EB-2019-0194

ONTARIO ENERGY BOARD

ONTARIO ENERGY BOARD IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an application by Enbridge Gas Inc. pursuant to section 36(1) of the Ontario Energy Board Act, 1998 for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2020.

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Enbridge Gas Inc. 2020 Rates Proceeding – Phase 2

Argument Submission of

Energy Probe Research Foundation

April 4, 2020

EXECUTIVE SUMMARY

ICM Requests

Enbridge is seeking OEB approval for ICM funding of two capital projects: the $35.4 million Don River Replacement Project in the Enbridge Gas Distribution (EGD) Rate Zone for which it is seeking $30.1 million, and the $106.8 million Windsor Line Replacement Project in the Union South Rate Zone for which it is seeking funding of $84.2 million. The Don River Replacement Project does not meet the materiality or prudence ICM criteria. Although the need for the Windsor Line Replacement Project was accepted by the OEB, there is no urgent need for the project, and it should be postponed until re-basing. It is also unlikely that Enbridge can proceed with construction in 2020 due to restrictions on construction activities in Ontario because of COVID-19. Energy Probe submits that the OEB should turn down both requests for ICM funding.

Cost Allocation Study

The study shows that EGD Rate Zone residential customers, along with Union North and Ex-franchise shippers are annually paying $16.916 million too much for Dawn –Parkway transportation and Union Rate Zones are paying too little, with EGD Rate Zone customers paying $10.2 million more than the should. Energy Probe submits that the OEB should direct Enbridge to implement in 2021 rates the changes proposed by the cost allocation study.

UFG Report

It appears that Enbridge Gas is treating the problem of Unaccounted for Gas (UFG) too lightly. Just because it is held whole for UFG Losses it appears the response is almost “Business as Usual”. EGI should respond in its Reply Argument with a commitment to bring forward, in its 2021 Rate application, a concrete UFG action plan supported by cost /benefit analysis as to how it will reduce/manage UFG in all business segments and provide improvements to its UFG forecasting,

E-bill Practices

It is clear from evidence on the record that implementation of e-billing as a default option by Enbridge created a major problem for its customers with over a 100 thousand customers in arrears. Energy Probe suggests that the OEB establish rules that would deal with billing practices by electricity and gas distributors. These should be established in consultation with distributors and customer representatives. Until such time, the interim measures implemented by the Settlement in this case should remain in effect.

ICM REQUESTS

Enbridge Gas is seeking ICM funding for two projects in 2020 that are not funded through existing rates – the Don River Replacement Project in the EGD Rate Zone and the Windsor Line Replacement Project in the Union South Rate Zone. It claims that each project meets the Board's ICM criteria in terms of materiality (including the means test and discrete project criteria); need; and prudence.

Materiality Threshold

The EB-2014-0219 Report of the Board explains the concept of the Materiality Threshold.

The materiality threshold is in effect a capital expenditure threshold which serves to demonstrate the level of capital expenditures that a distributor should be able to manage with its current rates.[1]

According to Enbridge[2] the amount of the Materiality Threshold is determined by the formula:

Threshold Value = 1 + [(RB/d) * (g + PCI * (1 + g))] * ((1 + g) * (1 + PCI))n-1 + 10%
Where: RB = Rate base included in base rates ($)
d = Depreciation expense included in base rates ($)
g = Growth factor (%) PCI = Price cap index (%)
n = Number of years since rebasing

The EB-2014-0219 Report of the Board that Enbridge relies on has the same formula except for the last term, which is +20% and not +10% as used by Enbridge.[3] The OEB allowed Enbridge the use of +10% instead of +20% in the EB-2017-0306/EB-2017-0307 decision[4]. The Threshold Value that Enbridge has to meet is lower than what is available to most distributors.

The EB-2014-0219 Report of the Board explains how to use the materiality threshold.

A capital budget will be deemed to be material, and as such reflect eligible projects, if it exceeds the Board-defined materiality threshold.[5]

Therefore, the key to obtaining approval for ICM funding is for a utility to have a capital budget that exceeds the materiality threshold. In the EB-2017-0306/EB-2017-0307 decision the OEB allowed Enbridge Gas to treat the EGD Rate Zone and the two Union Rate Zones as separate utilities for the purpose of calculating ICM Materiality Thresholds. Enbridge Gas has calculated

[1] EB-2014-0219 Report of the OEB – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, section 4.1.5, page 17
[2] Exhibit B, Tab 2, Schedule 2, page 9
[3] EB-2014-0219 Report of the OEB – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, section 6, page 19
[4] EB-2017-0306/EB-2017-0307 Decision and Order, August 30, 2018, page 33
[5] 5 EB-2014-0219 Report of the OEB – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, section 4.1.5, page 17

the materiality threshold amounts to be $487.1 million for the EGD Rate Zone and $444.1 million for the combined Union Rate Zones.[6]

To get ICM funding, Enbridge Gas needs to prove to the OEB that its 2020 capital budgets exceed $487.1 million for the EGD Rate Zone and $444.1 million for the Union Rate Zones. The question then for Materiality is "has Enbridge met the burden of proof"?

In its AIC Enbridge claims that its 2020 capital budgets are $517.2 million for the EGD Rate Zone and $528.3 million for the Union Rate Zones,[7] based on updated evidence filed on January 15, 2020. Yet the 2020 budgets presented in the AMP Addendum filed October 25, 2019 are $485.2 million for the EGD Rate Zone and $546.4 for the Union Rate Zones.[8]

Energy Probe Submission

The Materiality Threshold Value that Enbridge has to meet is lower than what is available to most distributors since it is allowed to use the 10% instead of the 20% band. Even with this advantage Enbridge Gas had difficulty in exceeding the Materiality Threshold for the EGD Rate Zone and had to rely on increased overhead allocation.

If Enbridge Gas had not updated its evidence, its EGD Rate Zone 2020 Capital Budget would have only exceeded the materiality threshold by $1.9 million ($487.1 million - $485.2 million). Enbridge did not include ICM evidence in its original filing dated October 8, 2019[9]. It seems that Enbridge did not know at the time of filing that its EGD 2020 Capital Budget was too low to qualify for substantial ICM funding and then increased the budget by $32 million in the updated evidence filed on January 15, 2020 by delaying the completion for the Don River replacement so that it could get ICM funding for it from ratepayers .

When one compares the 2020 EGD Capital Budget of $517.2 million in Table 1 in the updated evidence[10] with the 2020 EGD Capital Budget of $485.2 million in the AMP Addendum filed October 25, 2019, there are several categories of expense that Enbridge increased. The largest increase is in System Renewal which increases from $136.9 million to $168.8 million followed by Total Overheads which increase by $10.3 million from $146.5 million to $156.8 million. Overheads are capitalization of allocated costs of Finance, HR, Legal and Regulatory Affairs departments. It is hard to believe that the costs of these Enbridge Gas departments increased by $10.3 million between October 25, 2019 and January 15, 2020.

When one compares the overhead allocation percentages of the EGD Rate Zone with the Union Gas Rate Zones, it is clear that the overhead capitalization rate for the EGD Rate Zone is twice as high as the rate for the Union Rate Zones. For the EGD Rate Zone out of the total 2020 Budget of $517.2 million, Total Overheads are $156.8 million[11] or 30.3%, whereas for the Union

[6] EP-2: AIC, page 4
[7] AIC, page 5
[8] Exhibit C, Tab 1, Sch. 1, EGI Asset Management Plan Addendum – 2020, Table 1.1-1, page 5
[9] Exhibit A, Tab 1, Schedule 1, page 1, filed 2019-10-08
[10] Exhibit B, Tab 2, Sch. 1, Updated 2020-01-15, page 4
[11] Ibid.

Rate Zones out of the 2020 Budget of $528.3 million, Total Overheads are $76.4 million[12] or 14.5%. If the same overhead capitalization rate of 14.5% is applied to the EGD Rate Zone as was used for the Union Rate Zones the Total Overheads for the EGD Rate Zone would be the more reasonable $75.0 million instead of the outrageously high $156.8 million. The EGD Rate Zone 2020 Budget would be reduced by $81.8 million from $517.2 million to $435.4 million. Energy Probe submits that $435.4 million 2020 Budget would be the appropriate number for the purpose of determining if the Materiality Threshold has been exceeded for the EGD Rate Zone. On that basis the Materiality Threshold of $487.1 has not been exceeded for the EGD Rate Zone and the OEB should deny Enbridge's request for ICM funding for the Don River Replacement project.

For the combined Union Rate Zones, the Materiality Threshold is $444.1 million.[13] The 2020 Budget for the Union Rate Zones is $528.3 million, which has now been reduced by $1.3 million[14] to $527.0 million. Energy Probe agrees that based on the evidence the Materiality Threshold test has been met for the Union Gas Rate Zones.

Discrete Project Criteria

In the AIC, Enbridge explains that ICM funding requests must be based on discrete, material projects, and the amount claimed must be clearly outside of the base upon which the rates were derived, and that the MAADs Decision directs that any individual project for which ICM funding is sought must have an in-service capital addition of at least $10 million.

Energy Probe Submission

Energy Probe agrees with this explanation and the claim that the two proposed ICM projects meet the discrete projects criteria.

Need and Prudence Criteria

The $35.4 million Don River Replacement Project

The OEB issued its LTC approval for the Don River Project in its EB-2018-0108 decision issued on November 29, 2018 establishing the need for the project. Therefore, the need for the project and the prudence for proceeding with it are no longer issues. However, the prudence of management of the project by Enbridge is still an issue. The project is about 7 months behind schedule and about $10.2 million over budget. Ratepayers who are asked to pay for this project should be concerned that it is over budget and behind schedule, as should the OEB be whose duty is to see that ratepayers are only asked to pay for prudently incurred costs.

Enbridge Gas previously applied for ICM funding for this project in the 2019 Rates case. The Board determined that the 2019 capital expenditure budget for the EGD Rate Zone did not

[12] Ibid., page 5
[13] EP-2: AIC, page 4
[14] EB-2019-0172 Decision, page 13

exceed the ICM materiality threshold and did not approve the ICM request. In this case Enbridge is applying for ICM funding for $30.1 million[15] out of the total project cost of $35.4 million because its 2020 EGD Zone Capital Budget only exceeds the EGD Rate Zone Materiality Threshold by $30.1 million.

At the time of the 2019 Rates case, the Don River Replacement Project was scheduled to be placed into service in September[16] or October of 2019[17]; it is not clear from the evidence on the record which is the correct month. Enbridge claims that due to circumstances beyond the control of Enbridge Gas the Don River Replacement Project was not put into service on schedule in 2019 as promised by Enbridge to the OEB and will now be go into service in May 2020[18]. Enbridge claims that "the delay in the in-service date is due to unanticipated delays in obtaining necessary permits" [19].

Energy Probe Submission

The Don River Replacement project is $10.2 million over budget[20] and about 7 months behind schedule. The main reason for the cost variance is the increase in overhead costs from $759,000 to $9,899,358[21]. This is a very large variance that can not be blamed on circumstances beyond the control of Enbridge Gas. The increase in allocation of overhead costs is clearly due to a decision of Enbridge Gas management. Energy Probe believes that Incremental Capital Module funding for capital projects should not be used to recover non-incremental costs from ratepayers. Enbridge claims that all of the costs of the $35.4 million Don River Replacement Project including the $9.9 million overhead cost are incremental[22]. It is not clear from the record why allocated overhead costs from departments such as Finance, Human Resources, Law, and Regulatory affairs would be incremental. Did Enbridge Gas hire new staff in those departments to work on the Don River Replacement Project and plans to let them go when the project is completed? There is nothing on the record that would support the claim that overhead costs of $9.9 million that are being charged to this project are all incremental costs.

Regarding the Prudence criteria, it is hard to understand why a project, that is 7 months behind schedule and 40% over budget, would be considered prudent. It raises the question what would make a project not prudent? Would it be 12 months behind schedule and 100% over budget? Enbridge claims these large cost and timing variances are not its fault. Energy Probe disagrees. The large cost variance is due to Enbridge's failure to disclose the true cost of the project in the EB-2018-0108 LTC application. The large timing variance is due to Enbridge's failure to correctly estimate the time required for obtaining permits from various municipal and provincial authorities. Considering that Enbridge Gas and predecessor companies had been operating in Toronto for over 170 years, Enbridge management should by now know what permits are required and how long it takes to obtain them. Since both the large cost variance and the timing

[15] Exhibit B, Tab 2, Schedule 1, Updated 2020-01-15, page 15
[16] AIC, page 2
[17] Exhibit B, Tab 2, Schedule 1, Updated 2020-01-15, page 17
[18] Exhibit B, Tab 2, Schedule 1, Updated 2020-01-15, page 18
[19] Ibid
[20] Exhibit B, Tab 2, Schedule 1, Appendix C, p18
[21] I.BOMA.6
[22] I.EP.7

variance are due to Enbridge management's failure, this project does not meet the Prudence criteria.

The $106.8 million Windsor Line Replacement Project

The LTC proceeding for the Windsor Line Replacement project, EB-2019-0172, has been completed and the OEB issued its decision on April 1, 2020. In the EB-2019-0194 Enbridge Gas proceeding is applying for ICM funding of $84.2 million for the Windsor Line Replacement Project since the Union Rate Zones 2020 Capital budget exceeds the combined Union Rate Zones Materiality Threshold by that amount. The OEB EB-2019-0172 decision approved the project but with a reduced budget of $105.5 million.[23]

Energy Probe Submission

The OEB approved budget cost estimate of $105.5 million includes Indirect Overhead cost of $14.1 million which Enbridge confirms are not incremental costs[24]. Energy Probe believes that costs that are not incremental should not be recovered through the Incremental Capital Module. Recovering non-incremental costs through the Incremental Capital Module defeats the very purpose of the Incremental Capital Module.

Energy Probe was an intervenor in the Windsor Line Replacement LTC proceeding, EB-2019-0172, and argued that Enbridge has failed to provide adequate evidence for the OEB to determine the need or prudence of this very costly project[25].

Enbridge is justifying this project on integrity grounds, yet it did not file in the EB-2019-0172 LTC proceeding, nor in this this case, an integrity report from an independent integrity consultant or even an integrity report from internal technical staff. An integrity report is a basic and essential requirement to demonstrate need for the project on integrity grounds.

There is also no risk report that compares the risk of leaks on this pipeline that would compare it to the risk of leaks on other pipelines in the Union Rate Zones. There is no evidence that compares the leaks/year/kilometer of this pipeline to other pipelines in the Union Rate Zones.

This is a pipeline replacement project, but Enbridge did not file a "repair vs replace" DCF economic analysis in the EB-2019-0172 proceeding nor in this case. A repair vs replace DCF economic analysis is a basic and essential requirement for prudent replacement decision making, particularly for a large $106.8 million project. Without it there is no evidence of prudence.

As Enbridge Gas has failed to provide an integrity report or a repair vs replace economic analysis for this project in either the EB-2019-0172 LTC proceeding or in this case, Energy Probe believes that it has failed to demonstrate need and prudence for the Windsor Line Replacement Project.

[23] EB-2019-0172 Decision, page 13
[24] I.VECC.6
[25] EB-2019-0172, Energy Probe Argument

In its EB-2019-0172 Decision the OEB noted the deficiencies in the integrity evidence provided by Enbridge.

"The OEB would have been better assisted in making this conclusion if Enbridge Gas had offered more comprehensive supporting evidence as to the extent of the integrity issues and the ability of those issues to be rectified without necessitating the replacement. Safety and security of supply concerns are of paramount importance in determining need for the Project particularly given the age of the existing Windsor Line. However, the OEB has a responsibility to ensure that the proposed ratepayer-funded capital expenditure of $106.8 million is based on clear, well-supported and objective evidence. While the OEB does find that the Project is required and in the public interest, it generally expects a more thorough presentation of Project need given the funding requested."[26]

The OEB's Decision accepts the need for the project. It does not deal with the immediate need for the project that would justify ICM funding for it. Nothing that Enbridge presented in evidence in the EB-2019-0172 LTC proceeding or in the EB-2019-0194 Rates proceeding indicates an urgent need for the project. The integrity issues have been known to Enbridge Union Rate Zone management for years and nothing was done about them. Why something has to be done now, and why it can't wait until rebasing was never explained. The restrictions on construction activities in Ontario due to COVID-19 make it unlikely that construction can take place in 2020. Energy Probe believes that the project should be postponed until rebasing and that ICM funding at this time is not necessary.

The Means Test

In its AIC Enbridge explains that in order to be eligible for ICM funding, a distributor must also pass the "Means Test" showing that its regulated return is less than 300 basis points (bps) above the deemed return on equity (ROE) embedded in the distributor's rates.27 The actual 2018 ROE for the EGD Rate Zone was calculated to be 10.82%, and actual ROE for the Union Rate Zones was calculated to be 9.64%. Each of these are less than 300 bps above the ROE embedded in rates.

<u>Energy Probe Submission</u>

Energy Probe agrees that Enbridge Gas has met the Means Test for the EGD Rate Zone and for the Union Rate Zones.

[26] EB-2019-0172, Decision, April 1, 2020, page 6

COST ALLOCATION DIRECTIVE

As required by the MAADs Decision[27], the Enbridge Gas filed a Cost Allocation Study that takes into account four projects:

- Panhandle Reinforcement,
- Dawn-Parkway expansion including Parkway West,
- Brantford-Kirkwall/Parkway D. and
- the Hagar Liquefaction Plant.

The study also includes a proposal for addressing TransCanada's C1 Dawn to Dawn-TCPL service.[28] Enbridge Gas is seeking Board approval of cost allocation *methodology* changes applicable to the Panhandle System and St. Clair System, Parkway Station and Dawn Station.

Enbridge Gas prepared the Cost Allocation Study based on the 2019 test year. Enbridge Gas has based the revenue requirement on the 2019 forecast costs of the Union rate zones, which have been set to equal the forecast of 2019 revenue. Enbridge Gas used the three-step approach of Functionalization, Classification and Allocation of relevant costs.[29]

A summary of the results of the Cost Allocation Study is set out at Appendix A of the Argument in Chief. The impacts of the proposed cost allocation methodologies from the Cost Allocation Study are set out at Appendix B.[30]The updated revenue to cost ratios that would result are set out in the table at Appendix C.[31]

Enbridge Gas is proposing to implement the cost allocation methodology changes as part of its next rebasing proceeding.

In Union's 2013 Board-approved cost allocation study, Parkway Station costs are included as part of the Dawn-Parkway Easterly Demand functional classification. Dawn-Parkway demand costs are allocated to *in-franchise and ex-franchise rate* classes in proportion to easterly peaking distance-weighted design day demands (also referred to as "commodity-kilometres") on the Dawn-Parkway transmission system.

Enbridge Gas is proposing changes to the cost allocation methodology of the Parkway Station costs in response to the Board's directive. Enbridge Gas has allocated the measuring and regulating costs at Parkway in proportion to the bi-directional design day demands of the Parkway Station. This allocation methodology recognizes that measuring and regulating assets are used on design day to measure the volumes flowing through the Parkway Station. Enbridge Gas has allocated the compressor costs at Parkway in proportion to the easterly design day demands requiring compression at Parkway. This allocation methodology recognizes compressor equipment is used on design day to

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[27]August 30, 3018 Decision and Order in EB-2017-0306/0307 (MAADs Decision)
[28] Exhibit B, Tab 1, Schedule 1. Appendix C.

[29] AIC 34-35 and Exhibit B, Tab 1, Schedule 1, Appendix C, para. 15 and Schedule 2.
[30] Appendix A reproduces Table 1 from Exhibit B, Tab 1, Schedule 1, Appendix C, page 5.
[31] AIC 34-35 Appendix B reproduces Table 2 from Exhibit B, Tab 1, Schedule 1, Appendix C, page 9. Enbridge Gas provided estimated bill impacts in the Union Rate Zones from the implementation of the proposed cost allocation methodology changes (without taking in to account rate design considerations) at Exhibit I.STAFF.4. Rate impacts in the EGD Rate Zone are set out at Exhibit I.SEC.8.

move volumes to markets east of Parkway and includes *ex-franchise Rate M12/C1 and Union North in-franchise rate classes.*

Enbridge Gas has allocated all other costs at Parkway in proportion to the Parkway Station measuring and regulating and compressor net plant. This allocation methodology recognizes that the remaining costs, such as land, structures, and general plant, are used to support both the measuring and regulating and compression at Parkway.

Energy Probe Submission

While Energy Probe is interested in all of the results of the Cost Allocation Study, its focus and submissions relate to the interests of its supporters in the Residential Class and accordingly in the allocation of Dawn-Parkway Transportation costs for those Classes.

As indicated in the EGI response to interrogatories from Energy Probe[32] and SEC[33], EGD Rate Zone residential customers, along with Union North and Ex-franchise shippers are annually paying $16.916 million too much for Dawn –Parkway transportation and Union Rate Zones are paying too little. SEC IRR 8 specifically shows that EGD Rate Zone customers are now paying $10.2 million too much for their vital Dawn-Parkway transportation service[34].

This is most egregious, because EGD rate zones post-amalgamation are now in-franchise and the costs for transportation from Dawn to rate zone delivery points, including Parkway should be based on the same distance-based cost allocator for ALL in-franchise customers.
Only specific Parkway Costs should be allocated to EGD and Union North Rate zones (as well as to ex-franchise shippers).

Energy Probe submits that deferring implementation of the appropriate cost allocation for Dawn Parkway transportation represents an undue continuing large cross subsidy between the Union and EGD Rate zones.

To allow a $ 10.2 million annual cross subsidy from the EGD Rate zone customers is not fair and against the principle of Just and Reasonable rates. Energy Probe submits the Board has two Options:

1. Direct EGI to implement the revised Dawn-Parkway cost allocation in 2021 rates

2. Defer the excess M12/C1 EGD Rate zone revenue until rebasing. (2019-2024)
   At that point review the appropriate disposition.

Of these two options the former is preferable, because of the magnitude of the cross subsidy. We also note that in 2019 and 2020, EGD Rate zone customers have already been overcharged $20.4 million.

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[32] I.EP.15; I.EP.18
[33] I.SEC.8
[34] Ibid.

There may be pressure to implement all updated cost allocation proposals in 2021. However, the level of cross subsidy for other cost allocation changes is significantly less. Energy Probe also submits that if the Board directs EGD to bring forward the updated cost allocation for 2021 rates, it should also require Enbridge Gas to bring forward a proposal to assign the Union Rate Zone excess regulated storage to the EGD Rate zone in 2021.

To date, despite intervenor requests (including Energy Probe), the Board has declined to address the matter of reallocation of Union excess regulated Storage to EGD Rate zone customers until rebasing. Union and its Union Rate Zone are still benefitting from the sale of that storage into the market, including to the EGD Rate Zone. (10% of proceeds to Union/Enbridge Gas shareholders and 90% of proceeds to Union Rate Zone ratepayers).

UFG REPORT

As required by the MAADs Decision, Enbridge Gas has filed a Report by its consultant, Scott Madden, on Unaccounted for Gas (UFG) for the EGD and Union Rate Zones (the UFG Report). Enbridge Gas is not seeking any relief in relation to this item. The Company states in its AIC that EGI will implement the recommendations in the UFG Report and will report on its progress in future regulatory proceedings.

A common question in interrogatories about the UFG Report was around the reasons for differences between the UFG levels for the legacy utilities. As explained in Enbridge Gas's interrogatory responses, Scott Madden did not look into this question specifically, focusing instead on comparisons between the legacy utilities and other gas distributors in the US and Canada

In its AIC paragraphs 87[35] and 90[36] Enbridge states the following.
It should be noted, however, that any comparison of EGD and Union's historic UFG levels as set out in the UFG Report is not an "apples to apples" comparison[37]. The UFG reported for Union includes volumes related to distribution, storage and transmission activities. Conversely, the UFG reported for EGD includes only the volumes related to the distribution system in its franchise areas. It does not include gas storage (since it is outside the franchise area and relies on non-EGD transmission for transport to the franchise area) nor gas transmission (since EGD's distribution system does not include significant amounts of "transmission" pipeline).

Scott Madden made several recommendations for Enbridge Gas to consider in order to manage UFG in the future. These include identifying and implementing "best practices" related to monitoring and managing UFG across the legacy utilities; documenting data, processes and studies related to monitoring and managing UFG; and continuing to investigate sources of UFG on a periodic basis.

Enbridge Gas states it has committed to review and implement the recommendations from the UFG Report in its ongoing operations. Among other things, this includes Enbridge Gas's ongoing project to update the metering at the legacy EGD Victoria Square gate station where gas is received from

[35] AIC, page 29, Para 87
[36] Ibid, page 30, Para 90
[37] I.STAFF.28 (b) and I.EP.21(b).

TransCanada Energy. Enbridge Gas has also agreed that it will assess its UFG forecasting methodology ***in its rebasing proceeding.***

Energy Probe Submission

Energy Probe is concerned about Enbridge's response to the Board's direction and the Scott Madden Report on UFG. It appears that EGI is treating UFG too lightly. Just because it is held whole for UFG Losses it appears the response is almost "Business as Usual". There are several reasons that the Board should find this an unacceptable response:

- UFG is a significant contributor to greenhouse gas emissions
- EGI has an obligation to increase monitoring and management of fugitive emissions, including those related to its storage pools.
- Ratepayers are paying for UFG (except for the $5 million threshold for the Union Rate Zone)
- EGI has not explained the differences between the levels of UFG in the Union and EGD rate zones.
- EGD has an obligation to upgrade its custody and internal (rate zone) transfer meters to best/state of the art including calorimeters.
- EGD has an obligation to improve its UFG forecasting methodologies.

EGI should respond in its Reply Argument with a commitment to bring forward, in its 2021 Rate application, a concrete UFG action plan supported by cost /benefit analysis as to how it will reduce/manage UFG in all business segments and provide improvements to its UFG forecasting,

E-BILL PRACTICES

During the Technical Conference in response to an Undertaking[38] Enbridge disclosed that it has been transferring customers from paper billing to electronic billing ("e-billing") without their consent since January 2019[39]. Enbridge subsequently confirmed that fact in a response to an interrogatory[40]. Customers had to request to return to paper billing.

A large number of customers were unaware of the change and fell into arrears. Energy Probe notes the response to Board Staff Interrogatory 14c and d [41], demonstrates the scale of the problem.

[38] JT1.4
[39] Technical Conference Tr.68
[40] I.VECC.12
[41] I.Staff.14c

c)

	Total	Phase 1	Phase 2	Phase 3
(A) fell into arrears	109,742	66,380	27,967	15,395
(B) received a collection/reminder notice	109,742	66,380	27,967	15,395
(C) received a disconnection notice	3,220	1,680	1,540	-
(D) were disconnected	684	214	470	-

d) Enbridge Gas does not have sufficiently detailed data on inbound calls to determine the number of inbound calls for this specific group.

In the Settlement Enbridge Gas agreed to implement interim measures suspending this practice pending OEB decision on Phase 2 of this proceeding[42]. In its AIC Enbridge Gas submitted that there is no need for the continuation of interim measures implemented in the Settlement. It argued that *its practice of converting customers to eBill and making eBill the default method for new and moving customers is not contrary to any published rules or policies of the Board, including the GDAR which "establish[es] customer service rules for rate-regulated gas distributors*[43]. Enbridge Gas will continue to offer a paper bill on an exception basis and will not charge for paper bills without OEB approval.

Energy Probe Submission

Energy Probe submits that the evidence is clear, EGI acted inappropriately in its introduction of e-billing. The figures above[44] show that over 100,000 customers fell into arrears. Energy Probe believes that the change in the default option from paper bill to e-bill without explicit consent of the customer constitutes negative option billing.

Enbridge did not consider Negative Option Billing Regulations (SOR/2012-23) when it made its decision to change the default option. It claims that the Negative Option Billing regulations do not apply to Enbridge Gas because they only apply to financial institutions that are offering new services and Enbridge is not a financial institution and is not offering new services. Enbridge claims that Negative Option Billing regulations do not speak at all about the requirements of methods of billing[45]. In a strictest legal sense, Enbridge's interpretation of the applicability of Negative Option Billing Regulations may be right. It is surprising, however, that Enbridge did not even consider the potential applicability of the regulations. What Enbridge is doing is without question a negative option procedure. Customers are switched to e-billing without their consent. As Enbridge well knows, negative option procedures would result in decreased customer satisfaction as can be seen from the presentation to management [46].

[42] Exhibit N1, Tab 1, Sch. 1, Section 7, pages 12 to 14
[43] AIC page 26
[44] I. Staff.14 c)
[45] I.EP.27
[46] I.CCC.5, Att. 1, page 6

Many Enbridge's customers were negatively affected by Enbridge's adoption of this procedure in January 2019 as can be seen by the very large number of customers that fell into arrears.[47] Enbridge expected this negative reaction and put in place a mitigation plan.

One of the methods of mitigation appears to have been to produce a consistent message that it could use with the media and the OEB[48]. There is nothing in the mitigation measures that would help customers in dealing with the problem that Enbridge created. It appears that Enbridge was far more concerned with its image in the media and at the OEB than with helping customers that were converted to e-bill and whose accounts fell into arrears.

Enbridge was concerned about the legality of its plans and sought a legal opinion which it declined to disclose [49]. However, it is likely that the legal opinion dealt with OEB jurisdiction over billing practices which it discussed in a response to an interrogatory[50] as repeated below.

Enbridge Gas acknowledges that the Board has jurisdiction to establish rules related to a distributor's billing practices. However, as of the current date, no such rules have been established by the Board that are relevant to the issues raised by intervenors about eBill.

Similarly, Enbridge Gas acknowledges that the Board has jurisdiction to prescribe and make rules related to acceptable methods of bill format or payment. However, it is Enbridge Gas's position that the Company's actions to make eBill the default billing method are not in contravention of any orders or rules that the Board has made and/or implemented.

It appears that Enbridge was mainly concerned if it could legally get away with its e-bill negative option plan, and not concerned about the impact on its customers. A sentence in Enbridge's response above, inadvertently points the way to a potential OEB decision on this matter.

The Board has jurisdiction to establish rules related to a distributor's billing practices. However, as of the current date, no such rules have been established by the Board that are relevant to the issues raised by intervenors about eBill.

Energy Probe suggests that the OEB establish rules that would deal with billing practices by electricity and gas distributors. These should be established in consultation with distributors and customer representatives. Until such time, the interim measures implemented by the Settlement in this case should remain in effect.

Submitted on behalf of Energy Probe by its consultants,

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SPA Inc.	TL Energy Regulatory Consultants Inc.

[47] I.Staff.14
[48] I.CCC.5, Att. 1, page 6
[49] I.EP.27
[50] I.VECC.23