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October 18, 2013

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: EB-2013-0046
Vulnerable Energy Consumers Coalition (VECC)
Submissions

Please find attached the submissions of VECC in the EB-2013-0046 proceeding.

Yours truly,

Michael Janigan
Counsel for VECC

cc David Stevens - Counsel for EGD

EB-2013-0046

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Sched. 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.

Final Submissions on Behalf of the

VULNERABLE ENERGY CONSUMERS COALTION
(“VECC”)

October 18, 2013

Introduction

In accordance with the Hearing Plan filed by Enbridge Gas Distribution Inc.("EGD" or "Enbridge") on September 17, 2013, the following are the submissions of VECC in the referenced proceeding.

Pursuant to the Settlement Agreement dated August 2, 2013 and the subsequent letter from EGD to the Board on September 16, 2013, there remains one unsettled issue in this proceeding.

The unsettled issue is whether the revenue associated with capacity releases should be

(a) treated as an offset to gas costs, as was previously determined by the Board in its Decision and Order in the EB-2012-0055 proceeding[1] for disposition of 2011 deferral account balances, or rather,
(b) treated as transactional services revenue as is being proposed by EGD in this proceeding.

VECC notes that in its EB-2012-0055 Decision and Rate Order issued on May 2, 2013, the Board stated:

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.[2]

The Nature of Capacity Releases Did Not Change in 2012

In the instant proceeding, EGD is not claiming that there was any change in the types of transactions undertaken by Enbridge in 2012 versus the type of transactions undertaken by EGD in 2011. Enbridge confirmed this in the oral hearing in this proceeding:

[1] EB-2012-0055, Decision and Order, March 14, 2003, page 14.
[2] EB-2012-0055, Decision and Rate Order, May 2, 2013, pages 5-6.

MR. STEVENS: With respect, Madam Chair, I believe Enbridge has answered that the nature of the transactions hasn't changed, and I believe Ms. Giridhar explained the reason why Enbridge has come forward in this case. So the position is not premised on circumstances having substantially changed from what happened in 2011. It's premised on Enbridge better explaining itself.[3] [Emphasis added.]

What Does EGD say it did a Poor Job of Explaining to the Board in EB-2012-0055?

The evidence in the preceding case, EB-2012-0055 made it clear that it was the availability of FT RAM credits from TransCanada ("TC"), for unutilized FT capacity, that could be applied by the shipper of record against the cost of IT (interruptible transportation) anywhere on TC's system. These credits had to be used within the month they were earned – otherwise they would expire at the end of the calendar month in which they were earned.

Further, EGD expounded at length with respect to "unlocking" the value of FT RAM credits by assigning utility capacity and gas purchased at Empress to a third party so that additional value from the difference in gas prices at Dawn and Emerson could be shared between the utility and the third party could be shared.[4] VECC submits that the details of this transaction, including EGD's proposed accounting treatment thereof, were made clear to the Board by Enbridge's witness.

VECC notes that one specific alternative explored by FRPO in the oral hearing of the preceding case was for Enbridge to leave the FT capacity unfilled in the injection season, receive FT RAM credits, and use these credits to offset the far lower costs of nominating IT from Empress to Dawn.[5] This option would get gas from Empress to storage at Dawn was examined in some detail before the Board.

In the oral hearing in the instant case, Enbridge implied that the Board was not aware of the necessity of a third-party in Enbridge's set of criteria that defines transactional services:

MR. STEVENS: Thank you. Mr. LeBlanc, I note that within Enbridge's evidence, explanation is given about three elements that must be present for something to be a transactional service transaction. Can you please explain in detail those elements?

MR. LeBLANC: Sure. The three elements that Enbridge believes are part of transactional services transactions are that they must be unplanned, involve a third party, and must be generated through the sale of surplus capacity, or some valued component of that capacity.

[3] EB-2013-0046, Oral Hearing, Volume 1, September 20, 2013, page 54, lines 14-20.
[4] EB-2012-0055, Oral Hearing, Volume 1, November 22, 2012, pages 30-35.
[5] Ibid.

<u>On page 6 of its EB-2012-0055 decision, the Board specifically confirmed the unplanned and temporary surplus capacity characteristics of transactional services. Enbridge believes the other essential element that is necessary is the involvement of a third party</u>. Gas supply planning occurs in the spring, and when that plan is struck, it's struck to meet the forecast winter and peak customer demand for the upcoming gas year.[6] [Emphasis added.]

Firstly, VECC submits that the Board panel in the EB-2012-0055 proceeding is well aware that in capacity releases a third party is involved. Not only did FRPO, in its EB-2012-0055 submissions make multiple references to "third party,"[7] but the Board itself <u>defined</u> capacity release transactions in its Decision and Order in the EB-2012-0055 proceeding:

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).[8]

Furthermore, VECC submits that under cross-examination by counsel for CME, Enbridge's witness confirmed that the Board's description of the mechanics of a capacity release in the EB-2012-0055 Decision and Order were factually correct:

MR. DeROSE: You may have been reading more into my question than I meant; it really was that simple. Okay. Let me then turn to page 8 of the decision, and in the third paragraph, you describe a third method, or the Board describes a third method that Enbridge uses to generate transportation optimization revenue, referred to as capacity releases, and the Board describes a capacity release as follows:

"Capacity releases involve Enbridge providing gas to a third party at one location,"

and they give the example Empress,

"and assigning that party a portion of its long- haul capacity on TCPL."

Now, if I stop there, is there anything factually incorrect with that statement?

MR. SMALL: No, there's not.

MR. DeROSE: Okay. And then the Board goes on:

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6 Ibid, pages 13-14.

7 EB-2012-0055, FRPO Submissions, December 12, 2012. FRPO used the term "third party" twice on page 1, once each on pages 2, 3, and 4, and thrice on page 6 of its argument.

8 EB-2012-0055, Decision and Order, March 14, 2003, page 8.

"The third party then gives the gas back to Enbridge at another location,"

and they give the example Dawn. Again, is there anything factually incorrect with that?

MR. SMALL: No, that's correct.[9]

Up to this point in the Oral Hearing, VECC submits that Enbridge did not identify any issues with respect to the Board's understanding, the Board's need for clarification, or any requirement on the part of EGD for "better explaining" in terms of what the Board should have been – but was not – aware of when it made its Decision and Order in EB-2012-0055 in respect of the treatment of revenues associated with capacity releases.

At this point in the Oral Hearing, Enbridge purports to draw a material distinction based on whether a settlement with the third party to a capacity release are made on a gross or a net basis:

MR. DeROSE: Okay, and:

"Enbridge receives a credit from TCPL for the amount of the assignment, which is greater than the amount being paid to the counterparty."

MS. GIRIDHAR: So this is where I think we need to provide the clarification. Enbridge receives a credit from TCPL for the amount of the assignment. The counterparty bills us, in lieu of TransCanada, the same toll that TransCanada would have billed us for the amount of the assignment.

Those two transactions net off. Instead of TransCanada billing us, it's now the counterparty billing us.

On that same bill, because we have a netting arrangement with the counterparty, they then put back a credit equal to the revenues that they were going to share with us.

So what you see from the counterparty again is a net of two transactions; the cost of the transport that we assigned to them, which they're now paying for because we want our gas back at Dawn, and then they're adding it to some revenues that they have collected, because they can do more with the transport than we could have.

So it's not that they are charging us less; it's that they are charging us the same as TransCanada, and adding to it the revenues that they have recovered, that they have agreed to share with us.[10]

[9] EB-2013-0046, Oral Hearing, Volume 1, September 20, 2013, page 31, lines 17-28 and page 32 lines 1-10.
[10] EB-2013-0046, Oral Hearing, Volume 1, September 20, 2013, page 32, lines 11-28 and page 33 lines 1-9.

VECC submits that whether the two parties bill each other separately on a gross basis or simply on a net basis is beside the point: the issue is whether the associated revenues are considered gas cost reductions or transactional revenues. Therefore, VECC asks the Board to give *de minimus* consideration to this point made by EGD.

VECC submits that whether (i) EGD keeps the FT capacity full in the injection season and utilizes the diversion attribute of TC's FT service, (ii) EGD uses its FT at less than 100% load factor, accumulates FT RAM credits itself, and applies these credits to its own nomination of TC IT from Empress to Dawn,[11] or (iii) buys gas at Empress, assigns TC FT capacity to a third party along with the gas EGD purchased and receives gas at Dawn in return, the end result is the same: EGD holds TC FT capacity, buys gas at Empress, and gets gas at Dawn. VECC submits that this was made clear in EB-2012-0055.

VECC submits that EGD has not added sufficient clarification or explanation in the instant case to persuade the Board that its EB-2012-0055 decision should be varied now.

EGD's Own Three Criteria Should not be Determinative as to What Constitutes a Transactional Service for regulatory Purposes

VECC notes that Enbridge has defined as a transactional service, for the purpose of determining whether a transaction qualifies for inclusion in the TSDA (as opposed to the PGVA), as a transaction which is unplanned, uses temporarily surplus capacity, and involves a third party.[12]

In VECC's view these are necessary conditions but not sufficient conditions: the danger in finding them as sufficient conditions to qualify as TSDA transactions is that the utility could structure an unnecessary deal with a third party so as to satisfy these conditions while not being in the ratepayers' interest, i.e., deeming a reduction to the real cost of transportation as a transactional exchange qualifying what should be a PGVA benefit enjoyed by ratepayers as a TSDA element subject to sharing.[13]

VECC urges that the Board not find EGD's criteria as determinative in this respect.

Summary

VECC first note that it would always be in EGD's financial interest to substitute a transaction it could undertake on its own with a transaction with a third party involving

[11] EB-2012-0055, Oral Hearing, Volume 1, November 22, 2012, page 35, lines 1-5. Here, Enbridge stated that availability of IT in the summer would not be an issue.

[12] EB-2013-0046, Oral Hearing, Volume 1, September 20, 2013, page 13, lines 27-28 and page 14 lines 1-3.

[13] FRPO addressed this concern and proposed alternatives in its argument, EB-2012-0055, FRPO Submissions, December 12, 2012 on pages 1-2.

upstream transportation if the Board were to find that, contrary its findings in the EB-2012-0055 case, that capacity releases were subject to TSDA treatment. VECC believes that such a contrary finding would provide a perverse incentive to the utility.

Also, VECC submits that a standard regulatory principle is that the utility should not benefit from a reduction in upstream costs.

VECC submits that Enbridge's evidence in the instant case has not provided sufficient additional clarification so as to provide sufficient reason for the Board to alter its previous decision with respect to the appropriate treatment of capacity release revenues: indeed, VECC believes that nothing that Enbridge has presented in this case is materially different than in the EB-2012-0055 case.

Therefore, VECC submits that the revenues associated with capacity releases are properly taken into account as reductions in the cost of transportation and, as such, are properly credited to the PGVA for the same reasons that the Board determined the issue in its EB-2012-0055 Decision and Order.

In the event that the Board accepts that Enbridge, by assigning the capacity and gas it has bought at Empress to a third party, it has "unlocked" additional value due to the differential between gas prices at Dawn and at Emerson – value that would go unrealized otherwise, (i.e., as compared to the scenario under which Enbridge kept FT RAM credits for itself and nominated TC IT service from Empress to Dawn,[14]) – VECC urges the Board to find that only the additional value to ratepayers of involving the third party be eligible for TSDA treatment. In this case, the Board would find that some percentage less than 100% of EGD proposed amount be credited to the TSDA for 75:25 sharing with ratepayers, while the amount that Enbridge could have realized absent a third-party be credited to the PGVA. VECC notes that should the Board deem that Enbridge had unlocked additional value of 20% by assigning capacity to a third-party as opposed to using FT RAM credits itself, the net effect would be to split the revenues 95:5 in favour of ratepayers.[15]

<u>Costs</u>

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

All of which is Respectfully Submitted this 18th day of October 2013

[14] As noted earlier, Enbridge agreed it could have used the credits itself and nominated IT service from Empress to Dawn.

[15] That is, 25% (EGD's share) of the incremental value of 20% (above what EGD could get without the third party) is 5%.