

EB-2013-0046

Ontario Energy Board

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.

Federation of Rental-housing Provider of Ontario

Argument

Submitted October 18, 2013

Introduction

In the EB-2012-0055 Decision (“the Decision”), based upon the evidence before it, the Board determined that revenue generated from capacity release transactions should be treated as gas cost reductions¹. In its Application² for deferral or disposition of deferral and variance accounts for 2012, Enbridge Gas Distribution (“Enbridge”), the company provided additional background on the nature of the gas supply transactions. Through the discovery and settlement process, three issues remained. By letter³, Enbridge reduced the remaining issues to one: the proper allocation of the costs and benefits of gas supply transactions is the only remaining issue. The Settlement Agreement lays out the difference in allocation quantified at approximately \$4.7 million⁴.

Over the past couple of years, there has been a significant amount of time invested in discovery and creating clarity on the issue of gas supply including how utilities arrange for transport of gas to their customers and how the costs and benefits are accounted. Our goal in these submissions is to provide the Board with improved clarity and, we believe, criteria that can be used to establish clear delineation of costs and ultimately equitable allocation of benefits in this proceeding. We believe that the evidence in this proceeding confirms the Decision.

¹ EB-2012-0055 Decision and Order dated March 14, 2013, page 13

² EB-2013-0046 Application, dated May 24, 2013, Exhibit C, Tab 1, Schedule 6

³ Enbridge Letter to Ontario Energy Board, Withdrawal of Contested Issues, September 6, 2013

⁴ EB-2013-0046 Settlement Agreement dated August 2, 2013

Issue

Gas commodity purchase and transport has long been viewed as a pass through to customers. It is an essential service of the utility that has the franchise right. In economic terms, the pass through was created to ensure the monopoly utility does not leverage its monopoly position to extract undue margin from an essential service that has evolved into a contestable service. While the service is contestable, the utility enjoys superior access to customers. As a result, the Board has regulated this service as not for profit and the governing Incentive Regulation Settlement Agreement sets out gas costs, specifically identifying transportation, as a Y factor flow-through⁵.

However, we believe the issue has been unnecessary clouded by much of the detail provided by the utility including its recently articulated criteria⁶. These criteria are processed oriented and very difficult to document, establish and prove. In this category, most notably is the assertion that the utility must somehow be approached by an outside entity⁷. In our view, a utility holding excess transportation capacity would not simply stand by and hope that some party contacts them for this service. And frankly, would they transact directly with the first “third-party” that makes a request or would they, in a commercially responsible fashion, determine the value of their service through some form of bid thereby initiating contact with other third-parties? In any event, we view this criterion as unhelpful.

Gas Supply Services

In our view, clarity can be brought to this issue when the gas molecule is viewed as the asset being transported. The mechanisms, transport and its associated attributes along with storage, are asset

⁵ EB-2007-0615 Settlement Agreement dated February 4, 2008, Issue 5.1

⁶ Exhibit C, Tab 1, Schedule 6, paragraphs 15-17

⁷ Exhibit C, Tab 1, Schedule 6, paragraphs 16

rights that are utilized in the Gas Supply plan to ensure that end use customers receive the molecules of gas they need when they need it⁸. Therefore, if Enbridge is entering into any transactions that are used to ensure that they have sufficient gas molecules where they need them, be it in storage or in their franchise, these ought to be considered Gas Supply transactions and the costs and benefits allocated accordingly. These transactions would include:

“The third method that Enbridge uses to generate transportation optimization revenue is through capacity releases. Capacity releases involve Enbridge providing gas to a third party at one location (i.e. Empress) and assigning that third party a portion of its long haul capacity on TCPL. The third party then gives the gas back to Enbridge at another location (i.e. Dawn).”⁹

In this description leading to Enbridge transacting a capacity release to get the gas molecule to Dawn, the Gas Supply plan dictates that the molecule is needed in storage. Therefore, the result of the transaction is Enbridge has found a less expensive alternative to move the required gas molecule from the supply source to storage and therefore the entire transaction ought to be in the Gas Supply accounts.

Third Party Services

On the other hand, Enbridge recognizes that it has asset rights in excess of what is needed in the Gas Supply plan. During those periods, Enbridge can and does enter into transactions that effect a delivery of a third party’s gas to a location desired by that party. In this case, the transaction does not result in any change to the gas molecules that are being managed in the Gas Supply plan. The sole purpose of this transactional service is to move the third party’s gas molecules and therefore it is properly classified as a transactional service.

⁸ Transcript pages 37-38

⁹ EB-2012-0055 Decision and Order dated March 14, 2013, page 8

With the aid of Exhibit 1.3, an example of such a service was described for the witness panel¹⁰. In the example provided, temporarily excess asset rights could be used to move a third party's gas molecules from Dawn to the Enbridge CDA without impacting Enbridge's primary responsibility of ensuring that the molecules that its end use customers needed were delivered. This example was used to illustrate the description in the Decision:

"During periods of reduced demand, Enbridge optimizes underutilized transportation capacity by conducting base exchanges with a third party between two points (i.e. receive gas at Dawn and redeliver to the Central Delivery Area). Such a transaction would arise in an instance where a third party wants gas at a specific location but has no way of getting it there and thus Enbridge would conduct an exchange for a fee to the third party."¹¹

After some dialogue, the witnesses acknowledged the described transaction fit in the Board's description¹².

We would like to emphasize at this point that the discussions that occurred during this examination point to the need to simplify the criteria. In the testimony provided, it was clear that different terminology can be used to describe essentially the same service. In fact, in last year's evidence, Enbridge referred to capacity releases. This year, the term has become capacity release exchanges. Therefore making cost and benefit allocation decisions potentially based upon semantics in our view is problematic. Therefore we urge the Board to classify the costs according to the purpose of the transaction either Gas Supply or Third Party services.

¹⁰ Transcript pages 48-52

¹¹ EB-2012-0055 Decision and Order dated March 14, 2013, page 7

¹² Transcript page 51, lines 24-28 and page 52, lines 1-9

Relief Requested

In our view, the evidence in this proceeding presents a compelling case that there is nothing different in the nature of the transactions between 2011 and 2012. Enbridge has presented a case that process-based criteria should be used to include capacity release transactions as transactional service. We respectfully submit that this approach ought to be rejected. We have offered what we believe is clearer, more rigorous, purpose-based definition that can be applied to re-affirm the previous Decision in these matters and order the capacity release transactions to be treated as reductions to gas costs.

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,



Dwayne R. Quinn

Principal

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