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DECISION AND ORDER

EB-2018-0331

**Applications for the Disposition of Cap and Trade-
Related Deferral and Variance Accounts for the period
2016-2018**

ENBRIDGE GAS INC.

EPCOR NATURAL GAS LIMITED PARTNERSHIP

BEFORE: Susan Frank
Presiding Member

Michael Janigan
Member

August 22, 2019

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1 INTRODUCTION AND SUMMARY

On December 7, 2018, the Ontario Energy Board (OEB) issued a Notice of Hearing and Procedural Order No. 1 for a combined hearing to review the cap and trade-related deferral and variance account balances for Enbridge Gas Inc.¹ (Enbridge Gas) and EPCOR Natural Gas Limited Partnership (EPCOR Gas) (collectively, the Gas Utilities) under section 36 of the *Ontario Energy Board Act, 1998*. Given that the applications in this proceeding were filed prior to the completion of the amalgamation of Enbridge Gas Distribution Inc. (EGD) and Union Gas Limited (Union), this Decision and Order sometimes refers to the names of the predecessor companies for ease of reference.

In this proceeding, the Gas Utilities are requesting approval to dispose of the 2016-2018 cap and trade-related deferral and variance account balances relating to the discontinuance of the provincial cap and trade program. These balances are contained in three separate accounts:

- Greenhouse Gas Emissions Impact Deferral Account (GGEIDA)
- Greenhouse Gas Emissions Compliance Obligation – Customer-Related (GGEICO-Customer-Related)
- Greenhouse Gas Emissions Compliance Obligation – Facility-Related (GGEICO-Facility-Related)

The amounts sought for disposition are the following²:

Account (in 000's)	EGD Rate Zone	Union Rate Zones	EPCOR Gas
GGEIDA	\$(705)	\$(40)	\$268
GGEICO-Customer Related	\$(6,135)	\$1,158	\$(166)
GGEICO-Facility Related	\$1,244	\$188	\$(0.126)
Total	\$(5,596)	\$1,307	\$100

¹ Effective January 1, 2019, Enbridge Gas Distribution Inc. and Union Gas Limited amalgamated into Enbridge Gas Inc.

² For Enbridge Gas – Exhibit A, p. 10 and for EPCOR Gas – Application, p. 4.

The OEB approves the balances for disposition except for the following amounts:

1. EPCOR Gas' GGEIDA balance is to be reduced by \$25,182, which is EPCOR Gas' 2016 cap and trade administration costs.

The balances will be disposed over a 3-month period from October 1 to December 31, 2019.

2 PROCESS

On July 3, 2018, the provincial government filed Ontario Regulation 386/18, Prohibition Against the Purchase, Sale and Other Dealings with Emission Allowances and Credits (Revocation Regulation), which revoked Ontario Regulation 144/16, The Cap and Trade Program (Cap and Trade Regulation). Given the Revocation Regulation, the OEB suspended its review of the 2018 cap and trade Compliance Plans of the Gas Utilities on July 6, 2018.

On August 30, 2018, the OEB issued a letter to the Gas Utilities directing them, as part of their October 2018 QRAM applications, to request: (i) the elimination of their cap and trade charges and (ii) the disposition of any projected net credit amounts in the aggregate balance of their cap and trade-related deferral and variance accounts as at September 30, 2018.³ The Gas Utilities applied to remove their cap and trade charges as part of their October 2018 QRAM applications⁴. Also, EGD and Union requested approval for the disposition of the net credit amounts in the aggregate balance of their cap and trade-related deferral and variance accounts. EPCOR Gas did not request approval for the disposition of its cap and trade-related deferral and variance accounts as its accounts were in a net debit position.

On September 27, 2018, the OEB issued its Decisions and Interim Rate Orders for the three October 2018 QRAM applications. In doing so, the OEB: (i) eliminated the cap and trade charges; and (ii) approved the interim disposition of any over-collections in the cap and trade-related deferral and variance accounts of EGD and Union, pending a prudence review to be conducted by the OEB.

On November 14, 2018, the *Cap and Trade Cancellation Act, 2018* repealed the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (Climate Change Act) and provided for various matters related to the winding down of the cap and trade program.⁵

On December 7, 2018, the OEB issued its Notice and Procedural Order No. 1 (PO No. 1) that provided for procedural steps in the OEB's prudence review of the cap and trade-related deferral and variance accounts of the Gas Utilities. Pursuant to section 21(5) of the *Ontario Energy Board Act, 1998*, the OEB decided to hold a combined

³ <http://www.rds.oeb.ca/HPECMWebDrawer/Record?q=CaseNumber:EB-2017-0224&sortBy=recRegisteredOn-&pageSize=400>

⁴ EGD EB-2018-0249; Union EB-2018-0253; and EPCOR Gas EB-2018-0261.

⁵ S.O. 2018, c. 13, section 16.

proceeding to consider the applications of the Gas Utilities.⁶ In PO No. 1, the OEB directed the Gas Utilities to file supplemental evidence.

On January 18, 2019, the OEB issued Procedural Order No. 2 and granted intervenor status to the following parties (* Intervenors granted cost award eligibility):

- Association of Power Producers of Ontario (APPRO)*
- Building Owners and Managers Association, Greater Toronto (BOMA)*
- Consumer Council of Canada (CCC)*
- Canadian Manufacturers & Exporters (CME)*
- Industrial Gas Users Association (IGUA)*
- City of Kitchener (Kitchener)
- London Property Management Association (LPMA)*
- Ontario Sustainable Energy Association (OSEA)*
- School Energy Coalition (SEC)*
- Vulnerable Energy Consumers Coalition (VECC)*

On February 12, 2019, the OEB issued Procedural Order No. 3 (PO No. 3), in response to written letters⁷ filed with the OEB on the treatment of the strictly confidential auction and market sensitive information in this proceeding. In PO No. 3, the OEB provided for the Gas Utilities, intervenors and OEB staff to file submissions on the following issues: (i) the legal effect of the repeal of the Climate Change Act; and (ii) specifically, the treatment of the strictly confidential auction and market sensitive information in this proceeding resulting from the repeal of the Climate Change Act.

On April 25, 2019, the OEB issued Decision and Procedural Order No. 4 (Decision and PO No. 4) where the OEB determined that:

- Auction confidential information as defined by the *Report of the Board Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* (Cap and Trade Framework)⁸ will remain strictly confidential in this proceeding.
- Market sensitive information as defined by the OEB's Cap and Trade Framework will remain strictly confidential.

⁶ Section 21(5) of the *Ontario Energy Board Act, 1998* states that "the Board may combine two or more proceedings or any part of them, or hear two or more proceedings at the same time, without the consent of the parties".

⁷ Association of Power Producers of Ontario's letters dated December 19 and 28, 2018; Industrial Gas Users Association's letters dated December 13, 2018 and January 11, 2019; School Energy Coalition's letters dated December 13, 2018 and January 11, 2019; and Enbridge Gas letter dated December 27, 2018.

⁸ EB-2015-0363.

In Decision and PO No. 4, the OEB also provided for the dates on which: the parties were to file interrogatories; the applicants were to file responses to interrogatories; the parties were to file written submissions; and the applicants were to file written reply submissions.

3 DECISIONS

The OEB considers, in this Decision and Order, the requests for disposition of amounts contained in the Gas Utilities' GGEIDA and GGEICO accounts and the appropriate period for disposal.

Enbridge Gas' GGEIDA

Materiality

Several intervenors submitted that the GGEIDA should be treated in the same manner as Z-factors, given that these costs are not related to the obligation costs, but strictly to the administrative costs. These intervenors stated that Union's GGEIDA balance did not meet its annual materiality threshold of \$4 million⁹ during the 2016-2018 period and therefore should result in denial of the GGEIDA balances. CCC submitted that the materiality threshold was something Union had agreed to and it is important that all parties live with the requirements established through the Settlement Agreement and approved by the OEB. These arguments were supported by LPMA, APPrO, VECC and SEC.

LPMA stated that EGD exceeded its materiality threshold of \$1.5 million¹⁰ in 2017 and suggested that \$2.315 million for EGD in 2017 be approved. SEC submitted that EGD does not have a materiality threshold under its incentive rate-setting mechanism (IRM) framework and therefore, the balances in EGD's GGEIDA should be recoverable in full. VECC and CCC took no issue with the balances for EGD.

Enbridge Gas replied that the OEB has at no time indicated that any portion of the cap and trade program costs incurred by any gas utility should be the subject of Z-factor treatment. For example, there is nothing included in the OEB's Decision and Interim Rate Order¹¹ or in the Decision and Accounting Order¹², which indicates that the 2016 GGEIDA would be the subject of any materiality threshold.

⁹ EB-2013-0202. To qualify as a Z-factor, one of the criteria is the cost must meet the materiality threshold of \$4.0 million of annual net delivery revenue requirement impact per Z factor event.

¹⁰ EB-2012-0459. The cost must meet a materiality threshold, in that its effect on the gas utility's revenue requirement in a fiscal year must be equal to or greater than \$1.5 million.

¹¹ EB-2015-0114, Decision and Interim Rate Order, December 10, 2015.

¹² EB-2015-0114, Decision and Accounting Order, December 10, 2015

OEB Findings

A similar issue on materiality of administrative costs was recently raised in Enbridge Gas' application related to the Federal Carbon Pricing Program¹³. The OEB, in its decision, found that the categorization of the costs as customer-related, facility-related or administration did not necessitate a consideration of the materiality of each cost category. In this proceeding, the costs also relate to an integrated activity in response to the cap and trade program.

As noted by Enbridge Gas, in the OEB decision¹⁴ establishing the deferral and variance accounts, there was no mention of the GGEIDA being subject to Z-factor treatment. It is inappropriate to introduce a new criterion after the deferral accounts were established.

The OEB finds that no materiality test is to be applied to the GGEIDA balances.

Salaries and Wages Costs

Union's salaries and wages costs were higher than EGD. The reasons given by Enbridge Gas in the evidence included:

- Union taking a strategic approach to begin working on longer-term investments, new business activities, and abatement and offset opportunities
- Union and EGD operated under different incentive regulation models, and therefore EGD had additional costs that were already paid for through existing rates and not captured in the deferral and variance accounts

Enbridge Gas further argued that the OEB, in its Decision and Order related to the 2017 Compliance Plans, sent an unequivocal signal to the Gas Utilities to continue their pursuit of longer-term investments, new business activities and abatement including offset opportunities.

LPMA submitted that ratepayers have not received any value for money associated with these longer-term investments given the termination of the cap and trade program. APPrO, SEC, CME, VECC, BOMA and CCC submitted that the OEB should reduce the amount recoverable for administrative costs for Union to costs in the range of EGD. A principal reason advanced in the submissions was that EGD showed more prudence by leveraging internal resources rather than following Union's approach of staffing new positions.

¹³ EB-2018- 0205.

¹⁴ EB-2016-0296 / EB-2016-0300 / EB-2016-0330.

OEB staff disagreed with Enbridge Gas' argument that the OEB, in its Decision and Order related to the 2017 Compliance Plans, sent a signal to the Gas Utilities to continue their pursuit of longer-term investments, new business activities and abatement including offset opportunities. OEB staff noted that the 2017 OEB Decision and Order made no finding as to the prudence of any expenditures. OEB staff submitted that the recovery for Union's wages and salaries costs in the GGEIDA should be reduced by 5-10% (or by \$275,000 - \$550,000).

Enbridge Gas replied that several parties had attempted to use hindsight as the basis to deny the recovery of a portion of the administrative costs incurred. Enbridge Gas stated that the OEB follows regulatory and judicial precedent that provides that the use of hindsight to determine the prudence of costs is inappropriate.

Enbridge Gas noted that the Cap and Trade Framework identified the specific factors the OEB would consider in determining whether the cost consequence of the Gas Utilities' Compliance Plans are cost-effective, optimized and reasonable. These included:

- Whether a gas utility has engaged in strategic decision-making and risk mitigation resulting in a compliance plan that is as cost-effective as possible
- Whether a gas utility has selected greenhouse gas (GHG) abatement activities and investments that, to the extent possible, align with other broad investment requirements and priorities of the gas utility in order to extract the maximum value from the activity or investment¹⁵

Enbridge Gas submitted that the OEB should deem the costs incurred as being prudent given that the administrative cost forecasts were reviewed in detail and were determined by the OEB to be consistent with the Cap and Trade Framework.

Enbridge Gas argued that during the 2018 Compliance Plan proceeding, BOMA strongly supported increasing abatement activities by the Gas Utilities. Further, Enbridge Gas pointed out that the OEB, in its Cap and Trade Framework, stated that it considers "longer-term planning to be a prudent and reasonable activity that the Utilities should consider. As such, the OEB expects that a Utility's Compliance Plan will reflect long term planning for GHG abatement beyond a single year or a single compliance period".¹⁶

¹⁵ EB-2015-0363, p. 21.

¹⁶ EB-2015-0363, pp. 26-27.

Enbridge Gas also noted that it is important to recall that OEB staff, Environmental Defence and VECC all argued in favour of the OEB imposing a penalty on each of EGD and Union in respect of their 2018 Compliance Plans for what they submitted was the provision of inadequate funds being directed towards abatement activities.

OEB Findings

In its Decision and Order regarding the 2017 cap and trade Compliance Plans, the OEB reviewed and found that the planned administrative activities for EGD and Union were consistent with the expectations established by the Cap and Trade Framework.¹⁷

As noted above, there were several requests from parties for a strategic and longer-term approach to the cap and trade program including aggressively pursuing abatement activities during the 2017 cap and trade Compliance Plan proceeding. It is the OEB's view that Union's decision to increase staff to look at longer-term options was responsive to the submissions of intervenors, OEB staff and the OEB direction at the time. Despite the difference in approach to the strategic direction for cap and trade between EGD and Union, the OEB finds that Union and EGD both acted with sufficient prudence at the time and no salaries and wages costs will be disallowed.

Shared Service

APPRO, BOMA and VECC were critical of EGD's and Union's approach, noting that, despite having the advantage of being able to share resources for administering the cap and trade program as early as 2017, EGD and Union chose to continue to operate as separate entities.

Enbridge Gas replied that the amalgamation of two large gas utilities must necessarily be undertaken in an organized fashion to ensure that operations are continued in a safe and reliable manner. To suggest that EGD and Union should have commenced the combination of their cap and trade teams before OEB approval for amalgamation was received would, in Enbridge Gas' view, have been presumptuous and inappropriate.

Further Enbridge Gas stated that the requirement for EGD and Union to continue to operate as separate registered participants was specifically referenced under an amendment to the Cap and Trade Regulation¹⁸, which specified that for 2017 EGD and

¹⁷ EB-2016-0296 / EB-2016-0300 / EB-2016-0330.

¹⁸ Climate Change Act and Ontario Regulation 144/16, The Cap and Trade Program.

Union were to operate as if they were not related entities for purposes of satisfying their respective compliance obligations.

OEB Findings

The OEB agrees that Union and EGD could not operate as a single company until the OEB had approved the request by Union and EGD to amalgamate. However, the OEB shares the concern about cost efficiency raised by the intervenors.

The utilities generally understand the OEB's interest in cost savings opportunities. The search for cost efficiency has led electricity utilities to look at best practice processes, to shared service provisions and to benchmark to establish a targeted level of savings. The conservation and demand management program is an example where electricity utilities have shared service provisions to reduce administrative costs. Enbridge Gas has not provided evidence that EGD and Union were concerned about controlling their costs.

The cap and trade program was unique in that it legislatively prevented Union and EGD from combining certain aspects of their Compliance Plans prior to 2018 and most costs occurred prior to this date. While cost effectiveness in program administration is a general expectation of the OEB, there were no targets set or no benchmarks established to assist in determining the success of EGD and Union on controlling administrative costs. Accordingly, in this unique circumstance, the OEB is accepting the GGEIDA requests by Union of \$8.323 M and EGD of \$5.376 M.

The cap and trade program has ended but the Federal Carbon Pricing Program¹⁹ has been established. The OEB expects that Enbridge Gas will look for ways to administer the new program in a cost efficient manner.

EPCOR Gas' GGEIDA

OEB staff noted that the OEB, in its Decision and Order related to the 2017 Compliance Plans²⁰, directed EPCOR Gas to establish the GGEIDA to track its administrative costs, effective January 1, 2017. Therefore, OEB staff submitted that EPCOR Gas should not recover the 2016 actual administration costs of \$25,182 in the GGEIDA pursuant to the OEB's Decision and Order as it would constitute retroactive ratemaking.

¹⁹ <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan.html>

²⁰ EB-2016-0296 / EB-2016-0300 / EB-2016-0330.

EPCOR Gas replied that the 2016 costs identified in the GGEIDA were incurred to plan and prepare for the cap and trade program and to ensure that the required processes were in place for the 2017 implementation date. EPCOR Gas submitted that the OEB should amend the effective date of the deferral account to be January 1, 2016. In the alternative, EPCOR Gas requested that the OEB provide further direction to EPCOR Gas to commence a proceeding to record and recover the cap and trade administration costs incurred in 2016.

OEB Findings

EPCOR Gas' GGEIDA had a start date of January 1, 2017 and as a result no costs incurred prior to that date will be included for recovery. Furthermore, it would be inappropriate to revise the effective date to January 1, 2016 for the deferral account at this time. The purpose of deferral and variance accounts is to track costs that cannot be accurately estimated and provide for the opportunity for recovery in the future. Revising the effective date to January 1, 2016 does not meet the objective of deferral accounts and will not be adjusted. EPCOR Gas' GGEIDA balance will be reduced by \$25,182, which is EPCOR Gas' 2016 cap and trade administration costs.

GGECO-Customer-Related and GGECO-Facility-Related Accounts of the Gas Utilities

Several intervenors noted that GGECO should be treated in the same way as Y factors. The intervenors noted that they do not have any of the information necessary to ascertain whether the overall plan expenditures were prudent.

OEB staff did not identify any issues with the 2017-2018 balances in the GGECO variance accounts for Enbridge Gas or EPCOR Gas. These costs are the differences between actual costs for executing the compliance strategy and the amounts recovered in OEB-approved rates in 2017 and 2018.

OEB Findings

Having reviewed the strictly confidential filings, the OEB notes that the execution of Union's, EGD's and EPCOR Gas' purchasing strategies in 2017 and 2018 were consistent with the purchasing strategies set out in their 2017 and 2018 Compliance Plans. In its Decision and Order on the 2017 Compliance Plans, the OEB "concluded that each gas utility's Compliance Plan was based on reasonable option analysis and

optimized decision-making and risk management processes and analysis”²¹. The OEB also finds that the Gas Utilities’ purchasing strategies for 2018, which were similar to their 2017 purchasing strategies, are reasonable. As a result, the OEB has no issues with the GGECO-Customer-Related and GGECO-Facility-Related accounts for Union, EGD and EPCOR Gas. The balances are approved.

Disposition Plan

The Gas Utilities proposed different approaches to clearing the cap and trade-related deferral and variance account balances. EPCOR Gas proposed to dispose of its balances over an 8-month period.

For EGD, the impact of the proposed final disposition of the cap and trade balances was estimated to be a refund of \$0.59 for a typical residential customer based on a one-time billing adjustment on their October 2019 bills.

For Union, the impact of the proposed final disposition of the cap and trade balances was estimated to be an increase of \$0.38 per month for a typical residential customer in Union South and a decrease of \$0.08 per month for Union North residential customers based on a 3-month disposition period from October 1 to December 31, 2019.

OEB Findings

The OEB prefers a simple and consistent approach to disposing of the cap and trade-related deferral and variance account balances. While a one-time bill adjustment on the October 2019 bill would be simple, the potential impact on commercial or industrial customers is too large. The OEB has decided upon a 3-month disposition period from October 1 to December 31, 2019 for all Gas Utilities.

Timing to Close Cap and Trade-related Deferral and Variance Accounts

Enbridge Gas indicated that it would apply to close its cap and trade-related deferral and variance accounts in a separate application following the disposition of the balances in these accounts.

²¹ EB-2016-0296 / EB-2016-0300 / EB-2016-0330, Decision and Order (Public), September 21, 2017, p. 6.

OEB Findings

As per the OEB's Notice of Hearing and Procedural Order No. 1, the OEB is now closing the cap-and-trade-related deferral and variance accounts and clearing the balances in those accounts. The OEB directed the Gas Utilities to file the final balances in these accounts as there is no longer a need to continue these accounts. After the disposition of the accounts has occurred, the OEB directs the closing of the following accounts for Enbridge Gas (for both its Union and EDG rate zones) and EPCOR Gas:

- Greenhouse Gas Emissions Impact Deferral Account (GGEIDA)
- Greenhouse Gas Emissions Compliance Obligation – Customer-Related (GGECO-Customer-Related)
- Greenhouse Gas Emissions Compliance Obligation – Facility-Related (GGECO-Facility-Related)

4 ORDER

THE OEB ORDERS THAT:

1. Enbridge Gas and EPCOR Gas shall each file with the OEB a draft Rate Order that reflects this Decision and Order, and forward to intervenors, by **August 30, 2019**.
2. Intervenors and OEB staff may file with the OEB any comments on the draft Rate Orders by **September 6, 2019**.
3. Enbridge Gas and EPCOR Gas may file with the OEB a reply to any comments filed, and forward to intervenors, by **September 12, 2019**.

All filings to the OEB must quote the file number, **EB-2018-0331** and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available, parties may email their documents to the address below.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Laurie Klein at Laurie.Klein@oeb.ca and OEB Counsel, Lawren Murray, at Lawren.murray@oeb.ca.

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DATED at Toronto August 22, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary