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BY EMAIL and RESS

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Our File: EB20200134

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
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Attn: Christine Long, Registrar

Dear Ms. Long:

Re: EB-2020-0134 – Enbridge Gas Inc. 2019 ESM/DVA – SEC Submissions on TVDA

We are counsel to the School Energy Coalition ("SEC"). Pursuant to *Decision on the Settlement Proposal*, these are SEC's submissions on the unsettled issue in Enbridge Gas Inc.'s ("Enbridge") 2020 application for disposition of certain 2019 Deferral and Variance Accounts ("DVAs") The unsettled issue related to the appropriate approach to the disposition of the Tax Variance Deferral Account ("TVDA").

SEC submits that while Enbridge has calculated the balance in the TVDA correctly, its proposal with respect to the disposition is not appropriate. The Board should order Enbridge to dispose 100% of the balance to ratepayers in this application and continue to do so on an on- going forward basis in each subsequent DVA disposition applications, with respect to TVDA balances related to the Accelerated Investment Incentive ("AII").

Accelerated Investment Incentive

On June 21, 2019, Bill C-97 received royal assent, implementing various changes to the *Income Tax Act*, including the AII, which provided a first-year increase in the Capital Cost Allowance ("CCA") deductions on eligible capital assets acquired after November 20, 2018. Those changes to the CCA deductions in the first year include, a) applying the prescribed CCA rate for a class to 1.5 times the net additions to the class for that year, and b) suspending the existing CCA half-year rules. Together, this results in companies being eligible to deduct three times the normal CCA deduction in the asset's first year. The undepreciated capital cost of the asset at the end of the year is that much lower as a result of the higher CCA taken.

On July 25, 2019, the Board issued a letter notifying utilities that they are expected to record the impact of the AII in the appropriate variance account for the period beginning November 2018, and continuing until the effective date of a utility's next cost-based rate order.[1] The Board further noted that, while the Board's longstanding practice with respect to the impact of changes in taxes during incentive rate-making periods has been to share the impact on a 50/50 basis with ratepayers, "[u]tilities should not expect that this practice will necessarily apply in respect of CCA rule changes."[2]

SEC submits there is a good reason why the Board commented that utilities should not expect the usual 50/50 sharing practice to be applied to the AII. Unlike changes in tax rates or taxing authority assessment policy, the impact of the AII CCA changes is simply a timing difference. This is different from a situation in which there is a new tax rate implemented, where collectively Enbridge and its ratepayers are permanently better or worse off.

The total amount of the CCA that can be deducted for tax purposes in respect of any eligible capital asset does not change as a result of the AII. The total amount of the CCA will still be capped at Enbridge's cost of the asset.[3] The only thing that changes is the timing of the deduction. The AII allows a significant increase (three times) in the CCA that can be deducted in the first year, but as a result there is less available in future years[4]. For ratepayers, this means that insofar as Enbridge takes advantage of the accelerated CCA, which it has in 2018 and 2019, rates will be higher in the future, as the CCA that is available to deduct will be lower.

This is not in dispute. Enbridge had admitted this, saying "[a]ccelerated CCA, as compared to regular CCA, results in a reduction to revenue requirement in the year a qualifying capital expenditure is placed into service and increases the revenue requirement in relation to that capital expenditure in subsequent years."[5]

Ratepayers should get 100% of the revenue requirement impact of changes to taxes paid by Enbridge as a result of the AII changes to the CCA, since they will pay higher rates in the future as a result of Enbridge having less CCA to deduct against regulatory income.

Enbridge Disposition Proposal

Enbridge's primary proposal is that, instead of disposing the balance in the TVDA to ratepayers, the amount should be used as a source of funding for i) certain economic development projects and/or natural gas expansion projects, and, ii) integrated resource planning ("IRP") pilot projects that may be implemented after the approval of an IRP Framework at issue in EB-2020-0091. In the alternative, it argues the Board should share the balance of the TVDA on a 50/50 basis between Enbridge and its ratepayers.

SEC submits that both the primary and alternative proposal are inappropriate and should be rejected.

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[1] Ontario Energy Board Letter, Re: Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance (July 25, 2019)

[2] *Ibid*, p.2

[3] Canada Revenue Agency, Accelerated Investment Incentive

[4] See Interrogatory Response LPMA No.26(a) (Exhibit I.LPMA.26(a)) Enbridge notes:

> "In relation to capital additions that qualified for the AII in 2018 and 2019, there will be less CCA available to claim in each subsequent year, as compared to what there otherwise would have been if CCA had been calculated under the normal method"

[5] Interrogatory Response LPMA No.24(b) (Exhibit I.LPMA.24(b))

As a starting point, SEC submits the primary proposal is bordering on outrageous. Enbridge has received a windfall of $30M.4M over the first 14 months of the AII (November 2018 to the end of 2019) and the amount will increase year over year as Enbridge's capital expenditures grow, until the planned phased out beginning in 2023. Based on accepted regulatory principles, the amount should be returned to the ratepayers. Instead, Enbridge wants to keep it, and apply it to other things so that so that it can treat those things as cost-free. To the best of our knowledge, the Board has never allowed a utility to do this. There are no free costs. Spending is justified on its own merits, not on the basis that a utility has found extra money in another unrelated area. It is telling that Enbridge did not propose a similar scheme for any of the other DVA accounts that had a credit balance, nor held back seeking collection of any with a debit.

Enbridge is seeking to change a basic ratemaking paradigm, so that in the future spending can be justified on the basis that the utility has extra ratepayer money hanging around. This is fundamentally wrong. On that basis alone, the Board should reject Enbridge's primary proposal.

Even if the Board wants to consider such an approach idea, SEC submits that the proposed spending is, on its own merits, inappropriate.

Economic Development Projects. The proposal to use the TVDA balance (or any other ratepayer funds, for that matter) to fund economic development projects is inappropriate, on two related grounds.

First, it is inconsistent with the Board's policy to limit cross-subsidization between existing and new natural gas customers. In EB-2016-0004, the Board released through a generic decision, a framework for expansion of natural gas to communities who currently are not served ("Community Expansion Framework").[6] Central to the Community Expansion Framework is that there should be no cross-subsidies between new and existing natural gas customers. The Board rejected proposals by Enbridge (through its predecessor companies Enbridge Gas Distribution and Union Gas Limited) to have existing customers subsidize what on their own would be uneconomic expansion projects for new customers. Instead, the Board prohibited cross-subsidies but provided new tools for expansions, such as the ability to charge stand-alone rates and surcharges.[7]

Second, subsequent to the release of the Community Expansion Framework, Ontario passed the *Access to Natural Gas Act, 2018*, which creates an explicit but limited cross-subsidy regime under section 36.2 of the *Ontario Energy Board Act* and Ontario Regulation 24/19, ("Natural Gas Expansion Program"). Under the program, the Government of Ontario determines which projects are to be subsidized and by how much. The Board is not involved in granting or determining subsidies.

In late 2019, the Minister of Energy, Northern Development and Mines wrote to the Board, requesting that the Board undertake a process to collect expressions of interest and submit them to the Minister for consideration. The Board issued its report, and the Government of Ontario will make a determination on which projects are eligible for ratepayer funding in due course. In fact, the Government of Ontario is seeking comment on Phase 2 of the program through the Environmental

[6] *Decision with Reasons* (EB-2016-0004), November 17 2016

[7] *Ibid.*, p.4,11,18-19

Registry of Ontario, where it plans to specify which additional projects should be funded.[8][9] The proposal notes that the Government of Ontario plans to maintain the funding mechanism at the Phase 1 level, $1 per month from all-natural gas customers.[10]

It is only through that process that it is appropriate for existing ratepayers to cross-subsidize new customers and projects. This is both Board and government policy. Enbridge's proposal to use the TVDA as another source of funding is entirely inappropriate, and contrary not just to the principles, but also to the specific mechanisms, that were outlined by the Board in the Community Expansion Framework.

What is the most galling about Enbridge's proposal is that it expects that, over time, it should be allowed to use up to $115M for four economic development expansion projects through the TVDA.[11] To put that in perspective, the Minister in its letter to the Board noted that the Government of Ontario intends to make available through the Natural Gas Expansion Program an aggregate total of approximately $130 million to support new natural gas projects that can reasonably be expected to commence construction between 2021 and 2023, which is the equivalent of the $1 per month existing customer that is permitted by section 6(1) of O.Reg 24/19. [12]

Enbridge points to the Federal Government's purpose in enacting the AII, which was to encourage more businesses to invest in assets to help grow the economy.[13] This is of course the broad purpose of the AII, but that fact has no relevance to the issue before the Board. The AII is federal economic and fiscal policy. It is not, and was never intended to be, provincial energy or regulatory policy. What Enbridge is asking the Board to do is allow Federal Government fiscal and economic policy to override specific Ontario policies, even has expressed no intention to do so.

The AII was not a utility specific program, but involved changes to the CCA deduction rules economy-wide. Regulated monopoly utility spending, like Enbridge's capital programs, is not a function of available cash flow, as may be the case for the broader economy. Utility spending is based on the justness and reasonableness of those expenses, which broadly balances the need and impact on customers.

In a competitive market, companies who take advantage of the AII get extra cash now, but cannot simply transfer the future increases in income taxes they will necessarily incur to customers, as Enbridge can and will do.

If anything, the logic goes in the opposite direction. Disposing 100% of the TVDA balance to customers, who include businesses, institutions and individuals who operate in the competitive market, will increase their cash flow and therefore their ability to invest. This is especially important in the current economic environment, where COVID-19 has impacted the greater economy much more

[8] Report to the Minister: Potential Projects to Expand Access to Natural Gas Distribution (EB-2019-0225), October 30 2020

[9] Environmental Registry of Ontario, Phase 2 of the Natural Gas Expansion Program (ERO# 019-3191)

[10] *Ibid*

[11] Exhibit H, page 15, paragraph 55.

[12] Letter to Vice-Chair, dated December 12 2019, from the the Honorable Greg Rickford Minister of Energy, Northern Development and Mines, and the Honourable Bill Walker Associate Minister of Energy [Ministers Letter"], p.2; O.Reg 24/19, section 6(1)

[13] Enbridge Argument-in-Chief, para.22; See also Exhibit H, p.3

severely than regulated utilities.[14] In our submission, delivering the tax break to a utility frustrates its purpose, since it is the customers that will be able to deliver the greatest bang for the buck with that extra money.

IRP Pilot Projects. It is also not appropriate to use the TVDA balance to fund potential IRP pilot projects that Enbridge may apply for and the Board may approve in some future proceeding.

First, the Board in EB-2020-0091 has not even approved the proposal to launch pilot projects, so this Board panel would be presuming that result.

Second, any IRP pilot projects are separate projects whose reasonableness, not just as to their costs, but also their bill impacts, should and will be determined on their own merits. The Board should not predetermine part of the issues that it will need to consider in such an application by designating money derived for an entirely different reason, as a bucket of money that is available for that use.

Third, the Enbridge proposal by their own admission involves a cross-subsidy amongst existing ratepayers. The traditional, and appropriate, TVDA disposition is based on a rate base allocator which more appropriately mirrors the impact the AII has on ratepayers by customer class and rate zone. Enbridge itself "recognizes that the disposition methodology regarding any future approved IRP pilot project is very different than the proposed rate base allocator for the TVDA."[15] It expects that any approved costs for an IRP pilot would be allocated on a forecast peak demand basis for each customer class.[16]

The allocation problem arises if TVDA funds are diverted to other spending areas as well. For example, It would not be appropriate to apply the TVDA balance to other costs being sought for approval in other applications, such as the current Incremental Capital Module ("ICM") application (EB-2020-0181), as explored in interrogatory LPMA No. 33.[17] The allocation methodology for approved ICM costs is very different, only impacting customers in the Union Rate Zone, whereas here the TVDA would otherwise be a credit for customers in both the Union and Enbridge Rate Zones, as both sets of customers will be required to pay higher income tax costs in the future.

50/50 Sharing. As discussed above, SEC submits that the Board's past practice related to sharing of tax changes is not appropriate in these circumstances. The Board recognized this when it issued its direction to utilities to record them in Account 1592, or their utility specific account. Enbridge's own evidence recognizes that the impact of the AII is that there are savings today, but ratepayers will be asked to pay a higher revenue requirement in the future from a higher income tax payable in those years. On that basis alone, sharing is not appropriate. In this regard, we note that Enbridge has not proposed that there will be an equivalent sharing of those future tax increases. Their proposal is that they get the front end benefit, and the customers bear the back end cost.

In support of its 50/50 sharing argument, Enbridge also points to the deferred rebasing period, and to the Board policy to encourage distributor consolidation through allowing consolidating distributors to

[14] See OEB Staff Proposal, Consulting on the Deferral Account – Impacts Arising from the COVID-19 Emergency (EB-2020-0133), December 16, 2020, p.7

[15] Interrogatory Response Staff No.32(c) (Exhibit.I.Staff.32(c))

[16] *Ibid*

[17] Interrogatory Response LPMA No. 33 (Exhibit.I.LPMA.33)

offset transaction costs with any savings achieved.[18] This is incorrect. As SEC has noted earlier, the AII does not provide true savings to Enbridge (or its customers). It is simply a timing difference.

In many ways this is similar to the argument made by Alectra Utilities, and rejected by the Board, regarding changes to its capitalization policies that occurred after its merger. The Board found that none of the change was to accrue to Alectra's shareholders, as it had "no impact on the underlying total costs and therefore efficiency", and it was simply an allocation amongst OM&A and capital.[19] Similarly here, the total overall costs are the same, but there is a change in the allocation of costs between time periods (i.e. higher CCA deductions and thus lower income taxes payable now, and then lower CCA deductions and higher income taxes in the future).[20]

Summary

SEC submits the Board should approve the balances in the TVDA and order payment of 100% to the benefit of ratepayers.

Yours very truly,
Shepherd Rubenstein P.C.

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2021-03-08
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cc: Wayne McNally, SEC (by email)
Applicant and intervenors (by email)

[18] Enbridge Argument-in-Chief, para. 47

[19] *Decision and Order* (EB-2017-0024), April 6, 2018, p.79-80; See also *Decision and Order* (EB-2019-0018), September 5, 2019, p.10

[20] *Ibid*