

September 3, 2018

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

RE: EB-2017-0319 – Enbridge Gas Distribution Inc. – Renewable Natural Gas Enabling Program

Please find, attached, the Final Argument of the Consumers Council of Canada regarding the above-referenced proceeding. Please accept my apologies for the late filing of this submission.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC:

All Parties

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

RE: APPLICATION BY ENBRIDGE GAS DISTRIBUTION INC.

RNG ENABLING PROGRAM – EB-2017-0319

INTRODUCTION:

On January 17, 2018 Enbridge Gas Distribution Inc. (EGD) applied to the Ontario Energy Board (OEB or Board) for approval of two new programs – the Renewable Natural Gas (RNG) Enabling Program and the Geothermal Energy Service Program.

By letter dated June 26, 2018 EGD requested that the OEB hold the Geothermal Energy Service Program portion of the application in abeyance because of the uncertainty around Ontario Government funding for the program. The OEB granted that request on June 26, 2018.

With the current Application EGD is seeking approval of the following:

1. The rate-setting methodology to be applied to determine rates (service fees) for the RNG Upgrading and RNG Injection Services;
2. The Rate 400 and Rate 401 Rate Schedules; and
3. The use of the GHG Customer Variance Account (and a future new RNG Enabling Program Variance Account) to record and recover annual sufficiency/deficiency amounts associated with the RNG Enabling Program.¹

A Technical Conference was held on June 27, 2018 and responses to the Technical Conference undertakings were filed on July 13, 2018.

On July 23, 2018, the OEB issued its Procedural Order No. 4 and indicated its interest in submissions on the following issues:

1. The applicability of the proposed RNG Enabling Program to Section 36 of the *Ontario Energy Board Act, 1998*;
2. The relevance of the Orders-in-Council, the undertakings to the Lieutenant Governor In Council and the directives to the OEB.²

¹ Argument in Chief, dated August 7, 2018

² Procedural Order No. 4, dated July 23, 2018, EB-2018-0319

These are the submissions of the Consumers Council of Canada (Council) regarding EGD's RNG Enabling Program.

EGD'S POSITIONS:

EGD is asking the OEB to approve its RNG Enabling Program based on the following points:

- Although there is currently very little RNG in Ontario there is real interest in RNG in Ontario and they expect that the demand for and usefulness of RNG in Ontario will increase in the coming years;
- Its RNG Enabling Program (both the Upgrading and Injection Services) is designed to enable the production of RNG in Ontario and facilitate the delivery of RNG to the market;
- The Upgrading and Injection Services are gas distribution services and fit within the activities that the OEB regulates under section 36 of the Ontario Energy Board Act (OEB Act);
- These are services that promote the use of cleaner energy sources which are activities that EGD is permitted to pursue under the Minister's Directive from August 2006, which expanded the scope of permitted business activities pursuant to the Undertakings;
- EGD has designed a rate-setting methodology for these services that will see customers pay the full cost of the service being provided over the term of their contract;
- Over the life of the RNG Enabling Program projects, ratepayer are expected to benefit from an overall net sufficiency; and
- OEB approval of the RNG Enabling Program will allow EGD to move ahead with negotiations and enter into contract with municipalities and other RNG producers to provide infrastructure needed to support RNG production in an for Ontario.³

EGD is proposing to offer two services to RNG producers. These are a Biogas Conditioning and Upgrading Service and an RNG Injection Service. Rather than seeking approval of each customer-specific rate or contract for its RNG Enabling Service customers EGD is proposing a rate-setting methodology that would apply to its RNG customers.

³ AIC pp. 1-2

SUBMISSIONS:

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

Section 36 of the OEB Act limits the OEB’s authority to set rates for activities that relate to the transmission, distribution and storage of gas⁴. The Council submits that the Injection Service is properly considered to be a distribution activity and therefore the OEB can set regulated rates for the service.

The Council does not agree with EGD that the Upgrading Service constitutes a distribution service. The Upgrading Service involves converting biogas to RNG. It requires the service provider to remove impurities such as carbon dioxide, hydrogen sulfide and nitrogen so the product can be injected into the distribution system and comingled with traditional natural gas.⁵

It is EGD’s evidence that the Upgrading Service will be optional because it is an activity that could potentially be done by RNG producers or others⁶. There are actual projects currently in place and others being developed. Upgrading is, therefore, clearly a competitive service and not a “distribution” activity.

The Council notes that the Regie de l’énergie (Regie) in Quebec has determined that upgrading services that convert biogas to RNG are not distribution services. In addition, the Regie raised concerns about distribution customers financing a non-regulated service. In its 2013 Decision the Regie concluded that Gaz Metro’s request to include the assets used for upgrading biogas are not distribution assets should not be granted⁷.

On August 10, 2006, a Ministerial Directive was issued allowing both EGD and Union Gas Limited to undertake activities beyond the transmission, distribution and storage of gas to promote conservation, electricity load management, and cleaner energy sources, including alternative energy sources and renewable energy sources. In addition, in 2009 another Ministerial Directive permitted EGD to engage in the ownership and operation of certain facilities that would assist the Government of Ontario in achieving its conservation goals.⁸ These effectively superseded earlier undertakings that restricted EGD and Union to undertaking business activities, except through an affiliate beyond transmission, distribution and storage.

Although the Council accepts EGD’s position that in light of these undertakings the Upgrading Services should be permitted, we do not accept that they should be rate

⁴ *Ontario Energy Board Act, 1998*, s. 36(2)

⁵ Ex. B/T1/S1p. 17

⁶ AIC, p. 7

⁷ D-2013-041/R-3824-2012, paragraph 86, dated March 20, 2013

⁸ Ex. B/T1/S1/Appendices A and B

regulated. This would clearly be inconsistent with the OEB's jurisdiction under section 36 of the *Ontario Energy Board Act*. EGD can provide Upgrading Services, but the OEB cannot set rates for the services. The Council submits that Upgrading should be only be provided through an unregulated affiliate.

Issues 2.1 and 2.2 – Is the methodology to set service fees for the RNG – Enabling Program- Upgrading Service and Injection Service reasonable and appropriate?

It is EGD's proposal to have separate service fees for each of the Upgrading and Injection Services. The rates to be paid will be levelized (constant) over the term of the contract. The rates will be determined using a discounted cash flow analysis (DCF) for each customer based on the fully allocated costs associated with the services and the required facilities in each particular instance.⁹ The fee will be site specific and set so as to recover operating and maintenance costs, depreciation, the utility's return on investments and taxes while achieving a PI equal to or greater 1.02 over the service life of the plant¹⁰.

It is EGD's position that over the life of the RNG projects, ratepayers will benefit for an overall net sufficiency.¹¹

The Council does not believe that the OEB has the jurisdiction to set rates for the Upgrading Service. In addition, if EGD intends to undertake the Upgrading Services, it should be done through an affiliate to avoid any cross-subsidization from distribution customers.

With respect to EGD's proposals for its RNG Injection Service Rate – Rate 401 – the Council has the following concerns:

- EGD is seeking approval of a methodology and not specific rates. The Council does not believe this is appropriate. Without specific rates there is no way for the OEB to determine whether these rates are appropriate. Under its proposal EGD will have far too much discretion. Unless the OEB approves the specific rates, RNG producers will not be able to determine the fairness of the rates they are being charged, and distribution customers will not be able to determine whether they are cross-subsidizing the new service.
- EGD claims that ratepayers will benefit from an overall net sufficiency. However there is not guarantee that this will be the case. What happens if the forecast of costs is understated? What happens if the RNG customers are not allocated a fair share of EGD's common costs? What happens if the RNG

⁹ Ex. B/T1/S1/p. 18

¹⁰ Ibid

¹¹ AIC, p. 10.

customer abandons the service or goes bankrupt? Is it the distribution customers that are responsible for the stranded costs? There is no guarantee at the end of the day that distribution customers will benefit from an overall net sufficiency.

The Council believes that each RNG rate should be submitted for approval on a case-by-case basis. This will ensure that the rates are overseen by the OEB and more importantly that there is no cross subsidy from other distribution customers. EGD should be required to charge the RNG customers the full costs of providing the Injection Services, including an appropriate allocation of shared costs. If costs change over the term of the contract, the fees should be adjusted accordingly. Simply approving a methodology for setting rates will not ensure that the interests of the non-RNG customers are sufficiently protected.

In addition, non-RNG ratepayers should be held harmless in the event that the RNG customer no longer wants the service, or goes bankrupt. If EGD wants to provide RNG Enabling Services its shareholder should be required to bear all of the risks associated with any stranded assets that could arise if the RNG customer no longer wants the service or goes bankrupt. There is no reason for EGD's non-RNG customers to bear this risk.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.