

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.

Submissions of the School Energy Coalition

1. These are the submissions of the School Energy Coalition ("SEC") in Phase II of the Application by Enbridge Gas Distribution ("EGD") for an order approving or fixing just and reasonable rates commencing January 1, 2009.

2. There are two issues that remain to be resolved in this phase of the proceeding:

i.) Issue 7: EGD Request for approval of change in requirements for the contracting of upstream transportation that would require direct purchase bundled service customers to contract for firm upstream transportation.

3. EGD's position is that the decline in the use of firm transportation arrangements by direct shippers presents a reliability risk for EGD. That position is predicated on an assumption that firm transportation arrangements are necessary in order to be assured of being able to deliver gas to the distribution area on peak days.

4. SEC agrees with the submissions of others that EGD has not substantiated its claim that a reduction in the use of firm transportation arrangements translates into a system reliability issue. In fact, EGD's witnesses acknowledged that, though EGD has witnessed a decline in the use of firm transportation arrangements for several years, it could point to just one day- January 13,

2009- in which the company became "nervous"- not because the gas was not delivered, but because some direct shippers had not confirmed at the timely nomination window. [Tr1:28-29]

5. EGD has also not done any analysis of the additional costs the proposal would impose on the system and whether or not those costs are appropriate in relation to the risk.

6. EGD's concern about system reliability issues was first raised in its pre-filed evidence file September 26, 2008. EGD's position was that

The supply shortfall resulting from a curtailment of non-firm services by TCPL could have very serious consequences for EGD's distribution system and its obligation to serve...

...

While the probability of the above scenario may be low, the cost consequences would be very significant and borne largely by customers who did not cause the supply shortfall.

[Exhibit C-1-8, paras. 8-9.]

7. That was, of course, prior to the last winter season. Even though EGD had identified what it believes to be a problem prior to the last winter season, its evidence is that it did not itself take any of the actions to protect system reliability it now says are necessary for the next winter season.

8. The EGD witnesses described what was done for the 2008/09 season as follows:

For the winter of 2008/2009, we did, however, have several discussions internally, in terms of what we would do if we had to meet design-day conditions. This would have included mock emergency exercises that we routinely do.

In addition, we decided that if we reached 33 minus -- well, 33 degree days or approximately minus 15 degree days, that we would put into place curtailment of interruptible customers as a method.

We also looked to see if we could, in fact, take some amount of STFT, but the planning cycle and the cost consequences of including something in the gas cost budget without assurance of recovery was a factor that we had to consider.

Our plan eventually was one where we said: Okay, we'll call for curtailment, if warranted, at the earliest opportunity, in terms of planning for adverse winter conditions. So that was the option that we went on.

MR. WARREN: ...You didn't ask the ABC community, in September of 2008, to put in place short-term firm transportation arrangements to address this significant risk, did you?

MS. GIRIDHAR: We did not.

9. The EGD panel then confirmed that EGD had concluded that the arrangements in place were sufficient for the 2008/09 season:

MR. WARREN: Okay. And as I've understood your answer, you went through a cost-benefit analysis and decided that the arrangements that you had in place were sufficient to deal with what you've described as a significant risk; correct?

MS. GIRIDHAR: That's right.

[Tr1:32-33; see also Technical Conference Transcript, Volume 1, p. 159-160]

10. In other words, even though EGD said in September 2008 that it had a reliability issue that could cause significant financial damage if it materialized, it did not, in the 2008/09 take any of the steps it now urges the Board to require on direct shippers.

NGEIR Proceeding

11. In SEC's submission, EGD's claim that a decrease in the use of firm transportation translates into a system reliability issue is at odds with the finding of the Board in the Natural Gas Electricity Interface Review (NGEIR).

12. The issue in that proceeding, which was explored with the use of extensive expert evidence and evidence of market participants, was whether certain storage assets held by Union Gas were competitive such that the Board could forbear from regulating them pursuant to s.29 of the *OEB Act*. One of the issues to be determined was the extent to which the storage pools at Dawn competed with pools in other jurisdictions beyond Ontario. As a result, much attention was placed on whether or not there was sufficient transportation arrangements available to make the storage pools outside of Ontario viable competitors to storage held at Dawn. "The issue," wrote the Board, "centred on whether transportation constraints close off access to storage outside Ontario and included discussion of the secondary market."¹

13. The debate in the NGEIR proceeding coalesced around whether or not firm transportation arrangements had to be demonstrated to be available in order for the Board to conclude that storage outside of Ontario was a viable alternative to storage held at Dawn. The expert for the Board Hearing Team, Ms McConihe, had concluded that the market was restricted to Ontario. Her conclusion was based on that fact that her "survey of available firm primary pipeline capacity...concluded that most of the pipeline capacity was under contract." The proponents of forbearance, primarily Union Gas and Enbridge, countered that "the existence of pipeline capacity is what is important in terms of integrating markets- not the availability of unsubscribed firm capacity." [HD2.1, p. 34]

14. The Board agreed with the proponents of forbearance, on the basis that the secondary market, though not quantifiable, provided sufficient alternatives to firm transportation such as to make storage outside of Ontario a viable competitor to Dawn storage:

¹ Decision with Reasons in EB-2005-0551, p. 34. The relevant portion of the decision was filed in this proceeding as Exhibit HD2.1.

There is no significant amount of uncontracted firm capacity to access other storage areas. However, there is strong evidence that the market does view Michigan and other areas as viable alternatives to storage provided by Union.

Ms. McConihe acknowledged the existence and likely significance of the secondary market, but expressed concern that it could not be quantified. While there may not be sufficient transaction level data about total secondary market activity, we certainly have evidence which supports the conclusion that the secondary market is relatively deep and liquid and that the market extends beyond just Ontario. Enbridge referred to this anecdotal evidence as “real-world examples of competitive alternatives”. That evidence includes:

- GMi’s evidence regarding its assessment of alternatives and the growth of the secondary market;

the purchases of storage in Michigan and New York by Ontario utilities and marketers;

- the depth and liquidity of the Dawn Hub (as evidenced by the fact that traded volumes far surpass physical volumes);

- BP’s evidence regarding its use of storage in Ontario, Michigan and the upper Midwest to offer services in Ontario and its evidence that at least one Union storage customer had switched to BP as a supplier for part of its storage needs;

- BP’s evidence regarding its provision of services including swaps, exchanges, park and loans, delivery and re-delivery;

- Enbridge’s RFP results included at least response from outside Ontario

- the evidence as to the significant holdings of storage and pipeline capacity by marketers generally;

- open seasons for new capacity on pipelines and for storage.

The Board concludes that the geographic market extends beyond Ontario, even though there is a lack of uncontracted firm pipeline capacity. The Board is satisfied that there are reasonable alternative means for storage customers in Ontario to access a broad market area. This can be done through the secondary markets or through participating in open seasons for new firm capacity. The Board is also satisfied that there is access to suitable substitutes for Ontario storage available in the broader market

because there is direct evidence that the alternatives are considered and are being used.

[HD 2.1, p. 36-37; emphasis added]

15. EGD's witnesses were asked in cross-examination whether they felt the findings in the NGEIR decision are in conflict with EGD's position in this proceeding. The response essentially that it did not, because the issue in this proceeding is access to EGD's delivery area:

MR. DeVELLIS: Well, as I read the Board's decision, what the Board is saying is that a market has developed and it has developed alternative means to get the gas to your service area, whether or not firm capacity exists. And you seem to be saying you want evidence of firm capacity.

...

MS. GIRIDHAR: The way I interpret what the Board is saying is that there is multiple ways of getting gas to Dawn and to Ontario via Dawn. There's multiple pipelines, and you know, whether it's for uncontracted firm pipeline capacity or not, these paths and these alternatives exist.

I think what we are saying is that the only way -- again, keeping in mind we are talking about our franchise, our service delivery area, the CDA and the EDA, where we have limited pipeline connectivity. In fact, we are entirely reliant on both Union and TransCanada, and both of them require you to reserve space to ensure that your gas will actually arrive where you need it. So we're talking about something different.

[Tr2:168]

16. The issue in NGEIR, however, was not whether there were alternatives pathways to get the stored gas *to Dawn*, as EGD's witnesses imply. Rather, the issue was whether there were viable alternatives available to Dawn storage, and that necessarily involved examining the alternative transportation options. The fact that a customer would be able to get stored gas to Dawn and then be unable to get it to its delivery area would mean it was not a viable alternative.

17. In fact, the evidence of Mr. Ray, on behalf of Direct Energy, provided the same type of analysis that contributed to the Board's finding in NGEIR that the market was highly integrated. In NGEIR, the Board stated that the "absence of basis blow-outs at individual hubs, supports the conclusion that the market is highly integrated." [Exhibit HD2.1, p. 37] That is, the geographic market is not constrained by transportation capacity. The Board also went on to find that "the seasonal price analysis supports the conclusion that the storage facilities outside Ontario are part of the same market." [ibid, p. 38].

18. In cross-examination, Mr. Ray, testifying on behalf of Direct Energy, stated as follows:

All supply points within North America have a cost relative to NYMEX, and that's defined as basis. It shows you the relationship for how that gas trades relative to the Henry hub for which NYMEX is predicated upon.

When you look at constrained markets in the northeast, you see a significant and substantial premium in the basis market for the peak winter periods. I don't have the actual data in front of me, but relative to my last review of the forward basis for the Algonquin city gate market which delivers into Connecticut, the summer basis trades at around a 50 cents premium to the Henry hub, but the winter trades at a significant slope, with November and March being around a dollar but with the January and February months trading at literally \$3.50 of a premium to the Henry hub.

...

When I compare and contrast that to the market area basis that we see for the CDA, you see that the CDA in the summer months trades around 35 cents and in the winter months trades around the mid-60 cents. Clearly there is a premium to the summer months, and that would be indicative of a utility that is a winter-balanced utility, which Enbridge is.... However, there is no indication in forward pricing from the marketplace that there is substantial concern over supply security, whereas a large premium is being placed in those peak winter months.

[Tr3:20-21]

19. In other words, if supply to the EGD delivery area were constrained during peak winter months, you would expect there to be a price differential for delivery to the EGD service area, relative to areas where supply is not constrained. The fact that there is not suggests the market does not view there to be a supply problem to the EGD area.

20. That is the same conclusion reached by the Board in NGEIR: the fact that there is no "basis blow out" was accepted as indicating that the market does not view the jurisdictions to be separate markets.

21. EGD's assumption, without any empirical or real-world evidence to support it, is that a decline in the use of firm transportation arrangements creates a reliability risk. Another view, however, is that gas suppliers have simply found a more economical way to get their gas to EGD's delivery area.

22. In recent years the Board has been moved to a de-regulated gas supply system on the assumption that areas of the gas supply and distribution system that are not natural monopolies would operate more efficiently under a market mechanism. As the Board found in the NGEIR proceeding, the market has responded by developing a "deep and liquid" secondary market for the movement of gas [HD 2.1, p 36].

23. In SEC's submission, EGD's proposal would introduce a form of re-regulation into the gas supply chain that would counter-act much of the Board's work to establish a more efficient gas supply and delivery system.

24. As acknowledged by EGD, the timeline it has proposed will not leave it with enough time to have a rate order in place by January 1 in the event that there is no settlement of all aspects of the formulaic adjustment.

25. In SEC's submission, a better solution would be to follow a schedule that allows for new rates to be in place with an allowance for the possibility that a hearing may be necessary. That would likely mean an evidentiary filing approximately one month earlier than proposed by EGD.

26. If that is not possible and the Board is of the view that EGD's proposed schedule is acceptable, then SEC would like to make one clarification to EGD's submission. EGD has proposed that, in the event a rate order cannot be in place by January 1, "interim rates can be implemented as of January 1st, with final rates to be implemented at a later date to reflect the full year impact of any rate change" [EGD Argument in Chief, para. 41]. In SEC's submission, in the event interim rates are necessary, the effective date of the new rates should be at the discretion of the panel hearing the matter.

Costs

27. SEC participated responsibly in this proceeding and respectfully requests that it be awarded 100% of its reasonably incurred costs.

All of which is respectfully submitted this 2nd day of June, 2009.

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