

ONTARIO ENERGY BOARD

**Industrial Gas Users Association
Motion to Review and Vary Decision and Order dated
May 14, 2020 (EB-2019-0194)**

**SUBMISSIONS OF
BUILDING OWNERS AND MANAGERS ASSOCIATION, TORONTO ("BOMA")**

July 17, 2020

**Albert M. Engel
Partner
Fogler, Rubinoff LLP
77 King Street West, Suite 3000
Toronto, ON M5K 1G8**

Counsel for BOMA

BOMA's SUBMISSION ON IGUA's MOTION

1. BOMA is of the view that IGUA has not met the threshold test for a review of the Enbridge 2020 rates decision (EB-2019-0194), and that if the Board were to decide that IGUA met the threshold for review, the Board should not change its decision in the manner requested.
2. In the EB-2019-0194 decision, the Board found as follows:

"OEB staff and most intervenors submitted that approval of the cost allocation methodology should be deferred until Enbridge Gas's next rebasing application in 2024. Little value was attributed to approving the changes in methodology arising out of the 2019 cost allocation study now and then addressing the implementation of such changes in 2024. TCPL submitted that usage of system facilities by shippers, and gas flows could all change between now and implementation in 2024. The OEB supports the suggestion that the review and approval of any cost allocation methodology changes should occur as close as possible to the time the changes are proposed to be implemented. The OEB finds that when the full cost allocation study is filed for 2024 implementation, that would be the appropriate time to examine these changes.

The OEB acknowledges that the existing cost allocation over time has resulted in changes to the costs and benefits to certain parties since the OEB approved Union Gas's 2013 cost allocation study. Accordingly, Enbridge Gas responded to the OEB's direction in the MAADs Decision to undertake a new cost allocation study. However, the OEB notes that, consistent with the approved rate setting mechanism, the rates for 2020 continue to be decoupled from costs. Rate stability and predictability offered through incentive regulation also rely on the decoupling of rates from the allocating utilities' costs among different customer classes. At the next rebasing, potential changes to the comprehensive cost allowance are anticipated including other adjustments to rate base, possible rate harmonization proposals and rate design changes.

APPrO supported the material changes to specific customer classes, particularly T2 and M12, identified in the cost allocation study. IGUA promoted the removal from rates T2, M16 and C1 of the Panhandle system costs identified in the cost allocation study as being inappropriately and inequitably recovered from these customers. Enbridge noted the Panhandle Reinforcement Project was unique as it involved incremental costs not considered in the 2013 cost allocation study. The OEB acknowledges that the current cost allocations are outdated; however, attempting to make selected changes at this time will be disruptive to the

predictability of rates and result in more changes in 2024. The OEB reiterates that rate stability and predictability offered through incentive regulation rely on the decoupling of rates from the allocating utilities' costs among different customers classes.

The OEB acknowledges that the Rate C1 Dawn to Dawn-TCPL service approved in 2010 has allowed for recovery of these specific capital costs. However as noted earlier, the OEB does not make changes for specific costs during an IRM period. These will be assessed at the 2024 rebasing.

The OEB finds that changes to the methodology and implementation of Enbridge Gas's cost allocation shall be examined as part of the 2024 rebasing application."

The Board stated that the various proposals to change to Enbridge cost allocation methodology, including IGUA's proposal, should be dealt with at the next rebasing, following longstanding OEB practice. The Board noted that rates for 2020 would be determined by the IRM rate-setting mechanism, established in the 2013 rebasing, which decoupled rates from costs. The Board further noted that allowing the rates to be determined by the IRM formula during the IRM period ensured both rate stability and rate predictability, rate features valued by Enbridge's customers. Moreover, the Board stated that it was likely that further changes to the cost allocation methodology, rate design, possible rate harmonization, would be addressed at the next rebasing. Given that likelihood, piecemeal changes in cost allocation should not be made prior to the next rebasing. Under longstanding Board practice, Enbridge is required to conduct a comprehensive cost allocation study as part of its evidence in a rebasing year.

BOMA notes that while the Board did not specifically dwell on this point in its findings, the applicant's motion is the fourth time since 2016 that IGUA has proposed the same cost allocation change. In each instance, the Board has declined to make the requested change in advance of rebasing.

3. IGUA has not raised any new issues in its motion that it has not already raised in its several submissions on the cost allocation issue over the last 4 years. There is nothing new here. The applicant does not demonstrate that the Board made any identifiable error in its decision as required by the Board's Rule 43. In its 2020 decision, the Board did not make any finding contrary to the evidence before the panel, nor fail to address IGUA's proposal, nor did it make a finding inconsistent with its earlier findings to defer consideration of cost allocation proposals, including IGUA's proposal, to the next rebasing, or "something of a similar nature".
 4. The Board provided reasons for its decision that were clear, transparent and intelligible, and complied fully with the Supreme Court of Canada's recent comments on administrative tribunals' decisions in the Valivov case. (BOMA notes that the Valivov decision of the Supreme Court dealt with judicial oversight of administrative bodies' decisions in general, and not specifically with the procedure used by an administrative body to re-hear its own decision, which procedure is provided for by its statute and rules. Consequently, the Valivov decision has no direct impact on this application). Notwithstanding the difference in context, BOMA is of the view that, contrary to the factual situation in Valivov, the Board included substantial written reasons for its decision, which as noted above, were clear, intelligible, carefully-reasoned, and took into account the views of all of the intervenors in the case, including the applicant. Enbridge also submitted that the proposed cost allocation changes should be dealt with at rebasing.
- As a result, the applicant did not meet the threshold test for a re-hearing. The Board should, therefore, dismiss the applicant's motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF BOMA
ON JULY 17, 2020.**

Albert Engel, Counsel for BOMA