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.

FRPO ARGUMENT

December 12, 2012

Introduction

In its May 11, 2012 Application, Enbridge Gas Distribution ("Enbridge") applied for an order or orders approving the disposition of deferral and variance accounts for 2011. Through discovery and a Settlement Conference held on August 1 and 2, 2012, the parties reached a partial settlement agreement that was accepted by the Ontario Energy Board (the "Board) on September 17, 2012. This process combined with the settlement agreement in EB-2011-0354 left two unsettled issues. The following are the submissions of the Federation of Rental-housing Providers of Ontario ("FRPO") on one of these remaining issues, the 2011 Transactional Services Deferral Account ("TSDA").

Transportation of gas to Ontario historically treated as pass through cost for the natural gas utilities in Ontario. Board approvals of the cost consequences of changing transportation costs to keep Enbridge (formerly Consumers Gas) and its customers whole date back over two decades[1]. The principle has been that customers pay for the prudently incurred costs of transportation to Ontario while the utility does not profit from those activities.

Through 2012, it has become increasingly apparent in the discovery of gas utilities upstream contracting practices that the application of this principle has become blurred. In this case, Enbridge has testified that it negotiated arrangements with third parties to reduce the cost of transportation to Ontario. Enbridge subsequently deemed the transaction to have happened at the full contracted toll and diverted the reduction of transportation cost to transactional services affording a 25% allocation of the benefits of these transactions to its shareholders. We respectfully submit that this deemed transaction is in appropriate and that the reduction of cost should rightfully reduce transportation costs.

Utilities Ought Not Profit from Transportation Contracting

The long term principle that customers pay for the prudently incurred cost of transportation to Ontario ought not be distorted because the utility enters into an assignment contract with a third party to reduce the cost and then calls it an exchange. The fact is that the gas was moved from its supply source at Empress to its intended destination at Dawn by a less costly arrangement. In our

[1] E.B.R.O. 465 Decision with Reasons dated March 1, 1991, pages 89-90

view, this is simply a reduction in the cost of transportation. We hold this belief for the following reasons:

1) The costs borne by the PGVA do not reflect the actual cost of transportation to Ontario.
2) The company accounted for these transactions in a deemed transaction to create profit in a manner that has no explicit Board approval.
3) The company could have transported the gas to Ontario in the same manner, on its own, using attributes of the contract thus reducing the cost of transport benefitting ratepayers directly.
4) The resulting savings from company transport management would have been greater than the residual benefits available from third party assignment after sharing accounting margins with shareholders.

Prior to our expansion on the above reasons, it is important to distinguish that our concerns are specific to Enbridge's use of capacity releases. While Enbridge provided a confirmation of the three types of optimizations[2], we are concerned with the manner in which these releases are being characterized as optimization as opposed to gas cost reduction and will offer our thoughts on the other types of optimizations later in our submissions.

<u>1) Cost of Transport to Ontario</u>

Enbridge manages a diversified portfolio of transportation contracts to bring gas from multiple supply sources to Ontario for geographical diversity[3]. In doing so, the company has a variety of transportation costs that come together through the PGVA to form the actual cost of transportation as referenced to a common point of Empress[4]. These actual costs are flowed through to the PGVA to reconcile against forecasted costs to ensure that variances are trued up in the Quarterly Rate Adjustment Mechanism (QRAM). The resulting true up creates a rate rider or cost adjustment flowed through to customers. The principle as communicated as a commitment to its customers in its explanation of its bill is: Cost Adjustment. For costs that are passed on to customers with no mark up, such as the cost of natural gas and the cost of transporting natural gas, we use adjustments

[2] Transcript, Volume 1, November 22, 2012, page 6, lines 3-10
[3] Transcript, Volume 1 , November 22, 2012, page 22 line 26 to page 23 line 25
[4] Transcript, Volume 1 , November 22, 2012, page 24 line 18 to page 25 line 28

to ensure that in the end, customers receiving the product or service from Enbridge pay exactly what we paid[5].

While, as far as we have understood, that commitment has been maintained over time, what we have discovered in this proceeding is that Enbridge has varied from that commitment. As described in the oral hearing, in accounting for the capacity release transactions, Enbridge does not pass through the TCPL credit on its bill and substitute what it paid to the third party to take the capacity assignment and bring the gas to Dawn. The transcript is very clear here[6] and the summary is customers get charged as if the gas were transported under the contract even though the true cost was substantially lower.

2) Deemed Transactions Lack Board Approval

The accounting described for these capacity release transactions necessitates charging the PGVA with a deemed cost when, in fact, the actual cost is substantially lower. While Enbridge stated that they charge the PGVA with the cost as if the gas actually flowed on the contract so there is no impact on the PGVA[7], the company has not provided any evidence that the Board knew of this practice and has approved it in some fashion in the past. Further, by this accounting, they have created a notional revenue to use as transactional service[8] thus creating a shareholder opportunity to take a cut of the accounting difference. Again, Enbridge has not provided evidence of explicit Board knowledge or approval of this practice.

3) Enbridge Has Ability to Transport the Gas Directly

Since 2007, annual long-haul TCPL contracts have had a feature known as Firm Transport - Risk Alleviation Mechanism. This attribute of the contract was developed by TransCanada as means of alleviating the risk of holding annual long-haul contracts by allowing the shipper to convert unutilized firm capacity into interruptible capacity anywhere on its system within the calendar

[5] https://www.enbridgegas.com/businesses/accounts-billing/understanding-your-bill/
[6] Transcript, Volume 1 , November 22, 2012, page 28 to page 34
[7] Transcript, Volume 1 , November 22, 2012, page 30 line 1 to 2
[8] Transcript, Volume 1 , November 22, 2012, page 30 line 3 to 4

month[9]. Given that the intended destination of the gas in the summer is Dawn, as evidenced by Enbridge's assignment, as the shipper of record, Enbridge could deliver the gas to Dawn using FT-RAM itself. By simply leaving the pipe to the Eastern Delivery Area empty and nominating Interruptible Transport (IT) from Empress to Dawn, the gas could be transported for a lower cost. Our proposition is that by doing the math on FT-RAM credits and the relative cost of transporting on either path, Enbridge could reduce the cost of transport for its customers. However, Enbridge did not explore the alternative because they considered the savings to be only 24 cents per GJ[10]. However, in our submission Enbridge did not consider the opportunity fully nor correctly.

<u>4) Enbridge Use of FT-RAM for Dawn Deliveries Results in Incremental Ratepayer Benefit</u>

In our view, Enbridge has not properly considered the ratepayer impact. Enbridge has chosen to assignment the contract to a third party and have determined the resulting margin to be 38 cents per GJ[11]. Given that Enbridge has chosen to move this margin to transactional services, ratepayers receive 75% or 28.5 cents per GJ. However, a more economically rigorous review of the alternative of company use of the FT-RAM attribute yields a greater ratepayer benefit.

Enbridge accepted to undertake to calculate how much additional gas could be transported if it left the capacity to the Eastern Delivery Area empty and used RAM credits to pay for IT transport to Dawn. In Exhibit J1.1, Enbridge undertook to evaluate the benefit of this approach. In any assessment of alternatives in an economic fashion, all evaluation happens at the margin relative to the base case. The base case in this situation is what the cost is to move the gas from Empress to Dawn under the transportation contract that Enbridge has with TCPL. As broken out in lines 2 and 3 of the attachment to the undertaking, Enbridge provides the demand charge and the commodity charge on a per GJ basis. It is these two charges that would be paid by Enbridge if it did deliver the gas to Ontario using the contracted capacity. Enbridge provides in the description, summarized in the table of the attachment, how it would calculate the amount of additional gas that could be delivered on IT and their assessment of the savings. While this calculation correctly determines the amount of IT that contracted for using the Demand Charge to the Eastern Delivery Area, it fails to

[9] Transcript, Volume 1 , November 22, 2012, page 10 lines 20 to 26
[10] Transcript, Volume 1 , November 22, 2012, page 36 lines 14 to 28
[11] Transcript, Volume 1 , November 22, 2012, page 34 lines 4 to 11

recognize that the base case of delivery via the contract would have included both the demand charge and the commodity charge.

Therefore to assess accurately the relative benefit of another alternative, the commodity charge must also be included to determine how much additional gas could be transported using IT. In the attachment to our submission, we have used the same setup provided by Enbridge for comparison but adjusted the calculation to include the value of avoided commodity cost to the Eastern Delivery Area in the assessment of additional IT capacity. We have highlighted the changes we made that are spawned from including the avoided commodity cost from Empress to the Eastern Delivery Area[12]. The resulting savings are 38.6 cents per GJ. Very importantly, in this case, 100% percent of the benefit could be returned to ratepayers in a reduction to transportation costs. Using FT-RAM credits in this way would accomplish a utilization of the benefits of the contracts being maximized for those who pay for the cost of the contract. In fact, this approach would have been consistent with intent of the RAM program in alleviating the risk for those who are paying for the service. Even if the Board were to consider a margin sharing for Enbridge at 10%, the resulting benefit to ratepayers would 34.5 cents per GJ in reduced transportation costs. In our view, this approach would be using the transportation contract and its attributes keeping the interest of those who pay for the cost of the contract as paramount. This scenario emphasizes that activities related to the use of RAM should go to reducing the cost of the transport as part of a gas cost.

Enbridge Concerns Addressed

As described above, it is clear that Enbridge had not considered this alternative. In defending its position, in our view, Enbridge has presented some issues and concerns in the undertaking that are provided as a pretext that are not grounded in fact. While we could refute all of these concerns, we recognize that there is insufficient evidentiary basis to provide the Board insight from this docket and therefore will respond only to some of their caveats.

[12] This inclusion of the commodity cost is reflected in Enbridge's cost to deliver from Empress to Dawn as noted my its addition of line 8 to line 7 yielding the 100% Load Factor FT Toll in line 9 which is factored up by 110% to get the IT Bid Floor in line 10.

Role of a Marketer: this assertion was advanced in the oral hearing in re-examination[13]. What is quite surprising about this position is that Enbridge states that it does not want to be a marketer. Yet the reality is, in executing the assignments, the company is selling its capacity rights to a third party who takes their gas at Empress and re-delivers the gas to them at Dawn in a "pseudo buy-sell" and the marketer captures Enbridge's option on additional TCPL capacity. This is clearly a secondary market transaction requiring a counter-party which is generally the role of a marketer. In utilizing the FT-RAM credits to increase deliveries to Dawn, we are not asking Enbridge to seek a third party and arbitrage its delivery capability. In our proposition, we are expecting Enbridge to use its contractual rights to divert the gas to Dawn and save ratepayers transportation cost. Clearly, there is no transaction with a third party so the characterization of becoming a marketer is not founded. The Enbridge operations group only has to effect a change in delivery location as afforded by its contractual rights as a shipper with TCPL. In our view, Enbridge's stated concern of becoming a marketer is naive at best and misleading or unhelpful at worst.

Availability of Interruptible Transportation: As was evidenced significantly in the Union Rebasing Case[14], the market has changed and shippers have moved from longer term contracts to shorter term and seasonally driven contracting. The result has been a significant level of excess capacity on TCPL's mainline to Ontario. As described in the Union case, TCPL has been able to sell short term firm service for decades with only interruptions by catastrophic failures in the winter[15]. It is well known in the industry that TCPL IT is available all summer and, in fact, that point was made by Enbridge itself[16] that IT is completely available all summer. In addition, in that same reference, Enbridge provides that the commodity price risk is not an issue in this period.

Variation from the Supply Plan: As FT-RAM has been a feature of the TCPL's long-haul contracts for several years, it is our view that a utility could consider how a feature of its long term supply contracts could be used to the advantage of its ratepayers. Simply stated, if the calculation of incremental supply available using the FT-RAM credits to pay for IT to

[13] Transcript, Volume 1 , November 22, 2012, page 60 line 26 to 28
[14] EB-2011-0210
[15] EB-2011-0210 Transcript, Volume 9, July 25, 2012 page 113 line 11 to page 115 line17
[16] Transcript, Volume 1 , November 22, 2012, page 35 line 1 to 5

Dawn opportunity could yield an additional 18% deliveries for the same cost, a prudent utility would give priority to incorporating this practice in their gas supply plan. It is clear, again, that Gas Control has a plan going into the summer that determines a prudent approach to filling storage[17]. Using FT-RAM to bring additional gas for the same cost would reduce the need of buying additional spot gas at Dawn that would come with an implicit cost of transport which could be avoided.

To the extent that Enbridge brings forth a similar evidentiary basis in 2012, we will strive to ensure that the Board is fully apprised of a utility perspective on managing asset rights on behalf of ratepayers. We trust that the above provides the Board with reasonable assurance that the opportunity to use contractual rights on behalf of those that pay for the contract ought not be inhibited by a veil of acceptance that utilities are choosing their customer interests first.

Other Optimizations

We respect that the Board has only recently become aware of these matters and we trust that our submissions are helpful to the Board. In our role to further assist the Board, we would desire to submit on areas that we have no concern with the application.

Firstly, in our view, we have found no evidence of incremental contracting in 2011 beyond the utilities' needs, and therefore would not be seeking relief in the area of benefits of base exchange transactions.

Secondly, and very importantly, we recognize Enbridge's use of the STS-RAM credits[18]. While the transcript may not provide a clear picture, we support the fact that Enbridge's gas control function is mindful that STS credits accrue when delivery is not needed and are therefore available to offset IT expenses that may be incurred in the month due to variations in consumption patterns. In our view, this approach demonstrates the principle that the benefits of the contract ought to be used to reduce ratepayers' transportation cost. Then after ratepayers' needs are addressed, additional credits could be used to derive additional value prior to expiry at the end of the month. We understand that the

[17] Transcript, Volume 1 , November 22, 2012, page 12 line 14 to page 13 line 14
[18] Transcript, Volume 1 , November 22, 2012, page 49 line 27 to page 54 line 3

credits in the TSDA go back to ratepayers in proportion to their interest in the asset[19]. In our view, that is what a utility ought to do with the RAM program. To the extent that unutilized credits are released for the opportunity of creating margin for ratepayer and shareholder value, we believe Enbridge is acting as it ought to as a public utility.

Summary

In our view, the issue is quite simple. Are the transactions that provide gas to Ontario covered by Enbridge's regulatory compact to provide the commodity and transportation to Ontario under the Board's expectation of a pass through to customers? Another way of considering this question is what if Enbridge, in the period of its forecasted rate recovery for transportation services found a cheaper way to deliver that service, should they book the forecasted cost and profit from it or the actual cost? In our respectful submission, the company's commitment is that the customer should pay what Enbridge paid.

Relief Requested

In our view, the capacity release and subsequent assignment of ratepayer subsidized transportation benefits created margin that ought to be viewed as a reduction in gas cost transportation. We believe this construct is consistent with Board expectations and decisions of the past and most recently. Therefore, we would request that the approximately $3 million of margin created from capacity assignments be credited to gas costs for ratepayer benefit. To the extent that the Board believes that the utility ought to be incented to work to make these deals happen for the benefit of ratepayers, we would not oppose a 10% allocation to the shareholder comparable to the decision in the Union Gas 2011 deferral account/ESM and rebasing proceedings[20].

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[19] Transcript, Volume 1 , November 22, 2012, page 16 line 8 to 21
[20] EB-2011-0210 and EB-2012-0087 Preliminary Issue respectively.

Costs

We respectfully submit that the Federation of Rental-housing Providers of Ontario has acted responsibly in its intervention in this matter and respectfully requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

All of which is respectfully submitted on behalf of FRPO,

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Dwayne R. Quinn

Principal

DR QUINN & ASSOCIATES LTD

Item#	**TCPL -EmpresstoEasternZoneFTToll**			
1.	-DemandCharge	$/GJ/Mth		63.84842
2.		$/GJ		2.09913
3.	-CommodityTol	$/GJ		0.14377
4.	100%LoadFatcorFTToll	$/GJ		2.24290
5.	ITBidFloor	$/GJ		2.46719
	TCPL -EmpresstoSouthwestZoneFTToll			
6.	-DemandCharge	$/GJ/Mth		53.88793
7.		$/GJ		1.77166
8.	-CommodityToll	$/GJ		0.12129
9.	100%LoadFatcorFTToll	$/GJ		1.89295
10.	ITBidFloor	$/GJ		2.08224

Long-haulFTRAMFormula

Long-haulFTRAMcredit= (UnutilizedDailyQuantity)X[(100%loadfactorlong-haulFTtollx1.1) -FTLong-haulComr

(UnutilizedDailyQuantity)X[(2.24290x1.1) -.14377]

(UnutilizedDailyQuantity)X(2.32342)

TotalReleasein

		Daily quantity	Total Release in the month of April 11	
		GJ	GJ	
	FTCapacityReleased	41,088	1,232,640	
	TransportationCharges		$(000's)	
11.	EmpresstoEasternZoneFTDemandToll (41,088Gj/dayX$63.84842/Gj/mth)		2,623.4	
12.	FTRAMCredit (1,232,640GjX$2.32342/Gj)		(2,863.9)	
12A	FT Commodity Available for Transport (1,232,640GJX$0.14377/GJ)		(177.2)	
13.	EmpresstoSouthwestZoneITToll (1,232,640GjX$2.08224/Gj)		2,566.7	
14.	NetTransportationCost (Item#11+Item#12+Item 12A+Item#13)		2,148	
				Avgperunitsavings -$/Gj
15.	NetTransportationSavings (Item#11minusItem#14)		475.5	0.3857574
16.	AdditionalvolumethatcouldbemovedthroughIT(Gj's) (Item#15/$2.08224)		228,344	