

**Ontario Energy
Board**
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'Énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY EMAIL

August 29, 2018

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

Dear Ms. Walli:

**Re: Application for Renewable Natural Gas Enabling Program and Geothermal
Energy Service Program
OEB Staff Submission (revised)
Enbridge Gas Distribution Inc. – EB-2017-0319**

Please find attached OEB staff's revised submission on the above noted proceeding.

Please note that there was a word missing on page 5 in the original submission filed on August 28, 2018. The sentence read as follows: "This is a new service that EGD is offering RNG producers and it does not relate to the distribution of gas."

The applicant and intervenors have been copied on this filing.

Sincerely,

Original Signed By

Shuo Zhang

Attachment



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

August 28, 2018

Revised August 29, 2018

**Enbridge Gas Distribution Inc.
Application for Renewable Natural Gas Enabling Program and
Geothermal Energy Service Program
EB-2017-0319**

Background

On January 17, 2018, Enbridge Gas Distribution Inc. (EGD) filed an application with the Ontario Energy Board (OEB) seeking approval for its proposed Renewable Natural Gas (RNG) Enabling Program and Geothermal Energy Service (GES) Program.

On June 26, 2018, the OEB received a letter from EGD requesting to hold the portion of the application related to its proposed GES Program in abeyance at this time. EGD also requested the OEB to continue to process the relief requested in relation to its proposed RNG Enabling Program. In a letter dated June 26, 2018, the OEB granted EGD's requests.

In Procedural Order No. 2, the OEB determined the Final Issues List for this proceeding.

In Procedural Order No. 3, the OEB made provisions to hold a Technical Conference on June 27, 2018 that only addressed the proposed RNG Enabling Program.

In Procedural Order No. 4, the OEB noted that at the Technical Conference parties raised questions on the applicability of the proposed RNG Enabling Program to section 36 of the *Ontario Energy Board Act, 1998* (OEB Act) and indicated its interest in receiving submissions from the applicant, OEB staff and intervenors on this matter and on the relevance of:

- undertakings provided to the Lieutenant Governor in Council
- directives to the OEB

These documents are found at Exhibit B, Tab 1, Schedule 1, Appendix 1 in the pre-filed evidence.

Scope of OEB Staff Submission

OEB staff submission addresses EGD's proposed RNG Enabling program only and provides its submissions on the following issues:

- Issue 1 – New Business Activities
 - 1.1 Should the new business activity – RNG Enabling Program – be considered as part of the utility's regulated business?
- Issue 2 – Cost Consequences
 - 2.1. Is the methodology to set services fees for the RNG Enabling Program – Upgrading Service reasonable and appropriate?
 - 2.2. Is the methodology to set services fees for the RNG Enabling Program – Injection Service reasonable and appropriate?

- 2.4. What are the appropriate terms and conditions of the RNG Enabling Program – Upgrading Service and RNG Enabling Program – Injection Service?
- Issue 3 – Deferral and Variance Accounts
 - 3.1. Is the proposal to include the annual sufficiency / deficiency of the RNG Enabling Program within the Cap and Trade Compliance Obligation Variance Accounts reasonable and appropriate?
 - 3.2. Is the disposition methodology appropriate?
- Issue 4 – Aboriginal or Treaty Rights
 - 4.1. Are any Aboriginal or treaty rights impacted by this application? If so, what Aboriginal or treaty rights?
 - 4.2. To the extent any Aboriginal or treaty rights are potentially impacted, has the duty to consult been adequately discharged with respect to these rights?

Issue 1 – New Business Activities

EGD requested approval of the methodology to set service fees that RNG producers would be charged under its proposed RNG Enabling Program.

The RNG Enabling Program will provide two services to RNG producers:

- Injection Service where EGD will build a pipeline to attach RNG producers to its distribution system
- Upgrading Service where EGD will clean the biogas to pipeline quality¹

The Injection Service will be mandatory for all RNG producers seeking to move RNG using EGD's distribution pipelines. The Upgrading Service will be optional – RNG producers could do it themselves or have EGD do it for them.²

EGD proposed that the RNG Enabling Program be part of its regulated business activities.³

OEB Staff Submission

Issue 1.1 – Should the new business activity – RNG Enabling Program – be considered as part of the utility's regulated business?

In this application, EGD is asking the OEB to approve a rate methodology for its Injection Service and its Upgrading Service.

The OEB's jurisdiction to set rates for gas-related activities comes from section 36 of the OEB Act. Section 36(2) states:

The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.⁴

In this proceeding, the OEB must determine whether either one or both of the Injection and Upgrading Services are the sale, transmission, distribution or storage of gas. EGD argued that both services are distribution activities.⁵

¹ Ex. B, T1 S1, p. 16, #48

² Ex. B, T1 S1, p. 17, #49 and #50

³ Ex. B, T1 S1, p. 10, #29

⁴ *Ontario Energy Board Act, 1998*, S.O. 1998, Sched. B, s. 36 (2)

⁵ Technical Conference – Transcript, June 27/18, pp. 166-167

OEB staff submits that EGD's Injection Service is a gas distribution activity, and is thus under the OEB's ratemaking authority.

In contrast, OEB staff submits that EGD's Upgrading Service is not the sale, transmission, distribution or storage of gas, and should therefore not be considered part of EGD's regulated business for which the OEB may set rates.

Is EGD's Proposed Injection Service a Distribution Activity?

The Injection Service involves EGD:

- Building a pipeline to attach the RNG producer to its distribution system
- Odourizing the RNG
- Measuring the gas volumes and energy context of the RNG
- Managing pressures and ensuring the RNG meets required specifications
- Injecting the RNG into its distribution network
- Transporting the RNG to delivery points designated by the RNG producer⁶

OEB staff submits that EGD's Injection Service fits within the scope of a gas distribution activity under the OEB Act. As noted in EGD's Argument in Chief (AIC), the injection of RNG into EGD's distribution network is no different from the injection of other pipeline quality gas into its system and that activity is exclusively offered by the utility.⁷

Is EGD's Proposed Upgrading Service a Distribution Activity?

The Upgrading Service involves EGD planning, designing, procuring, constructing, owning, operating and maintaining biogas conditioning and upgrading equipment on the RNG producer's premises.⁸ The upgrading facilities will convert the raw biogas to RNG (biomethane), a process that includes the removal of impurities such as carbon dioxide, hydrogen sulfide and nitrogen.⁹ This is a new service that EGD is offering RNG producers and it does not relate to the distribution of gas.

OEB staff submits that EGD's Upgrading Service is not a distribution activity under the OEB Act. As part of its Upgrading Service, EGD is not delivering RNG to a consumer nor is it carrying RNG by hydrocarbon transmission line.¹⁰ The Upgrading Service also does not require EGD to store RNG in its storage facilities.

⁶ Ex B, T1, S1, p. 17, #50

⁷ AIC, p. 7, para. 24

⁸ Ex. B, T1, S1, p. 17, #49

⁹ Ibid

¹⁰ The OEB Act defines a gas distributor (and by extension gas distribution) as a person who delivers gas to a consumer, and defines a gas transmitter (and by extension gas transmission) as a person who carries gas by hydrocarbon transmission line

OEB staff's position is consistent with the 2012 decision of Québec's energy regulator, la Régie de l'énergie (Régie).¹¹ In that proceeding, the Régie had to determine whether facilities to upgrade raw biogas constituted assets for the distribution of natural gas. The Régie found that these facilities were not an operation over which the utility had exclusive distribution rights.¹² Citing a 2011 OEB decision that considered the purchase of RNG (biomethane), the Régie further expressed concerns that this could result in customers of a regulated activity (i.e., system gas customers) financing a non-regulated activity, an outcome which it considered inappropriate.¹³ Ultimately, the Régie concluded that the facilities were not for the distribution of natural gas within the meaning of section 73 of the *Act respecting the Régie de l'énergie* (reproduced in Appendix A) and therefore declined to approve them.¹⁴

EGD's Permitted Business Activities

In Procedural Order No. 4, the OEB invited submissions on the relevance of the Orders-in-Council and the associated undertakings and directives found at Exhibit B, Tab 1, Schedule 1, Appendix 1 of EGD's pre-filed evidence. Having reviewed these instruments, OEB staff submits that they are not relevant to the issue of whether the OEB has jurisdiction to set rates for the Upgrading and Injection Services.

EGD's business activities in Ontario are restricted by undertakings provided to the Lieutenant Governor in Council that took effect on March 31, 1999 (1999 Undertakings)¹⁵ which state in part:

2.1 Consumers [EGD] shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.

...

6.1 The Board may dispense, in whole or in part, with future compliance by any of the signatories hereto with any obligation contained in an undertaking.

On August 10, 2006, a Ministerial directive (2006 Directive)¹⁶ was issued pursuant to section 27.1¹⁷ of the OEB Act, which applied to both EGD and Union Gas Limited. To

¹¹ D-2013-041 / R-3824-2012, March 20, 2013. The OEB has arranged for the translation of this decision, which can be made available

¹² D-2013-041 / R-3824-2012, para. 77

¹³ D-2013-041 / R-3824-2012, paras. 79, 85

¹⁴ D-2013-041 / R-3824-2012, para. 86

¹⁵ Order-in-Council 2865/1998, Exhibit B, Tab 1, Schedule 1, Appendix 1, pp. 2-7. The effective date of the undertaking is set out in article 11.1 of the Undertaking

¹⁶ Order-in-Council 1537/2006, Exhibit B, Tab 1, Schedule 1, Appendix 1, pp. 11-13

¹⁷ Section 27.1 of the OEB Act states: "The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps

assist the provincial government in achieving its goals in energy conservation, among other things, the 2006 Directive expanded the utilities' permitted business activities to include services related to:

- a) the promotion of electricity conservation, natural gas conservation and the efficient use of electricity;
- b) electricity load management; and
- c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.¹⁸

On September 8, 2009, a similar Ministerial directive (2009 Directive)¹⁹ was issued pursuant to section 27.1 of the OEB Act. The 2009 Directive essentially allowed EGD to engage in the ownership and operation of certain facilities, including assets required in respect of the provision of services that would assist the provincial government in achieving its goals in energy conservation.

While the OEB must implement Ministerial directives, OEB staff submits that the 2006 and 2009 Directives cannot alter the OEB's ratemaking powers. The 2009 Directive expressly acknowledges this when it states:

This directive is not in any way intended to direct the manner in which the Ontario Energy Board determines, under the *Ontario Energy Board Act, 1998*, rates for the sale, transmission, distribution and storage of natural gas by Enbridge Gas Distribution Inc. and Union Gas Limited.²⁰

The 2006 and 2009 Directives are relevant to the question of whether EGD can do an activity directly through the utility, as opposed to through an affiliate. Assuming that the RNG Upgrading Service fits within one of the activities described in the Directives, for example the promotion of cleaner energy sources, EGD could undertake the RNG Upgrading Service without violating the 1999 Undertakings. However, EGD is not seeking approval to undertake the RNG Upgrading Service; rather it is asking the OEB to approve its proposed rate setting methodologies for the Upgrading and Injection Services. The jurisdiction for the OEB to issue rate-related orders for EGD's operations starts and ends with section 36 of the OEB Act.

specified in the directives to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources"

¹⁸ Other activities were also enabled by the 2006 Directive

¹⁹ Order-in-Council 1540/2009, Exhibit B, Tab 1, Schedule 1, Appendix 1, pp. 8-10.

²⁰ Similarly, the 2006 Directive states: "To the extent that any activities undertaken by Enbridge Gas Distribution Limited or Union Gas Limited in reliance on this Directive are forecast to impact upon their regulated rates, such activities are subject to the review of the Ontario Energy Board under the Ontario Energy Board Act, 1998"

To be clear, OEB staff is not arguing that EGD cannot undertake activities permitted by the 2006 and 2009 Directives. OEB staff submits that those are activities which EGD can do itself notwithstanding the 1999 Undertakings. However, the OEB can only set regulated rates or service fees for the sale, distribution, transmission and storage of gas. The OEB's involvement is focused on ensuring appropriate separation between the non-regulated and regulated business activities of EGD.²¹

Section 36(3) of the OEB Act also does not support EGD's position. Section 36(3) states:

In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.

While section 36(3) does give the OEB broad discretion in determining rates, that discretion assumes that the activity is one for which the OEB may set rates in the first instance. Section 36(3) does not speak to that underlying question, section 36(2) does.

In its answers to interrogatories²², EGD referenced the Divisional Court's decision in *Advocacy Centre for Tenant-Ontario v. Ontario Energy Board* (ACTO Decision).²³ OEB staff is of the view that the ACTO Decision is not relevant to the issues in this proceeding. The ACTO Decision considered whether the OEB had jurisdiction to implement a rate affordability assistance program for low-income consumers. At its core, it was a question of how the OEB could approach the setting of rates for the distribution of gas. The Divisional Court found that the OEB has jurisdiction to take into account the ability to pay in setting rates.²⁴ The ACTO Decision does not state, implicitly or explicitly, that sections 36(2) and (3) can be interpreted to permit the setting of rates for activities not listed in section 36(2) of the OEB Act.

Although not discussed in its AIC, EGD also raised the doctrine of necessary implication in its answers to interrogatories.²⁵ The doctrine of necessary implication operates to permit powers not expressly conferred by statute to be implied where they are "practically necessary" for the accomplishment of the object intended to be secured by the statutory regime created by the legislature.²⁶

²¹ OEB Guidelines: Regulatory and Accounting Treatments for Natural Gas Utility-Owned Qualifying Facilities or Assets (February 25, 2010), sections 3.2 and 4.2.

²² Response to Energy Probe Interrogatory #2, Exhibit I.1.EGDI.EP.2

²³ [2008] O.J. 1970 (Div. Ct.)

²⁴ *Advocacy Centre for Tenant-Ontario v. Ontario Energy Board* [2008] O.J. 1970 (Div. Ct.), para. 61

²⁵ Exhibit I.1.EGDI.EP.2

²⁶ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] SCC 4, para. 51.

EGD suggested that the object intended to be secured by the statutory regime is the regulation of energy matters.²⁷ EGD further argued that the OEB Act guides the OEB to regulate in accordance with the public interest and public policy, with specific mention being made of energy efficiency and conservation. This, according to EGD, together with the government's public policy on encouraging carbon abatement activities, leads to the conclusion that the doctrine of necessary implication provides the OEB with jurisdiction to permit a gas utility to carry out abatement programs within the regulated utility.

OEB staff submits that arguments made by EGD are simply too broad. Setting a regulated rate for the Upgrading Service is not, in OEB staff's submission, practically necessary to the OEB fulfilling its mandate. The service is optional, and can be provided by others (including EGD through an affiliate).

Competitive Advantage Concerns – Upgrading Service

OEB staff submits that even if the OEB determines that it has jurisdiction to approve a rate setting methodology for the Upgrading Service, it does not necessarily follow that the OEB should do so without consideration of the potential market impacts for RNG upgrading service providers. Before approving a rate methodology for EGD's Upgrading Service, the OEB may wish to consider any potential impacts on the marketplace for RNG upgrading services.

In 2009, the OEB considered whether various green energy initiative investments should be part of EGD's rate base.²⁸ In that decision, the OEB did not allow EGD's investments associated with these initiatives to be included in its rate base, even assuming (without conceding) that the OEB has the jurisdiction to include the costs in rate base. The OEB noted that generally when assets are allowed in rate base it is because those assets are related to the monopoly franchise.²⁹ The OEB found that EGD did not have a monopoly franchise for the production of renewable (electricity) energy which occurs in a competitive market, and that other participants would be materially disadvantaged if the costs associated with that initiative were to be allowed in rate base.³⁰ Speaking in relation to other proposed activities that take place within a broad competitive market, the OEB stated that "permitting a well financed public utility to include its costs of participation in this market into its rate base, thereby transferring risk to the ratepayer, is unfair to other market participants."³¹ The OEB also expressed

²⁷ Exhibit I.1.EGDI.EP.2

²⁸ EB-2009-0172, pp. 5-6

²⁹ Ibid

³⁰ Ibid

³¹ Ibid, p. 6

concern that including the costs of the proposed initiatives in rate base “significantly increases the risk to the ratepayer”.³²

In 2011, the OEB also considered a request by EGD and Union Gas Limited to acquire RNG as part of their respective supply portfolios.³³ In that decision, the OEB found that it did have jurisdiction to approve the recovery of the costs of purchasing RNG but stated that “...it does not necessarily follow that the Board should do so. Any approval would be dependent upon the strength of the evidence in support of the proposal.”³⁴ The OEB had concerns about the lack of evidence filed in certain key areas and refused to approve the utilities’ proposals.³⁵ One issue that arose in the proceeding was the potential impact of the proposals on the retail market. On that issue, the OEB found that it should “...ensure that the proposals do not have a material adverse impact on the overall health of the competitive retail gas market in Ontario.”³⁶

At the Technical Conference, EGD indicated that its Upgrading Service requires two key components – companies to design the facilities and companies to supply the necessary equipment. EGD stated that there are a number of engineering companies that could support the design of an RNG upgrading facility and also there are equipment providers.³⁷ Also, there are a dozen companies that could clean biogas to meet pipeline specifications and that EGD would consider hiring them if EGD were to provide this service.³⁸

Further, EGD stated that it does not have any experience building and operating an RNG upgrading facility. As a result, EGD relied on discussions with existing service providers to forecast operating and maintenance (O&M) costs for its Rate 400.³⁹

EGD argued that it could offer its Upgrading Service as a regulated utility business at a lower cost compared to offering the service through an affiliate for the following reasons:

- lower cost of capital⁴⁰
- the ability to take advantage of certain tax benefits such as accelerated Capital Cost Allowance (CCA)⁴¹

³² Ibid, p. 6

³³ EB-2011-0242/EB-2011-0283, Interim Decision and Order, July 12, 2012

³⁴ EB-2011-0242/EB-2011-0283, Interim Decision and Order, July 12, 2012, p. 7

³⁵ The utilities were provided an opportunity to file supplemental evidence to address the issues raised in the decision

³⁶ EB-2011-0242/EB-2011-0283, Interim Decision and Order, July 12, 2012, p. 17

³⁷ Technical Conference – Transcript, June 27/18, pp. 111-112

³⁸ Technical Conference – Transcript, June 27/18, p. 112

³⁹ Technical Conference – Transcript, June 27/18, p. 185

⁴⁰ Technical Conference – Transcript, June 27/18, p. 8

⁴¹ Technical Conference – Transcript, June 27/18, p. 73

OEB staff notes that EGD stated that it has a lower cost of capital because it typically faces lower risks than a competitive business because it is regulated.⁴² Also, non-regulated companies would not have ratepayers paying for the upfront capital costs of these projects in the early years where annual deficiencies have been estimated (see Issue 3.1).

In Ontario the RNG market is a nascent industry. However, there is an active market for RNG in North America⁴³ and a market for RNG already exists in British Columbia and Québec.⁴⁴ There are existing companies that could offer this service to RNG producers in Ontario.

⁴² Technical Conference – Transcript, June 27/18, pp. 157-158

⁴³ Argument in Chief (AIC), p. 4

⁴⁴ Technical Conference – Transcript, June 27/18, p. 4

Issue 2: Cost Consequences

EGD requested OEB approval for:

- the methodology to set service fees for its Upgrading and Injection Services^{45 46}
- a new Rate 401 for its Injection Service⁴⁷
- a new Rate 400 for its Upgrading Service⁴⁸

Each service fee will be derived from a discounted cash flow (DCF) analysis. The DCF analysis will be based on the principles and parameters set out in the OEB's E.B.O. 188 Distribution System Expansion Report. The fee for each service would be site specific and set to recover O&M costs, depreciation, distributor's return on investment, and taxes while achieving a Profitability Index (PI) equal to or greater than 1.0 over the service life of the facility. EGD is proposing a levelized (constant) service fee for each month of the term of the contract.⁴⁹

EGD provided copies of its standardized contracts for both services.⁵⁰

OEB Staff Submission

Issues 2.1 and 2.2 Is the methodology to set service fees for the RNG Enabling Program (Upgrading and Injection Services) reasonable and appropriate?

Service Fees for Injection Service (Rate 401)

OEB staff submits that EGD's methodology to set services fees for its Injection Service is appropriate.

EGD indicated that Rate 401 would be based on:

- the actual capital costs to build the facilities plus expected future capital costs⁵¹
- a forecast of O&M costs over the length of the contract⁵²

⁴⁵ Ex. B, T1, S1, pp.16-17, #48

⁴⁶ EGD is not seeking approval for each customer-specific rate or contract for its Program

⁴⁷ Ibid

⁴⁸ Ex. B, T1, S1, p. 20, #58

⁴⁹ Ex. B, T1, S1, p. 18, # 54

⁵⁰ Exhibit I.2.EGDI.STAFF.6, Attachment 1

⁵¹ Technical Conference – Transcript, June 27/18, p. 189

⁵² Technical Conference – Transcript, June 27/18, p. 182

EGD stated that it will establish suitable warranties and protections from manufacturers and installation contractors to cover future unanticipated capital costs for RNG injection facilities. Any change required by the customer will result in adjustments to the RNG producer's fees to cover the associated additional costs.⁵³ EGD, in its pre-filed evidence, stated that the PI will be equal to or greater than 1.0 over the service life of the facility. EGD also provided economic feasibility results which showed a PI of 1.1.⁵⁴ Further, in its AIC, EGD stated that it will ensure that a PI of 1.0 "plus a safety factor" equates to a PI of 1.02 or greater.⁵⁵

In response to one of OEB staff's interrogatories, EGD's scenario analysis shows that when capital or O&M costs were to increase by 10% in each year of a 20-year contract, the PI at year 20 would be a little over 1.0.⁵⁶

OEB staff submits that for Rate 401, EGD should describe its methodology in its tariff. OEB staff also submits that as part of EGD's annual rate application, it should include a description of any new facilities related to its Injection Service and a statement confirming that the rates for these facilities are in accordance with the OEB's approved methodology.

OEB staff notes that for facilities related to its Injection Service, EGD would be required to file a leave to construct application, under section 90 of the OEB Act, if any of the following criteria are met:

- the diameter of pipe is 12 inches or greater
- an operating pressure of an amount equal to greater than 2,000 kilopascals
- the cost of project is greater than or equal to \$2,000,000
- the length of pipe required exceeds 20 km

Service Fees for Upgrading Service (Rate 400)

As discussed, OEB staff proposes that EGD's Upgrading Service should not be part of its regulated utility business.

However, if the OEB determines that EGD's Upgrading service should be part of its regulated utility business, OEB staff submits that EGD's methodology to set services fees for its Upgrading Service is appropriate, subject to the competitive advantage concerns previously discussed. As with EGD's proposed Rate 401, the service fee will

⁵³ Exhibit I.2.EGDI.APPrO.5 (d) and Technical Conference – Transcript, June 27/18, p. 185

⁵⁴ Ex B, T1, S 1, Appendices 5-10

⁵⁵ AIC, p. 9

⁵⁶ Exhibit I.2.EGDI.STAFF.9, (o)

be derived from a DCF analysis, the fee will be site specific and EGD will ensure that a PI of 1.0 “plus a safety factor” equates to a PI of 1.02 or greater.

OEB staff also submits that for Rate 400, EGD should describe its methodology in its tariff. In addition, as part of EGD's annual rate application, it should include a description of any new facilities related to its Upgrading Service and a statement confirming that the rates for these facilities are in accordance with the OEB's approved methodology.

Issue 2.4. What are the appropriate terms and conditions of the RNG Enabling Program – Upgrading Service and RNG Enabling Program – Injection Service?

OEB staff has not identified any issues with EGD's proposed standardized contracts for these services.

One of the issues raised at the Technical Conference was whether EGD's financial assurance as outlined in its standardized contracts was appropriate given that its proposed RNG Enabling Program would require assets that were dedicated to a single RNG producer. EGD stated that the financial assurances would be valued so that EGD would recover the undepreciated capital cost of those facilities⁵⁷ and that the treatment of financial assurances would be consistent with EGD's existing practices.⁵⁸

OEB staff notes that EGD's primary focus for these services has been on municipalities that are required to deal with large waste streams as part of their day to day operations.⁵⁹

⁵⁷ Technical Conference – Transcript, June 27/18, pp. 86-89

⁵⁸ Exhibit I.2.EGDI.SEC.16

⁵⁹ Ex B, T1, S1, p.14, #43

Issue 3: Deferral and Variance Accounts

EGD used a levelized rate for the RNG Enabling Program which results in annual revenue deficiencies/sufficiencies over the life of the service contract.⁶⁰ EGD stated that there would be a deficiency in terms of the revenues versus the costs of this program in their early years and there will be a sufficiency in the later years.⁶¹

Initially, EGD proposed to capture these differences in the Greenhouse Gas (GHG) Emissions Compliance Obligation-Customer-Related Variance Account (GHG-Customer VA) and be periodically cleared to ratepayers.⁶² EGD stated that it was appropriate to recover these amounts in the GHG-Customer VA because the objective of these initiatives is to reduce GHG emissions associated with natural gas deliveries and customers' consumption of gas.⁶³ The annual revenue deficiencies/sufficiencies associated with the RNG Enabling Program would be treated as credits or debits to the cost of carbon or costs of carbon abatement.⁶⁴

However, EGD indicated that the GHG-Customer VA may not exist indefinitely into the future and that it may be necessary to create a new RNG Enabling Variance Account at a later date, and to transfer any existing balances to that account.⁶⁵ EGD proposed that the disposition methodology for the new RNG Enabling Variance Account should be determined at the time when the account is established or alternatively when the account is first brought forward for disposition.⁶⁶

⁶⁰ AIC, p. 15

⁶¹ Ex B, T1, S1, p. 10, #28

⁶² Ex. B, T1, S1, p. 10, #30

⁶³ Ibid

⁶⁴ Ex B, T1, S1, p. 10, #29

⁶⁵ AIC, p. 16

⁶⁶ AIC, pp. 16-17

OEB Staff Submission

Issue 3.1 Is the proposal to include the annual sufficiency / deficiency of the RNG Enabling Program within the Cap and Trade Compliance Obligation Variance Accounts reasonable and appropriate?

OEB staff submits that EGD's Injection Service should not have a variance account. EGD proposed a PI of 1.0 "plus a safety factor" which equates to a PI of 1.02 or greater. Therefore, over the life of the injection facility, the revenues will be greater than the costs. It is OEB staff's understanding that EGD's rationale for establishing a variance account is to recover from ratepayers (not RNG producers) the upfront capital costs of these projects in the early years where annual deficiencies have been estimated (and subsequently rebate to ratepayers when revenue from RNG producers will exceed costs). OEB staff submits that it is not appropriate for ratepayers to foot the bill for the hiatus between revenues and costs over the length of the RNG contract. If EGD did not want to bridge that gap, it should have proposed a rate other than a levelized rate over the term of the contract. In addition, OEB staff is of the view that an injection facility project is no different than any other natural gas expansion project (which are also subject to the OEB's E.B.O. 188) where EGD would recover the costs over the lifespan of the project and where annual true ups are not performed.

As mentioned, OEB staff proposes that EGD's Upgrading Service should not be a rate-regulated service, therefore, an OEB-approved variance account for this service is not required.

If the OEB determines that the RNG Enabling Program requires a variance account to capture any annual deficiencies/sufficiencies for these projects, OEB staff supports the creation of a new RNG Enabling Variance Account (RNG-VA). As these are new services, OEB staff is of the view that the RNG-VA should track costs separately for each service. OEB staff submits that it is not appropriate for EGD to capture any annual deficiencies/sufficiencies of the RNG Enabling Program in its GHG-Customer VA given that the Ontario government is winding down the Cap and Trade Program.^{67 68} EGD should use its 2018 GHG-Customer VA to track costs related to its 2018 cap and trade

⁶⁷ AIC, p. 1

⁶⁸ Ontario Regulation 386/18, Prohibition Against the Purchase, Sale and Other Dealings with Emission Allowances and Credits (Revocation Regulation and Bill 4, the *Cap and Trade Cancellation Act, 2018*, which repeals the Climate Change Act and provides for various matters related to the wind down of the Cap and Trade Program

Compliance Plan⁶⁹ only as outlined in the OEB's Procedural Order No. 6 in that proceeding.

EGD also argued that the disposition methodology for the new RNG-VA should be determined when the account is established or first brought forward for disposition. OEB staff disagrees and submits that the RNG-VA, if required, should be established in this proceeding, not at some future date. Also, the disposition methodology should also be determined in this proceeding as per Issue 3.2.

3.2. Is the disposition methodology appropriate?

If the OEB determines that EGD should have a variance account (RNG-VA) for its RNG Enabling Program then OEB staff submits that EGD's proposed disposition methodology to recover any annual deficiencies/sufficiencies from ratepayers is not appropriate.

OEB staff also submits that the appropriate disposition methodology is for EGD to recover any annual deficiencies/sufficiencies specific to an RNG producer from that RNG producer for its RNG Enabling Program. However, this would mean that RNG producers would be paying a variable rate; not a levelized rate over the length of the contract.

EGD stated that annual revenue deficiencies/sufficiencies associated with the RNG Enabling Program should be treated as credits or debits to the cost of carbon or costs of carbon abatement. On July 25, 2018, Bill 4⁷⁰ was introduced in the Ontario legislature and will, if passed, repeal the *Climate Change Mitigation and Low-carbon Economy Act, 2016* and provide for various matters related to the winding down of the Cap and Trade Program. As a result, RNG entering into EGD's distribution system is not expected to result in a reduction of its GHG compliance obligation or a reduction in the procurement of allowances for its ratepayers.

EGD argued that Bill 4 will require the Ontario government to establish GHG emission reduction targets⁷¹ and the federal government's Clean Fuel Standard (CFS)⁷² will incent the use of lower carbon fuels, energy sources and technologies. OEB staff

⁶⁹ EB-2017-0224

⁷⁰ The *Cap and Trade Cancellation Act, 2018*, https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2018/2018-07/b004_e.pdf

⁷¹ AIC, pp. 1 and 16

⁷² AIC, p. 16 and <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-standard.html>

submits that, at this time, it is not known when the provincial government will establish its GHG emission targets, how these targets will be implemented and EGD's role in meeting these targets. Also as noted by EGD, the CFS is still in development and is not expected to be completed until the fall of 2019, for enforcement in 2021/2022.⁷³ Consequently, OEB staff submits that there are too many uncertainties to fully understand EGD's GHG compliance obligation, if any, related to Bill 4 and the CFS.

⁷³ Technical Conference – Transcript, June 27/18, p. 5

Issue 4: Aboriginal or Treaty Rights

EGD indicated that it is not aware that there are Aboriginal rights or treaty rights impacted by the relief sought in the RNG Enabling Program Application, but would respond to any issues raised in submissions from OEB staff and intervenors.

EGD will address any Aboriginal rights and treaty rights that arise in relation to specific RNG Enabling Program projects as those projects are proposed and proceed.⁷⁴

Issue 4.1 Are any Aboriginal or treaty rights impacted by this application? If so, what Aboriginal or treaty rights? And 4.2. To the extent any Aboriginal or treaty rights are potentially impacted, has the duty to consult been adequately discharged with respect to these rights?

OEB Staff Submission

OEB staff understands that EGD proposes to address any Aboriginal rights and treaty rights that arise in relation to specific RNG Enabling Program projects as those projects are proposed and proceed. As a result, it may be premature to address this issue at this time.

The OEB has specific processes that will be engaged where Aboriginal or treaty rights may be impacted in an OEB proceeding. In Chapter 3 of the OEB's *2016 Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (the Guidelines)⁷⁵, the OEB provides further direction to parties on what is expected with respect to consultations including the duty to consult with potentially affected Indigenous communities.⁷⁶

- All of which is respectfully submitted -

⁷⁴ AIC, p. 17

⁷⁵ https://www.oeb.ca/oeb/Documents/Regulatory/Enviro_Guidelines_HydrocarbonPipelines_2016.pdf

⁷⁶ OEB's *2016 Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*, section 3.3 Indigenous Consultation

Appendix A

chapter R-6.01

ACT RESPECTING THE RÉGIE DE L'ÉNERGIE

Section 73:

The electric power carrier, the electric power distributor and natural gas distributors must obtain the authorization of the Régie, subject to the conditions and in the cases determined by regulation by the Régie, to

- (1) acquire, construct or dispose of immovables or assets for transmission or distribution purposes;
- (2) extend, modify or change the use of their transmission or distribution system;
- (3) cease or suspend operations; or
- (4) restructure their operations with the result that part thereof would be excluded from the application of this Act.

When examining an application for authorization, the Régie shall consider such economic, social and environmental concerns as have been identified by order by the Government and, in the case of an application for the purposes of subparagraph 1 of the first paragraph, the Régie shall consider, where applicable,

- (1) the sales forecasts of the electric power distributor or natural gas distributors and their obligation to distribute electric power or natural gas; and
- (2) the contractual commitments of the consumers served by the electric power transmission service and, where applicable, their financial contributions to the acquisition or construction of transmission assets, and the economic feasibility of the project.

The Régie may authorize the project on the conditions it determines.

An authorization under this section does not constitute a dispensation from seeking any other authorization required by law.

1996, c. 61, s. 73; 2000, c. 22, s. 24; 2016, c. 35, s. 10.