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VIA RESS

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Dear Ms. Long:

Re: EB-2020-0134 – Enbridge Gas Inc. (EGI) 2019 Earnings Sharing and Disposition of Deferral and Variance Account Balances Application.

Industrial Gas Users Association (IGUA) Final Argument.

This letter provides brief submissions on behalf of IGUA on disposition of the balance held in EGI's Tax Variance Deferral Account (TVDA).

Origin of the “50/50” Rule on Sharing of Tax Savings

The most comprehensive description of the rationale for the OEB's practice on the sharing of tax savings between utility shareholders and ratepayers on a 50/50 basis can be found in the Board's *Decision* in EB-2007-0606/0615. That decision addressed the unsettled issues related to (then) Union Gas Limited's (Union) multi-year incentive rate mechanism (IRM) rate plan (IR Plan) for rates effective January 1, 2008.

In that case, ratepayer representatives argued that tax reductions should be treated as z-factors and flowed through to the benefit of ratepayers during the course of an IRM rate plan. Union argued that tax reductions are, subject to a lag, reflected in the economy wide inflation factor used to set IR Plan rates during the term of the rate plan through reduced inflation factors and thus lower rate changes (than would otherwise be the case). EGI argued that, in the result, returning tax savings to ratepayers through z-factor treatment would result in double recovery by ratepayers. The issue was framed by the Board as follows¹:

¹ EB-2007-0606/0615 *Decision* July 31, 2008, page 3, first full paragraph.

The question to be decided is whether the tax changes will work their way through the economy so that they are reflected in the price cap index through the inflation factor. If the changes are not thought to be so reflected, then they qualify for Z factor treatment.

In weighing “[a] substantial body of quantitative evidence... tendered by various experts” on both side of the debate, the Board ultimately concluded²:

In the circumstances, the Board believes that the fair solution is to treat 50% of the tax reductions as a Z factor.

Critical to understanding, and applying, the Board’s policy so developed is the following passage from the decision³:

... the \$80 million tax reduction is a windfall gain which was caused by events entirely beyond Union’s control and had nothing to do with productivity gains initiated by Union. Under a cost of service regime these costs reductions would flow through to the customer at each cost of service rates application.

As noted by the Board, ratepayer representatives argued in that case, and we repeat the position here, that “as a matter of general regulatory principle, consumers should be no worse off under an IR plan than they would be under cost of service regulation”.⁴

Application of the Allocation of Tax Savings Rationale to Current TVDA Balances

The tax change in issue in respect of EGI’s TVDA is a change in timing only. Accelerated capital cost allowance (CCA) in the near term is balanced by less CCA available later. The Board must consider whether, in this circumstance, there is likely to be any structural change in inflation. If the Board concludes that there will be no structural net change in inflation, then but for clearance of 100% of the revenue requirement impact of this tax change to ratepayers, ratepayers will in fact be worse off under EGI’s IRM Plan than under cost of service. In this instance, application of the Board’s policy directs that 100% of the TVDA balance be cleared to ratepayers.

Inappropriate Proposed Expenditures by EGI

While proper consideration and application of the Board’s policy on reflecting tax changes in IRM period rates should be dispositive of the issue of clearance of the TVDA, we would also comment on EGI’s proposed use of these ratepayer funds.

² EB-2007-0606/0615 *Decision* July 31, 2008, page 9, 3rd paragraph.

³ EB-2007-0606/0615 *Decision* July 31, 2008, page 8, first full paragraph.

⁴ EB-2007-0606/0615 *Decision* July 31, 2008, page 8, first full paragraph.

EGI proposes that TVDA funds be redirected in support of a subset of natural gas expansion projects which have been labelled “*economic development projects*”, on the basis that the “*intent and purpose of the All*” tax change in issue in this proceeding is to stimulate economic recovery, and is consonant with the Ontario provincial policy reflected in the *Access to Natural Gas Act, 2018*.⁵

First, the All as an economic stimulus measure by the Federal government was not designed for rate regulated utilities. EGI does not need more cash flow. It is granted the continuing privilege of cash flow by virtue of its rate regulated status. In fact, the intent and purpose of the All would be better served by returning the TVDA cash to customers who actually need the additional cash to spend.

Second, economic development is not a mandate for the OEB.

Third, the scope of, and the scope of funding for, natural gas expansion projects has been fully determined by the Ontario government. The OEB does not have a mandate to add to that funding, and in fact such an incremental subsidy from existing customers to expansion customers would be contrary to the OEB’s carefully considered and clearly articulated policy against such cross-subsidization.⁶

EGI has also proposed that TVDA funds be redirected in support of Integrated Resource Plan (IRP) pilot projects which it has proposed as part of its filing in the Board’s IRP review⁷. This proposal is completely premature. Neither the scope of IRP nor the advisability of proceeding with IRP pilots, nor determination of how such pilots would be funded if they were to be proceeded with, has been determined by the Board.

Conclusion

Contrary to the position advanced by EGI, the All tax policy which has given rise to the TVDA balance was not meant for rate regulated utilities, and if anything the stimulus intentions of that federal tax mechanism is better served by returning funds to customers and thus relieving current consumer and business cash flow impairments.

⁵ EGI Argument in Chief, paragraphs 29 *et seq.*

⁶ EB-2016-0004 *Ontario Energy Board Generic Proceeding on Community Expansion Decision with Reasons*, November 17, 2016.

⁷ EB-2020-0091.

In any event, the Board does not have an economic development or stimulus mandate, and application of the Board's policy on treatment of tax changes during incentive rate plan periods directs, absent evidence of an impact on broad inflation expectations from the All, that 100% of the TVDA balance brought forward in this application be cleared to ratepayers.

Yours truly,



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