

Reply Submissions

At the outset, like many that have contributed, we want to affirm the fact that the QRAM has resulted in an efficient, forward-looking market sensitive price that has flowed through resulting actual variances while it has mitigated price spikes by clearing the deferral accounts and setting the forward price over a 12 month period. Of these two facets, it is the clearing of the deferral accounts which we perceive as the cause for concern in the QRAM process. As we advanced in our initial submissions, the reasons behind the variances from forecast are rarely explored nor understood. As the often misquoted saying goes "Those who do not learn from their history are destined to repeat it."¹

Therefore, we focus most of our comments in response to the submissions of Enbridge Gas Distribution ("EGD"). In its response to the Board's questions, EGD submitted that "The proposals made by Enbridge in EB-2014-0459 include the introduction of an annual stakeholder meeting at which a forward-looking discussion of the next year's gas supply plan would occur."² While this is an encouraging first step, this "proposal" by EGD is very undefined as its Reply Argument in the rate case states; "Several parties propose that Enbridge should be required to hold annual stakeholder meetings during the IR term, along the lines of what Union Gas agreed to within their Settlement Agreement".³ Details later on that same page essentially informs the reader that EGD will provide a Gas Supply Memorandum consistent with what Union has provided.

With all due respect, what EGD has missed in this process is that the Union Gas Supply Memorandum was the result of two years of discovery, Board decisions, consultants review and stakeholder input. Essentially, learning from the past and applying it to better communication of the planning leading to stakeholder understanding and reduced regulatory investment. In our view, we are just at the outset of that process with EGD as the past practice has not been discussed, understood and potential improvements created. It may be EGD's preference to move

¹ The actual quote is " **Those** who cannot remember the past **are condemned to repeat it**" from George Santayana, Life of Reason.

²² EGD Comments Filed June 17, 2014, page 4.

³ EB-2012-0459 EGD Reply Argument, dated May 7, 2014, page 68

on without this prior assessment but that would preclude learning from the past. We would respectfully submit that valuable opportunities would be lost without a review of the recent past.

Enbridge has also proposed additions to QRAM filings similar to the Board Staff Interrogatory response #1⁴. We would support the provision of additional data to understand the planned and the actual purchases. However, the data and the explanation in that response provides the "what" but it does not provide the "why". Enbridge adds further in that same paragraph "As a result of Enbridge's proposed approach, stakeholders would be in a position to understand such information in the context of the decision-making criteria applied in the execution of the gas supply plan." In our submission, the above referenced Interrogatory response does not provide that criteria. We would respectfully encourage the Board to have utilities work with their stakeholders to develop reporting criteria that would give ratepayers comfort that their risk is being managed appropriately.

Lastly, in reply to the EGD submission, we will address EGD's continued emphasis that all reviews ought to be prospective and its stated concerns about the prospect of a substantive review trigger resulting in a prudence review⁵. We do understand and agree that there are well-established principles for triggering a prudence review. Extracting from the Court decision cited by EGD are the following from the Section B on "The Decision of the Board"⁶:

The Board agrees that a review of prudence involves the following:

- ◆ Decisions made by the utility's management should generally be presumed to be prudent unless challenged on reasonable grounds.
- ◆ To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.
- ◆ Hindsight should not be used in determining prudence, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of prudence.
- ◆ Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time.

⁴ EGD Comments Filed June 17, 2014, page 5

⁵ EGD Comments Filed June 17, 2014, page 6

⁶ *Enbridge Gas Distribution Inc. v. Ontario Energy Board*, 2006 Can LII 10734, para. 10 (Ontario Court of Appeal).

We believe that the Board would continue to uphold these criteria in any process of substantive review. However, it is our respectful submission that the Board's discretion cannot be fettered by limiting inquiry into an understanding the facts that were known at the time decisions were made⁷. Allow us to be very clear that we are not insinuating any imprudence on behalf of the utilities: however, in a potential scenario where the Board has been given reason to believe that the actions of the utility warrant evaluation using these criteria, it is our respectful submission that it is the Board's statutory right and obligation under the Act to do so in establishing just and reasonable rates.

One final point of clarification. In our original submission, we offered that the expanded QRAM review process could be triggered by the reporting of metrics and " If there are significant variances from the planned execution, the Board could trigger enhanced discovery while establishing interim rates". While we went on to allow for the consideration of a 10% increase threshold, we accept submissions by others in opposition to a set criteria who would prefer to rely on the Board's discretion. As a result, our final position supports the Board maintaining that discretion and that their evaluation would focus on program metrics and relative comparability of utility pricing.

All of which is respectfully submitted on behalf of FRPO and OGVG,



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⁷ Consistent with our initial submissions of June 17, 2014, page 2