



EB-2012-0055

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 Inc. for an order or orders approving the
clearance or disposition of amounts recorded in certain
deferral or variance accounts.

BEFORE: Paula Conboy
Presiding Member

DECISION AND RATE ORDER
May 2, 2013

Introduction

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application dated May 11, 2012 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Sched. B, for an order or orders approving the disposition of balances in certain deferral or variance accounts established by the Board’s Decision and Order in EB-2010-0146 dated November 25, 2010. The Board assigned File Number EB-2012-0055 to this Application.

The Proceeding

On June 4, 2012, the Board issued its Notice of Application and Procedural Order No. 1 which included an Issues List, a process for written interrogatories, and dates for a Settlement Conference as well as the filing of a Settlement Proposal.

The Settlement Conference was held on August 1, 2012 and August 2, 2012. Enbridge filed a proposed partial Settlement Agreement on August 24, 2012. On September 17, 2012 the Board issued a Decision and Order on the Settlement Agreement accepting the proposed Settlement Agreement and setting November 22, 2012 as the date for an oral hearing of the unsettled issues.

The unsettled issues pertained to the 2011 Earnings Sharing Mechanism Deferral Account (“ESMDA”) and the 2011 Transactional Services Deferral Account (“TSDA”).

The accepted Settlement Agreement established that the issue relating to the allocation of costs between regulated and unregulated gas storage activities be dealt with in accordance with the outcome of Enbridge’s 2013 Cost of Service proceeding (EB-2011-0354). This issue was settled in the EB-2011-0354 proceeding and the Board has accepted this issue as having been settled in this proceeding.

The unsettled issue with respect to the 2011 TSDA related to whether Enbridge has treated the upstream transportation optimization revenues appropriately in 2011 in the context of Enbridge’s existing IRM agreement.

The Board issued its Decision and Order on the unsettled issues on March 14, 2013. In its Decision, the Board directed Enbridge to file a Draft Rate Order reflecting the Board’s findings in the Decision. The Board also directed Enbridge to propose a methodology for disposing of the incremental amount resulting from the Board’s findings and to discuss how it proposes to dispose of the 2012 capacity release net revenues in its Draft Rate Order filing. The Board also set out a process for Board staff and intervenors to file comments on the Draft Rate Order and for Enbridge to respond to those comments.

Enbridge filed the Draft Rate Order on March 25, 2013 in accordance with the March 14, 2013 Decision and Order (“2011 ESM Decision”). Board staff, Canadian Manufacturers & Exporters (“CME”), and Energy Probe filed comments on the Draft Rate Order and Enbridge responded to those comments in its reply submission. In response to Enbridge’s reply submission, Federation of Rental-housing Providers of Ontario (“FRPO”) and School Energy Coalition (“SEC”) submitted comments identifying their position and clarifying why they did not originally file comments.

Comments on the Draft Rate Order

Board staff, CME, and Energy Probe supported Enbridge's proposal to dispose the incremental amount of \$776,300 resulting from the Board's findings as a one-time credit to the transportation component of its Purchased Gas Variance Account ("PGVA").

In response to Enbridge's proposal to revisit the issue of 2012 capacity release net revenues in its 2012 ESM application, CME submitted that as a matter of principle, classification determinations made by the Board in a prior proceeding should endure from year to year absent an allegation and subsequent convincing demonstration of material changes in circumstances related to that issue of classification. CME submitted that it would be inappropriate to permit Enbridge to re-visit this classification issue on the basis of what CME characterized as Enbridge's vague and unsupported assertion pertaining to the insufficiency of the evidence before the Board in the 2011 ESM proceeding

CME stated that since no material changes in circumstances pertaining to the nature of Enbridge's participation in capacity release transactions between 2011 and 2012 are alleged, Enbridge should be directed to adhere to the 2011 ESM Decision's classification of capacity release net revenues as gas cost reductions when submitting its 2012 ESM application.

Energy Probe submitted that it agrees with Enbridge that the 2012 capacity release net revenues should be dealt with in the 2012 ESM proceeding, however, it does not agree with Enbridge that the change in the magnitude of the capacity release net revenues is sufficient grounds to revisit the issue in the 2012 ESM proceeding.

Energy Probe submitted that if there is a significant change in the nature of capacity releases in 2012 from that in 2011, then Enbridge can provide evidence of these changes and indicate why the Board's 2011 ESM Decision should not apply to some or all of the capacity release net revenues in 2012.

In its reply submission, Enbridge stated that more than fifteen intervenors did make any comments. Enbridge stated that seven intervenors participated in the Settlement Conference and five intervenors submitted no comments in relation to the Draft Rate Order. Enbridge submitted that it must be presumed that the many intervenors that did not submit comments do not take issue with any aspect of the filing made by Enbridge pursuant to the directions of the Board with respect to the Draft Rate Order.

FRPO and SEC responded to Enbridge's reply submission. SEC submitted that it is common practice, where there are a number of intervenors, for only some intervenors to comment on the Draft Rate Order. SEC stated that other intervenors, knowing that those who are commenting will capture all of the material issues, make no additional comments, in the interests of regulatory efficiency. SEC submitted that it is sometimes the one on whom others rely, and sometimes it relies on other parties. In this case, SEC stated it relied primarily on CME, because it knew CME would be thorough in its analysis, and its interests on this point are similar to those of SEC. SEC also submitted that it was aware that Energy Probe would be providing comments.

FRPO submitted that it adopts SEC's comments and by extension the submission of CME. FRPO stated that it reviewed CME's comments and believed its concerns were expressed effectively. FRPO submitted that given the efficiency and effectiveness of these communications and because it did not believe that the Board needed a letter to support the CME submissions, FRPO did not file comments.

Enbridge noted that in its 2011 ESM application, it brought forward for disposition balances in approximately twenty non-commodity related accounts (including the 2011 ESM Deferral Account) and three commodity related accounts. Enbridge stated that it is neither practical nor reasonable to expect that, in the annual ESM proceeding, it will pre-file highly detailed evidence about the background, methodology and nature of transactions or activities for more than twenty deferral and variance accounts. Enbridge argued that this is particularly so in the case of Transactional Services, which is an area that has been given extensive consideration by the Board in previous proceedings, including at least one proceeding devoted entirely to the subject of Transactional Services. Enbridge submitted that it was a significant challenge to embark on a reassessment of Transactional Services in the context of Enbridge's 2011 ESM filing and Enbridge recognizes the importance of developing a better evidentiary record with respect to Transactional Services for the 2012 ESM proceeding.

Enbridge submitted that it is clear that the evidence included in the 2011 ESM filing did not meet the challenge of conveying to the Board a sufficient understanding of the background, methodology and nature of Transactional Services. The Board's 2011 ESM Decision was premised on the notion that capacity release transactions differ in a meaningful way from other transactions included within Transactional Services, given the Board's assumption that capacity release transactions do not rely on temporarily

surplus assets. Enbridge stated that with all due respect to the Board, the premise of the 2011 ESM Decision on capacity release transactions was not correct.

Enbridge stated that it believes it is important that its Transactional Services methodology not go forward on the basis of an incorrect premise. At a minimum, Enbridge submits that the Board should consider the premise of the 2011 ESM Decision with the benefit of a full record of evidence regarding the background, methodology and nature of Transactional Services and, particularly, capacity release transactions. In the circumstances, and for the reasons set out by Enbridge with its filing of the Draft Rate Order, the reasonable course of action is for Enbridge to file this evidence for the Board's consideration in the 2012 ESM proceeding.

Enbridge submitted that the Board should not pre-judge Enbridge's 2012 ESM application before even seeing the evidence that it will file for that case. Enbridge also submitted that the Board should not accede to CME's attempt to have the Board panel hearing this case fetter the discretion of a panel hearing a future case. Rather the Board should leave 2012 capacity release net revenues to be considered in the 2012 ESM proceeding and should give no directions in this case regarding 2012 net revenues.

Board Findings

The Board does not agree with Enbridge's comments that intervenors that do not file comments implies agreement. The only conclusion that the Board can draw from an intervenor not filing comments is that it takes no position. In any event, FRPO and SEC had not filed comments have since made their support of CME's submission clear.

The Board made the 2011 ESM Decision based on the evidence before it. Enbridge submitted that the evidence it put forward in the 2011 ESM filing did not meet the challenge of conveying to the Board a sufficient understanding of the background, methodology and nature of Transactional Services. Enbridge submitted that the Board should consider the premise of the 2011 ESM Decision with the benefit of a full record of evidence regarding the background, methodology and nature of Transactional Services and, particularly, capacity release transactions. In these circumstances, Enbridge submits that the reasonable course of action is for Enbridge to file this evidence for the Board's consideration in the 2012 ESM proceeding.

The Board will leave 2012 capacity release net revenues to be considered in the 2012 ESM proceeding. The Board will not provide directions in this case regarding 2012 net revenues. It will be incumbent on Enbridge as it is for the applicant in every case to provide comprehensive evidence in support of its requested relief.

The Board also agrees with Enbridge's proposal to dispose the incremental amount resulting from the Board's findings in the 2011 ESM Decision as a one-time credit to the transportation component of its PGVA.

THE BOARD ORDERS THAT:

1. The incremental 2011 capacity release net revenues of \$776,300 to be cleared as a one-time credit to the transportation component of Enbridge's Purchased Gas Variance Account including interest up to March 31, 2013 is approved for disposition and shall be implemented as part of July 1, 2013 QRAM.

ISSUED at Toronto, May 2, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary