

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

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an accounting order or orders establishing certain Demand Side Management Deferral Accounts for the years 2010 - 2014.

**SUBMISSIONS
INDUSTRIAL GAS USERS ASSOCIATION (IGUA)**

Introduction.

1. Enbridge Gas Distribution Inc. (EGD) has styled its application herein as an application for an accounting order for a deferral account.
2. While EGD's Notice of Application is accurate, the true nature of this application is reflected in EGD's response to an interrogatory from CCC.¹ Key passages from that interrogatory response bear repeating:

The Board, the government and EGD's customers have come to expect EGD to be a major participant, if not leader, in the global objective to conserve energy and reduce harmful emissions. EGD's determination to fulfill that role to its highest possible extent means that EGD must always be ready to consider new opportunities and address new challenges.

EGD and all stakeholders, including the Board itself, need to be ready and willing to stretch the boundaries of the regulatory framework if we are to collectively achieve the goals in conservation and emission reduction as set out by the Ontario government.

The impact on the operations and customers of EGD of new green energy technologies could be significant over the coming decades. This pilot research project will provide insight and data on potential impacts on customers who do participate, the impact on those customers who do not participate and potential impact on the current natural gas distribution system and the potential feasibility of serving new customers. These technologies will challenge government, utilities and utility customers to

¹ Ex. B/T7/S1.

change their views on the traditional role of utilities and how energy is provided to all Ontarians.

3. This application was filed on February 4th. Notice of the proceeding was provided on February 22nd. Interrogatory responses, which provided significantly more information on the solar thermal initiative, were provided on March 4th - 4 working days before the filing of these submissions.
4. IGUA is not prepared, with 4 working days to consider the details of EGD's proposed solar thermal initiative, to endorse the *"stretch[ing of] the boundaries of the regulatory framework"* nor to *"change [its] views on the traditional role of utilities and how energy is provided to all Ontarians"*.
5. IGUA respectfully submits that neither should the Board.

Position Summary

6. IGUA submits that the Board should decline to provide the relief sought by EGD on this application.
7. EGD's shareholder has both the resources and the interest to enter into the contribution agreement with NRCan that this application contemplates, and to carry out the pilot project thereby envisioned.
8. Should EGD and its shareholder see fit to bring forward a proper application to explore the role of the regulated distribution utility in the future provision of district energy services, IGUA would be an interested and active participant. The current process simply does not support decisions of such a fundamental nature.

Analysis

9. EGD has sought to characterize the solar thermal initiative that is the subject of this application as a DSM research pilot project.²
10. Gas distributor DSM was initially introduced in Ontario, and accepted from a regulatory perspective in EBO 169-III, as a least cost system planning approach.
11. The DSM initiatives subsequently endorsed in the Board's EB-2006-0021 multi-year framework decision have been focused on reduction in natural gas use through customer awareness and the deployment of technology (gas burning technology and technology ancillary to the burning of gas) to render gas use more efficient.
12. The solar thermal initiatives proposed by EGD in this application are activities of an entirely different nature. The activities proposed now are expressly designed to displace gas use, both locally (i.e. in a particular premise) and regionally (through a district heating approach).
13. Even if traditional DSM measures are properly characterized as logically ancillary to the activity of distributing natural gas, the solar thermal pilot proposed by EGD cannot be so characterized. This initiative is not related to gas distribution. It displaces, and EGD presumably fears replaces, gas distribution.
14. The description of the initiative contained in EGD's NRCan application is instructive in this respect. The text found in that application³ includes the following:

The urgency of completing this project work within the next five years is extremely compelling. With the proposed legislation with respect to atmospheric carbon dioxide emission abatement both within Canada and

² Ex. B/T1/S1, part a), second paragraph.

³ Ex B/T2/S1/Attachment , page 4, 2nd paragraph.

North America, the fuel that has been the historical green fuel of choice and a significant cost and growth driver for the housing sector is being placed into a position where it is becoming increasingly under threat.

15. The preceding passage follows an earlier one⁴ which further illustrates EGD's aspirations in pursuing the solar thermal initiative:

As a utility Enbridge Gas Distribution would be able to use this [sic] fundamentals developed in this project to transform its position as the largest natural gas distributor in Canada to the largest clean and green energy distributor thus achieving the end result of integrating renewable energy into our operations.

16. The solar thermal initiative proposed through this application is further removed from the business of gas distribution than DSM has been to date. IGUA submits that the solar thermal activity herein proposed cannot be fairly characterized as sufficiently connected to the distribution of natural gas to be considered "gas distribution".
17. If the solar thermal initiative proposed cannot be considered "gas distribution", then EGD cannot engage in it absent Board approval, and the Board cannot include costs associated with the initiative in rates.
18. EGD's business activities are limited by the Undertakings given by EGD and its shareholder to the Ontario Lieutenant Governor in Council. The Undertakings limit EGD's activities to the transmission, distribution or storage of gas⁵, subject to approval of other business activities by this Board.
19. While the Undertakings have been amended by two recent Ministerial Directives⁶ to broaden the scope of activities that the regulated distribution company is permitted to engage in, EGD expressly disclaims any connection between the

⁴ Ibid, top of page 4.

⁵ LGIC Undertakings, section 2.

⁶ Approved by Orders in Council 1537/2006, dated August 10, 2006, and 1540/2009, dated September 8, 2009, respectively.

proposed solar thermal initiatives and these Ministerial Directives and associated Undertaking amendments.⁷

20. Neither has EGD expressly requested Board approval to engage in these activities.
21. IGUA respectfully submits that for the Board to consider granting such an approval, a much more thorough and careful consideration of the issues arising from, and the implications of, such diversification of the regulated gas distribution business would be required than has been possible in this expedited application process. IGUA urges the Board to avoid providing implicit approval for such utility diversification through approval of a deferral account.
22. EGD has effectively requested inclusion of costs related to the proposed solar thermal initiative in rates. The Board's ratemaking jurisdiction in respect of gas utilities is provided for in section 36 of the *Ontario Energy Board Act, 1998*. Under the legislation the Board has the jurisdiction to set rates for the sale of gas by gas transmitters, distributors or storage companies, and for the transmission, distribution and storage of gas.
23. Costs for solar thermal heating of individual premises and districts, which heating displaces (and not merely enhances the efficiency in the use of) natural gas, are not properly included in gas distribution rates. IGUA respectfully submits that this Board does not have the jurisdiction to include the costs associated with EGD's solar thermal initiative in rates.
24. Even if the Board did have the jurisdiction to include the costs associated with EGD's solar thermal initiative in rates, IGUA submits that such inclusion should be denied, for the same reasons that the Board denied inclusion in rates of costs associated with the now withdrawn proposal by EGD to pursue other "green energy initiatives".

⁷ Ex. B/T1/S1, part a), 2nd paragraph.

25. The Board's December 22, 2009 *Decision on a Preliminary Motion* in EB-2009-0172 includes the following findings with respect to EGD's then proposed "green energy initiatives":
- (a) When assets are allowed in rate base it is generally because those assets are related to the monopoly franchise. EGD does not have a monopoly franchise for the production of renewable energy, which occurs within a broad competitive market involving the provision of a variety of new and refined energy and conservation products. Permitting a well financed public utility to include its costs of participation in this market into its rate base, and thereby transferring risk to the ratepayer, is unfair to other market participants.
 - (b) Including such costs in rate base would significantly increase the risk to the ratepayer. The ring fencing of utility assets from non-utility assets, begun for EGD the mid-1990s, was based on a concern that the diversification activities by the gas utilities would expose utilities' customers to undue risk.
26. IGUA submits that the foregoing reasoning applies with equal force to operations and maintenance costs related to the proposed solar thermal initiative and proposed in this application for inclusion in rates.
27. In respect of the competitive landscape for provision of green energy technology and services, including the solar thermal technology and services in particular, see Ex. B/T4/S2 and Ex. B/T4/S1, Attachment 2.
28. In respect of utility diversification, if EGD's shareholder wants to hedge its Ontario gas distribution investment through engagement in pilot projects towards becoming Canada's *"largest clean and green energy distributor thus achieving the end result of integrating renewable energy into [its] operations"*, it certainly has the resources to do so, (and has so represented to NRCan - see Ex. B/T2/S1, Attachment, page 19, first full paragraph). It can do so either directly or through an unregulated energy services affiliate such as it has with ventures involving solar photovoltaic technologies⁸. Investments associated with hedging and

⁸ Ex. B/T5/S4.

diversifying its gas distribution investment, and attendant risks, should be borne by the shareholder, not the utility's ratepayers.

29. IGUA notes that the establishment of the deferral accounts requested in not a precondition of NRCan for execution of the Contribution Agreement.⁹
30. IGUA respectfully submits that this application should be denied; i) because the Board does not have the jurisdiction to include costs associated with the proposed solar thermal initiative in rates; ii) because EGD has neither requested nor justified an approval under the Undertakings to engage in the initiative; and iii) in deference to the competitive energy services marketplace and to preclude the shifting of diversification risk from EGD's shareholder to its ratepayers.

Process

31. IGUA has argued above that, despite how it has been framed, the instant application raises fundamental issues regarding the appropriate scope of EGD's gas distribution business. EGD itself has stated that the application raises fundamental issues regarding the *"traditional role of utilities and how energy is provided to Ontarians"* and *"the boundaries of the regulatory framework"*.¹⁰
32. In this context IGUA finds it astounding that EGD has brought this matter forward at the 11th hour, and requested that it be disposed of on an expedited basis.
33. The proposal that is the subject of this application was presented to EGD's senior management on June 3rd, 2009.¹¹

⁹ Ex. B/T4/S6.

¹⁰ Ex. B/T7/S1.

¹¹ Ex. B/T6/S10.

34. The detailed NRCan application was submitted September 14th, 2009.¹²
35. Enbridge participated in a January 11th press release fashioned by NRCan announcing the 19 projects selected to proceed, including EGD's proposed solar thermal initiative.¹³
36. EGD did not file its application, however, until February 4th. When EGD did file its application, EGD requested expedited consideration, on the basis that NRCan requires EGD to execute a Contribution Agreement before March 31, 2010.¹⁴ (As it turns out, execution of this agreement is not required by March 31st.¹⁵)
37. In the result, intervenors have been given 4 working days from receipt of detailed interrogatory responses, which responses provide a significant amount of additional substantive information regarding EGD's proposals and positions, to formulate their positions and provide written submissions.
38. For organizations, such as IGUA and most of the other intervenors, which seek to gather the input of, and properly reflect and represent the views of, their members, 4 days to provide reasoned and thoughtful positions on the *"traditional role of utilities and how energy is provided to Ontarians"* and *"the boundaries of the regulatory framework"*¹⁶ is simply insufficient.
39. EGD was well along the path towards proposal of the solar thermal initiative by the spring of 2009. There is absolutely no reason why this application should need to be expedited, or why intervenors and this Board should be forced to address such fundamental matters in such a restricted time frame.

¹² Ex. B/T2/S1, Attachment.

¹³ Ex. B/T4/S1, Attachment 1.


¹⁴ EGD transmittal letter to Board Secretary dated February 4, 2010.

¹⁵ Ex. B/T1/S2, part a)

¹⁶ Ex. B/T7/S1.

40. In this circumstance, as well as for all of the reasons set out above, IGUA submits that this application should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
Macleod Dixon LLP, per:



Ian A. Mondrow
Counsel to IGUA

March 10, 2010

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