EB-2009-0055

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 the clearance or disposition of amounts recorded in certain deferral or variance accounts.

SUBMISSIONS OF THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF THE GREATER TORONTO AREA

A. INTRODUCTION

These are the submissions of the Building Owners and Managers Association of the Greater Toronto Area ("BOMA") related to the disposition of the amounts recorded in certain deferral and variance accounts by Enbridge Gas Distribution Inc. ("EGD").

BOMA has reviewed the evidence, updated evidence and interrogatory responses of EGD and provides the following submissions.

B. TAX RATE AND RULE CHANGE VARIANCE ACCOUNT

In its original evidence, EGD indicated that amount of $3.66 million o tax reductions related to anticipated capital cost allowance ("CCA") tax rate changes for 2008 had not yet been passed into law (Exhibit C, Tab 1, Schedule 4). As a result, EGD sought to recover the 50% ratepayer share of $1.83 million through this variance account.

However, as indicated in the response to a BOMA interrogatory (Exhibit I, Tab 3, Schedule 3), these CCA rate changes were passed into law in April of 2009. As a result, EGD has filed updated evidence at Exhibit M1, Tab 1, Schedule 1 and Exhibit C, Tab 1, Schedule 1 that reflects the removal of the recovery of the $1.83 million as originally proposed by EGD. In addition to the removal of this amount, there is a small change associated with this removal in the earnings sharing calculation.

BOMA has reviewed the change in the recovery of the variance account and the change in the earnings sharing calculation and believe they both accurately reflect the removal of the $1.83 million originally proposed to be recovered from ratepayers by EGD. BOMA submits that the Board should accept the updated evidence of EGD in this matter.

C. 2008 OPEN BILL SERVICE DEFERRAL ACCOUNT & 2008 OPEN BILL ACCESS DEFERRAL ACCOUNT

The table in the updated evidence at Exhibit C, Tab 1, Schedule 1, page 3 shows a forecast for clearance at October 1, 2009 of $25,746.2 in principal partially offset by $573.6 in interest, for a total net recovery from ratepayers of $25,172.6. This is the $25.2 million referred to in paragraph 1 of updated Exhibit C, Tab 1, Schedule 1 that EGD is requesting for clearance.

The amount requested for clearance appears to include $808.4 for the Open Bill Service and Open Bill Access accounts. These accounts are shown on lines 9 and 10 of the updated table shown in Exhibit C, Tab 1, Schedule 1 at page 3. The $808.4 includes principal and interest for these accounts, as shown in columns 3 and 4 on lines 9 and 10.

However, as shown in the response to a CME interrogatory (Exhibit I, Tab 4, Schedule 2, part (d)), EGD has indicated that it *"no longer seeks to clear the balances in the 2008 Open Bill Service Deferral Account and 2008 Open Bill Access Variance Account as part of this proceeding"*. The response goes on to indicate that the balances, disposition and clearance of these accounts are being addressed in a separate proceeding, EB-2009-0043.

BOMA submits that EGD should remove the balances associated with these accounts from its request for clearance in this proceeding based on this response. This would reduce the amount to be collected from ratepayers from the requested amount of $25, 172.6 to $24,364.2.

D. ALLOCATION

As shown in the response to an interrogatory at Exhibit I, Tab 3, Schedule 4, EGD has made no changes to the allocation methodology previously approved by the Board for the clearance of existing deferral and variance accounts. BOMA submits that this is appropriate.

However, as further noted in the interrogatory response, the Board approved the creation of four new accounts for 2008. These accounts are the Average True-Up Variance Account ("AUTUVA"), Municipal Permit Fees Deferral Account ("MPFDA"), Tax Rate & Rule Change Variance Account ("TRRCVA") and the Earnings Sharing Mechanism Deferral Account ("ESMDA"). This is the first time that the Board has been requested to allocate balances in these accounts.

The proposed allocation of these accounts is shown in Exhibit C, Tab 2, Schedule 2 and Exhibit C, Tab 2, Schedule 3. As shown in these schedules, the AUTUVA has been allocated to Rate 1 and Rate 6 and is based on the difference in the normalized actual use and forecast use for these rates classes, as shown in Appendix A to Exhibit C, Tab 1, Schedule 5. BOMA submits that this allocation between Rate 1 and Rate 6 is appropriate and should be approved by the Board.

The MPFDA and TRRCVA accounts are proposed to be allocated on the basis of rate base (note that there is no longer any balance in the TRRCVA to be allocated, based on the updated evidence of EGD). BOMA submits that the allocation based on rate base is appropriate for these accounts.

Finally, EGD proposes to allocate the ESMDA based on Distribution Revenue Requirement. This is shown in column 7 of the table on page 3 of Exhibit C, Tab 2, Schedule 2. BOMA submits that this is **not** an appropriate allocation of the earnings sharing amount.

In EB-2009-0101, Union Gas has proposed to allocate the earnings sharing based on allocation of return on equity. This allocation is consistent with how Union allocated, and the Board approved, earnings sharing for 2003, 2005 and 2006 for Union (EB-2009-0101, Exhibit A, page 29). BOMA believes that this is a more appropriate allocation methodology to apply to earnings sharing.

BOMA notes that no such allocator is shown in the table on page 3 of Exhibit C, Tab 2, Schedule 2. However, BOMA believes that this allocator would be equivalent to the rate base column shown in the table. This is because the allocation of return on equity is the same as the allocation of rate base since rate base times the common equity component of rate base times the approved return on equity is in the same proportion as the return on equity.

BOMA submits that rate base is a more appropriate allocator to be applied to earnings sharing than is the distribution revenue requirement. Earning sharing is the direct result of a return on equity that exceeds the dead band return on equity. This return on equity is directly related to the level of common equity and the level of common equity is directly determined by the level of rate base. As a result there is a direct link between earnings sharing and the level of rate base.

On the other hand, there is much less of a direct link between the sharing of excess earnings and the distribution revenue requirement by rate class. The distribution revenue requirement by rate class includes impacts related to taxes, depreciation, operating and maintenance costs and the cost of debt, in addition to the return on equity.

It is the submission of BOMA that any excess earnings (return on equity) should be allocated back to ratepayers on the same basis as the corresponding cost is included in rates. The cost associated with the return on equity component of the revenue requirement for each rate class is directly determined by the level of rate base allocated to each of those rate classes. To be consistent, an excess return on equity should be refunded to customers on the same basis.

As noted above, EGD proposes to allocate the TRRCVA account based on rate base. This account tracks variances in tax rates and tax rule changes. Like return on equity, taxes are allocated to rate classes based on rate base since taxes are payable based on income generated from the return on rate base. BOMA submits that the excess return on equity (excess income for earnings sharing) should be allocated on the same basis as the taxes on that income. In both cases that basis should be rate base.

E. 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 11th day of June, 2009

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