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ENBRIDGE GAS INC. (EGI)
DVA Disposition – Tax Deferral Account
EB-2020-0134

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

March 8, 2021

Vulnerable Energy Consumers Coalition

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Introduction – Summary of Submissions

1. VECC is a party to the settlement agreement filed by Enbridge Gas Inc. ('EGI' or 'Enbridge') on January 5, 2021. The Parties to this proceeding settled all issues but one - disposition of the Gas Tax Variance Deferral Account ('TDVA'). In its Decision of January 25, 2021, the Board accepted the agreement of the Parties on the settled issues and allowed for the examination of the unsettled issue and submission of argument.

2. As outlined in the Settlement Proposal there is a credit balance (not including interest) of $4.897 million that is related to the 2018 impact of the enactment of Bill C-97 which contains accelerated CCA measures (aka 'AIIP'), and a credit balance of $25.134 million that is related to the 2019 impact of the accelerated CCA measures. The TDVA contains only balances related to the AIIP. Enbridge Gas estimates that the total cumulative balance related to the AIIP in the TVDA account for the 2019 to 2023 period will be in the range of $80 to $115 million[1]. The total balance for disposition as of December 31, 2020 was $30.728 million including interest.[2]

3. Enbridge relied on the Board's letter of July 25, 2019 in its original proposal to not seek disposition of the TVDA in this proceeding. During the course of the proceeding EGI amended that proposal and is now seeking either:[3]

    a. Applying 100% of the balance of the TDVA as a source of funding for Economic Development Projects and IRP Pilot Projects; or in the alternative,
    b. Disposing of the TDVA balance by way of a 50/50 allocation between ratepayers and shareholder.

4. It is VECC's position that 100% of the balances should be disposed of forthwith and to the benefit of ratepayers.

5. There are three questions for the Board to consider in this matter. First is whether it is appropriate to address the matter of disposition of the TDVA in whole or part in this proceeding or defer the matter until the time of EGI's next cost of service application. If the Board determines it appropriate to address the disposition of the accounts then, how are the balances to be allocated as between ratepayers and shareholders. Finally, if any of the amount are paid to ratepayers how should this be allocated amongst the various classes of customers.

[1] Exhibit H, page 6
[2] I.EP.13
[3] EGI, Argument-in-chief (AIC), February26, 2021, par 52, page 18

Timing for Disposition of the TDVA Balances

6. EGI's original proposal was to defer the disposition of the TDVA until its next cost of service application. This proposal was responsive the Board's July 25, 2019 letter of accounting direction on the matter. Specifically, on the issue of timing the Board said[4]:

   Consistent with the OEB's filing requirements for the disposition timing and parameters of deferral and variance accounts, the OEB expects Utilities to bring forward any amounts tracked in their applicable CCA-related sub-account for review and disposition in accordance with the OEB's filing requirements for the disposition of deferral and variance accounts[ftnt]. *Unless the OEB orders otherwise, this would generally coincide with a Utility's next cost-based rate application.*

   The OEB expects Utilities, including those whose applications are currently before the OEB, to reflect any impacts arising from CCA rule changes in their cost-based applications for 2020 rates and beyond. The OEB recognizes that there may be timing differences that could lead to volatility in tax deductions over the rate-setting term. The OEB may consider a smoothing mechanism to address this.

7. VECC agrees with EGI that both Utility ratepayers and shareholder would benefit from certainty around the issue of how AIIP CCA changes are addressed[5]. The amounts are material and will continue to accrue over time. As we argue below the amounts also represent temporal differences and therefore there are intergenerational issues for the Board to consider.

8. In our view the matter at hand can be determined largely on principle and there is not likely much to be further by delay or waiting until this Utility is expected to file for rebased rates in 2024.

9. We also note that the Board has approved rates based on settlement proposals which address this issue. For example, in Waterloo North Hydro Inc., EB-2020-0059, the Board approved the refunding of 100% of the 2019 and 2020 AIIP impacts to ratepayers. While prior decisions are not strictly precedential, there are certainly indicative of the Board's willingness to have the issue addressed outside of a generic proceeding.

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[4] Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance, July 25, 2019, page 2

[5] See AIC, par. 28, page 9

Accelerated Investment Incentive program (AIIP) Allocation

10. The AIIP program as set out by EGI is:[6]

- *A 50% increase in the available CCA deduction (calculated on the net capital cost addition to a class) in respect of property acquired after November 20, 2018 that becomes available for use before 2024 (i.e., by the end of 2023); and*
- *The suspension of the existing CCA half-year rule in respect of property acquired after November 20, 2018 that becomes available for use before 2028 (i.e., by the end of 2027)*

11. In our submission EGI's arguments in this case are based on a fundamentally flawed notion of the AIIP. The Utility conflates the concept of a tax rate with the notion of changes in the capital cost allowance (**CCA) schedules.** The AIIP does not change any tax **rates**, as recognized by EGI:

> *The AII will not change the total amount that can be deducted over the life of a property – the larger deduction taken in the first year will be offset by smaller deductions in future years (i.e. the undepreciated capital cost in the class, on which the CCA is calculated, will be reduced is subsequent years). The AII is temporary.*[7]
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> *Accelerated 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.*[8]

12. A change to the CCA schedule does not change the tax rate or ultimately the tax payable, but rather changes the timing of the depreciation related tax shield. It is more akin to CRA administrative income tax interpretation bulletins which at time modify the application of CCA to different asset types. The AIIP does not change the final tax shield or change the tax rates applied to income. Higher CCA taken now will be replaced by lower CCA allowed in the future. From a regulatory rate making point of view the accelerated CCA makes no long-run difference. A utility under annual cost of service ratemaking would see lower rates in early periods offset by higher rates in latter period. Properly refunded the AIIP puts money in the hands of both residential **and business** ratepayers to invest or use for consumption of goods. Nowhere can we find a Federal statement stating they prefer these monies to be invested by regulated utilities as opposed to the business they serve.

13. As such EGI errs in relying on the stated OEB policy that "... *in order to encourage distributor consolidations, a deferred rebasing period provides consolidating distributors with an opportunity to offset transaction costs with "any" achieved savings during the*

[6] AIC, par 20, page 6-7
[7] Exhibit H, page 4
[8] I.LPMA.24

deferral period."[9] There are, in fact, no "savings" in the AIIP, only a deferment of tax payable. Since there taxes are payable by ratepayers the AIIP time value of money benefits should accrue to ratepayers.

14. The proposal is flawed in other ways as well. First, and most strikingly, EGI invites the Board to use ratepayer money to further Ontario provincial policies specifically expansion projects as might be contemplated under the *Access to Natural Gas Act* and, even more peripherally, other projects as EGI might find appealing as IRP pilot projects. This is wrong from the point of accountability and transparency. If ratepayers are to be asked to subsidies natural gas expansions good regulatory practice demands it be done transparently and with direct connection to the proposal. AIIP balances should not form a "slush" fund for unrelated projects. If the EGI (or the Board) wishes to subsidies non-profitable projects with ratepayers' funds this should be done openly and the subsidy from ratepayers done explicitly.

15. In any event, it is simply incongruitous to argue that monies arising out of Federal policy are somehow meant to address a provincial one. More incredible yet is the suggestion that even if Federal policy was meant "*encourage more businesses to invest in assets that will help drive business growth over the long term, setting the stage for more good middle class job*s," then the Board should accommodate this goal in its ratemaking[10] . Leaving aside the conflation of jurisdictions, had the Federal government wished for the regulated utility shareholders to keep for themselves the advanced CCA tax credits it's legislation could have done that. It did not and suggestion that EGI is the intended recipient of monies to advance that policy is simply wrong. It is equally fair to assume accelerated CCA benefits in the hands of ratepayers will drive consumers demand thereby growth and expansion. In any event it is neither the Board's or EGI role to anticipate federal fiscal policy. Except within the narrow mandate granted to it otherwise by the provincial government through legislation and regulation the Board's role is limited to setting just and reasonable distribution rates. Under the AIIP rates in the future will be higher than without this program. If these timing benefits are not now returned to customers then over the life of the asset customers will have overpaid for the use of these assets. That is neither just or reasonable.

16. EGI also implies the Board has provided the type of relief sought by reference to a prior decision of the Board, EB-2007-0606/0615. However, the referenced case dealt with both the matter of income tax rate changes and changes to CCA schedules[11]. EGI did not lead any evidence with respect to that case, A reading of the Decision does not show that the Board turned its mind specifically to the distinction to be drawn between CCA and tax rate changes. In any event, this decision has no more (and no less) precedential force than

[9] AIC, par.47, page 16
[10] See AIC, par. 22, page 7
[11] Exhibit I.VECC.10

the one in which the Board ordered 100% of the AIIP related amounts to be returned to ratepayers of Waterloo North Hydro. At least what can be said about the latter case is that it addresses precisely the same matter that is before the Board I this proceeding.

17. EGI's other references and arguments with respect to past TVDA tax deferral/variance matters are not relevant in this proceeding. The Board has, by way of its letter of July 25th identified the AIIP as being unique:

    For natural gas utilities and electricity distributors and transmitters, the OEB's long-standing practice with respect to the impact of changes in taxes due to regulatory or legislated tax changes during an incentive rate-setting period has been to share the impacts between Utility shareholders and ratepayers on a 50/50 basis. However, Utilities should not expect that this practice will necessarily apply in respect of CCA rule changes, and determinations as to the appropriate disposition methodology will be made at the time of each Utility's cost-based application. The OEB therefore expects that all Utilities will record the full revenue requirement impact of any changes in CCA rules that are not reflected in base rates. The impacts should be recorded as of the effective date of the changes in CCA rules, which for the Bill C-97 changes is November 21, 2018.

18. Given the generic nature of the Board's direction it clearly sees the AIIP as something different. And it has anticipated arguments are to be made for **not** applying the general policy of 50/50 sharing of legislative tax changes.

Allocation of balance among ratepayers

19. EGI's two proposals also have different impacts on the allocation among ratepayers as set out below.

    The cost allocation amongst the customer classes for the combined HND projects and the IRP pilot projects would be different than the disposition methodology for the TVDA balance. The cost of HND projects and IRP pilot projects would most likely be allocated to the customer classes based on forecast peak demand of each customer class[12].

20. *The alternate proposal to share the TVDA balance on a 50/50 basis is based on the OEB's longstanding practice that the impacts of tax changes during the term of an IR plan are shared between utility ratepayers and shareholders on a 50/50 basis. In this case, the balance is refunded to rate zones and rate classes in a manner that reflects the tax costs in base rates.*[13]

21. Under EGI's proposal it is unclear how the "benefits" of obligatory capital contributions by ratepayers from the TVDA would be allocated among customer classes. To the

[12] Exhibit I.Staff.32
[13] Exhibit I.VECC.13

extent projects lie in one rate zone or the other direct benefits accrue to the affected new customers. In any case the allocation is not like that in EGI's secondary position of a 50/50 sharing. This is not surprising as the two proposal have no intern

22. In any event it is VECC's position that 100% of the TDVA AIIP balances should be to the benefit of ratepayers. VECC supports the allocation methodology set out by EGI for that outcome[14].

> *Enbridge Gas would propose to split the ratepayers' share (assumed 100% in this illustration) of the TVDA credit balance plus interest between the EGD and Union rate zones in proportion to the 2018 actual rate base for each rate zone of $6,729 million and $6,018 million, respectively. 100% of the TVDA credit balance of $30.728 million1 split in proportion to 2018 actual rate base results in $16,221 million credit being cleared to the EGD rate zone and $14,507 million credit being cleared to the Union rate zones. …..*
>
> *The Company would further propose to allocate the split balance to rate classes in each rate zone in proportion to 2018 rate base for the EGD rate zone and 2013 rate base for the Union rate zones. The rate base allocation for each rate zone is taken from the last fully allocated cost study prepared for each rate zone.*

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23. VECC submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

[14] See Exhibit I.EP.13 Attachment 1-3 / I.Staff.8