



EB-2006-0021

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

AND IN THE MATTER OF a generic proceeding initiated by the Ontario Energy Board to address a number of current and common issues related to demand side management activities for natural gas utilities.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

Paul Vlahos
Member

Ken Quesnelle
Member

DECISION AND ORDER

PHASE III

In the Ontario Energy Board's (the "Board") partial decision in Enbridge Gas Distribution's ("EGD") 2006 rates application (EB-2005-0001 / EB-2005-0437), the Board announced its intention to convene a generic proceeding to address a number of current and common issues related to demand side management ("DSM") activities for natural gas utilities. The Board issued a Notice of Hearing on this matter on February 15, 2006. The oral phase of the hearing, including final argument, concluded on July 28th 2006.

On August 25, 2006 the Board released its decision on the first phase of the EB-2006-0021 proceeding. In that decision, the Board indicated that it would convene a second phase to the hearing for the purpose of determining common input assumptions to be used by EGD and Union Gas Limited (together the “Companies”) when compiling their DSM plans. An Alternate Dispute Resolution process was held which resulted in a settlement agreement being filed with the Board on October 5, 2006. The Phase II Decision was issued October 18, 2006 accepting the settlement agreement.

As part of the Phase II Decision, the Board ordered that the Companies were to file applications for approval of their respective DSM plans, incorporating the Phase I and Phase II Decisions with the Board and non-utility intervenors no later than November 21, 2006. The non-utility intervenors were to submit written comments on the Companies’ DSM Plans by December 5, 2006.

The Companies filed their respective applications on November 21, 2006. On December 5, 2006, submissions were received by the Green Energy Coalition (“GEC”), Consumers Council of Canada (“CCC”), Industrial Gas Users Association, Low Income Energy Network, London Property Management Association (“LPMA”), Pollution Probe, and the Vulnerable Energy Consumers Coalition. The Companies provided a separate response to the intervenor comments on December 8, 2006.

A common request of the non-utility intervenors was for additional opportunity to probe the applications with the majority suggesting a technical conference as the next step in the process. There was overlap and commonality in the areas of concern raised by the non-utility intervenors with GEC providing the most detailed list of issues. Other non-utility intervenor comments are substantially subsumed in the comments provided by GEC. GEC’s concerns were summarized in its submission as follows:

1. **Impact of changes in avoided costs on TRC goals.** Changes in avoided costs should lead to changes to the TRC net benefits target, but the companies have proposed no such changes.
2. **Market transformation program selection.** Some of the market transformation programs proposed by the utilities are inappropriate.

3. **Market transformation metrics for shareholder incentives.** Market transformation goals to which shareholder incentives are often either inappropriate or insufficiently defined.
4. **Evaluation plans.** Some evaluation plans are problematic. There is also too little detail in the evaluation plans, particularly given the increased importance of such plans in the context of the new DSM rules.
5. **Prescriptive efficiency measure assumptions.** Proposed assumptions for new measures are problematic in some cases and lack sufficient documentation in others. In addition, Enbridge is misapplying the recent settlement agreement.
6. **Missing Information.** Both filings are missing information that is needed to support the utilities' proposals, for estimating the value of savings and shareholder incentives, to determine whether the portfolios are responsive to current market potential, and to minimize conflicts when clearing LRAM and SSM accounts at a later stage.

Both Union and Enbridge focused on GECs comments in their responses of December 8, 2006.

This decision uses GEC's submission as a platform to address non-utility comments and the Companies' responses.

1) Impact of Changes in Avoided costs on TRC Goals

GEC and others submitted that the Companies should adjust their 2007 targets to correspond with their altered avoided costs. The accepted settlement proposal on target setting from Phase I of the proceeding was cited, as follows, in support of this submission.

"Furthermore, the parties agree that, in the event the avoided costs used by the utility are, at a later date, updated, the actual audited results from previous years used to calculate the target will be adjusted to reflect these updated avoided costs."

In response, Union pointed to the decision pertaining to Phase I of the proceeding where the Board accepted a proposal put forward by the Companies that “the avoided costs will be submitted for review as part of the multi-year plan and should be in place for the duration of the plan”. Union further points to sections of the Phase I decision that state that Union’s Target for 2007 would be set at \$188 million.

Union also responded that the passage submitted by GEC should be interpreted to mean that the 2007 targets should remain the same in that there are no “actual audited results” from previous years which have been used to calculate the 2007 target.

Enbridge submitted that the target levels must be viewed in the context of the partial settlement “package” that included the shape of the incentive curve and Shared Savings Mechanism (SSM) amounts. Enbridge also submitted that pursuant to Undertaking J2.4 it would be updating the commodity portion of its avoided costs annually. It noted that the undertaking was quoted in the Phase I decision and accordingly, it could not be stated that the intervenors had not considered this eventuality.

The Board accepts that the transition to a multi year plan may have given rise to the expectation gap between the parties on this issue. However, The Board finds that the record is clear. In the Board’s view, holistic analysis of the germane elements of the Phase I decision demonstrates that the Companies’ position is the correct one. The Companies’ 2007 targets will not be altered as a result of the updated avoided cost information.

2) Market Transformation Program Selection

GEC made numerous comments on the Companies plans regarding program scale and efficacy in relation to other potential programs. Most other non-utility intervenors commented that more clarity of program design is required.

Union responded that while it respected that GEC’s assessment of the market is different than theirs, it is Union alone that is responsible and accountable for Union’s actions. Union went on to comment that it values the contribution

provided by the consultative and intends to work with GEC and other intervenors in the future to identify other possible Market Transformation (MT) programs.

Enbridge responded that the level of detail contained in the application is consistent with the level of detail filed in evidence in earlier rate proceedings and that it fails to understand what additional materials are required at this time.

The new DSM framework that flows from the Phase I decision places an increased importance on retrospective analysis to develop plans going forward. For this reason the Board does not consider the detailed program pre-selection analysis of the nature requested by GEC to be appropriate. The Board is satisfied that the Companies will be guided by the results of ongoing monitoring and the assistance provided by the consultative in this area.

3) Market Transformation Metrics for Shareholder Incentives

The comments of GEC and CCC on the lack of detail related to the shareholder incentive metrics were supported by LPMA and Pollution Probe. In general these intervenors have requested greater clarity on the structure of the incentive mechanisms.

The Companies responded that the nature of the concerns are more related to how the incentives will be triggered (i.e. market outcomes) as opposed to lack of detail. Union provided the following extract of the Phase I decision in support of the contention that market outcomes should not be the exclusive incentive metric:

“While GEC argued for a more concrete incentive mechanism, the witnesses at the hearing were largely in agreement that market transformation programs are not necessarily amenable to fixed and inflexible rules. The Board agrees. The Board therefore accepts the proposal as filed.”

The Board remains satisfied that market outcomes should not be the exclusive metric for shareholder incentives. However the Board finds that the market transformation metrics filed in evidence by Enbridge are insufficient for the

consideration of the appropriateness of the metrics in determining an incentive for program performance.

Union proposed to use a scorecard approach to evaluate program effectiveness and eligibility for an incentive payment. The Board sees merit in this approach since it provides a more detailed description for calculating eligibility for an incentive.

The Board would be assisted in making a decision on the appropriateness of the metrics if Enbridge filed additional evidence to provide a similar level of clarity to that provided by Union's "Market Transformation Scorecard" on pages 36 and 37 of Union's plan.

The Board will not approve Enbridge's market transformation metrics for incentives at this time. However, the Board does grant approval of Enbridge's proposed market transformation programs thus allowing for immediate commencement of the programs.

4) Evaluation Plans

GEC and CCC were supported by LPMA in their comments on the need for additional evaluation plan details.

The Companies responded by providing additional clarity and reaffirming their commitment to the use of their Evaluation and Audit Committees ("EACs") to advise on improvements to the evaluation plans.

The Board is of the view that the evaluation plans are and should be dynamic in nature but must be designed to meet the obligations set out in the Phase I decision.

The Board accepts the evaluation plan proposals with the understanding that the goal of the plans is to attain the objectives and that the Companies' respective EACs will be utilized in ongoing plan development.

5) Prescriptive efficiency measure assumptions

GEC, CCC, Pollution Probe, VECC and LPMA expressed concerns with the new input assumptions contained in the Companies' plans. These intervenors have requested further information to assess the validity of the assessments in advance of program implementation.

Union responded that the assumptions for the 5 new measures contained in its plan that were not approved in Phase II of this proceeding are substantiated in its proposed plan and that all assumptions will be reviewed by the EAC during the currency of the DSM plan, therefore there is no need for further details.

Enbridge responded that the detail and format of the assumptions for new programs in its proposed plan is similar to that provided in earlier applications, including Phase II of this proceeding. Enbridge further submitted that the appropriate time to consider new program assumptions is when that information becomes available for discussion and review in a future evaluation and audit committee context.

Enbridge also noted that, as per the Phase I decision, the updating process for input assumptions is to be centralized within Board Staff.

The Board agrees with Enbridge that the updating process for input assumptions is to be centralized within Board Staff. In the Phase I decision the Board stated as follows:

"The completely settled issue 3.1 stipulates that the input assumptions will be updated on a regular basis during the plan period as part of each utility's ongoing evaluation and audit process. The Board has the ultimate authority to review and approve any changes. It appears to the Board that unless there is joint utility participation, the updates may occur at different times. This would not be efficient and would burden the regulatory process needlessly. The Board therefore concludes that the updating process should be centralized within Board Staff, at least for this first generation of multi-year DSM plans. The Board anticipates that the recommendations that come from the evaluation and audit committee would, in effect, be the substance of the comments process to be

employed for the updating of the list and values of the input assumptions. Any suggested updates to the input assumptions guide arising from the evaluation and audit process should be filed with the Board within one month of the end of the annual audit and evaluation. The suggested updates will be considered by the Board, and the guide will be updated if the Board decides it is necessary. Further Procedural Orders may be issued regarding updates to the guide.”

In the Board's view, the expectation of how new assumptions will be developed and monitored is contained in Issues 3.3 and 3.4, which were settled by the parties and accepted by the Board. They read as follows:

3.3 “What certainty is required that the assumptions are set for the duration of the DSM plan?”

“The time at which changes in assumptions become effective shall differ depending on the use to which the assumption is being put:

Program Design and Implementation. *The Utilities agree to the principle that their DSM programs should be managed with regard to the best available information known to them from time to time. Normal commercial practice requires that a Company should react through changes to program design, implementation and/or mix, to material changes in base data as soon as is feasible given relevant operational considerations.*

LRAM. *Assumptions used will be best available at the time of an audit. By way of example, if in June of 2008 the audit of the 2007 programs demonstrates a change in assumptions, that change shall apply for LRAM purposes from the beginning of 2007 onwards until changed again.*

SSM. *Assumptions used from the beginning of any year will be those assumptions in existence in the immediately prior year, adjusted for any changes in the audit of that prior year. By way of example, if in June of 2008 the audit of the 2007 programs demonstrates a change in assumptions, that change shall apply for SSM purposes from the beginning of 2008 onwards until changed again.”*

3.4 “What is the mechanism to determine if an input assumption needs to be reviewed or researched?”

“The Utility may of its own initiative or at the request of the Evaluation and Audit Committee (“EAC”) commence a review of or research into assumptions.”

The Board’s acceptance of the settlement in Phase I established the framework for how assumptions are to be developed and monitored and the Board is satisfied that the ongoing retrospective analysis of input assumptions will be informative for prospective plan development.

The ongoing process will use information at the time of the audit to assess the validity of input assumptions. The LRAM provision of issue 3.3 above puts that information into effect retroactively to the beginning of the period that the assumption was considered effective. The SSM provision in issue 3.3 above puts the information resulting from the audit into effect prospectively. The provisions contained in the Program Design and Implementation element of issue 3.3 are intended to hold the Companies to the use of the best available information known to them from time to time.

The acceptance of the settlement on issue 3.4 establishes that the Company has the discretion as to when to initiate a review of, or research, into assumptions.

The Board continues to be satisfied that the interconnection of the elements contained in issue 3.3 as well as 3.4 strikes the correct balance of the Companies’ freedom to manage their programs with the scrutiny of the results.

The Board recognizes that the level of scrutiny that was afforded to the assumptions approved in Phase II of this proceeding has not come to bear on the new measure assumptions proposed. However, the Board views this as transitional in nature and given the aforementioned checks and balances, acceptable.

6) Missing Information

GEC commented generally that the filings of both utilities are missing information that is needed to support the Companies' proposals.

The Utilities responded that given the new processes approved in this proceeding related to audit and ongoing consultation the level of information provided is adequate for the Board to grant approval.

The transition to the new framework with an increased focus on empirical evidence gained within the time frame of the plan has an inherent weakness. That weakness is the lack of information available at the start of the plan.

The Board is satisfied that this weakness is balanced with the ramping nature of the incentive plans and the motivation this creates to introduce beneficial plans that can grow over time. The Board is further encouraged that the Companies have reaffirmed their sentiments on the valuable role the consultatives and the EAC have in a continuous improvement process.

With the exception of items related to EGD's Market Transformation program metrics dealt with earlier in this decision, the Board approves the plans as submitted.

THE BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. and Union Gas Limited are granted approval of their filed DSM plans with the exception of Enbridge's market transformation metrics for incentives.
2. Enbridge Gas Distribution Inc. is to file additional evidence to provide a similar level of clarity to that provided by Union's "Market Transformation Scorecard" on pages 36 and 37 of Union's plan for all market transformation programs. The filing is to be completed by Monday, February 26, 2007.

3. Intervenor who wish to comment on Enbridge's supplementary market transformation metrics shall file those comments with the Board and the other Intervenor on or before Monday, March 5, 2007.
4. **All filings with the Board noted in the Order must be in the form of 10 hard copies and received by the Board by 5:00 p.m. on the stated date.** The Board requires all correspondence to be in electronic form as well as paper. Therefore, all parties must also e-mail an electronic copy of their filings in accessible, searchable PDF to the Board Secretary at Boardsec@oeb.gov.on.ca. Parties must also include the Case Manager, Michael Bell michael.bell@oeb.gov.on.ca and Board Counsel, Michael Millar michael.millar@oeb.gov.on.ca on all electronic correspondence related to this case.

DATED at Toronto, January 26, 2007

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary