EB-2019-0183

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders approving a new firm transportation service for gas distributors under the Rate M17 rate class, effective December 1, 2019;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders modifying the applicability of the existing Rate M9 and Rate T3 rate schedules for existing gas distributors;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in in the Municipality of West Grey and the Township of Chatsworth;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders approving the form of various land agreements.

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Argument Submission of

Energy Probe Research Foundation

March 6, 2020

Executive Summary

Energy Probe believes that the OEB should approve the project subject to following concerns.

Energy Probe believes that EPCOR customers should pay a CIAC, but it should be calculated based on 50% of the cost of facilities south of Dornoch and be calculated to meet a PI of 1.0. New Enbridge customers would be responsible for paying a CIAC based on 50% of the costs south of Dornoch and 100% of the costs north of Dornoch based on a PI of 0.8.

Energy Probe supports the position of Enbridge on the issue of customer specific station costs.

Energy Probe believes that what Enbridge is proposing with Rate M17 constitutes undue discrimination and would not result in just and reasonable rates. Energy Probe submits that the OEB should turn down Enbridge's proposed Rate M17. In the alternative the OEB could approve Rate M17 but make it optional for all distributor customers.

Regarding the availability of daily load balancing Energy Probe submits that both existing and new distributor customers should be treated equally.

Energy Probe believes that the OEB should consider a new generic proceeding that would review and re-examine the issues that were addressed in the NGEIR proceeding. Pending that review, the OEB should deviate from that decision by putting in place a process that would prorate the available cost-based storage to all gas distributors in Ontario on a volumetric basis.

Energy Probe has concerns about the cost estimate for this project. The source for the cost estimate labour estimate was a courtesy bid from a contractor that may have a conflict of interest. The contingency amount for materials is overstated and should be reduced.

Issues

As there is no OEB approved issues list for this proceeding, Energy Probe has structured its argument according to some of the topics used by Enbridge in its Argument-in Chief[1].

[1] AIC, page 2

- The Owen Sound Reinforcement Project
- Contribution-in-aid of Construction
- Rate M17
- Customer-specific Station Costs
- Cost-based Storage
- Daily Load Balancing
- Other Leave-to-Construct Considerations

The Owen Sound Reinforcement Project

Enbridge Gas is proposing to construct approximately 34 kilometres of NPS 12 pipeline with a maximum operating pressure of 4670 kPa. The Proposed Facilities will extend from the Durham Gate Station to a tie-in point located at Grey County Road 40 and will include upgrades to the Durham Station, as well as a new valve/receiver site at the northern terminus[2]. The total cost of the project is $69.0 million, including indirect overheads of $8.9 million[3].

The need for the project is due to two distinct drivers: the projected customer growth in the distribution system of Enbridge Gas, and the request for service from EPCOR.

Enbridge Gas is forecasting growth in customer attachments on the Owen Sound System that will result in increase in demand to 13,864 m3/hr by the end of the next four years. The Company claims that its existing system only has adequate capacity for three years of growth[4]. Just based on its own needs, the Owen Sound System would need to be reinforced by December 2022, prior to the start of the fourth year. This was later reduced by 2,508 m3/hr due to a load reduction of a significant customer served by the Owen Sound System. Energy Probe is concerned that the projected growth in customer attachments is not based on a detail regional forecast but is based on 10 year historical averages.[5] The Company is forecasting 1,759 residential attachments, 158 small commercial and 23 large commercial attachments, 5 small industrial and 3 large industrial attachments in each of the next four years. Energy Probe believes

[2] Exhibit D, Tab 2, Sch.1, pages 1 and 2
[3] Ibid., Sch. 3, page 3
[4] Ibid.
[5] Exhibit E, Tab 3, Sch. 3, page 1; Exhibit I. STAFF.19

that Enbridge could have easily done a survey of potential commercial and industrial customers which it failed to do. The inaccuracy of the customer attachment forecast puts into question the volume and the hourly load forecast, and the calculation of the contribution that Enbridge is demanding from EPCOR.

EPCOR requested that Enbridge provide it with 10,648 m3/hr of natural gas delivered to the new custody transfer point by December 1, 2019. Enbridge has adequate spare capacity on the Owen Sound System to supply EPCOR for one year. According to the evidence the demand from EPCOR, Enbridge accelerated the in-service date for the project from December 2022 to December 2020.[6]

Contribution-in-aid of Construction

Enbridge Gas has requested EPCOR make a CIAC payment of $5.34 million, which is, according to Enbridge, commensurate with the funds required to bring EPCOR's proportionate share of the Project up to a Profitability Index of 1.0. It is not clear from the evidence why Enbridge is calculating CIAC based on the PI of 1.0 instead of a PI of 0.8 as allowed under EBO-188 guidelines[7]. It is also not clear why new EPCOR customers are required to pay a CIAC while new Enbridge customers are not required to pay it[8]. Considering that the volumes on the Owen Sound Line are approximately equal, all new gas customers that will be served by the line should pay a contribution. Asking that only EPCOR customers pay a contribution appears to be an attempt by Enbridge to weaken its competitor. Another way that Enbridge is trying to weaken its competitor is by including in the calculation of CIAC that it wants to charge EPCOR the cost of facilities north of the EPCOR delivery point at Dornoch[9].

EPCOR's consultant Elenchus argues that there should be no CIAC paid by EPCOR because of EBO 134 Stage 2 and Stage 3 benefits. Stage 2 benefits is the present value of future energy savings of new gas customers. Such savings are now very large because of the high cost of electric home heating. Stage 3 benefits are the benefits of the project to society at large.

[6] Exhibit D, Tab 1, Sch. 1, page 3
[7] Exhibit I. EPCOR.3
[8] Exhibit 1. EP. 1
[9] Exhibit I. EPCOR. 2

Energy Probe believes that Elechus has misinterpreted the intent of OEB's guidelines for system expansion. Since it first considered the impacts of system expansion, the OEB has always maintained policies that prevented undue cross-subsidies between new and existing gas customers. It is at Stage 1 that rate impacts on existing gas customers are considered. It is therefore at Stage 1 that a need for a CIAC is considered. Stage 2 and Stage 3 do not consider rate impacts and are irrelevant to a consideration of a CIAC.

Energy Probe believes that EPCOR customers should pay a CIAC, but it should be properly calculated based on 50% of the cost of facilities south of Dornoch and be calculated to meet a PI of 1.0. New Enbridge customers would be responsible for paying a CIAC based on 50% of the costs south of Dornoch and 100% of the costs north of Dornoch. Their CIAC could be based on a PI of 0.8 as the project would be part of Enbridge's system expansion portfolio as allowed by EBO-188. There is insufficient evidence on the record to determine the appropriate amounts and the OEB should direct Enbridge to re-calculate the CIAC.

Rate M17

In its application, Enbridge Gas has proposed to introduce a new Rate M17 rate schedule to accommodate firm transportation service from Dawn, Kirkwall or Parkway to the gas distributor's delivery area. Enbridge Gas' proposed rate design includes a monthly charge, firm monthly transportation demand charge, commodity charges to recover incremental compressor fuel and unaccounted for gas and overrun charges. The proposed rates are based on current approved interim 2019 rates and will be subject to changes based on the outcomes of Enbridge Gas' 2019 rates proceeding.

Enbridge Gas is requesting approval from the Board of Rate M17 firm transportation service for gas distributors and to limit the applicability of the existing Rate M9 and Rate T3 rate schedules to existing gas distributor customers who commenced and continued service to their current delivery points under these rates prior to January 1, 2019.[10]

[10] Exhibit C, Tab 1, Schedules 2 and 3; AIC page 1

Enbridge wants the OEB to allow it to discriminate between existing gas distributor customers and new gas distributor customers. This is based on the premise that existing distributors that are customers of Enbridge Gas have acquired rights that should not be available to new distributor customers. A similar issue came up before the National Energy Board in a Trans Canada tolls restructuring case, RH-003-2011, regarding Trans Canada's Alberta System Extension (ASE) tolling proposal.

We view the ASE as inappropriate cost shifting among affiliate companies that is contrary to sound tolling principles, such as the principle of "no acquired rights or obligations," which we believe must be upheld. In our opinion, shippers' costs and benefits do not extend beyond a contract under which service was requested and made available. The ASE violates this principle and, accordingly, cannot produce tolls that are just and reasonable. [11]

In the RH-03-2011 case the proposal that legacy shippers, that had been customers of Trans Canada for years and had acquired certain rights due to their long relationship with the company, should be treated differently than new shippers, was rejected by the NEB. While the OEB is not required to follow NEB decisions, it should be aware of how the NEB handled a somewhat similar issue.

In this case Enbridge Gas is proposing that its existing embedded distributor customers, have acquired rights that allows them to use Rates M9 and T3 in perpetuity because they have used these rates in the past, however, EPCOR as a new embedded distributor customer is prohibited from using these rates and should be forced to use Rate M17 by the OEB.[12] Rate M17 is available to all but only EPCOR is required to use it. Energy Probe believes that what Enbridge is proposing constitutes unjust rate discrimination. The only difference between EPCOR and existing embedded distributor customers of Enbridge is that EPCOR is a competitor of Enbridge in the provision of gas distribution service in unserved regions of Ontario and the existing

[11] RH-003-2011, March 2013, page 2
[12] Elenchus Evidence, page 3; Exhibit B1, Tab 3, Sch. 1

embedded distributors are not. That is not a justifiable reason for rate discrimination.[13] Approval of Enbridge's Rate M17 proposal as filed would not result in just and reasonable rates.
Energy Probe submits that the OEB should turn down Enbridge's proposed Rate M17. In the alternative the OEB could approve Rate M17 but make it optional for all embedded distributor customers, including EPCOR.

Daily Load Balancing

The proposed Rate M17 does not include a daily load balancing service whereas Rates M9 and T3 that are available to existing distributor customers of Enbridge do include it. This is another instance of acquired rights and unjust discrimination that favours existing embedded distributor customers of Enbridge and discriminates against new embedded distributor customers. Energy Probe submits that all embedded distributor customers should be treated equally.

Customer-specific Station Costs

EPCOR's agreement with Enbridge required EPCOR to pay Enbridge $4.02 million for the construction of the Dornoch station which EPCOR has paid. It now claims that it should not have paid for the station and wants its money back. In its AIC, Enbridge explains why it was appropriate for EPCOR to pay for the station. Energy Probe supports the position of Enbridge on this matter.

Cost-based Storage

EPCOR needs access to gas storage for its daily operations. Storage may be available at cost-based rates or market-based rates. In general, cost-based rates are lower than market-based rates.

EGD rate zone currently has a 126.1 PJ in-franchise storage requirement; 99.7 PJs of which is provided through legacy EGD cost-based storage with the remaining 26.4 PJs purchased at market-based rates. The Union rate zones' in-franchise storage requirement for the winter

[13] Principles of Public Utility Rates; James C. Bonbright, Albert L. Danielsen, David R. Kamerschen; Public Utilities Reports, Inc. Second Edition, March 1988, pages 513 to 542

of 2019/2020 is 97.1 PJ's2. The combined 199.7 PJs of cost-based storage owned by Enbridge Gas is not adequate to meet current storage needs for in-franchise customers[14].

In the NGEIR Decision, the OEB determined that there should be a cap on Union Gas Limited's existing storage space that is reserved for in-franchise customers at cost-based rates. Accordingly, the OEB determined that Union Gas should be required to reserve 100 PJ (approximately 95 bcf) of cost-based rates for in-franchise customers[15]. As a result of the NGIR decision incremental storage needs of legacy Enbridge Gas Distribution and embedded Utilities Kingston are purchased and priced at market-based rates.

Energy Probe believes that storage is a natural resource and should in theory be available to all Ontario gas customers at cost-based rates. That is not possible because there is insufficient storage space for all customers and the NGEIR decision does not require it. Energy Probe believes that the OEB's NGEIR decision may have violated the principle of *no acquired rights or obligations*. Moreover, the decision does not reflect the current status of the natural gas distribution utility industry in Ontario and the OEB should consider a new generic proceeding that would review and re-examine the issues that were addressed in the NGEIR proceeding. Pending that review, the OEB should deviate from that decision by putting in place a process that would prorate cost-based storage to all gas distributors in Ontario on volumetric basis.

Other Leave-to-Construct Considerations

According to the evidence the primary source of cost estimates are contractor "courtesy bids".[16] It should concern the OEB that Enbridge Gas is relying on construction contractors that would be awarded the construction contract for this project to provide Enbridge with the cost estimate. The contractor providing such an estimate would have an incentive to provide a high estimate in order to maximize profit.

[14] Exhibit I. STAFF.6, page 2
[15] Ibid., page 1
[16] Exhibit 1. EP.4, page 2

It should also concern the OEB should be that the estimate of Contingency is a simple 15% applied to all categories of expenditures[17] instead of having different contingencies on labour and materials. Contingency is an estimate of costs of dealing with unforeseen circumstances or unknown events. The risk of such circumstances or events is lower for materials than for construction labour. Industry practice is for contingency on materials to equal approximately half of the contingency on labour. Based on the evidence of the total materials cost estimate for the project of $5,518.000 [18], the Contingency should be reduced by 7.5% of that amount or $413,850.

Another concern is that Enbridge Gas does not have incentives in place to ensure capital projects are completed on budget and on time.[19] Energy Probe believes that utilities under incentive regulation should have incentives to ensure that OEB approved capital projects are completed on time and on OEB approved budget. Enbridge Gas is currently under a five-year Incentive Regulation plan and project cost variances and resulting impacts on revenue requirement may not be known for several years.

Conclusion

This case raises several important issues that could have large impact on future evolution and operation of the gas distribution industry in Ontario. Energy Probe believes that the case would have benefitted from an oral hearing where the issues could have been more thoroughly explored and discussed. The case raises issues of acquired rights and unjust discrimination that favours existing distributor customers of Enbridge and discriminates against new distributor customers. It seems that Enbridge is abusing its monopoly power against EPCOR in order to weaken EPCOR's competitive position.

Submitted on behalf of Energy Probe by its consultant,

Tom Ladanyi

TL Energy Regulatory Consultants Inc.

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[17] Ibid.
[18] Ibid.
[19] Exhibit I.EP.3