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July 17, 2020

Christine E. Long  
Registrar and Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
26<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON  
M4P 1E4

DELIVERED BY EMAIL

Dear Ms. Long,

**RE: EB-2020-0156 - IGUA - Motion to Review and Vary Part of Decision and  
Order dated May 14, 2020 in EB-2019-0194**

Please find enclosed the submissions of the Ontario Greenhouse Vegetable Growers in the above noted proceeding.

Yours very truly,



Michael R. Buonaguro

Encl.

CC: All Parties

**ONTARIO ENERGY BOARD**

**Enbridge Gas Inc. (EGI)**

**Application for natural gas distribution rates and other charges effective  
January 1, 2020**

**Industrial Gas Users Association Motion for Review**

**SUBMISSIONS ON BEHALF OF THE ONTARIO GREENHOUSE  
VEGETABLE GROWERS**

## SUMMARY

OGVG respectfully submits that IGUA's motion for review does not meet the threshold test under Rule 43.01, such that the OEB should dismiss the motion without reviewing its merits.

OGVG further submits that in the event the OEB determines that the threshold test under Rule 43.01 has been met and that the merits of the motion should be considered, the motion should be dismissed on the basis that the original decision was reasonable and should stand without modification.

## THRESHOLD ISSUE

IGUA's argument in support of the notion that the threshold issue has been met in this instance relies materially on the assertion that the OEB's reasons in support of its decision are deficient. More specifically, IGUA asserts that the OEB has not adequately explained why it decided not to include the new cost allocation evidence submitted by EGI in the proceeding when setting rates for 2020, and that the Board's failure to adequately explain its decision is an error that meets the threshold test for a motion for review.<sup>1</sup>

OGVG believes that the OEB's reasons for its decision are sufficient in the circumstances and that accordingly the threshold for a review has not been met.

In OGVG's submission the Board's reasons for its decision must be read within the context of the application as a whole.

In this instance the application was for the setting of 2020 rates based on the established incentive rate-setting mechanism ("IRM") imposed on EGI as a result of the MAADs Decision, which determined that EGI would be permitted to defer rebasing until the 2024 rate year.<sup>2</sup>

In the context of an application for the setting of rates under an IRM framework, the costs incurred by EGI during the period covered by the IRM, and the allocation of those costs amongst EGI customers during the period covered by the IRM, are irrelevant to the determination of just and reasonable rates under s. 36 of the OEB Act except to the extent they relate to a specified mechanic of the IRM framework.<sup>3</sup>

In the present case the IRM framework under which EGI's rates for 2020 are determined does not include a mechanic that accounts for changes in the allocation of costs between customers during the IRM period.

As the OEB reiterated in this 2020 IRM application, and as the OEB has consistently held in prior decisions where it has been suggested that the cost allocation between customers should be updated in rate years where EGI is subject to an IRM framework, 2020 rates continue to be decoupled from costs in favour of the stability and predictability provided by the IRM framework:

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<sup>1</sup> IGUA Submissions, June 30, 2020, paragraph 56.

<sup>2</sup> EB-2017-0306/0307, Decision and Order, pages 22-23.

<sup>3</sup> By way of example, the OEB Handbook for Utility Rate Applications, October 13, 2016, describes at page 23, footnote 15 how the OEB has made available incentive rate making options available to utilities wherein rates are decoupled from costs.

*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.<sup>4</sup> (emphasis added)*

In coming to its decision the OEB is explicit in its finding that even in the face of changes in the cost and benefits to certain parties since the OEB approved Union Gas' 2013 cost allocation study, those changes do not impugn the IRM framework under which EGI is being regulated.

IGUA questions whether the OEB panel was "alert and sensitive to the matters before it"<sup>5</sup>; OGVG respectfully submits that the OEB was alert and sensitive to the matters before it, in that the OEB expressly acknowledged that the cost allocation that underpinned 2013 rates has changed. The problem that IGUA faces in this instance is that the IRM framework under which EGI is operating and which the OEB is applying when setting rates for EGI until 2023 as a result of the MAADs application decision specifically and intentionally ignores the changes in costs that IGUA's requested relief depends on.

In OGVG's respectful submission the OEB's decision with respect to the cost allocation study is supported by the OEB's parallel decision with respect to the Rate C1 Dawn to Dawn-TCPL Service issue raised by TCPL (the "Dawn" issue). The Dawn issue raised by TCPL was summarized by the OEB in its decision:

*In the MAADs Decision, the OEB directed Enbridge Gas to include a proposal to address TCPL's Rate C1 Dawn to Dawn-TCPL service for consideration in the 2020 rate application. The Rate C1 Dawn to Dawn-TCPL service was approved by the OEB in 2010. The service required modifications to Dawn facilities to allow for custody transfer metering at a capital cost of \$3.3 million. The OEB approved the recovery of the capital cost over an accelerated 5-year period from 2010 to 2015 using a 20% depreciation rate in order to ensure that the cost was solely recovered from TCPL.*

*TCPL noted that the calculation of the demand rate provides for the recovery of approximately \$548,000 per year associated with the Dawn facilities. Although the cost of the facilities has been fully recovered since 2015, no adjustments have been made to the rate. TCPL argued that the continuation of the existing rate for the Rate C1 Dawn to Dawn-TCPL service is inconsistent with cost causation principles and results in charges that are not just and reasonable. Accordingly, TCPL submitted that Enbridge Gas should be directed to revise the rate schedule to incorporate the decrease in revenue requirement for implementation January 1, 2021.*

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<sup>4</sup> EB-2019-0194, Decision and Order dated May 14, 2020, page 17.

<sup>5</sup> IGUA Submissions, June 30, 2020, paragraph 55.

*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.<sup>6</sup> (emphasis added)*

With respect to the Dawn issue the OEB makes what is essentially an identical decision as it makes with respect to the issue raised by IGUA, acknowledging that the costs have changed, but denying changes to rates as a result of changes in costs prior to the next rebasing application in deference to the prevailing IRM framework.

OGVG believes it is important to note that OEB acknowledges that both the cost allocation issue raised by IGUA and the Dawn issue raised by TCPL will be addressed as part of EGI's 2024 rebasing application, which is when, from a rate-setting perspective, EGI's rates and costs will "recouple". In the context of the planned 2024 rebasing application all of the various cost and cost allocation issues that may have arisen will be addressed by the OEB in a comprehensive manner, not just the issues championed by IGUA and TCPL.

Accordingly, in OGVG's view, the issue raised by IGUA is really limited to the appropriate time for updating the allocation of costs between customers, which is itself not, in OGVG's view, a particularly complicated issue; the OEB has consistently decided that the appropriate time to update the allocation of costs between customers is not in an IRM application, but rather in the context of a full rebasing application.

To that end OGVG would respectfully suggest that the OEB be cautious when reviewing cites of the previous decisions of the Board; by way of example, at paragraph 46 of its argument IGUA cites a previous OEB decision in support of consistency in the OEB's decision making, citing the following sentence from the decision:

*Consistency in OEB decisions is important to regulatory clarity and predictability.*

However, that sentence is the culmination of a paragraph wherein the Board clearly rejects the notion that the OEB should ever entertain a partial cost allocation study in isolation, rejecting a request (by IGUA) to adjust IRM rates to reflect the results of a partial cost allocation study:

*The OEB is of the view that any change to the existing cost allocation model should be done with the assistance of a comprehensive system-wide full cost allocation study. Cost allocation is a zero sum exercise. A full study ensures that all changes to facilities, operations and use in the transmission system since the development of the previous cost allocation model are recognized across all customer classes. This form of study provides that positive and negative changes in costs throughout the system are accounted for. A finding that current rates are inequitable because of the underlying allocation of costs for one project could introduce other inequalities by an incomplete analysis of the changing cost impacts on customers. Equitable cost causality is only possible with a full study. The OEB will not vary the Panhandle leave to construct decision that declined to change the cost allocation methodology for Panhandle Project costs and directed that any change should be considered in the next Union rates*

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<sup>6</sup> EB-2019-0194, Decision and Order dated May 14, 2020, pages 16-18.

*proceeding. Consistency in OEB decisions is important to regulatory clarity and predictability.<sup>7</sup> (emphasis added)*

Further to the point about consistency, the OEB, in the previous decision on the same issue, refused to adjust the cost allocation in the midst of Union's IRM period, asserting that that could only be done appropriately within the context of a cost of service application or custom IR application (both of which would entail a comprehensive rebasing analysis of a test year):

*The OEB will not approve Union's proposals for a 20-year depreciation period and a revised cost allocation methodology. The OEB finds that both proposals should be deferred to Union's next cost of service or custom IR application. It would be inconsistent to change the depreciation term and cost recovery for one project while Union's other assets are depreciated and recovered on a different bases [sic]. A comprehensive review is required for parties to test, and the OEB to assess, the merits and implications of these two proposals and this should be at Union's next cost of service or custom IR application.*

*While these proposals may have merit, they cannot be adequately considered during the IRM term, for one project in isolation. A leave-to-construct application requesting a capital pass-through mechanism for cost recovery over 14 months is not the appropriate forum to consider deviations from principles embedded in current OEB-approved rates.<sup>8</sup>(emphasis added)*

Accordingly, OGVG respectfully submits, the OEB's decision in the present case reflects a consistent approach to the issue raised by IGUA.

It appears to OGVG that IGUA assumes the OEB's direction in the MAADs decision to EGI to file a limited cost allocation study in its 2020 rates application was a binding direction on the OEB panel hearing the 2020 rates application to account for cost allocation changes supported by that study when setting 2020 rates. In OGVG's respectful submission that was not the case.

At its highest, the OEB's direction in the MAADs proceeding was binding on EGI, requiring EGI to prepare particular cost allocation evidence for filing in the 2020 rate application for consideration by the panel hearing that application; the MAADs decision does not purport to require the panel hearing the 2020 rate application to account for that evidence in any particular way:

*... the OEB is concerned about the cost allocation issues raised by parties for Union Gas' Panhandle and St. Clair Systems. The OEB therefore requires Amalco to file a cost allocation study in 2019 for consideration in the proceeding for 2020 rates that proposes an update to the cost allocation to take into account the following projects: Panhandle Reinforcement, Dawn-Parkway expansion including Parkway West, Brantford-Kirkwall/Parkway D and the Hagar Liquefaction Plant. This should also include a proposal for addressing TransCanada's C1 Dawn to Dawn TCPL service. The OEB accepts that this proposal will not be perfect, but is intended to address the cost allocation*

<sup>7</sup> EB-2017-0087, Decision and Rate Order dated January 18, 2018, page 8.

<sup>8</sup> EB-2016-0186 Decision with Reasons February 23, 2017, pages 10-11.

*implications of certain large projects undertaken by Union Gas that have already come into service.<sup>9</sup>(emphasis added)*

Having considered the evidence, the OEB determined that it was, in the context of EGI's 2020 rate application, irrelevant, given the OEB's determination, both in the MAADs decision and again in the 2020 rate application, that EGI's 2020 rates were to be set on the basis of the prevailing IRM framework. In OGVG's respectful submission that decision is clearly within the OEB's discretion to make when exercising its jurisdiction under s. 36(3) of the *OEB Act*:

*In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.*

In the present case, the OEB adopted an incentive rate making mechanism as the method for fixing just and reasonable rates for EGI for 2020; the incentive rate-making mechanism that the OEB adopted for EGI for 2020 rates, *by design*, does not account for the changing costs of the utility or for cost allocation changes. Evidence with respect to costs and cost responsibility are, except in the case of enumerated exceptions, none of which apply in this instance, irrelevant to the determination of just and reasonable rates.

For all these reasons OGVG respectfully submits that the motion does not meet the threshold test under Rule 43.01. In OGVG's view it is clear in the OEB's decision that evidence related to cost allocation changes between customers, even if perfectly accurate (which OGVG does not concede was the case) should not affect the determination of rates under a prevailing IRM framework.

## **MERITS OF THE MOTION**

OGVG notes that IGUA does not suggest that there has been a change in circumstances, that new facts have arisen, or that there are facts that were not previously placed in evidence in the proceeding that could not have been discovered by reasonable diligence at the time.

Accordingly, it appears to OGVG that, if the OEB were to determine that the threshold for review of the Decision has been met, the merits of the motion should be determined based on the same evidence and submissions that were before the Board in the first instance. It appears to OGVG that IGUA agrees with this general proposition:

*IGUA requests that the Review Panel then proceed to properly consider and determine the matter based on the record as summarized above and more extensively argued in IGUA's and APPRO's arguments, and those of the other parties, in the 2020 Rate Application.<sup>10</sup>*

Consequently, in the event the OEB determines that the threshold test has been met, OGVG respectfully repeats and relies on its submissions as filed on April 8, 2020 in EB-2019-0194.

In particular OGVG would like to highlight, within its original submissions, its comparison of the revenue to cost ratios produced by the implementation of the partial cost allocation study against the revenue to cost ratios from Union's 2013 rate proceeding. In OGVG's respectful

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<sup>9</sup> EB-2017-0306/0307, Decision and Order, page 41.

<sup>10</sup> IGUA Submissions, June 30, 2020, paragraph 68.

submission that comparison demonstrates that the deviation from the revenue to cost ratios that underpin Union's 2013 base rates "caused" by the implementation of the partial cost allocation study fall well within a range of reasonable deviation that should be tolerated within an IRM period. In OGVG's submission it is inevitable that revenue to cost ratios will shift over the course of an IRM period, and that such shifting will largely be tolerated as a necessary consequence of and IRM framework.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> DAY OF JULY, 2020**