ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.
2019 Utility Earnings and
Deferral & Variance Accounts

EB-2020-0134

March 8, 2021

Background

On August 30, 2018, the Ontario Energy Board (OEB) approved the amalgamation of Enbridge Gas Distribution Inc. (EGD) and Union Gas Limited (Union Gas).[1] The companies amalgamated to form Enbridge Gas Inc. (Enbridge Gas) on January 1, 2019. Following the amalgamation, Enbridge Gas maintained the existing rates zones of EGD and Union Gas (the EGD rate zone, and the Union North West, Union North East and Union South rate zones).[2] Enbridge Gas has also maintained most of the existing deferral and variance accounts for each rate zone.

The current application addressed the 2019 utility earnings and disposition of certain 2019 deferral and variance account (DVA) balances. Enbridge Gas's actual utility earnings did not exceed the OEB-approved return on equity by more than the threshold for sharing. Accordingly, no earnings sharing mechanism (ESM) amount was proposed to be shared with ratepayers.

The intervenors and the applicant (together refereed to as parties) reached a settlement on all DVA balances with the exception of the Tax Variance Deferral Account (TVDA). The parties also agreed on the calculation of utility earnings and accepted that there was no ESM amount for 2019. In a decision issued on January 25, 2021, the OEB accepted the settlement proposal and scheduled a written process to deal with the unsettled item (TVDA).

OEB staff in its submission on the settlement proposal noted that the settlement between the parties did not include any reference to the performance scorecard. OEB staff submitted that all parties should be permitted to make submissions on the 2019 performance scorecard as part of the written hearing. The OEB in its decision on the settlement proposal determined that the scorecard was within the scope of the proceeding and the OEB would allow parties and OEB staff to file submissions regarding the performance scorecard.

Enbridge Gas filed supplemental evidence on the TVDA which provided further background on the TVDA account and proposed alternative approaches to address disposition of the balances. Intervenors and OEB staff filed interrogatories on the supplemental evidence. Enbridge Gas filed responses to the interrogatories on February 19, 2021 and filed its argument-in-chief on February 26, 2021.

[1] EB-2017-0306 / 0307 Decision and Order August 30, 2018, application by Enbridge Gas Distribution and Union Gas Limited to amalgamate under the OEB's policy on mergers, acquisition, amalgamation and divestiture (MAADs Decision).
[2] Collectively Union North West, Union North East and Union South are referred to as the Union rate zones.

The balance in the TVDA as of December 31, 2019 is a credit of $30.03 million excluding interest. In its supplemental evidence, Enbridge Gas proposed to use 100% of the cumulative balance in the TVDA over the 2019 to 2023 period as a source of funding for two initiatives: Economic Development Projects and Integrated Resource Planning (IRP) pilot projects. Alternatively, if the OEB does not accept the above proposal then Enbridge Gas proposed that the TVDA balance be cleared as per the OEB's established practice of sharing the impacts of tax changes during the incentive regulation term on a 50/50 basis between the utility and ratepayers.

For reasons that follow, OEB staff submits that 100% of the TVDA balance should be credited to ratepayers.

With respect to the performance scorecard, OEB staff notes that Enbridge Gas did not meet the performance metric for two measures. OEB staff requests Enbridge Gas to outline in its reply the steps that it intends to implement in order to meet the metrics in the future.

Tax Variance Deferral Account

In the legacy Union Gas's 2014-2018 incentive ratemaking (IRM) framework, the TVDA was established as part of a settlement. The parties agreed in the settlement that through the IRM term (which ended in 2018), the impact of tax changes resulting from federal/provincial legislation would be shared 50/50. In the case of EGD's previous Custom IR (2014-2018), there was no accommodation for sharing the impacts of tax changes. Cost increases or decreases that were unexpected and outside the control of management (such as impacts of tax changes) were captured through the Z-factor materiality threshold.[3]

In the MAADs proceeding which dealt with the amalgamation of EGD and Union Gas, the OEB retained the TVDA for the Union Gas legacy areas and expanded the account for the EGD rate zone.[4]

In the Enbridge Gas 2019 rates proceeding, the OEB set Enbridge Gas's annual rates as per the new ratemaking framework established in the MAADs proceeding.[5] In that proceeding, the OEB directed Enbridge Gas to follow the direction issued by the OEB in its July 25, 2019 letter.[6] In that letter, the OEB provided accounting direction to regulated utilities regarding Bill C-97. Bill C-97 provides for, among other matters, accelerated capital cost allowance (CCA) deductions for eligible capital assets acquired

[3] EB-2012-0459, Enbridge Gas Distribution Inc. 2014-2018 Rate Application Decision with Reasons, pp. 18-21, July 17, 2014.
[4] EB-2017-0306/0307
[5] EB-2018-0305
[6] OEB July 25, 2019 Letter

after November 20, 2018. The Accelerated Investment Incentive Program (AIIP) allows taxpayers to claim a larger share of the cost of a newly acquired depreciable asset in the year the asset becomes available for use.

The OEB in its letter directed utilities to record the impacts of CCA rule changes in the appropriate deferral account from the effective date of the Bill C-97 rule changes until the effective date of the utility's next cost-based rate order. The OEB also noted that its long standing practice of sharing the impact of changes in taxes due to regulatory or legislated tax changes during an incentive rate-setting period between utility shareholders and ratepayers on a 50/50 basis should not be expected to 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.

OEB staff agrees with the position of the parties in the settlement that the balance in the TVDA should be disposed of in this proceeding. Enbridge Gas shares the same view and notes in its argument-in-chief that all parties would benefit from a decision on the treatment of the TVDA balance at this time rather than waiting for the next cost-based rate application.[7]

The AIIP has significantly accelerated the CCA deductions available to Enbridge Gas for tax purposes. As a result of capital additions which have qualified for AIIP in 2018 and 2019, Enbridge Gas has been able to claim more CCA than it otherwise would have been able to under prior CCA measures, which has resulted in lower corporate/utility income taxes. As of December 31, 2019, the principal balance (excluding interest) in the TVDA was a credit of $30.03 million. The entire balance in the TVDA is a result of the CCA rule changes. OEB staff has no concerns with respect to the calculation of the TVDA balance. Enbridge Gas has estimated that the total cumulative balance in the TVDA for the 2019 to 2023 period will be a credit in the range of $80 to $115 million.[8]

In its supplemental evidence on the TVDA, Enbridge Gas proposed to use 100% of the cumulative balance in the TVDA over the 2019 to 2023 period as a source of funding for two initiatives: Economic Development Projects and IRP pilot projects. A portion of the TVDA balance up to $115 million would be directed towards funding the capital investment of the combined Hamilton-Nanticoke-Dunnville project. The economic development projects were filed with the OEB in response to the OEB's Natural Gas Expansion Program (NGEP). Enbridge Gas also proposed to access up to $20 million of the TVDA balance to use towards IRP pilot projects. The TVDA balance would be used to fund the costs of the pilot projects that would otherwise be recovered from ratepayers. From a rate base perspective, Enbridge Gas confirmed that if the Economic

[7] Enbridge Gas argument-in-chief, p. 9, para 28.
[8] Exhibit H, p. 6, February 4, 2021.

Development Projects and IRP pilot projects are funded through the TVDA balance, the amount that would be included in rate base would be each project's capital cost, net of any funding provided through the TVDA balance.[9]

Enbridge Gas indicated that its two proposed initiatives (Economic Development Projects and IRP pilot projects) are aligned with the objectives of the accelerated CCA benefits, which is to encourage more businesses to invest in assets that will help drive business growth over the long-term and create jobs.[10]

In the event that the OEB does not accept Enbridge Gas's proposal of using 100% of the TVDA balance for the above noted projects, Enbridge Gas has proposed that the TVDA balance be cleared in accordance with the OEB's long standing practice that the impact of tax changes during the term of an IR plan are shared equally between the utility and ratepayers.

(i) Appropriate Sharing of TVDA Balance

In Union Gas's 2008 IRM rate proceeding, the OEB made a determination on whether a series of tax reductions that will be applicable to Union Gas during the incentive regulation (IR) plan (2008 to 2012) should be passed on to ratepayers through a Z-factor adjustment.[11] A variety of tax changes were announced in 2007, including reductions in federal and provincial income and capital tax rates, and changes in capital cost allowance rates, to be implemented in 2007 and throughout the IR period. The key consideration in the proceeding was the extent to which changes in tax rates which occurred within Union Gas's then IR plan were captured in the national inflation factor, as measured by the Gross Domestic Product Input Price Index for Final Domestic Demand (GDP-IPI-FDD) component of the price cap formula. OEB staff notes that Enbridge Gas's current IR plan (2019 to 2023) also uses GDP-IPI-FDD as a component of its Price Cap Index to adjust rates on an annual basis.

Union Gas argued in the 2008 rate proceeding that tax reductions flow through to the inflation index and therefore are already passed on to ratepayers. The OEB in its decision accepted that tax reductions operating generally within the national and provincial economies will flow through to the inflation factor over time. The OEB recognized that while tax changes do flow through the inflation factor, there is a significant lag in the time it would take for the tax changes to fully reflect in the inflation factor.[12] Accordingly, the OEB determined that 50% of the tax reduction should be

[9] OEB staff IRR #32(f)
[10] Exhibit H, p. 12, para 44, February 4, 2021.
[11] EB-2007-0606/EB-2007-0615
[12] Decision on Union Gas Limited 2008 Rates, EB-2007-0606/EB-2007-0615, pp. 8-9, July 31, 2008.

treated as a Z-factor and should be credited to ratepayers (with the remaining 50% notionally being returned to ratepayers through a lower inflation rate).

OEB staff agrees with the 50% sharing of tax changes during an IRM when such changes are of a permanent nature. The AIIP under Bill C-97 is not a permanent change to the tax rate, it is merely a deferral of taxes over time. In fact, it is not a change to the income tax rate, rather it is a change in the timing of taxes to be paid. The lifetime deductions available for a specific capital expenditure remain unchanged (i.e. savings now are just paid for later). As Enbridge Gas notes in its evidence, "The [AIIP] 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 in subsequent years)".[13] In OEB staff's view, this distinction is critical between the mechanics of the AIIP program and the effect of a typical change in income tax rates.

If the accelerated CCA results in a reduction to the revenue requirement in a year a qualifying capital expenditure is placed into service and increases the revenue requirement in relation to that capital expenditure in subsequent years, then ratepayers should get the entire benefit of the initial reductions. The AIIP is a temporary tax benefit – savings today result in future costs. If ratepayers are expected to absorb those costs in future years when the utility rebases, they should similarly be entitled to the entire benefits. This argument is clearly aligned with OEB's long standing benefits follow costs principle. Accordingly, OEB staff submits that 100% of the TVDA balance should be credited to ratepayers.

OEB staff further notes that Hydro Ottawa Limited, in its 2021 Custom IR application, proposed to clear 100% of 2018-2020 balances related to the revenue requirement impact from AIIP to ratepayers.[14] In a decision and procedural order issued on October 2, 2020, the OEB accepted the settlement proposal between the intervenors and the applicant which among other matters reached full agreement on the 100% disposition of AIIP amounts to ratepayers.[15] The OEB has recently also approved two settlement proposals that included agreement on disposition of account balances resulting from these CCA rule changes. In the Waterloo North Hydro Inc.'s 2021 settlement proposal, the utility agreed to refund 100% of the 2019 and 2020 AIIP impacts to customers.[16] In

[13] Exhibit H, p. 4, para 16, February 4, 2021.
[14] EB-2019-0261, Exhibit 9, Tab 1, Schedule 4.
[15] Decision on Settlement Proposal and Procedural Order No. 8, EB-2019-0261, October 2, 2020.
[16] EB-2020-0059 Settlement Proposal, November 16, 2020.

Niagara Peninsula Energy Inc.'s settlement proposal, the utility agreed to refund 100% of the revenue requirement impact of AIIP to customers.[17]

(ii) Timing of Disposition of TVDA Balance

The next issue is whether the benefits of larger CCA deductions in the initial years should be returned to ratepayers now or be applied against future costs.

In its supplemental evidence on the TVDA, Enbridge Gas proposed to use 100% of the cumulative balance in the TVDA over the 2019 to 2023 period as a source of funding for two initiatives: Economic Development Projects and IRP pilot projects. In the event that the OEB does not accept Enbridge Gas's proposal of using 100% of the TVDA balance for the above noted projects, Enbridge Gas has proposed that the TVDA balance be shared equally between the utility and ratepayers.

OEB staff submits that whether the benefits are returned to ratepayers now or at a later date should have no bearing on the sharing of these benefits. In other words, the timing of returning these benefits ought to be independent of the quantum of the benefits to be returned to ratepayers. As previously stated, OEB staff if of the view that 100% of those benefits should be returned to ratepayers.

OEB staff is of the opinion that the TVDA balance should not be used to fund the proposed Economic Development Projects and IRP pilot projects. Economic Development Projects are currently under consideration under the NGEP and there is a funding mechanism in place for these projects if they are chosen by the government for support. As funding for those Economic Development Projects has not yet been approved by the government and will likely be subject to OEB approval for leave to construct, this means that the benefits to ratepayers by way of offsetting future costs may not materialize for quite some time, if at all. The use of the TVDA balance for funding economic development projects would also require the OEB to create a framework to monitor and review the use of the TVDA funds. OEB staff submits that using the TVDA funds for the proposed Economic Development Projects is not an appropriate funding mechanism and would lead to unnecessary complications.

Similarly, with respect to funding IRP pilot projects from the TVDA balance, OEB staff notes that the IRP framework for Enbridge Gas is currently before the OEB.[18] The OEB still has to determine an IRP framework and provide guidance regarding the nature, timing and expectation for any IRP pilot projects. Although OEB staff understands that the costs of any approved IRP pilot projects would likely be subject to recovery from

[17] EB-2020-0040 Settlement Proposal, January 7, 2021.
[18] Enbridge Gas Integrated Resource Planning Framework Proceeding, EB-2020-0091.

ratepayers, the mechanism of the recovery has to be determined by the OEB and it is premature to consider funding mechanisms at the present time.

In light of the financial hardship of COVID-19 and the uncertainty and timing around the proposed Economic Development Projects and IRP pilot projects, OEB staff suggests that 100% of the benefits captured in the TVDA should be returned to ratepayers now. In addition, in response to an interrogatory, Enbridge Gas confirmed that the cost allocation amongst the customer classes for the proposed Economic Development Projects and IRP pilot projects would be different from the disposition methodology for the TVDA balance.[19] Accordingly, OEB staff submits that the Enbridge Gas proposal is not appropriate from a rate setting perspective.

Performance Scorecard

The purpose of the scorecard is to measure and monitor performance over the deferred rebasing period. In the MAADs proceeding, the OEB approved a performance scorecard for the amalgamated utility (Enbridge Gas). The scorecard is produced annually, with 2019 being the first delivery of the scorecard. Enbridge Gas met or exceeded all elements of the scorecard apart from two measures: Time to Reschedule Missed Appointments and Meter Reading Performance.

The measure “Time to Reschedule Missed Appointments” (TMRA) tracks the percentage of customers contacted to reschedule the work within two hours of the end of the original appointment time. The annual standard for TRMA is 100% and Enbridge Gas achieved 97% in 2019. Enbridge Gas attributed the achieved performance to human error or the customer not being available to reschedule appointments.[20] OEB staff requests Enbridge Gas in reply, to outline the measures implemented to reduce human errors in the future. OEB staff further believes that the performance of this metric should be monitored over the next year in order to assess the impact of the achieved performance on customers and consider whether the metric needs to be revised in any manner.

The measure Meter Reading Performance represents the number of meters with no read for four consecutive months or more divided by the total number of active meters to be read. The target for the metric is 0.5% and Enbridge Gas achieved a level of 0.7% in 2019. Enbridge Gas noted that it was unable to meet the metric due to extreme weather in the first and second quarters and the transition to a new vendor for the legacy Union rate zones. OEB staff notes that the performance of this metric was particularly impacted in November (1.6%) and December (2.5%) of 2019 for the Union rate zones.[21]

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[19] OEB Staff IRR #32(c)
[20] OEB staff IRR #29.
[21] OEB staff IRR #30a

In response to an interrogatory, Enbridge Gas noted that transition to a new vendor is expected to impact meter reading performance in the short term for the Union rate zones. The new vendor will require time to become proficient and get familiar with the meter reading routes and day to day meter reading activities.[22] OEB staff notes that the new vendor began the meter reading contract in December 2019. OEB staff submits that transition to a new vendor is not a sufficient rationale to miss the metric. OEB staff requests Enbridge Gas to outline the measures it has implemented to meet the performance metric in the future and provide any recent data that shows an improvement in this metric.

– All of which is respectfully submitted –

[22] OEB staff IRR #30.