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VIA RESS AND COURIER

Ms. Kirsten Walli
ONTARIO ENERGY BOARD
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario
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Dear Ms. Walli:

Re: EB-2011-0277 – Enbridge Gas Distribution Inc. (EGD) 2012 Rates Application

Industrial Gas Users Association (IGUA) Final Argument

Further to the Board's directions at the conclusion of the oral hearing herein on January 25th, IGUA wishes to provide brief submissions on two issues before the Board related to EGD's 2012 rates:

1. EGD's inclusion in its 2012 revenue requirement of costs associated with an incremental 75,000 GJ/day of TCPL Short Term Firm Transportation (STFT) long-haul transportation capacity; and

2. EGD's z-factor claim for costs associated with its sewer safety (the cross-bore) program.

For the reasons set out below, IGUA does not object to inclusion in EGD's 2012 cost of service of the incremental costs associated with the incremental STFT capacity, but without prejudice to review of appropriate system reliability costs for 2013 and beyond. IGUA does, however, object to inclusion in 2012 rates of incremental cross-bore related costs.

Incremental STFT

EGD should have reported to the Board and the parties to the EB-2010-0231 System Reliability Settlement Agreement that it had determined a requirement to increase its 2012 STFT capacity by 75,000 GJ/day.

IGUA was an active participant in the system reliability consultations directed by the Board in the Phase 2 Decision in EGD's EB-2008-0219 rate case. While the issue raised by EGD in that case may have related specifically to whether direct purchase bundled service customers should be required to contract for firm upstream transportation[1], the scope of the resulting Board Directed consultation, and of the ensuing Settlement Agreement, were much broader. In particular, the precise amount of STFT to be acquired by EGD as a result of that settlement of a "long term resolution" of EGD's system reliability concerns – 200,000 GJ/day - was a very specifically agreed number. For the winter of 2012, EGD has increased this component of its gas supply portfolio by just under 40%.

The System Reliability Settlement Agreement provides:[2]

> *In the event of a change in circumstances that affects security of supply to Enbridge's franchise area and/or the Long Term Resolution in a material way ("Material Change"), Enbridge will review the implications of the change and, within a reasonable period of time after the change has become known, will report to the parties to this Settlement Agreement the implications of the change on system/reliability and/or the Long Term Resolution.* [Emphasis added.]

EGD's evidence is that the drivers for its decision to increase, materially, the amount of STFT in its gas supply portfolio included[3]:

1. recent failure by EGD's suppliers of peaking services to deliver gas when called upon to do so;
2. an increase in EGD's peak day requirements; and
3. return to system supply of direct purchase customers.

In IGUA's view, all of these factors can reasonably be viewed as changes in circumstances that affect security of supply to EGD's franchise area or the long term system reliability resolution in a material way. It is particularly noteworthy that:

1. Part of the System Reliability Settlement Agreement included assignment to gas marketers of 50,000 GJ of short haul capacity. This is noteworthy in the context of the "return to system" driver of EGD's 2012 supply portfolio changes.
2. The cost of the initial 200,000 GJ of STFT held by EGD for 2012 pursuant to the System Reliability Settlement Agreement has itself increased in cost by more than $7 million, as a result of the precipitous increase in TCPL long-haul tolls

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[1] EGD Argument in Chief herein, paragraph 10.
[2] Ex, I, tab 6, Schedule 11, section 4.
[3] Tr.1, page 24, line 26 through page 25, line 2; page 80 lines 24 through 27; page 82, lines 7 through 11; EGD Argument in Chief, paragraph 7.

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since the System Reliability Settlement Agreement was struck and approved by the Board.[4]

The changes cited by EGD have led EGD to decrease the amount of its peaking supplies, and increase by almost 40% the amount of contracted STFT for winter 2012. This 40% increase in STFT will cost EGD $7.8 million[5]. It also appears that EGD has taken an assignment of an incremental 27,000 GJ/day of TCPL firm transportation from Empress to Iroquois[6], though there was little discussion of this during examination.

EGD's responsibility under the System Reliability Settlement Agreement in these circumstances is to report to the parties to that agreement. This provides those parties with an early opportunity to make inquiries should they deem it appropriate to do so, and to then determine whether, and if so how and when, to pursue any resulting concerns. EGD was not required to *"consult"* with parties in respect of this supply portfolio change[7], nor is it *"restricted"* or *"continually brought back to that [system reliability] proceeding"*[8] as a result of such changes. The reporting required by the settlement agreement is a simple matter of transparency, and could easily have been undertaken by EGD. In the result, however, the lack of reporting by EGD has led to this matter being discovered and brought out only due to the diligence of FRPO in this proceeding, only late in the process, and in such a way that there may be parties to the System Reliability Settlement Agreement not yet apprised of these developments.

IGUA acknowledges EGD's witnesses' testimony to the effect that even with the increase in STFT for 2012, the proportion of STFT held by EGD in 2012 is less than the proportion of STFT embedded in the System Reliability Settlement Agreement.[9]

In all of these circumstances, and particularly in light of the evidence regarding "proportionate adherence" to the system reliability balance struck in the Board approved System Reliability Settlement Agreement, IGUA does not object to the incremental STFT costs underpinning EGD's 2012 gas supply portfolio. However, IGUA expressly reserves its rights to review EGD's system reliability costs for 2013 and beyond in reference to the gross amount of system supply components specifically set out in the System Reliability Settlement Agreement, and in reference to the driving factors cited herein by EGD and any other factors then determined to be relevant and material.

[4] Tr. 1, page 20, lines 1 through 12.
[5] Tr. 1, page 69, lines 20 through 27.
[6] Tr. 1, page 75, lines 5 through 7.
[7] EGD Argument in Chief, paragraph 12.
[8] Tr. 1, page 29, lines 15 to 16.
[9] Tr. 1, page 67, lines 14 through page 68, line 6.

Cross Bores

EGD's $3.8 million in forecast cross-bore related expenditures should <u>not</u> qualify for z-factor treatment. These expenditures are in the normal course of prudent utility management and are not caused by an external event beyond utility management control. (Consequently, EGD`s request for a variance account for actual cross-bore expenditures in 2012 should also be denied.)

There is no issue about whether EGD should, and will, proceed with its cross-bore initiatives, regardless of the outcome of its request for z-factor treatment.[10] The essential determination for the Hearing Panel in connection with EGD's request for z-factor treatment of cross-bore related costs is whether such costs qualify for z-factor treatment.

In its pre-filed evidence, EGD relied on the recent TSSA order as the "event" which caused the cross-bore related costs to be incurred by EGD in 2012.[11] In its Final Argument, EGD relies on *"the Company's understanding of cross bores as a real safety issue in its service areas"* as the cost causing event.[12]

To their credit, the testimony of EGD's witnesses' on this topic was candid. They stated that:

1) *"the costs associated with the program are costs that [EGD] could not avoid as a prudent utility"*[13]; and

2) the only significance of the TSSA order is that *"while Enbridge was performing activities to deal with the issue, the company no longer has an option to change its direction in regards to what its intentions were. It now is required to perform the activities that it believed were appropriate.*[14]

This causal need to ensure safe and reliable operation of the gas distribution system is simply part of EGD's overall imperative to ensure that people do not damage EGD's facilities and cause releases of gas. That is, EGD's cross-bore activities are simply part of its overall pipeline integrity activities.[15]

Pipeline integrity activities are activities in the normal course of prudent utility management, and do not qualify for cost pass through under the concept of a "z-factor". The cross-bore program, and its cause, are readily distinguishable from a true z-factor (as defined in the 2007 settlement agreement) external causal event, such as a tax change. Clearly EGD would not remit more in tax payments if it were not required to do

[10] Tr. 2, page 127, lines 13 through 17.
[11] Ex. B/T2/S6, paragraph 34.a.
[12] EGD Final Argument, paragraph 66.a.
[13] Tr. 2, page 103, lines 20 and 21.
[14] Tr. 2, page 100, lines 12 through 17.
[15] Tr. 2, page 95, lines 4 through 15.

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so by an external event, such as a change in tax legislation or interpretation. EGD has clearly indicated, in contrast, that the realization of the operational safety issue is what drives its cross-bore program, not the TSSA order. The fact that there is a TSSA order, as a result of the realization of this utility operational issue, is irrelevant to consideration of the z-factor criteria.

Under its IRM deal, EGD bears the risk for operational expenses beyond those forecast, and is entitled to the benefit of operational expense reductions in excess of the productivity factor embedded in the IRM formula. EGD has benefited under this deal, through over-earning relative to Board approved ROE, by in excess of $110 million for the years 2008 through 2011.[16] EGD's request to be relieved of this $3.8 million dollar expense driven by prudent utility operational requirements should be denied.

Yours truly,

Cathy Galler

for: Ian A. Mondrow

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Encl.

cc: M. Newton (IGUA/ENREG)
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[16] Ex. J2.4