



EB-2009-0172

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, 2010.

PROCEDURAL ORDER NO. 5

Enbridge Gas Distribution Inc. ("Enbridge" or the "Applicant") filed an Application on September 1, 2009 (as amended on September 14, 2009) with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, as amended, for an order of the Board approving or fixing rates for the distribution, transmission and storage of natural gas, effective January 1, 2010. The Board assigned file number EB-2009-0172 to the Application and has issued a Notice of Application dated September 18, 2009 (the "Notice").

In Procedural Order No. 4 issued on January 20, 2010 the Board established the Final Issues List for the proceeding.

On January 22, 2010 Enbridge filed updated evidence in which it indicated that it intended to use the Return on Equity ("ROE") set by the Report of the Board on Cost of Capital (EB-2009-0084 dated December 11, 2009—the "2009 Cost of Capital Report") to calculate its 2010 earnings sharing mechanism ("ESM") referred to in Section 10.1 of the IRM Settlement Agreement ("Section 10.1"). The 2009 Cost of Capital Report updated and refined the Board's previous cost of capital policies. It was Enbridge's position that Section 10.1 requires the ROE be calculated in accordance with the 2009

Cost of Capital Report, the Board policy in place at the time the calculation will be performed.

By letter filed on January 27, 2010 the Industrial Gas Users Association (“IGUA”) advised that it did not accept Enbridge’s interpretation of Section 10.1. It was IGUA’s position that Section 10.1 requires the ROE be calculated in accordance with the Board policy which was in place at the time the IRM Settlement Agreement was entered into. At the time the settlement was reached, the gas distributors were calculating ROE based on the guidance contained in the 1997 draft ROE guidelines¹ (which was reviewed and reconfirmed in the Board’s 2003 Gas ROE review under Board file no. RP-2002-0158). IGUA requested the matter be added to the Final Issues List.

By letter dated February 1, 2010 Enbridge agreed that the issue should be added to the Final Issues List in this proceeding. Enbridge suggested the issue be framed as the following:

What is the appropriate ROE to be used in the 2010 earnings sharing calculation?

By letter dated February 3, 2010 IGUA stated, among other things, that it agreed with Enbridge’s proposed wording of the issue.

The Board agrees that the Final Issues List should be amended to include a new issue related to the ROE to be used in the calculation of the 2010 earnings sharing under the heading “Other Issues”. The Board will, however, reframe the issue to be worded as follows:

Does the calculation of the earnings sharing referred to in Section 10.1 of the IRM Settlement Agreement require the use of an ROE based on the Board’s cost of capital policy in effect at the time the IRM Settlement Agreement was entered into, or the 2009 Cost of Capital Report, which is in effect at the time the earnings sharing calculation will be performed? (the “ROE Issue”)

The amended Final Issues List is attached to this order.

¹ Ontario Energy Board Draft Guidelines on a Formula-Based Return on Common Equity for Regulated Utilities, March 1997.

The Board has determined that it will receive written submissions on the ROE Issue, and makes provision below for submissions on the ROE Issue by parties and reply submissions by Enbridge.

Please be aware that further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. The amended Final Issues List is attached as Appendix "A" to this procedural order.
2. Parties wishing to make written submissions on the ROE Issue shall file such submissions with the Board and serve them on all parties by February 24, 2010.
3. Enbridge may file its Reply to any submissions on the ROE Issue by March 1, 2010.
4. All parties shall file their submissions with the Board Secretary and must quote file number EB-2009-0172. These submissions should be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address and must be sent to the Board by 4:45 pm on the date indicated with a copy to all parties. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the addresses below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Colin Schuch at colin.schuch@oeb.gov.on.ca and Board Counsel, Donna Campbell at donna.campbell@oeb.gov.on.ca.

DATED at Toronto, February 10, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

Final Issues List (as amended February 10, 2010)

Enbridge 2010 Rates - EB-2009-0172

1. Has Enbridge calculated its proposed distribution revenue requirement, including the assignment of that revenue requirement to the rate classes and the resulting rates, in accordance with the EB-2007-0615 incentive settlement agreement?
2. Is the forecast of degree days appropriate?
3. Is the forecast of average use appropriate?
4. Is the forecast of customer additions appropriate?
5. Is the gas volume budget appropriate?

Y FACTORS

6. Is the amount proposed for the Y factor Power Generation Projects appropriate?
7. Is the amount proposed for the Y factor DSM Program appropriate?
8. Is the amount proposed for the Y factor for Gas in Storage and related carrying costs appropriate?
9. Is the amount proposed for the Y factor for CIS Customer Care appropriate?

Z FACTORS

10. Is it appropriate to have a Z factor for the Pension Funding costs and if so, is the amount proposed appropriate? In connection with this issue, is it appropriate to establish a Pension Funding costs variance account ("PFCVA")? Is it appropriate to have a Z factor for the Crossbores/Sewer

Laterals and if so, is the proposed amount appropriate? In connection with this issue, is it appropriate to establish a Crossbores/Sewer Laterals costs variance account ("CBSLCVA")?

DEFERRAL AND VARIANCE ACCOUNTS

11. Is it appropriate to establish for 2010 the previously agreed upon list of deferral and variance accounts from the Settlement Agreement in the EB-2007-0615 proceeding?
12. Is it appropriate to establish for 2010 the Open Bill Revenue variance account ("OBRVA") and the Ex-Franchise Third Party Billing Services deferral account ("EFTPBSDA")?
13. Is it appropriate to establish for 2010 the accounts relate to: (i) the International Financial Reporting Standards Transition Costs deferral account ("IFRSTCDA"), (ii) the Purchased Gas Variance Disposition Change Cost variance account ("PGVDCCVA") and (iii) the Mean Daily Volume Mechanism deferral account ("MDVMDA").

OTHER ISSUES

14. Is the adjustment to the incremental tax amounts "Y factor" appropriate (Ex. C-1-4)?
15. Review of the filed results of Enbridge's Service Quality Requirements Performance and Measurement reports (GDAR) for 2007 and 2008 and a discussion of what, if any, remedial action should be taken.
16. Does the calculation of the earnings sharing referred to in Section 10.1 of the IRM Settlement Agreement require the use of an ROE based on the Board's cost of capital policy in effect at the time the IRM Settlement Agreement was entered into, or the 2009 Cost of Capital Report, which is in effect at the time the earnings sharing calculation will be performed? (the "ROE Issue")

IMPLEMENTATION

17. How should the new rates be implemented?