

ONTARIO ENERGY BOARD

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.

**ARGUMENT OF
ECNG Energy L.P.
(Phase 2 Issues)**

A. Overview

ECNG Energy L.P. ("ECNG") provides energy procurement consulting services to industrial, commercial and institutional corporations with over 10,000 end-use meter locations in Ontario, with a majority being located in the Enbridge territory. Each of these consumers has access to reasonably-priced natural gas distribution services today. These consumers have also elected to purchase gas from a third party and are direct shippers of natural gas supply to Enbridge. Issue 7 in this proceeding, the proposal by Enbridge to require direct purchase customers to contract for firm upstream transportation, represents a potential significant change to the direct purchase marketplace in Ontario. ECNG believes that the Enbridge proposal is unnecessary and is potentially very costly to Ontario consumers. As such, ECNG does not support the Enbridge proposal and recommends that the Enbridge proposal be rejected.

ECNG takes no position on Issue 8, the timing of the next IRM filing.

B. The Enbridge Proposal Remains Unclear

In our Intervention letter, ECNG stated that *"The evolution of the electricity and natural gas markets in Ontario is of vital interest to ECNG"*. The letter also stated *"Of particular interest in the proceeding is the Enbridge proposal regarding the contracting by direct purchase customers for upstream transportation. ECNG's clients purchase their own natural gas and, thus, are direct purchase consumers. The level of detail on this transportation proposal, as currently filed in evidence, is insufficient to fully evaluate. The impact on costs and services to ECNG clients are unclear."*

This issue has now been discussed in detail in this proceeding. Many of the features of this proposal have been difficult to determine and have altered throughout the proceeding resulting in a lack of clarity. One example is the simple question of eligibility: to whom does the Enbridge proposal apply? In ECNG's opinion, the answer remains unclear. The evidence and testimony narrowed the applicability down to "small volume" direct shippers. However, Enbridge, in its Argument (page 3, paragraph 10), identifies that its proposal would apply to *"customers who receive their gas supply and upstream transportation through agents, marketers or brokers"*. This statement envisages a more comprehensive coverage of the direct shipper community than simply "small volume" consumers.

A similar lack of clarity arises when one attempts to identify the exact firm upstream transportation route that is satisfactory to Enbridge. Many upstream options have been canvassed such as TCPL Firm Transportation (FT), TCPL Short Term Firm Transportation (STFT), vertical slice, M12 transportation on the Union Gas system, and the Alliance and Vector Pipelines. Enbridge modified its proposal during cross-examination making it very difficult to understand which route is acceptable and, further, which could possibly be implemented by November 2009.

C. Enbridge's Proposal was Rushed and Premature

Enbridge rushed this premature proposal through the regulatory process without proper consultation with industry stakeholders. EGD witnesses made a presentation to its Executive Management Team (EMT) on September 15, 2008 (Ex I, Tab 12, Sch. 5, Attach 1), then filed evidence on September 26. It wasn't until January 30, 2009 – a full 4 months later – that Enbridge finally met with stakeholders to understand their views on the proposal - *"We held that stakeholder conference to get an understanding of what the direct-purchase community felt, and other intervenors in general."* (Tr. Vol. 1, page 40). It is no surprise that the strong opposition to the issue in this proceeding was a direct result of this failure to communicate and understand the impact of the proposal on direct shippers.

The original evidence consisted of only four pages and lacked detail. Supplemental Evidence had to be filed to provide any sort of detail on the proposal. This was not filed until March 2, 2009 and, as discussed earlier, included proposals that were subsequently modified during the hearing.

In addition, Enbridge witnesses acknowledged that they had been looking at this issue for two years, since April of 2007 (Tr. Vol. 1, p 30) yet chose to do nothing for two winters, the winters of 2007/08 and 2008/09 (Tr. Vol. 1, p 30 to 32). This pattern over the past two years indicates that there has never really been a serious problem warranting any further action by Enbridge. There has been no material change in circumstances in the last two years that warrants any action for this upcoming winter.

The evidence is also quite clear that direct shipper supplies have never led to any reliability problems on the Enbridge system (Exhibit I, Tab 9, Schedule 3). This was evident in the following exchanges with Mr. Warren at Tr. Vol. 1 pages 24/25 in which the January 13 to 15 2009 period was discussed, a period in which Enbridge unsuccessfully attempted to prove that there was a problem:

MR. WARREN: Now, am I right that on that day, or on that three-day period, all of the gas supply did arrive; is that correct?

MS. GIRIDHAR: It did arrive.

And at Tr. Vol. 1, p 28/29...

MS. GIRIDHAR: Well, the period 13th to the 15th was one such period of this year, and --

MR. WARREN: Okay. I said three days before, and you pointed me to one day only in the three days where they got nervous. Have I got it right? One day in that entire period of time, and the system worked, right?

MS. GIRIDHAR: That is correct.

Finally, Enbridge's witness placed further doubt on the urgency of the problem when they acknowledged that Enbridge itself would not go and obtain TCPL FT in the event that the Board were to deny this proposal (Tr. Vol. 1, page 44):

MR. WARREN: Let me understand this. Enbridge would not itself go out and acquire 200,000 GJs of long-term firm transportation; is that right?

MS. GIRIDHAR: We would look for the Board to approve the 200,000 GJs.

MR. WARREN: If the Board -- I'm sorry, if the Board doesn't approve it, do I understand that Enbridge would not go out and acquire 200,000 GJs of --

MS. GIRIDHAR: Well, it would impose a serious risk to the shareholder, in terms of cost recovery.

MR. WARREN: The answer is: No, it wouldn't do it. Right?

MS. GIRIDHAR: That is correct.

D. Enbridge Proposal Would Dramatically Alter How Direct Purchase is Facilitated

Enbridge first offered turnback in 1999 (Tr. Vol. 2, page 101). For ten years, direct purchase customers have been able to replace deliveries at Empress with firm deliveries to the Enbridge franchise at either the Central Delivery Area (CDA) or the Eastern Delivery Area (EDA). Over this period, customers have steadily increased their turnback volumes. The eligible volumes for turnback are currently in the order of 80% of bundled direct shipper volumes. Most direct shippers now enjoy this ability with approximately 505,000 GJ/day delivered via Ontario Transportation Service (OTS) (Exhibit I, Tab 10, Schedule 10). OTS direct shippers now represent the vast majority of the overall direct purchase market in the Enbridge franchise.

The Enbridge proposal would require approximately 40% of the OTS direct shippers (or 200,000 GJ/day) to alter their supply arrangements at November 2009. In other words, Enbridge is seeking direct shippers to change in 5 months what has been created over the last 10 years. This would represent a significant change in obligations, responsibilities and risk for the direct purchase market in Ontario.

Such a major change is not practical this year. It is simply not feasible to expect 40% of the direct shippers to transform arrangements that have been placed under one set of rules to another set of contracts under a new set of rules in this short period. If, by some miracle, this were to happen it would come at some considerable expense to consumers. Existing deals would have to be rescinded and replaced, and within a very short time frame. It is highly likely that a Decision from the Board may not be available until August, leaving very little time for the industry to digest the Decision and implement in an effective manner by November 1.

E. Enbridge Proposal Would be Very Costly to Ontario Consumers

Direct Energy provided evidence that the cost to unwind hedges as soon as this November could cost upwards of \$53 million over 5 years, or roughly \$10 million annually (Ex. L, Tab 7, page 7). The Enbridge witnesses were surprised that hedges would be in place for upcoming seasons "So our presumption was that these hedges would not have existed, and it did come to us with some amount of surprise that they do." (Tr. Vol. 1, page 38). Also at Tr. Vol. 2, page 33, Enbridge acknowledged they thought it would be easy to implement their proposal this

upcoming winter since they were not aware there were hedges in place... *"And my thinking was that that would not take a whole lot of time to change. But since then, I guess we've understood that there are actually hedges also involved."* This exhibits their lack of understanding of the direct purchase market and the impacts on these customers.

Any prudent customer, or its representative, that is seeking to provide certainty to its costs for a period of time, whether it be one year or five years, would be fixing its costs (both commodity and transportation) for their chosen period. The majority of direct purchase customers, particularly business customers, have chosen direct purchase to retain control of their costs and to provide certainty for a term of their choice. Consistent with these business objectives, the vast majority already have arrangements in place for this upcoming gas year, and beyond. This is certainly the situation amongst ECNG's client base.

Further, the testimony of Direct Energy witnesses highlighted another incremental - and more costly - potential impact on consumers of \$35.8 million in annual costs (Tr. Vol. 3 pages 90 to 92). This estimate represents the additional cost that would be incurred by direct shippers of moving (200,000 GJ/day) from existing third party transportation/deliveries to the long haul TCPL option. The annual cost estimate is based on the current market price for third party transportation for the upcoming gas year (November 2009 to October 2010) of approximately \$1.40/GJ. This was identified to be approximately 49 cents/GJ less than the comparable transportation service via the TCPL route (expected to be a total cost of approximately \$1.89/GJ).

The evidence is quite clear – applying this proposal would add incremental costs in the neighbourhood of \$50 million annually to Ontario consumers. Even more harmful, if this proposal were to be expanded to the entire direct shipper market, the costs would exceed \$100 million annually. These are costs that Ontario consumers cannot afford in these tough economic times – if ever. What is disappointing is that Enbridge did no analysis of the cost consequences to end users nor is aware of the cost implication of its proposals on direct shippers as evidenced by this exchange with Mr. Warren at Tr. Vol. 1, p 35-36:

MR. WARREN: Now, when you were asked, Ms. Giridhar -- not you personally, but when Enbridge was asked about the cost consequences, in this context, if you could turn up an interrogatory response that was delivered to my friend Mr. Mondrow's client? It's Exhibit I, Tab 11, schedule 9, IGUA Interrogatory No. 9. You were asked:

"Has EGD undertaken any analysis of the cost impact on customers of the proposed requirement to demonstrate firm upstream transportation? If so, please describe the results of the analysis and provide any available supporting documentation."

And your answer is, the second paragraph:

"No. EGD has not undertaken this analysis and could not do so, as it is not privy to the cost of its customers' agents."

Have I read that correctly?

MS. GIRIDHAR: Yes.

The total impact of the Enbridge proposal could approach \$100 million next year alone to Ontario consumers. This is unacceptable.

F. Many Other Options Exist But Have Been Ignored

Enbridge identified a number of options to protect their system reliability in its pre-filed evidence. However, one option that was not considered was discussed at Tr. Vol. 2, pages 146 to 149. This was a suggestion that EGD place a risk adjustment factor on the direct shipper supplies, include additional supply costs in its supply plan and seek approval for this from the Board. This concept was not considered or analyzed by Enbridge. It is one of multiple options that were discussed under cross-examination that were acknowledged to have some merit. Enbridge should explore all of these options in greater detail, in consultation with stakeholders, to develop a more comprehensive, refined proposal.

The use of STFT was another option, this one acceptable to Enbridge, that arose under cross examination. Enbridge acknowledged the system reliability risk could be alleviated with a purchase of STFT for three months at a cost of \$21 million, or approximately \$6 per customer (Tr. Vol. 1, page 130-31). Enbridge also accepted that STFT could work for this winter (Tr. Vol. 2, page 81).

Another option cited by Enbridge in its evidence would have OTS customers move to Western T-Service (WTS). However, under examination, it was shown that Enbridge has not contracted for the necessary service from TCPL to facilitate this option and they are relying on *"the assumption that FT capacity would be available to the franchise"* (Tr. Vol. 2, page 58). Implementation details cannot be left full of assumptions.

Another broad area that could also have been explored and analyzed in greater detail is the use of more onerous penalty provisions as a tool to mitigate the perceived security risk.

Finally, in the Technical Conference, Enbridge witnesses dismissed another proposal presented by ECNG (Technical Conference, April 22, pages 135 to 137). This proposal would have direct shippers provide Enbridge copies of their firm supply arrangements as evidence of secure supply arrangements. Enbridge dismissed this proposal, without any analysis and did not believe this was sufficient for their concern.

This rejection is somewhat baffling and inconsistent with the requirements of the Enbridge tariff as it exists today which states that direct shippers are required to provide firm deliveries to the Enbridge franchise at a designated delivery point (CDA or EDA) each and every day. To comply with this contractual requirement, direct shippers then turn around and purchase their gas and transportation from multi-billion dollar, highly credit-worthy counter-parties on these same terms and conditions – firm, each and every day, to the designated delivery point on the Enbridge franchise. As discussed earlier, there is no evidence that these supplies have ever failed or caused a reliability problem on the Enbridge distribution system. Consumers would not enter into these supply arrangements if they did not believe their suppliers would meet its obligations. Likewise, these credit-worthy, multi-billion companies would not enter into these supply arrangements if they did not believe they could fulfill their obligations. It is ECNG's belief that these contracts should be sufficient proof that firm supply arrangements exist.

G. Inaccuracies in the Operational Facts

Enbridge witnesses consistently, and incorrectly, stated that direct shippers were not providing firm deliveries because they, on occasion, did not place their nomination to Enbridge by the "timely nomination widow" (Tr. Vol. 1 pages 52 to 57). This is incorrect and misleading.

The fact is that a late nomination causes “anxiety” for the operations staff (Tr. Vol. 2, page 13). The Enbridge Service Agreement (SA) does not obligate a direct shipper to place its nomination by this timely window. The Enbridge witness incorrectly stated at Tr. Vol. 2, page 189 *“that is a requirement under the contract...”* A review of this contract showed that this is not true.

Likewise, once a shipper has placed a firm nomination on a pipeline, and it is accepted by a pipeline, this nomination is firm. Enbridge witnesses incorrectly stated that a nomination made after the timely window “was not firm”. Firm supply nominations made and confirmed after the timely window are, in fact, firm.

H. Conclusion

Enbridge has identified a concern about the risks faced by its distribution system. However, it has been unable to prove that a risk actually exists. Its sole reliance on the TransCanada Index of Customers is misguided. A proposal of this significance should not rely on this sole piece of evidence that does not fully explain the actual operational situation on this upstream pipeline.

It is clear that the amount of TCPL FT volumes to the Enbridge franchise has fallen and that FT services have been replaced by shorter term services. However, it is also quite clear that direct shipper volumes are being delivered to the Enbridge franchise in compliance with all contractual requirements. The TCPL pipeline is not full. If and when the usage of this TCPL pipeline does increase, shippers will likely migrate back to the TCPL FT service, or an equivalent upstream option. This is how the market works.

And the market is working. This was quite evident on January 13 to 15 2009 when 439,235 GJ of INCREMENTAL gas – volumes over and above the direct shippers MDV – were delivered to the Enbridge franchise, despite some constraints on the TransCanada system (Exhibit I, Tab 9, Schedule 24).

ECNG agrees that the utility has a responsibility to ensure adequate system reliability and design. ECNG recommends that the Enbridge proposals in this proceeding be rejected and that the Board direct Enbridge to consult with industry stakeholders and bring forward recommendations on a comprehensive proposal that is more robust, complete with details and analysis on need, options, eligibility, implementation details, and any other practical issues, including broad industry support.

All of which is respectfully submitted:

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