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December 12, 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-2012-0055

Ontario Power Generation Inc.

Please find enclosed the submissions of VECC.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

EB-2012-0055

Ontario Energy Board

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders approving the clearance or disposition of amounts recorded in certain deferral or variance accounts.

Final Submissions on Behalf of the VULNERABLE ENERGY CONSUMERS COALTION

("VECC")

December 12, 2012

Background to Issues before the Board

Settlement Agreement [1]
2011 Earnings Sharing Mechanism D/A (2011 ESMDA)

There are two unsettled issues:

(1) The allocation of costs between regulated gas storage activities and unregulated gas storage activities for the purposes of the 2011 earnings sharing calculation; and

(2) The amount of the provision for uncollectibles for the purposes of the 2011 earnings sharing calculation.

Notwithstanding these two unsettled issues, it was agreed that the principal balance in the 2011 ESMDA would be cleared as part of Enbridge's October 1, 2012 Quarterly Rate Adjustment Mechanism (QRAM) application and this clearance of the 2011 ESMDA will be subject to a subsequent true-up.

The first of the two unsettled issues was addressed as follows:

Deferral and Variance Accounts

2. Is the financial impact on the 2011 ESM amount resulting from the proposed?
methodology for the Allocation of Costs between Regulated and Unregulated
Storage Activities appropriate?

There was one unsettled issue and the disposition of this was as follows:

The allocation of costs between Enbridge's regulated and unregulated storage activities is an issue in Enbridge's 2013 rate proceeding, EB-2011-0354.

If, as a result of the Board's Decision in the EB-2011-0354 proceeding, there is any change to Enbridge's approach to the allocation of costs between regulated and unregulated storage activities that, when applied to the 2011 allocations, would have affected the earnings sharing calculation made for the purposes of the 2011 ESMDA, there will be a true-up to reflect the outcome that would have occurred if that change to Enbridge's approach to the allocation of costs had been made in this proceeding.

The Presiding Member in EB-2012-0055 noted the final disposition of this

[1] EB-2012-0055 Exhibit N1,Tab1,Schedule1

matter:[2]

> The Board notes this element of the 2013 cost of service proceeding was included in the settlement agreement approved by the Board on November 2nd, 2012. Therefore, as per the terms of the settlement agreement approved in this proceeding on September 17th, 2012, the issue relating to the allocation of costs between regulated gas storage activities and unregulated gas storage activities for the purposes of the 2011 earnings sharing calculation has been settled and accepted by the Board.

With respect to the amount of the provision for uncollectibles for the purposes of the 2011 earnings sharing calculation it was agreed in the Settlement, this will proceed to hearing.

The Settlement also noted that If the Board decides that an adjustment should be made to the applied-for provision for uncollectibles used in the earnings sharing calculation for the purposes of the 2011 ESMDA, Enbridge will give effect to that adjustment to the earnings sharing calculation and the 2011 ESMDA as part of the first QRAM application following the Board decision in which it is reasonably practicable to bring forward the adjustment.
.

2011 Transactional Services D/A (2011 TSDA)

There is one unsettled issue with respect to this account, as follows:

(1) Has Enbridge treated the upstream transportation optimization revenues appropriately in 2011 in the context of Enbridge's existing IRM Agreement?

Notwithstanding this unsettled issue with respect to the 2011 TSDA, The Settlement Agreement indicated that the principal balance in the account as shown in Schedule 1, together with interest, would be cleared as part of Enbridge's October 1, 2012 QRAM application.

The Settlement also indicated that if the Board decides that there should have been an adjustment to the amount recorded in the 2011 TSDA as shown in Schedule 1, Enbridge will give effect to the adjustment as part of the first QRAM application following the Board decision in which it is reasonably practicable to bring forward the adjustment. The clearance of the 2011 TSDA was without prejudice to the rights of all parties to take any position on the unsettled issue relating to the 2011 TSDA.

VECC understands from the evidence and IR responses[3] that EGD has three main types of transactions that may be in dispute:

[2] EB-2012-0055 Hearing Transcript Volume 1 Page 2

- Base exchanges,
- STS RAM transactions that involve Risk Amelioration Mechanism (RAM) credits', and
- Capacity releases that may include FTRAM credits.

Base Exchanges

In VECC's view, these transactions are the "normal transactions" not involving TCPL Risk Amelioration Mechanism (RAM) Credits. VECC has no issue with these being covered under the EB-2008-0615 Settlement regarding Transactional Services.

Short-term Transportation Service (STS) RAM Transactions

Under "own use" optimization STS RAM credits on TCPL are used to reduce the costs associated with the transportation of gas for EGD ratepayers by offsetting IT transportation costs.

Under "third party" optimization, in 2011, a total of $2.3 million in credits was generated.[4] Of this $0.2 million flowed to the utility customers as part of the gas transportation and acquisition costs through the Purchase Gas Variance Account (PGVA). The remainder of this amount ($2.1 million) was credited to the TS Revenue account.

As we will argue below, the recent reclassification of such transactions changes the appropriate regulatory treatment of this type of transaction.

Capacity Releases

VECC is familiar with the background to Capacity Release-related FTRAM transactions from the Union EB-2012-0210 case.

EGD provides gas purchased for use by ratepayers at Empress to a counterparty and assigns that counterparty a portion of its Upstream TCPL capacity; the counterparty delivers gas back to EGD at Dawn.[5]

EGD's evidence is that it operates its transportation on TCPL at 100% load factor and therefore the opportunity for such transactions is more limited than for Union and is based on marketers requesting an exchange:

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[3] e.g. I-4-2 and 3 FRPO Interrogatories #2 and 3
I-6-8 and 10 VECC Interrogatories #8 and 10

[4] Exhibit I, Tab 2, Schedule 2, Attachment
[5] Transcript Volume 1 Pages 11-12

> MR. SMALL: That's fair. I mean, the FT RAM component on TransCanada has been something that's been around since, I believe, 2004.
>
> Do we take advantage of the FT RAM explicitly? No, because we're operating our long haul contracts at 100 percent, so we're not leaving any of the space empty.
>
> Is that marketer taking advantage of that FT RAM? Probably most certainly they are.[6]

Regulatory treatment of STS RAM and Capacity Releases

Both types of transactions noted above (except own use STS RAM) have been treated as Transactional Services subject to sharing above the TS "floor" baked in rates of $8 million. The net revenue for 2011 was approximately $3.8 million from both STS RAM and capacity releases. This revenue is shared 75% ratepayers and 25%.

The primary issues are whether, given the underpinnings of the transactions are firm transportation paid for by ratepayers, both the STS RAM and capacity release revenue should be treated as an offset to gas costs with a different sharing arrangement as directed by the Board in Union's EB-2012-0210 Decision[7].

Having considered these issues VECC believes that while EGD has acted in accordance with the agreed historic treatment of such transactions and has not sought to gain any undue profit, nonetheless the Board's reclassification of FTRAM transactions as gas cost–related would also apply to third party STS RAM and Capacity Releases. This changes the appropriate regulatory treatment for this type of transaction.

Accordingly VECC disagrees with Board Staff[8] and adopts the position it took in the Union Case that STS RAM and Capacity releases be classified as Gas Cost-Related and the net revenue flowed through the PGVA as an offset to the transportation costs component of gas supply and transportation. Accordingly, unlike other non-STS RAM and Capacity releases the Ratepayers should receive the net benefit in accordance with the Boards Findings in EB-2012-0210:

> Consistent with the description provided by Union, the Board will define optimization as any market-based opportunity to extract value from the upstream supply portfolio held by Union to serve in-franchise bundled customers, including, but not limited to, all FT-RAM activities and exchanges.

[6] Transcript Volume 1 Pages 13/14
[7] Transcript Volume 1 Page 21
[8] Board Staff Submission Page 5 Paragraph 4

> The Board finds that 90% of all optimization net revenues shall accrue to ratepayers and 10% shall accrue to Union as an incentive to continue to undertake these activities on behalf of ratepayers. Although Union has undertaken optimization activities for a lengthy period of time, it has indicated that absent an incentive, these types of activities may not occur. The Board has not considered the issue of whether optimization is an integral part of prudent utility practice that should be undertaken by Union without the payment of an incentive. Absent consideration of this issue by the Board in the context of this proceeding, the Board is of the view that it is appropriate for an incentive to be continued, at a 10% rate. This level of incentive is consistent with that associated with short-term storage and balancing.[9]

In sum VECC submits that the revenue from optimization of ratepayer paid for Short term and Firm Transportation by third party STS RAM and capacity releases should be flowed through the PGVA as a gas cost-related transportation cost to the credit of ratepayers less an incentive of 10% to EGD.

Treatment of the Provision For Uncollectibles for the 2011 Earnings Sharing Mechanism

EGD's Provision for Uncollectibles rose significantly in 2011 to $21.542 million from $11.5 million in 2010[10]. EGD contended that this increase of approximately $10 million was as a result of adjustments required to correct deficiencies in accounts receivable reporting that were recognized in 2011.[11][12]

Prior to the Hearing, EGD filed updated evidence[13]. In VECC's view, Question 7 and Response is the key to a Board determination of this matter:

> Question 7: In response to CME Interrogatory #4, the Company indicated that the change in Enbridge's Provision for Uncollectibles in 2011 resulted from two deficiencies in Accounts Receivable reporting. Please explain each of these two items.

The Presiding Member asked about the Response[14]:

> MR. QUESNELLE:
> Well, the only one - and I hadn't anticipated we would be at this point in this time what -- this written evidence, but I did take a brief look through it, and the one area that did come up that I would like to hone down on, if we

[9] EB-2012-0210 Decision and Order Page 39
[10] Exhibit B, Tab 4, Schedule 2, page 1
[11] Exhibit B, Tab 4, Schedule 2, page 1
[12] Exhibit I, Tab 2, Schedule 4, Attachment
[13] K1.2
[14] Transcript Volume 1 Page 67

can, is in response to question number 7.
And we're talking about deficiencies here and the one that -- midway through the second paragraph, starting with the sentence:

> "This allows for the reconciliation of all customer accounts to the General Ledger Account balance. This capability did not exist prior to the implementation of the new CIS. During the conversion of its legacy system to the new CIS, the Company became aware that the detail in its customer accounts did not agree to the balance in the General Ledger Account."
> Now, we go on and refer to the correction of an error.
> So is it an error, or is it literally a refinement?

VECC disagrees with the Company position that is a refinement. Rather, VECC believes that it is an accounting error requiring a true up.

The Board attempted to clarify the difference with EGD:

MS. CONBOY: So if A plus B doesn't equal C, you've got the one account that has the different amounts.
MR. YUZWA: So we had to do the analysis of the middle account, the B account, to see why we couldn't get A and B to equal C.
MS. CONBOY: Okay.
MR. YUZWA: Does that help?
MS. CONBOY: Yes, I guess it is just the proportions of what goes in -- what comes directly from the bills and what goes into the clearance account to come to the end result in the ledger.
MR. YUZWA: Exactly. Everything that went through the bills actually goes through the clearing account.
MS. CONBOY: Got you. Thank you.[15]

Board Staff did not cross-examine EGD's witnesses and in Argument supported EGD's position that EGD acted on new information and noted EGD had a clean audit during the years in question[16]. In VECC's view that is not the issue; it is one of responsibility and who should bear the cost.

It is not clear to VECC why, if there are differences in some of the 2 million accounts why EGD should not upon discovering the error attempt to collect these amounts from the specific customers that apparently also include Marketers and other Service Providers, (who are protected from uncollectible debt if billed on the EGD bill), rather than assigning this to Provision for Uncollectibles and charging all ratepayers.
By definition Bad Debt is uncollectable debt and there is no evidence that EGD attempted to collect any of the $10 million.

[15] Transcript Vol 1 Page 70
[16] Board Staff Submissions page 6

There are three additional issues related to assigning this $4.1 million as a Provision for Uncollectable Accounts.

These are

1. The new CIS has been in place since early 2010; why did EGD just "discover" these discrepancies in 2012?

2. Accounting is under the control of EGD and any errors not resulting from either Board direction or other external circumstances, such as changes to accounting rules, are the responsibility of the shareholder.

3. There will be a material intergenerational inequity if the Board allows the relief and requested recovery, since the differences between the General Ledger and the amounts collected in rates appear to go back several years.

For all of the above reasons, while not disputing the quantum of the discovery of discrepancies resulting in a year over year $10 million increase in Provision for Uncollectible accounts in 2011, VECC submits that this amount should be added back to Utility Net income prior to calculating the 2011 Earnings Sharing between Shareholder and Ratepayers, with a consequential increase in the earnings shared with ratepayers.

Costs

VECC submits it has acted prudently and in an efficient manner in the proceeding and respectfully requests an award of 100% of it legitimately incurred costs.

All of which is Respectfully Submitted this 12th day of December 2012