

PETER C.P. THOMPSON, Q.C.
T 613.787.3528
pthompson@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1300
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
F 613.787.3558 (IP)
blg.com



Our File # 339583-000192

By electronic filing

February 27, 2015

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Ms. Walli

Re: Enbridge Gas Distribution Inc. (“EGD”) – 2015 Rates Application
Board File #: EB-2014-0276

A. Introduction

Pursuant to paragraph 1 of Procedural Order No.3 dated February 24, 2015, this letter contains our submissions on behalf of Canadian Manufacturers & Exporters (“CME”) on the requirement for EGD to file its 2014 actual results in this proceeding.

We have reviewed the recent letter from counsel for EGD in which it is asserted that a determination need not be made, at this time, of the requirement for EGD to file its 2014 results in this proceeding. This contention is based on EGD’s willingness to produce some but not all of its 2014 actual results.

For the reasons which follow, we urge the Board to order EGD to produce all information pertaining to its 2014 actual results by the commencement of the Settlement Conference on March 5, 2015, along with complete responses to all of the interrogatories which it has refused to answer on the grounds that 2014 actual results are irrelevant. The issuance of such an order should not be postponed as EGD contends.

B. Matters in Issue in this Proceeding

The issues in this proceeding include the following:

1. The appropriateness of EGD’s forecasts of each of the components of its 2015 revenue requirement which it is updating, namely,

- (a) 2015 volumes and revenues,
 - (b) 2015 O&M expenses for:
 - Customer Care/CIS costs
 - DSM costs
 - Pension and OPEB expense amounts
 - (c) Income taxes
 - (d) Costs of Capital
2. The reasonableness of the final rates proposed for implementation effective January 1, 2015; and
 3. The appropriateness of the changes to its Gas Supply Planning and Storage Management which EGD asks the Board to approve.

C. Information Relevant to the Matters in Issue

Information relevant to the 2015 revenue requirement and rates listed above includes any and all historic information which bears upon an assessment of the credibility and reliability of EGD's forecasting.

1. All 2014 Actual Information is Relevant to the Reliability and Credibility of EGD's Updated Forecasts

In its recent letter, EGD resists the voluntary production of any actual 2014 information with respect to 2015 line items which are not subject to update on the grounds that such information has no relevance to the setting of 2015 rates. We disagree with that contention.

The extent to which there is a material variance between any 2014 actuals for line item amounts not being updated and the 2014 Board approved budget amounts has relevance to a consideration of the reliability of any of EGD's forecasts. For example, if 2014 actual information demonstrates that actual costs for line items not subject to update are materially less than the budgets for those line items which the Board approved, that information is capable of supporting an inference that EGD's forecasting has a bias towards creating opportunities for over-earning. The possibility for such an inference to be drawn will be strengthened if actual 2014 revenues materially exceed EGD's 2014 budget amounts which the Board approved. The reliability and credibility of EGD's forecasting generally is an issue which bears on an assessment of the credibility to be ascribed to the updated forecasts which EGD asks the Board to approve.

Accordingly, all of the 2014 actual results are relevant to issues in this proceeding. The fact that actual information which EGD seeks to withhold will be produced later in the Earnings

Sharing Mechanism (“ESM”) proceeding is of no consequence when considering whether the actual information is relevant to issues in this proceeding.

2. Historic Information Pertaining to Storage Management and Upstream Transportation Optimization is Relevant to Matters in Issue

In an email this morning, counsel for EGD proposes to produce some, but not all, of the actual historic information requested by the representative of Federation of Rental-housing Providers of Ontario (“FRPO”) during the course of the Technical Conference. The historic information requested relates to the question of the criteria which should be applied to determine the timing of decisions to release excess upstream transportation capacity to the secondary market. Historic information pertaining to EGD’s management and optimization of its unutilized FT capacity is relevant to the approvals EGD seeks in this proceeding.

EGD is forecasting substantial under-utilization of the capacity it acquires under its FT contracts with TransCanada PipeLines Limited (“TCPL”). The timing of decisions taken by EGD to release portions of that excess capacity to the market could have significant impacts on ratepayers because the value of unutilized TCPL capacity in the secondary market is higher in March and April than in the summer months.

EGD’s position during the Technical Conference that such information is irrelevant to matters in issue in this proceeding is untenable. The Board should require EGD to produce all of the historic information requested by the representative of FRPO.

D. The Board Requires Bridge Year Actual Information Before Approving Test Year Rates

The rate-setting model under which EGD is currently operating is a Cost of Service model wherein year over year rate changes to certain elements of the revenue requirement are based on data internal to EGD rather than on an escalation factor derived from information external to the utility. In such a Cost of Service model of regulation, where some rate-setting forecasts for the test year are updated annually, the information traditionally filed by an Applicant utility to support the reasonableness of test year forecasts includes the bridge year actual and estimated information available at the time of the filing of the Application. Where the hearing of the Application takes place months later, the Board has traditionally required the Applicant utility to update bridge year information to the most current information available at the time of the hearing.

A comparison of test year forecasts to the most current bridge year actuals and estimates is clearly relevant to an evaluation of the reasonableness of the updated components in the 2015 revenue requirements and rates which EGD is asking the Board to approve in this case. No one can reasonably contend that this information is “irrelevant” to 2015 rate-setting under the auspices of the “partial” year over year Cost of Service rate-setting model under which EGD is operating.

When updating any components of test year rates based on forecasts, the Board should invariably consider the most current information available before determining the appropriateness of the forecast amounts proposed by the Applicant. A refusal by an Applicant utility to disclose the most current information available with respect to forecasts which the Board is being asked to approve should not, under any circumstances, be countenanced by the Board. The Board should always be cognizant of the compatibility of test year forecasts with bridge year actuals and estimates before authorizing the recovery of the forecast amounts in rates.

Utilities operating under the auspices of a partial Cost of Service update model of regulation should always be required to demonstrate that its test year forecasts are compatible with bridge year actuals and estimates. Confining the comparison of test year forecasts to bridge year Board approved budgets is inappropriate and could lead to an unreasonable outcome. For example, the total volumes, gas sales and transportation forecast which EGD asks the Board to approve for 2015 is 11,178.5106 M³, almost 380 10⁶M³ below 2013 actuals. The appropriateness of the 2015 volume forecast cannot reasonably be determined without comparing that volume forecast to 2014 bridge year actuals.

EGD's Application for 2015 Rates was filed on or about November 28, 2014. During the course of the Technical Conference, an EGD witness indicated that the nine (9) months actual of three (3) months estimated information was not considered when developing the updated forecasts which EGD asks the Board to approve. Appendix E to EGD's EB-2012-0459 Rate Order requires that "established processes" be used by EGD to prepare its updated forecasts. We submit that by failing to consider the most current actual information available at the time of the filing of the Application, EGD has not proceeded in accordance with established forecasting practices.

In EGD's prior Cost of Service proceedings, year-end actuals and year-end weather normalized information is made available as of the end of the month of February in the following year. Accordingly, EGD's actuals and weather normalized information for the year ending December 31, 2014, can be produced to participants in this proceeding before the commencement of the Settlement Conference scheduled for March 5, 2015.

In prior EGD proceedings, where the hearing of a rate case has not been completed before the end of February, the Board has required EGD to produce actual year end information for its consideration prior to approving test year rates.

The Board should continue to adhere to its past practices and order EGD to produce 2014 actual results along with complete responses to all of the interrogatories it has refused to answer on the grounds that 2014 actual results are irrelevant.

E. A Ruling on the Issue of Relevance Should Not Be Postponed

The voluntary disclosure which EGD proposes in its recent letter is inadequate. EGD should not allowed to hide any of the 2014 actual information from participants in this proceeding. Disclosure of all of the currently available actual information prior to the Settlement

Conference is a pre-requisite for a successful conference. EGD's withholding of available actual information impedes rather than fosters good faith settlement negotiations.

EGD acknowledges that the information which it seeks to withhold is non-confidential information that will become a matter of public record shortly. As already noted, the actual information which EGD seeks to withhold is relevant to matters in issue in this proceeding. That the information will be produced later in the ESM proceeding has no bearing on the relevance of the information to matters in issue in this proceeding.

By seeking to temporarily withhold production of some of the 2014 actual information, EGD is effectively seeking to temporarily redact non-confidential 2014 information from documents which it acknowledges are to be a matter of public record. The Board should reject what is effectively a temporary redaction proposal and require EGD to produce all 2014 actual information now. If EGD's forecasting processes are as credible as it asserts, then it should not hesitate to disclose all actual 2014 results now rather than later.

F. Order Requested

As already noted, we request the issuance of an order requiring EGD to produce all information pertaining to its 2014 actual results by the commencement of the Settlement Conference on March 5, 2015, along with complete responses to all of the interrogatories which it has refused to answer on the grounds that the 2014 actual results are irrelevant.

Yours very truly

Borden Ladner Gervais LLP



Peter C.P. Thompson, Q.C.

PCT\slc

c. Andrew Mandyam (EGD)
Fred Cass (Aird & Berlis)
Intervenors EB-2014-0276
Paul Clipsham (CME)

OTT01: 6841464: v1