a problem exists.

C. IRM FILING TIMELINE

The Settlement Agreement approved by the Board in EB-2007-0615 provided for an annual rate adjustment process with a specific timeline. That timeline was that EGD would file the rate setting information by October 1 in order to get a Board approved rate order by December 15 which would ensure implementation of rates for January 1.

EGD filed the current application before the October 1 date contemplated in the Settlement Agreement, and the Board's decision on the Phase 1 issues was issued on December 18.

BOMA has reviewed the proposed timeline set out in EGD's Argument-in-Chief dated May 21, 2009 and finds it to be a reasonable approach to ensure that the rate changes can be implemented on January 1. By filing the Rate Adjustment Application on September 1st rather than by October 1st, the EGD timeline enables the Board to kick off the regulatory process earlier.

The EGD proposal only deals with the determination of rates under the IRM adjustment formula (equivalent to Phase 1 of the current proceeding). EGD indicates that any other issues would be addressed on a separate timeline (i.e. Phase 2 in this proceeding) or in a different proceeding.

BOMA submits that it would be more efficient if any other issues that EGD brings forward that are not directly related to the determination of rates under the IRM adjustment formula would be brought forward in a different proceeding. This would ensure that the rate adjustment formula proceeding could proceed efficiently without any procedural orders dealing with what is a Phase 1 or Phase 2 issue that could potentially delay the determination of rates.

If a separate filing as proposed by BOMA is used to deal with other issues, it should be noted that such a filing could be before the September 1st date by which EGD plans to file the Rate Adjustment Application, or well after that date. This would provide the Board and intervenors with more flexibility in terms of timing to deal with these issues.

D. COSTS

BOMA requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding.

All of which is respectfully submitted this 1st day of June, 2009

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