SCOTT POLLOCK
T 613.787.3541
spollock@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1300
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
blg.com

Borden Ladner Gervais

Our File # 339583-000267

By electronic filing

July 17, 2020

Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Long

Re: Industrial Gas Users Association ("IGUA") Motion to Review and Vary
Board File #: EB-2020-0156

Pursuant to the Board's *Notice of Hearing and Procedural Order No. 1* dated June 17, 2020, please find enclosed the Submission in regard to the above-noted proceeding on behalf of our client, Canadian Manufacturers & Exporters ("CME").

Yours very truly,

Scott Pollock

Enclosure
c. Shahrzad Rahbar (IGUA)
Ian Mondrow (IGUA Legal Counsel)
Mark Kitchen (EGI)
David Stevens (EGI Legal Counsel)
Intervenors for EB-2020-0156
Alex Greco (CME)

114937117:v1

EB-2020-0156

Enbridge Gas Inc. ("EGI") Application for natural gas distribution rates and other charges effective January 1, 2020

Industrial Gas Users Association ("IGUA") MOTION for review of Panhandle Cost Allocation Determination

---

SUBMISSIONS OF

CANADIAN MANUFACTURERS & EXPORTERS ("CME")

July 17, 2020

Scott Pollock
Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9
Counsel for CME

1. INTRODUCTION

1. On October 8, 2019, EGI filed an application seeking approval to increase the rates charged for natural gas distribution in Ontario beginning on January 1, 2020. The hearing was bifurcated. Phase I of the hearing dealt with the application of the incentive rate-making framework determined by the Board in EB-2017-0306/0307, as well as certain variance and deferral account matters.

2. Phase II of the proceeding dealt with the remaining aspects of EGI's application, including a review of the company's cost allocation study for the Panhandle System.

3. With respect to Phase II, the hearing process provided for interrogatories and a written hearing. Following interrogatory responses, EGI delivered its argument-in-chief on March 11, 2020. Intervenor groups, including IGUA and CME provided submissions on April 8, 2020. EGI provided reply submissions on May 1, 2020.

4. The Board issued its Decision and Order with respect to Phase II of EGI's application on May 14, 2020 (the "**Decision**"). In the Decision, the Board acknowledged that certain cost allocations were outdated. However, the Board found that changes to rates as the result of EGI's cost allocation study would be disruptive of current rate predictability, and would require additional changes as part of EGI's 2024 rebasing application.[1] As a result, the Board declined to implement EGI's cost allocation study as part of EB-2019-0194.

5. On June 3, 2020, IGUA filed its motion for review and variance the Decision in relation to the Board's determination to defer cost allocation of the Panhandle System until EGI's 2024 rebasing application.

6. IGUA argued that the Decision contained an error in fact, and did not provide adequate reasons to support its decision to defer cost allocation changes. As a result,

[1] EB-2019-0194, Decision and Order, May 14, 2020, p. 17.

IGUA stated that the Board failed to meaningfully grapple with the key issues and central arguments in the proceeding, and therefore, the reasons were unreasonable and in error.

7. While CME is sympathetic to the cost burden borne by Panhandle System users, ultimately, CME disagrees that the Board's decision was unreasonable or in error. CME submits that IGUA's motion should be dismissed, as it does not meet the Board's threshold test for a motion to review and vary, and the Decision is reasonable on its merits.

2. THRESHOLD TEST

8. The threshold requirements for a motion to review and vary is set out in the Board's *Rules of Practice and Procedure*. Rule 40.01 states that any person may bring an order requesting that the Board review all or a part of a final order or decision, and can vary, suspend or cancel the order.[2]

9. Rule 42.01 sets out the threshold test by stating that every notice of motion under Rule 40.01 must:

> ***[S]et out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:***
>
> ***(i) error in fact;***
>
> ***(ii) change in circumstances;***
>
> ***(iii) new facts that have arisen;***
>
> ***(iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time…***[3]

10. In addition to those requirements, the Board previously determined that:

---

2 Ontario Energy Board, *Rules of Practice and Procedure*, last updated October 28, 2016, p. 29.
3 Ontario Energy Board, *Rules of Practice and Procedure*, last updated October 28, 2016, p. 31.

(a) the error or change in circumstance must be material such that if corrected, a reviewing panel would vary the decision;[4] and

(b) it is not sufficient to argue that conflicting evidence should have been interpreted differently,[5] a review is not an opportunity to reargue the case.[6]

11. IGUA argued that it has met the threshold test on three potential bases. First, IGUA argued that the Board's made an error when it determined that making changes to cost allocation will result in rate instability at rebasing.[7] Second, IGUA argued that the Decision's reasons are deficient, which constitutes an error that is "similar in nature" to the listed grounds for a motion.[8] Third, IGUA argued that the panel failed to address a material issue, made findings contrary to the evidence, and findings that were inconsistent.

12. None of these contentions are supported by the evidence. The Decision did not contain an error, the reasons do not give rise to an issue that is similar in nature to the enumerated grounds for a motion to review and vary, and the Decision was grounded in the evidence, reasonable and consistent.

2.2 The Decision Contained No Error

13. In support of its motion, IGUA argued that the Board's determination regarding further rate instability upon rebasing was an error in fact because there was "no evidence to substantiate that conclusion".[9]

---

4 EB-2006-0322/EB-2006-0338/EB-2006-0340, Motions to Review The Natural Gas Electricity Interface Review Decision, Decision with Reasons, May 22, 2007, p. 18.

5 EB-2006-0322/0338/0340 Motions to Review The Natural Gas Electricity Interface Review Decision, Decision and Order, May 22, 2007, p. 18.

6 EB-2006-0322/0338/0340 Motions to Review The Natural Gas Electricity Interface Review Decision, Decision and Order, May 22, 2007, p. 18.

7 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, p. 23.

8 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, pp. 23-24.

9 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, p. 23.

14. CME disagrees.

15. EGI filed evidence in EB-2019-0194 that supported the Board's conclusion. EGI filed a table that demonstrated the impacts of implementing its cost allocation study.[10] The table showed that certain rate classes, such as M4 would see an increase in revenue requirement allocation of approximately 10%.[11] The reallocation of revenue requirement would cause an increase in delivery charges of approximately 30% to M4 customers.[12]

16. Furthermore, EGI's evidence indicated that the impacts outlined in the table were unlikely to be the final rate adjustment. EGI indicated that a cost of service proceeding would include "rate design and other adjustments that may be required to manage revenue to cost ratios, maintain rate class continuity and address bill impacts".[13]

17. EGI listed some of the reasons for adjustments in their interrogatory responses. EGI's stated that adjustments would likely be necessary to address the magnitude of the proposed change, the relative changes of other rate classes, the impact on customers, and customer expectations with respect to rate stability and predictability.[14]

18. In its argument in EB-2019-0194, IGUA downplayed the importance of EGI's adjustments. For instance, with respect to the magnitude of the change, and the impact on customers, IGUA argued that the cost increases to certain rate classes was no greater than borne by other rate classes already.[15]

19. However, nothing about IGUA's argument invalidates or negates the existence of EGI's evidence that other adjustments are likely needed at rebasing. While IGUA may feel that the proposed cost allocation shift is warranted without further adjustments, EGI's

---

10 EB-2019-0194, Exhibit B, Tab 1, Schedule 1, Appendix C, p. 5.
11 EB-2019-0194, Exhibit B, Tab 1, Schedule 1, Appendix C, p. 5.
12 EB-2019-0194, Exhibit I.Staff.4, Attachment 1, p. 2.
13 EB-2019-0194, Exhibit B, Tab 1, Schedule 1, Appendix C, p. 6.
14 EB-2019-0194, Exhibit I, TCPL.1, p. 3 of 3, Attachment 1.
15 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, p. 44 of 333.

evidence is clear that as part of their rate-design process, it will likely need to change rates again upon rebasing.

20. Accordingly, there is ample evidence on the record to support the Board's finding that rate stability would be negatively impacted both as the result of implementing the study itself, and again at rebasing. While IGUA may have wanted the Board to interpret the evidence in a different way, that does not meet the threshold test nor warrant a review and variance of the Decision.

2.3 The Decision Would Not Change

21. In addition to identifying the grounds for a motion to review and vary a decision of the Board, the moving party must demonstrate that the error had a material impact on the decision such that a reviewing panel would vary the decision.[16] In this instance, IGUA's argument that the Board was in error, even if accepted uncritically, would not cause a reviewing panel to change the Decision.

22. The heart of the reasoning on cost allocation is found at page 17 of the Decision, where the Board stated:

> ***"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."***[17]

23. CME submits that the Board's reasoning provided two grounds for declining to implement the cost allocation changes to the Panhandle System. The primary reason articulated by the Board was that making the selected changes would be disruptive to the predictability of rates at the moment of implementation. The secondary reason was additional rate disruption upon rebasing.

---

16 EB-2006-0322/0338/0340, Motions to Review the Natural Gas Electricity Interface Review Decision, Decision with Reasons, May 22, 2007, p. 18.

17 EB-2019-0194, Decision and Order, May 14, 2020, pp. 17-18.

24. Even if this panel were to accept IGUA's argument that the Board was in error by determining that there would be more adjustments at rebasing, the Decision would still be reasonable. The fundamental truths underpinning the Board's decision remain:

(a) The evidence demonstrated that implementing the cost allocation changes would cause significant rate spikes for certain rate classes; and

(b) The purpose of incentive ratemaking is to decouple rates from costs in order to provide rate stability and predictability.

25. As a result, the primary reasoning provided by the Board in the Decision would still stand, and the reviewing panel would not vary the decision.

2.4 Deficient Reasons are Not a Standalone Ground of Review

26. IGUA's second argument regarding the threshold test is novel. IGUA relied on the Supreme Court of Canada's discussion about reasonableness in administrative decision making in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 *("**Vavilov**")* to argue that deficiencies in the Board's reasons were grounds to review and vary the Decision.

27. The grounds for review enumerated by IGUA were:

(a) there is an identifiable error in the decision, in that;

(i) the findings are contrary to the evidence that was before the panel;

(ii) the panel failed to address a material issue;

(iii) the panel made inconsistent findings; or

(iv) something of a similar nature,

the ("**Enumerated Grounds of Review**").

28. IGUA's argument, however, conflated the Enumerated Grounds of Review with the evidence used to prove those grounds.

29. In *Vavilov,*[18] the Court confirmed that deficient reasons were not a stand-alone ground of review. This has been echoed by subsequent Court decisions.[19]

30. Deficient reasons are evidence that can demonstrate whether the Board has made an error that is listed in the Enumerated Grounds for Review. In other words, deficient reasons can show that the Board: failed to address a material issue; made findings contrary to the evidence; or made internally inconsistent findings.

31. Accordingly, CME submits that it is incorrect to argue, as IGUA did, that alleged deficiencies in the reasons operate as its own separate ground of review that is "similar in nature" to the Enumerated Grounds of Review. The reasons are only useful to prove another independent error.

2.5 The Board's Decision was Reasonable, Consistent, and Address all of the Material Issues

32. IGUA also seemed to argue, although without explicitly referencing the Enumerated Grounds of Review, that the Decision was contrary to the evidence, failed to address material issues "in any substantive manner", and was inconsistent with previous Board decisions.

33. These contentions are not supported by the evidence. CME addresses these arguments in section 3 of these submissions, as they overlap with IGUA's contention that the decision is unreasonable.

34. Accordingly, it is sufficient to note here that the Decision is grounded in the evidence that was before the Board in EB-2019-0194. The reasons provided on cost allocation adequately demonstrate that the Board was alive to the key issues in the case,

---

18 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 91. See also *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14.

19 See for example *Mayer v The Superintendent Of Motor Vehicles,* 2020 BCSC 474 at para 45.

and shows a logical chain of reasoning supporting the Decision's conclusions. These conclusions accord with the Board's previous determination on cost allocation. Accordingly, IGUA's motion does not pass the threshold test.

3. THE MERITS OF THE DECISION

35. While CME believes that IGUA's motion does not pass the threshold test for motions to review and vary pursuant to the Board's *Rules of Practice and Procedure*, below are CME's submissions regarding the merits of the Decision.

36. In its argument, IGUA submitted that the Decision was "unreasonable".[20] IGUA seems to have framed the standard of review as 'reasonableness'. CME agrees that this is appropriate. Courts have regularly found that the Board has a "wide ambit of power in its rate setting function".[21] Courts have also found that the *Ontario Energy Board Act, 1998*[22] reflected a clear intent by the legislators to use a subjective and open-ended grant of power to the OEB to fulfill its function to set rates.[23] Accordingly, decisions of the OEB are entitled to substantial deference, and should be reviewed it on the 'reasonableness' standard.

3.2 The Reasonableness Standard

37. The Supreme Court of Canada held that the reasonableness standard is concerned with two things:

(a) The existence of justification, transparency and intelligibility within the decision-making process; and

(b) Whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.[24]

---

20 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, pp. 22-23.
21 *Toronto Hydro-Electric Systems Ltd. v. Ontario (Energy Board)*, 2010 ONCA 284 at paras 25-28.
22 S.O. 1998, c. 15, Sched. B.
23 *Toronto Hydro-Electric Systems Ltd. v. Ontario (Energy Board)*, 2010 ONCA 284 at para 28.
24 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 86.

38. The Supreme Court of Canada went on to discuss the hallmarks of a reasonable decision. The hallmarks map onto the two requirements. A reasonable decision is one that:

(a) Is based on internally coherent reasoning (it demonstrates justification, transparency and intelligibility within the decision-making process); and

(b) It is justified in light of the legal and factual constraints that bear on the decision (it falls within a range of possible, acceptable outcomes).[25]

3.2.2 The Decision is Internally Coherent

39. The decision will be unreasonable when the reasons, read holistically, in light of the evidentiary record, and with sensitivity to the administrative regime, fail to reveal a rational chain of analysis.[26] While a reviewing body must be able to identify a line of analysis within the given reasons that could reasonably lead the tribunal from the evidence presented to the conclusion at which it arrived,[27] a reasonableness review is not a "line-by-line treasure hunt for error".[28]

40. In this instance, the Board's reasons allow a reviewing body to identify a rational chain of analysis which lead from the evidence on the record to the ultimate determination. Accordingly, the Decision is reasonable.

<u>The Administrative Regime</u>

41. The administrative regime for the Board is governed by the *Ontario Energy Board Act, 1998 ("**OEB Act**")*.[29] The Board's power to set just and reasonable rates is open ended and permissive. Section 36(2) of the *OEB Act* states that the Board has the

---

25 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 85.
26 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 96.
27 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 102.
28 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 102.
29 S.O. 1998, c 15, Sch B.

authority to make orders approving or fixing just and reasonable rates for natural gas distributors.

42. Moreover, section 78(7) states:

> ***"In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate."***[30]

43. The Board's over-arching policy goals when setting rates are also relevant. In the Renewed Regulatory Framework for Electricity Distributors, which has since been modified to apply to natural gas distributors, the Board stated that its approach to rate-setting must promote "more predictable rates".[31]

44. In order to achieve predictable rates, the Board uses incentive ratemaking to set rates for regulated entities. Incentive ratemaking decouples the revenues paid by ratepayers from the costs incurred by the utility throughout the IR period. This improves rate predictability by embedding a regular, predictable rate increase throughout the term, rather than applying rate-increases on an ad-hoc basis, causing rate spikes.

45. In the context of an open-ended grant of power to set just and reasonable rates, as well as an overarching policy goal to stabilize rate increases and decouple costs from revenues, the Decision is reasonable.

<u>The Evidence</u>

46. In EB-2019-0194's pre-filed evidence, EGI provided a summary of the impacts of implementing the updated cost allocation study. The evidence showed that EGI's updated cost allocation would increase the revenue requirement for several rate classes, including the M4 rate class.[32]

---

30 *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, s. 78(7)

31 Report of the Board, Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, October 18, 2012, p. 8.

32 EB-2019-0194, Exhibit B, Tab 1, Schedule 1, Appendix C, p. 5.

47. As previously indicated, the cost allocation changes in EGI's study would cause significant rate spikes to a number of rate classes, including M4. This is exactly the sort of rate unpredictability that incentive regulation was designed to avoid.

48. The rate spike would be particularly deleterious to ratepayers in the M4 class. M4 customers are generally small to medium size industrial customers, and as such must budget their costs well in advance in order to operate their businesses. A rate spike could cause severe budgeting and solvency issues for members of the M4 rate class.

49. The Board, mindful of its own regulatory regime, and the overarching policies that it strives towards in setting rates, was alive to the impacts of implementing the cost allocation study. In its decision, the Board stated:

> ***"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."***[33]

50. As a result, the Board determined that just and reasonable rates would not include implementing EGI's cost allocation study. The Decision therefore provided a clear chain of analysis which led the panel from the evidence, which demonstrated potential rate spikes and unpredictability for ratepayers, to the conclusion, that the cost allocation study should not be implemented in the middle of the IR term.

3.2.3 The Decision is Justified in Light of the Legal and Factual Constraints

51. The Supreme Court of Canada provided a list of factors which may be reviewed to determine if a decision is justified in light of the legal and factual constraints of the case. These factors included:[34]

(a) The governing statutory scheme;

---

[33] EB-2019-0194, Decision and Order, May 14, 2020, pp. 17-18.
[34] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 106.

(b) Evidence before the decision maker;

(c) The submissions of the parties; and

(d) The past practices and decisions of the administrative body.

52. Many of these factors were the subject of CME's submissions in section 3.2.2, so they are only referenced below briefly.

The Governing Statutory Scheme

53. The Supreme Court in *Vavilov* found that the relevant statutory scheme was likely to be the most salient aspect of the legal context of a decision.[35] As previously indicated, the *OEB Act* provides the Board with a open-ended and permissive grant of authority when setting just and reasonable rates. As a result, the Board's statutory authority supports its ability to decline to implement EGI's cost allocation changes.

The Evidence

54. The Board in EG-2019-0194 was entitled to evaluate the evidence before it and come to a conclusion.[36] A reviewing body must refrain from "reweighing and reassessing the evidence considered by the decision maker".[37]

55. As described previously, the evidence before the Board indicated that implementing EGI's updated cost allocation would cause significant and rapid increases to rates for certain rate classes. Furthermore, the updated rates would need to be revisited again as part of EGI's rebasing application in 2024, causing additional unpredictability. The Board was well within its rights to consider that evidence, and conclude that implementing the new cost allocation was not appropriate.

[35] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 108.
[36] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 125.
[37] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 125.

56. Simply because IGUA would have preferred for the Board to weigh the evidence differently does not mean the decision was unreasonable.

The Submissions of the Parties

57. The Supreme Court in *Vavilov* found that the parties' submissions had two impacts on the reasonableness of a decision. First, parties must be given the opportunity to present their case fully and fairly. In EB-2019-0194, the interrogatory process, coupled with the written hearing allowed IGUA to provide the Board with detailed and thorough submissions in support of implementing EGI's updated cost allocation. As CME understands IGUA's submissions in this motion, IGUA does not take issue with the written hearing process in EB-2019-0194.

58. Second, the Supreme Court found that the decision at issue must reflect the submissions made by the parties. IGUA argued that the Board's decision failed to "meaningfully grapple with the key issues" and central arguments of the parties, which called into question whether the Board was alert and sensitive to the matter before it.[38]

59. A decision maker, however, is not required to "respond to every argument or line of possible analysis".[39]In order to be reasonable, a decision only needs to show that the decision maker was alert and sensitive to the issues before it. In this instance, the Board's decision demonstrated that it had read and considered IGUA and APPrO's arguments, and was alive to the key issues.

60. The key issue before the Board in EB-2019-0194 from IGUA's point of view was rectifying an "inequity" that exists as part of EGI's current Panhandle System cost allocation.[40]

---

38 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, p. 3.

39 *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 128.

40 EB-2020-0156, Motion to Review and Vary, Industrial Gas Users Association, Submissions on Motion for review of Panhandle Cost Allocation Determination, starting at page 30 of 333.

61. The Board summarized IGUA and APPrO's argument in the Decision:

> ***"APPrO and IGUA noted that in the Panhandle Reinforcement Project proceeding, Union Gas proposed a change to the cost allocation of Panhandle and St. Clair system costs. However, the OEB did not approve the cost allocation changes as the company was expected to rebase in 2019. As a result of the amalgamation of EGD and Union Gas, rebasing did not occur in 2019 and the inequities continue to exist according to APPrO and IGUA.***
>
> ***APPrO and IGUA dismissed Enbridge Gas's justification around rate stability, rate design and other changes that are likely to happen at rebasing as valid reasons to defer implementing of the proposed cost allocation changes to rebasing. APPrO and IGUA argued that the OEB was aware of these issues when it ordered Enbridge Gas in the MAADs Decision to update the cost allocation for the Union Gas rate zones.***
>
> ***APPrO and IGUA maintained that if the implementation of the cost allocation is delayed until 2024, the existing inequity will continue for another four years and large customers will overpay by a cumulative $4.4 million. Accordingly, APPrO and IGUA submitted that the OEB should not delay implementation of the cost allocation study and that implementation should occur in 2021."***[41]

62. The Board also summarized EGI's and other intervenor positions, which opposed the implementation of EGI's cost allocation proposal. Afterwards, the Board provided its findings. While the Board acknowledged that the current cost allocation methodology was outdated, and therefore was unlikely to represent the most accurate allocation of costs among ratepayers, it ultimately concluded that the need for rate stability and predictability were of paramount importance, and declined to apply EGI's new cost allocation.[42]

63. CME submits that the Board's decision was clearly alive to the issue before it. It recognized IGUA's argument and acknowledged that the current cost allocation did not perfectly reflect EGI's cost to serve all customers, and weighed that against other considerations, such as the predictability and stability of rates for all classes. Accordingly, the Board's decision did not fail to grapple with the Panhandle System issue and was therefore reasonable.

---

41 EB-2019-0194, Decision and Order, May 14, 2020, pp. 15-16.
42 EB-2019-0194, Decision and Order, May 14, 2020, pp. 17-18.

The Board's Past Decisions

64. IGUA also pointed to past decisions of the Board as evidence that the Decision is unreasonable. IGUA referenced a line of Board decisions that touch on the cost allocation of the Panhandle System and argued that the Decision "completely ignores" these decisions.

65. However, far from ignoring it, the Decision is consistent and harmonious with the Board's previous guidance on the Panhandle System cost allocation.

66. The first Board decision on the Panhandle System cost allocation was EB-2016-0186. The Board declined to order cost allocation changes. The Board's reason for not ordering changes to the Panhandle System cost allocation was because a full study was necessary to capture all of the gives and takes of cost allocation:

> ***"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. A proper review of these issues will need to include the full range of possible amortization periods, and the impacts on all customer classes of a change to the cost allocation methodology."[43]*** **[emphasis added]**

67. The Board next considered the Panhandle System cost allocation in EB-2017-0087, Union's 2018 rates case. In that case the Board once again determined that making cost allocation changes was inappropriate without a full 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***

[43] EB-2016-0186, Decision and Order, February 23, 2017, p. 10-11.

> ***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."***[44] **[emphasis added]**

68. The Board considered Panhandle System cost allocation again in Union and Enbridge's merger case EB-2017-0306/0307. In that case, the Board set rates for Amalco (now EGI) that would last until 2024, five years after when Union would have been required to rebase absent the merger.

69. In recognition of the longer deferred rebasing period, the Board ordered that EGI file a cost allocation study in 2019 as part of EGI's 2020 rates case:

> ***"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 implications of certain large projects undertaken by Union Gas that have already come into service."***[45] **[emphasis added]**

70. EGI complied with this directive and filed such a cost allocation study.

71. Critically, the Board did not say that the study and its associated changes would necessarily be accepted. Instead the Board required EGI to submit a study for "consideration" in the 2020 rates case. In stating that the proposal was intended to address the cost allocation of certain large projects, the Board was not making an advanced determination that changes would necessarily be made to cost allocation. Instead, the Board was delineating the subject matter of the proposal.

72. Once the Board reviewed the impacts of EGI's cost allocation study, it determined that the cost of implementing the study outweighed the benefits. It confirmed once again that the cost allocation changes should be made in the context of a full study:

---

[44] EB-2017-0087, Decision and Order, January 18, 2018, p. 8.
[45] EB-2017-0306/0307, Decision and Order, August 30, 2018, p. 41.

> ***"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."***[46] **[emphasis added]**

73. The Board consistently held that cost allocation should not be cherry-picked, but should be subject to a comprehensive review. This was demonstrably clear in the Board's decisions in EB-2016-0186 and EB-2018-0087, and it is demonstrably clear in the Decision. Accordingly, there is no inconsistency in the Board's findings on this issue.

4. CONCLUSION

74. For all of the foregoing reasons, CME submits that IGUA's Motion to Vary should be denied.

5. COSTS

75. We request that CME be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of July, 2020.

Scott Pollock
Counsel for CME

114930902:v1

[46] EB-2019-0194, Decision and Order, May 14, 2020, p. 17.