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February 14, 2012

VIA MAIL and E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
EB-2011-0277

Enbridge Gas Rates for 2012

Please find enclosed the submissions of VECC in the above-noted proceeding.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

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 Limited, pursuant to section 36(1) of the *Ontario Energy Board Act, 1998,* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1 2012.

ARGUMENT OF THE VULNERABLE ENERGY CONSUMERS COALITION ("VECC")

February 14, 2012

INTRODUCTION

1. These are the submissions of VECC with respect to the outstanding issues in this proceeding.

2. VECC does not have any submissions with respect to Issue 9, the proposed Y-Factor for Gas Costs and Carrying Costs.

3. With respect to the request for a transition Impact of Accounting Changes Deferral Account VECC has reviewed and supports the Board Staff submissions to the effect that the requested deferral account should not be approved.

4. What follows are VECC's submissions on the two Z-Factor requests relating to 2012 Pension Funding Requirements and the 2012 Sewer Safety Program costs, along with the related sub-issues.

Z-FACTOR-2012 PENSION FUNDING COSTS

5. In VECC's view the 2012 Pension Funding costs, currently forecast to be $16.6M, are not recoverable by EGD as a Z-Factor.

6. In order to qualify for Z-Factor treatment:

> The cost must be <u>beyond</u> the control of the Company's management and is <u>not</u> a risk in respect of which a prudent utility would take risk mitigation steps. (emphasis added)

7. With respect to the claimed Pension Costs of (forecast) $16.6M, the cost will be incurred by EGD as a result of its pension plans descending into a deficit position.

8. Whether or not EGD's pension plans descend into a deficit position is:

   a) under the control of the Company's management, and

   b) a risk that a prudent utility <u>would</u> take risk mitigation steps against.

9. In VECC's submission the performance of the pension plans, and therefore whether or not they descend into a deficit position, is clearly under the control of

the Company's management. How the pension plans perform is a direct result of the decisions made by the Human Resources and Compensation Committee of the Board in adopting and approving the of the Company's Statement of Investment Policies and Procedures to "ensure that the assets of the Pension Funds are managed prudently and effectively."[1]

10. Furthermore, the risk that the pension plans may fall into a deficit during the term of the IRM and trigger a requirement by EGD to make a contribution is not a new, unknown risk that a prudent utility would not have taken steps to mitigate. On the contrary, the risk is one that EGD was clearly and knowingly exposed to during the IRM, such that it was incumbent on EGD to take prudent steps to avoid having that risk manifest itself:

> MR. BUONAGURO: Thank you for that clarification.
>
> So now looking at these figures on this particular page, we see that in 2008 on a going concern basis, there was a deficit of $2.4 million; correct?
>
> MR. MONTEIRO: Correct.
>
> MR. BUONAGURO: And my question is a hypothetical.
>
> If that deficiency had occurred one year later, so 2009, that was the same year that a valuation was required; correct?
>
> MR. MONTEIRO: Correct.
>
> MR. BUONAGURO: And if that had happened, again, in 2009, a deficiency of 2.4 million, there would have been no holiday at all for 2010, 2011 and 2012; correct? No contribution holiday?
>
> MR. MONTEIRO: That's correct.

[1] Exhibit I, Tab 2, Schedule 8, Attachment B, page 1, s. 1.3.

MR. BUONAGURO: So the company would have been subject to contributions in 2010, 2011 and 2012?

MR. MONTEIRO: Well, unless they filed a subsequent valuation. As we talked about, you are only required to file a valuation once every three years, but you can file it more frequently if you wish to do so.

So in your example, if you are at a deficit of 2.4 million at the end of 2009, and then by 2010 you were back in a surplus, Enbridge could have chosen to file a valuation at that point and restart a contribution holiday.

MR. BUONAGURO: Assuming that they were in a surplus?

MR. MONTEIRO: In a surplus.

MR. BUONAGURO: But once the initial three-year holiday terminated in 2009 and the first valuation comes out with a negative, the only time you go back on a contribution holiday for any length of time is if you are in a surplus position?

MR. MONTEIRO: Correct.

11. VECC submits, and the preceding exchange makes it clear, that EGD was always exposed to the risk that they would have to contribute the service cost to the pension plans during the IRM period as a result of the pension plans having fallen into a deficit. Accordingly it has always been in the interests of EGD, acting as a prudent utility, to take steps to mitigate the risk of the pension plans falling into a deficit. Indeed, the Company's Statement of Investment Policies and Procedures is precisely that: a manifestation of the Company taking steps to mitigate a risk by exercising management control.

12. Unfortunately, in this instance, the Company failed in its attempts to keep the pension plans at a surplus, which would have avoided the incurrence of the service costs.

13. For all these reasons VECC respectfully submits that, in the context of a claim for Z-Factor relief, Enbridge's claim to recover the service costs triggered by the failure of the pensions plans to remain in a surplus position must fail.

PROPOSED PENSION FUNDING COSTS VARIANCE ACCOUNT

14. VECC submits that if the Board finds that any z-factor amount is to be recovered from ratepayers in relation to 2012 Pension Funding Costs, then EGD's proposal to include the forecast amount in 2012 rates and track the actual contribution amount in a variance account is appropriate. In VECC's view, given the base rate increase for 2012, and considering that EGD is scheduled to establish rates on a cost of service basis for 2013 (with a concurrent risk of a material rate increase) it would undesirable to defer 2012 Pension Funding Cost Recovery in their entirety to 2013.

COST ALLOCATION OF PENSION COSTS

15. VECC submits that if the Board finds that any z-factor amount is to be recovered from ratepayers in relation to 2012 Pension Funding Costs, then EGD's proposal to allocate those costs proportionately to the allocation of the 2012 distribution revenue requirement (excluding proposed Z-factors) is appropriate.

Z FACTOR-2012 CROSS BORES/SEWER LATERALS

16. VECC respectfully submits that the 2012 costs in relation to EGD's Sewer Safety Program do not qualify for Z-Factor treatment, and accordingly are not recoverable by EGD.

17. In the alternative VECC submits that, if the Board agrees that costs related to the Sewer Safety Program qualify for Z-Factor treatment,

a) The approved costs should be included in 2012 rates and tracked in a variance account,

b) the failure of the 2012 actual costs to meet the Z-Factor materiality threshold of $1.5M should result in a full refund of any Sewer Safety Program costs included in 2012 rates,

c) The costs associated with Legacy Investigations should be disallowed as costs eligible for Z-Factor treatment, and

d) The Public Education/Awareness and Response Campaign costs should be capped at $300,000 as forecast, such that the variance account will track only those costs that vary based on actual incoming calls that cause EGD to react.

THERE IS NO Z-FACTOR EVENT

18. In order to qualify for recovery as a Z-Factor, the relevant costs must be causally connected to a Z-Factor event.

19. In VECC's view, there is no Z-Factor event that caused the costs which EGD seeks recovery for.

20. The costs associated with the Sewer Safety Program relate to safety issues caused by the proximity of natural gas lines (installed using trenchless technology) to sewer lines.

21. EGD concedes that it has been performing trenchless installations of natural gas lines for approximately 40 years.[2] Accordingly, the risks associated with these types of installations have existed for decades, and did not suddenly manifest themselves during the course of EGD's IRM period.

22. In VECC's respectful submission, the failure of EGD to appreciate the potential risks associated with their trenchless installations is not a qualifying Z-Factor event; it is simply an example of the utility having failed to act prudently. By way

[2] Exhibit B, Tab 2, Schedule 6, page 3.

of example, it is clear from the transcript that EGD knew of the cross bore issue through an incident of one of its own affiliates as early as 2004:

> MR. STEVENS: Thank you. Can you please briefly describe the nature of Enbridge's understanding of the cross bore issue or danger or risk over time?
>
> MS. LAWLER: Enbridge first became aware of the cross bore risk when a tragic incident occurred at our affiliate, St. Lawrence Gas, in New York State.
>
> In that instance, a plumber attempted to clear a blocked sewer beyond the foundation wall of the house. The plumber damaged a cross bore, which was a gas service that was intersecting a sewer lateral, and it allowed the gas to travel up the sewer lateral and into the house, where it ignited. It resulted in an explosion and a fatality.
>
> MR. STEVENS: When did this incident take place?
>
> MS. LAWLER: The incident occurred in 2004.
>
> At that time, Enbridge did not appreciate that the same circumstance could arise in our franchise area. We were under the belief that the circumstance of gas/sewer conflicts would not occur in our franchise area, since sewer systems tend to be so much deeper than gas systems due to freeze/thaw issues.
>
> The issue was thought to be a United States issue.[3]

23. Yet there is no evidence that, having been alerted to the possibility of the dangerous intersection of sewers and natural gas lines, that EGD did anything more than assume, incorrectly, that their lines were well clear of sewers. The fact that, finally, within the timeframe of EGD's IRM regime, EGD determined that

[3] Transcript Volume 2, pages 89-90.

their assumption about the proximity of their natural gas lines to nearby sewers was wrong, does not create a Z–Factor event.

24. Similarly, the issuance of a requirement from the TSSA to initiate a Sewer Safety Program is not a Z-Factor event; it is nothing more, VECC respectfully submits, than an assertion that in the absence of a Sewer Safety Program EGD would be acting imprudently.[4]

25. At the risk of stating the obvious, the issuance of an order by the TSSA or other authority compelling EGD to incur costs is not necessarily a *de facto* Z-Factor event. If it were, every failure of EGD to meet the standards of the TSSA that resulted in an order that compelled EGD to incur costs would become justification for Z-Factor relief.

26. For these reasons VECC respectfully submit that the costs associated with the Sewer Safety Program should be disallowed Z-Factor treatment.

27. To be clear, it is not necessarily VECC's position that a Sewer Safety Program should not be part of EGD's operations; it is simply that, in the circumstances of this proceeding, such costs do not attract Z-Factor treatment.

PROPOSED CROSS BORES COST DEFERRAL ACCOUNT

28. In the alternative, if the Board agrees with EGD that there was a Z-Factor event that caused costs in 2012, VECC submits that the Board should create the requested variance account to track the related costs. To that end VECC agrees with the submissions of EGD in its argument in chief, paragraphs 68-72. In summary,

[4] Transcript Volume 2, pages 99-101.

a) EGD proposes to put any approved forecast of Cross Bores Z-Factor costs into 2012 rates,

b) The variance from the amount put into rates and the actual amount will be tracked in a variance account,

c) If the actual amount is less than the Z-Factor Materiality threshold, the entire amount that was recovered in 2012 rates will be refunded, and

d) To the extent the actual costs vary from the amount recovered in rates (without falling below the materiality threshold) there will be a true up between the amount recovered rates and the actual costs.

29. With respect to the proposed costs, and relevant to the determination of which amounts should be included in rates and tracked in the account, VECC submits that the costs related to the "Legacy Investigations", estimated at $16,000.00 in capital and $668,920 in O&M,[5] should not be included.

30. As set out above, it is VECC's position that there is no Z-Factor Event that triggers recovery of costs related to the Sewer Safety Program. However, even if there were a qualifying Z-Factor Event, VECC submits that the costs related to the Legacy Investigations cannot be properly characterized as Z-Factor costs.

31. In VECC's view, in the context of a Z-Factor application, the costs eligible for recovery are those sufficient to address the Z-Factor event. In the present case, the risk associated with the Cross Bore issue does not manifest itself simply as a result of the proximity of a natural gas line, installed using trenchless technology, with a sewer line. Rather, the risk is manifested when the sewer is blocked and action is taken to unblock the sewer. This risk is addressed by requiring locates in connection with sewer blockage work and performing emergency work in connection with those locates.

[5] VECC IR #9

32. By contrast, costs associated with Legacy Investigations are not necessary to address the risk; such costs are simply incurring costs that may be required in the future. As noted by Union in EB-2011-0025, there are potentially "hundreds of thousands" of possible Cross Bore locations[6], with no time frame specified for the proactive location and elimination of the Cross Bore risk.[7]

33. To be clear, it is not necessarily VECC's position that there is no justification for a Legacy Investigation Program as part of the Utility's normal operations. Rather, in the context of a Z-Factor application for special cost relief during an IRM, VECC's position is that such a cost under such circumstances should not qualify for Z-Factor relief.

34. VECC further submits that the Public Education/Awareness and Response Campaign cost should be capped at the forecast $300,000 such that variances above $300,000 for that category of costs should not be tracked in the variance account.

35. In VECC's view the variance account is required to track the variance in the cost actually incurred by EGD to react to Cross Bore issues as they happen; by contrast the Education and Awareness related costs is not reactive, such that EGD should be held to its forecast activity as a cap for that category of spending.

PROPOSED COST ALLOCATION OF CROSS BORE/SEWER LATERAL COSTS

36. VECC submits that if the Board finds that any Z-factor amount is to be recovered from ratepayers in relation to 2012 Cross Bore/Sewer Lateral costs, then EGD's proposal to allocate those costs based on the services allocator factor is appropriate.

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[6] EB-2011-0052, Transcript Volume 2 page 97.
[7] EB-2011-0052 Exhibits B6.4 and B6.5

COSTS

37. VECC respectfully submits that it has conducted its intervention in this matter responsibly and efficiently, and accordingly requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th DAY OF FEBRUARY, 2012