FINAL SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: EB-2020-0134

ENBRIDGE GAS INC. - 2019 ESM/DVA PROCEEDING - TAX DEFERRAL VARIANCE ACCOUNT

Introduction:

On September 2, 2020, Enbridge Gas Inc. ("EGI") applied to the Ontario Energy Board ("OEB") for an order approving disposition of amounts in certain deferral and variance accounts. EGI and the intervenors reached a settlement on disposition of all of the accounts, with one exception. There was no agreement on the disposition of the Tax Deferral Variance Account ("TDVA").

The issues that remain are the calculation of the balance in the account, the disposition of the balance of the account between EGI and its customers, and the allocation of any disposition to customers. Following the Settlement Conference, EGI filed supplemental evidence and responded to interrogatories posed by a number of intervenors.

These are the Submissions of the Consumers Council of Canada ("Council") regarding the TDVA issues.

Submissions:

On June 21, 2019, Bill C-97, Budget Implementation Act, 2029 received Royal Assent. The Act provided a first-year increase in the Capital Cost Allowance ("CCA") deductions on eligible capital assets acquired after November 20, 2018. The Accelerated Investment Incentive ("AII") allows EGI to write off a larger share of costs related to newly acquired assets in the year the investment is made or the asset becomes available for use.

As acknowledged by EGI, the AII is temporary. The AII will not change the total amount that can be deducted over the life of a property as the larger deduction taken in the first year will be offset by smaller deductions in future years (i.e. the undepreciated capital cost, on which the CCA is calculated, will be reduced in subsequent years).[1]

On July 25, 2019, the OEB issued a letter providing accounting direction regarding Bill C-97. The OEB directed utilities to record the impacts of then Bill C-97/ CCA rule changes for the period November 21, 2018, until the effective date of the utility's next cost-based rate order. The OEB in that letter also stated:

> For natural gas 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

[1] Exhibit H, p. 4

> changes during an incentive rate-setting period has been to share the impacts between Utility shareholders and ratepayers no 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 rate. 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[2].

With respect to EGI's capital additions that are subject to CCA for tax purposes, all amounts which have been incurred and which became available for use after November 20, 2018, have all been eligible for the AII.[3]

In 2018, a $4.9 million credit was recorded in the TVDA, and in 2019 it resulted in a $25.1 million credit. EGI estimates that the total cumulative balance in the TDVA for the 2019-2023 period will be in the range of $80 to $155 million[4].

EGI originally proposed that, in accordance with the OEB's July 25, 2019 letter, that impacts arising from CCA rule change, together with carrying costs, would be disposed of in a future rate proceeding. In its Supplemental Evidence EGI indicated that it agreed with intervenors that the OEB should determine through this proceeding how the amounts should be cleared. EGI indicated in its Argument in Chief that, "…all parties would benefit from a decision clarifying the treatment or use of the TDVA balance at this time, rather than at the next cost-based rate application."[5]

EGI is now proposing that the amounts recorded in the TDVA be used as a source of funding for "important capital projects that will deliver public and ratepayer benefits as well as support Enbridge Gas in meeting the goals of natural gas expansion to underserved areas and integrated resource planning ("IRP")". Specifically, Enbridge proposes that these amounts be used in support of Economic Development Projects and IRP Pilot Projects".[6]

Specifically, EGI is proposing that a portion of the TDVA balance up to $115 million be directed towards funding the capital investment of three of its Economic Development Projects that it would combine – Hamilton Airport, Nanticoke and Dunnville. These projects arose through an Expression of Interest process undertaken by EGI in response to the OEB's EB-2019-0255 Natural Gas Expansion Program ("NGEP").

[2] OEB letter dated July 25, 2019, p. 2
[3] Exhibit H, p. 5
[4] Exhibit H, p. 6
[5] Argument in Chief, dated February 26, 2021, p. 9
[6] AIC, p. 10

In addition, EGI also proposes that it be able to access up to $20 million of the TDVA balance to use towards IRP Pilot Projects. EGI's proposal is to use the funds as an "enabling fund" for specific OEB-approved IRP Pilot Projects.[7]

If the OEB does not accept EGI's proposal to use 100% of the TDVA balance to fund Economic Development Projects and IRP pilot projects EGI proposes that the TDVA balance be cleared "in accordance with the OEB's well-established practice that the impacts of tax changes during the term of an IR plan are shared between utility ratepayer and shareholders on a 50/50 basis." [8]

The Council submits that the OEB should dispose of 100% of the balance in the TDVA related to the AII to ratepayers at this time, and continue to do so in future DVA proceedings. These amounts are not akin to tax savings that have been shared on a 50/50 basis in past proceedings, like reductions in tax rates. The total amount of CCA is not changing, but rather the timing of the deductions are changing, and being accelerated. Whereas EGI has taken advantage of the accelerated CCA in 2018 and 2019, rates will be higher in the future as less CCA will be available to deduct. The OEB, in its July 25, 2019, letter clearly noted that the longstanding practice of sharing on a 50/50 basis will not necessarily apply in this case.

The current balance in the account is significant - $30 million – and is expected to increase over the next several years. It is not like some accounts where the amounts might be credits and debits from year to year. These are ratepayer funds that should be disposed of now.

EGI has proposed to use the money to fund Economic Development Projects and IRP Pilot Projects. Both of these proposals should be rejected. The OEB has developed a policy for system expansion that explicitly rejected having existing customers subsidize uneconomic system expansion projects. EGI's current proposal is inconsistent with that policy and instead of allocating the TDVA amounts to all customers it allocates them to a few targeted projects. If this was permitted certain system expansion projects would be assessed and funded on one basis and other projects on another basis. This is clearly not what was envisioned by the OEB in its EB-2016-0004 Decision.

EGI is proposing to use the amounts to fund IRP Pilots. Currently, there is no IRP policy or framework approved by the OEB. The OEB is in the process of considering EGI's IRP proposals, but the proceeding is not yet complete. For an OEB panel, in this case, to approve funding for IRP Pilots prior to any decision by the OEB regarding an IRP framework is premature, at best. Ultimately, the OEB may not support the implementation of IRP Pilots. In any case, to use funds generated by accelerated CCA deductions to fund pilots that target discrete areas of EGIs distribution and transmission system would amount to a cross subsidy that has not been justified.

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[7] AIC, pp. 11-13
[8] AIC, p. 14

The evidence is this case is clear. The AII results in tax savings that have materialized and been recorded in the TDVA. Those savings should be allocated to ratepayers now, as those ratepayers in the future will have higher rates arising from the fact that the CCA that is available to deduct will be lower.

The Council does not take issue with EGI's calculation of the balance in the TDVA and believes it is appropriate.

All of which is respectfully submitted.