

IN THE MATTER OF the *Ontario Energy Board Act, 1998*;

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.

Board Jurisdiction with respect to Enbridge Gas Distribution's Green Energy Initiatives

Written Submissions of the Industrial Gas Users Association (IGUA)

1. In its prefiled evidence in this application¹ Enbridge Gas Distribution Inc. (EGD) proposes to engage in "Green Energy Initiatives". As described in the prefile EGD "plans to pursue initiatives and own and operate a variety of assets capable of generating and distributing alternative forms of energy to end-use customers in Enbridge's franchise areas [sic]"². The particular examples of Green Energy Initiatives" provided in the prefile are solar, ground source heat pumps, distributed and district energy systems, micro-combined heat and power (CHP) and heat from waste technologies, and geo-thermal systems and stationary fuels cells.
2. That these initiatives can be pursued by EGD - the regulated gas distribution company - is clear from the Minister's section 27.1 Directive to the OEB approved by Order in Council on September 8, 2009 (the "Directive"). The Directive effectively amends undertakings given by EGD and related parties to the Lieutenant Governor in Council (LGIC) and effective March 31, 1999 (the Undertakings).
3. What is in issue on this Board initiated motion is the regulatory treatment for any such Green Energy Initiatives now permitted to be undertaken by the regulated distribution utility.

¹ Ex B/T2/S4

² Ibid, para. 1

4. EGD proposes to:³

- (a) Include the capital costs associated with the assets associated with these initiatives in regulated rate base.
- (b) Include the operating and administrative costs associated with these initiatives in its regulated cost of service.
- (c) Include revenues from these initiatives in its regulated revenues.
- (d) Charge for the provision of the Green Energy Initiatives products and services in accord with contracts with its customers, and specifically not pursuant to rates set by the Board.
- (e) Recover any sufficiency/deficiency associated with the Green Energy Initiatives as part of its overall revenue requirement.

5. EGD further indicates in its profile that its overall 2010 system expansion portfolio, which would include certain of the Green Energy Initiatives, would result in a net positive present value (though EGD is silent with respect to the economic tests that would be applied to any specific Green Energy Initiative grouped by EGD within its system expansion portfolio).⁴

6. Given that EGD is currently in the middle of an IRM term, EGD proposes to address 2010 revenue requirement impacts of its Green Energy Initiatives through a "Y-factor" pass through set at \$300,000 (on a planned closure to rate base in 2010 of \$4 million, out of a total forecast \$10 million dollars of Green Energy Initiatives expenditures in the test

³ Ibid, para. 16.

⁴ Ibid, para 17. The first point that IGUA notes in respect of EGD's proposed regulatory treatment of these *Green Energy Act* initiatives is that, as IGUA currently understands EGD's proposal, any specific initiative may have a net negative impact on revenue requirement, and thus effectively be subsidized by natural gas distribution ratepayers. This is of concern to IGUA, and IGUA submits should be of concern to the Board. IGUA finds no authority in any of the legislative or regulatory instruments in issue (the *OEB Act*, the Undertakings or the Minister's Directive) for this sort of cross-subsidization through natural gas distribution rates of *Green Energy Initiatives* by EGD.

year). EGD proposes that this Y-factor would be adjusted every year based on actual costs.⁵

Regulatory Treatment Implications of the Directive.

7. IGUA submits that the general purpose of the Undertakings is to provide a basic level of assurance as to the overall financial integrity of the franchised gas distributor. In order to do so, the Undertakings:
 - (a) Limit the scope of business diversification (and attendant risks) that the regulated distribution company can engage in.
 - (b) Obligate the parent company of the regulated distribution company to provide an injection of capital if required.
8. The Undertakings do not address, in any way, the determination of distribution rates. The authority for the Board's jurisdiction to determine distribution rates is provided for in the Ontario Energy Board Act, 1998, and in particular in section 36.
9. The recent broadening of the scope of business activities permitted to EGD under the Undertakings reflects a desire by the government to permit the engagement of Ontario's natural gas distributors in support of the government's "green" energy policy. The LGIC has presumably determined that the benefits of such engagement to the Ontario public at large outweigh the business risks with such engagement to gas distribution customers.
10. As noted by Board Staff in its submissions, the Directive specifically and expressly disclaims any direction to the Board as to the manner in which the Board is to determine rates for the distribution of natural gas.

⁵ Ibid, para. 18.

11. There is absolutely no authority in the Directive or the associated effective amendments to the Undertakings for the inclusion in rates of the assets, costs or revenues of any of the Green Energy Initiatives.

OEB's Gas Distribution Rate Making Authority.

12. Given that there is no authority in either the Undertakings or the Directive for inclusion in rates of the assets, costs or revenues associated with EGD's proposed Green Energy Initiatives, such authority, if it exists, must be found in the Ontario Energy Board Act, 1998 (OEB Act).
13. The OEB's jurisdiction in respect of setting natural gas distribution rates is provided by OEB Act section 36. Under subsection 36(2) the Board may make orders approving or fixing just and reasonable rates for the distribution of gas.
14. "Distribution" in respect of gas is defined with reference to the definition of "gas distributor", and means the delivery of gas to a consumer.⁶
15. IGUA submits that only the costs that are necessary for, or necessarily incidental to, the delivery of gas to a consumer are properly included in gas distribution rates set under OEB Act section 36.
16. EGD seems to be arguing⁷ that the legislative fact that the Board is empowered to use "any method or technique that it considers appropriate" to set gas distribution rates results in the Board being authorized to include, in setting distribution rates, costs and revenues not necessary for, or necessarily incidental to, the delivery of gas.
17. IGUA disagrees with EGD's submission in this respect. The Low Income Energy Network (LIEN) case that EGD refers to in its Written Argument addressed the allocation

⁶ *OEB Act*, section 3.

⁷ Written Argument of Enbridge Gas Distribution Inc. on the Jurisdictional Question, pages 5 to 6.

of costs, not their inclusion in rates ab initio. Nothing in OEB Act subsection 36(3) or in the Court's reasoning in the LIEN case provides any authority for the proposition that costs not necessary for, or necessarily incidental to, the delivery of gas to a consumer can be included in distribution rates.

18. EGD also argues⁸ that the broad nature of the Board's objectives in respect of gas, or in respect of electricity regulation for that matter, as set out in the OEB Act⁹ provide the statutory authority for the Board to include in rates costs associated with the Green Energy Initiatives.
19. IGUA disagrees with EGD's submission in this respect as well. The objectives provided for the Board should inform the Board in the exercise of its statutory authorities. They do not, however, themselves confer authorities on the Board. There are a lot of things that the Board does (witness the Board's recent plethora of initiatives to reform its electricity transmission and distribution codes in response to the Green Energy and Green Economy Act, 2009) that are informed and influenced by the Board's statutory objectives. The legislatively defined scope of costs and revenues properly included in gas distribution rates is not one of them, in IGUA's respectful submission.

Implication for EGD's Proposed Green Energy Initiatives of Denial of Rate Relief.

20. IGUA thus concludes that there is no statutory authority for the Board to include in gas distribution rates the costs or revenues associated with initiatives by EGD that are not necessary for, or necessarily incidental to, the delivery of gas to consumers. IGUA further concludes that neither the Undertakings nor the recent Ministerial Directive confer such ratemaking authority (in fact, the Directive expressly disclaims such intent).
21. One might ask, then, if EGD cannot include the costs associated with these initiatives in rates, why would it pursue them? The LGIC must have intended that EGD pursue such

⁸ Ibid, page 6.

⁹ Sections 1 and 2.

initiatives in approving the Directive, or at least contemplated that EGD would pursue such initiatives.

22. EGD might pursue such initiatives given the revenue opportunity, short term or long term, presented by such initiatives, and synergies that it might perceive exist in respect of undertaking such initiatives within the regulated distribution utility. EGD's prefiled evidence refers to the complement that such initiatives offer to EGD's "core competencies".¹⁰
23. The generation of electricity from the let down of gas distribution system pressures, as described in Mr. Cass' November 13th letter, is a good example of such synergies. (Presumably EGD will sell the resulting electricity, either to the OPA or another party, and if the price paid to EGD exceeds the costs incurred by EGD this would be a profitable initiative.) This would further the Ontario government's green energy policy.
24. The development of biogas from waste, for injection into EGD's distribution system, is another example from Mr. Cass' November 13th letter in which synergies with EGD's distribution business might prove valuable. EGD, as the operator of the monopoly distribution system, best understands the operational parameters of that system and the qualities required in the gas that the system distributes. It makes some sense for EGD to engage in the development of a biogas product that it can then sell to end users, and distribute through a conventional gas distribution system. This too would further the Ontario government's green energy policy.
25. A third example provided in Mr. Cass' November 13th letter, the development of district energy systems for heating and cooling, may be effectively leveraged by EGD given EGD's proficiency in the design and construction of underground distribution pipe. Like the other initiatives, this one too would further the Ontario government's green energy policy.

¹⁰ Ex. B/T2/S3, para. 12.

26. The final example provided in Mr. Cass' November 13th letter is that of adding a solar water heating device to a conventional natural gas water heater, to achieve gas burn efficiencies for the assembly projected to be in the 150% range. This initiative seems not unlike the DSM initiative that EGD has proposed in its 2010 DSM filing which is currently before the Board (EB-2009-0154, see Ex. D/T1/S1). However, in this instance EGD seems to be proposing that it would retain ownership of the assets, and put those assets in rate base and earn a return on them. Based on EGD's 2010 DSM Plan filing, it appears that this regulatory treatment is not required for the government's green energy policy to be furthered.
27. Finally, in respect of the "why" would EGD engage in these initiatives, as contemplated by the Directive, without rate recovery, IGUA notes the new section 26.1 of the OEB Act, as added by the Green Energy and Green Economy Act, 2009. This new section 26.1 provides a mechanism for the government to direct funding of one or more of these EGD initiatives, if it so chooses, through a special purpose levy on gas distribution customers.¹¹
28. In conclusion on this point, there are reasons - synergies that EGD could lever or, potentially, funding that the government might directly undertake - why EGD would engage in worthwhile green energy initiatives, even absent recovery of the costs of such initiatives through regulated rates. The denial by the Board of EGD's request to include the assets, costs and revenues of the Green Energy Initiatives in rates will not neuter the intent of the Directive.
29. In fact, there is a good public policy reason for not including the assets, costs and revenues associated with these Green Energy Initiatives in rates. As important as green energy policies are, there is an additional public policy consideration more fundamental to economic regulation. Natural Gas distribution is rate regulated because it is a natural monopoly and an essential service. Solar water heating, biogas manufacturing, district heating and electricity generation are not monopolies, natural or effective. Providing

¹¹ IGUA would object to such a funding program, as IGUA believes that social programs should be funded through government general revenues and not through regulated energy rates.

EGD with regulatory protection for these non-monopoly business initiatives would merely prejudice all of those entities competing, or hoping to compete, for the provision of these services in Ontario's new "green economy".

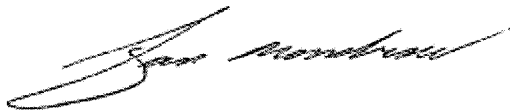
Conclusion.

30. In conclusion, IGUA submits that:

- (a) The costs, assets and revenues associated with EGD's proposed Green Energy Initiatives are not properly part of the regulated operations of Enbridge and thus are not under the Board's ratemaking authority.
- (b) The Board's jurisdiction in respect of these costs, assets and revenues extends to ensuring that they are properly excluded from rates.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

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