

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998;

**AND IN THE MATTER OF an Integrated Resource Planning
Proposal by Enbridge Gas Inc.**

INDUSTRIAL GAS USERS ASSOCIATION (IGUA)

ARGUMENT

Introduction

1. IGUA's members, Ontario's largest volume gas consumers, rely on natural gas as both an energy input and as a feedstock for their processes. They rely on Enbridge Gas Inc. (EGI) to deliver that gas.
2. While some of IGUA's members have invested in systems which allow substitution of their natural gas supply with an alternative input without interrupting their processes, such substitutions are effective only for a short period of time (in the context of an interruptible delivery service option, or a design day spike in delivered gas prices, for example). Large industrials who rely on natural gas do not have the ability to permanently substitute alternative fuels for natural gas absent fundamental redesign of their industrial processes entailing huge recapitalization requirements and very long lead times (decades or more), even if such permanent fuel substitution were possible for the industrial process in question and in the competitive environment within which these businesses operate.
3. All of which is to say that IGUA's members, Ontario largest volume gas consumers, are as concerned about the possibility of underutilization or stranding of Ontario's gas delivery asset base as are any other of EGI's customer groups, and perhaps even more so.
4. IGUA thus supports the objective of facilitating the deployment by EGI of non-pipe alternatives (NPAs) to conventional gas delivery infrastructure where to do so is more cost

effective than such investment in more conventional infrastructure. (What “cost effective” should mean in this context is a matter subject to some difference of opinion, and we return to this critical issue below.)

5. A lot of time has been spent in this proceeding exploring a carbon constrained future and the potential impact of such a future on the provision of energy services. The breadth of that exploration, encouraged by the liberal approach to the scope of the proceeding directed by the OEB, has been useful, providing appropriate context for consideration of the matter at hand.
6. The matter at hand, however, is not to re-design Ontario’s energy system to meet our province’s growing energy demands in a carbon constrained future.
7. The matter at hand is considerably more modest.

Clarity of Purpose for this Proceeding

8. The matter at hand is the advisability of and, if advisable, essential features for a framework (IRP Framework) to encourage EGI to properly consider non-pipe alternatives (NPAs, often also referred to in this proceeding as “IRP Alternatives” or “IRPAs”) to deployment of conventional gas distribution infrastructure in meeting growth in customer demand for natural gas.
9. IGUA’s view is that such a framework is advisable, and that the time is ripe for the OEB to provide guidance on some of the essential features of such a framework.
10. IGUA also urges the OEB to retain and provide clarity on what the IRP Framework is properly intended to do, and what it should not be expected or designed to do.
11. As already noted, the IRP Framework should not be expected or designed to re-engineer Ontario’s energy system, nor should it sanction a fundamental rewriting of the 100+ year old approach to utility economic regulation in North America (at least not all in one step).
12. The IRP Framework should encourage pursuit of NPAs which are appropriate for a regulated gas distributor to pursue where doing so reduces utility costs and resulting rates for customers.

Statutory Basis for Approving NPAs and Inclusion of NPA Costs in Gas Distribution Rates

13. EGI argues¹, and we agree, that the legal basis for OEB approval of NPAs, or more accurately, approval for recovery by EGI of the costs incurred in deploying NPAs, is section 36 of the *Ontario Energy Board Act, 1998 (OEB Act)*. Section 36 of the *OEB Act* empowers the OEB to determine, and requires EGI to obtain the OEB's approval for, inclusion in rates of costs incurred in selling or providing transmission, distribution or storage of natural gas.
14. Also relevant is the statutory limitation on the permitted scope of EGI's business activities. The combination of the undertakings provided by EGI and its predecessors to the Ontario Lieutenant Governor in Council (LGIC) and the modifications to those undertakings through Ministerial directives dated August 2006 and September 2009 requires that EGI not, except through one or more affiliates, carry on any business activity other than the transmission, distribution or storage of gas without the prior approval of the OEB. This limitation is subject to the LGIC sanctioned exceptions of;
 - (a) business activities that would assist the Government of Ontario in achieving its goals in energy conservation, including services related to natural gas conservation and the promotion of cleaner energy sources (including alternative and renewable energy sources); and
 - (b) business activities in respect of the ownership and operation of renewable electricity generation facilities, combined heat and power facilities, energy storage facilities, solar-thermal water and ground-source heat pumps, and stationary fuel cells.
15. Notably, while the LGIC has sanctioned exceptions to the limitation of EGI's business activities to the sale, transmission, distribution and storage of natural gas, such exceptions are expressly without modification to the scope of the OEB's section 36 natural gas ratemaking authority.
16. EGI has proposed that there be no restrictions on the type of NPAs that it be permitted to engage in, and recover the costs of in rates², and that the OEB permit EGI to engage in NPAs that "*go beyond gas distribution*". IGUA is concerned that this is neither appropriate nor legislatively permitted. In any event, given the paucity of information on potentially

¹ EGI Argument in Chief (AIC), paragraph 31 & JT1.17.

² Transcript Volume 3, pages 97-98; AIC paragraphs 52 – 54 and 61.

viable NPAs for EGI, such a pronouncement is not currently necessary (and thus should not be provided).

17. EGI argues that³:

Any approvals granted for the IRP Plan application could presumably be made under section 36 of the OEB Act, on the premise that the investments being made are in place of natural gas infrastructure and are aimed at ensuring that the Company continues to provide safe, reliable gas delivery service to its customers.

18. IGUA agrees with the implicit requirement for a nexus between a proposed NPA and EGI's fundamental obligations to deliver natural gas. IGUA is however concerned with EGI's proposal that the Board essentially provide pre-approval for EGI to engage in an unconstrained scope of NPA initiatives.⁴
19. Whether any particular NPA initiative properly qualifies as supporting delivery (i.e. transportation, storage and/or delivery) of natural gas in place of natural gas infrastructure is an open question. The boundaries are as yet abstract and unclear.
20. At a minimum, approval of NPA costs for inclusion in rates under the authority of *OEB Act* section 36 must be anchored in a determination by the OEB that the NPA costs in question are incurred directly in support of EGI's obligation to deliver (i.e. transport, store and/or distribute) natural gas.⁵ To the extent that NPA costs are not directly supportive of EGI's obligation to deliver natural gas, but rather are incurred, wholly or partially, in support of broader social objectives or benefits but are not directly necessary in support of the delivery of natural gas *per se*, such costs should not be included in regulated natural gas delivery rates.

The Role of Public Policy in Consideration of NPAs

21. Also relevant to consideration of the appropriate scope of a framework to encourage EGI to properly consider NPAs to deployment of conventional gas distribution infrastructure in

³ EGI AIC, paragraph 131.

⁴ While EGI maintains that it is seeking only "*OEB endorsement of a broad range of IRPA's*" and not pre-approval of any particular IRPA [AIC, paragraphs 61-62], IGUA remains concerned that EGI is effectively requesting pre-determination of the appropriateness of a potentially over-broad scope of NPAs.

⁵ *OEB Act*, section 42(2).

meeting growth in customer demand for natural gas are the statutory directions found in section 2 of the *OEB Act* that are provided to guide the OEB in carrying out its legislative functions in relation to natural gas. The most salient of these for the purposes of this proceeding are (in the order in which they appear in the legislation, with our emphasis);

- (a) protection of the interests of consumers with respect to prices and the reliability and quality of gas service;
- (b) facilitation of rationale expansion of the gas transmission and distribution systems and the rational development and safe operation of gas storage;
- (c) to promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances; and
- (d) to facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

- 22. These legislated objectives do not constitute the mandate of the OEB. Rather they lay out the policy considerations that the Board is to consider, and be guided by, in carrying out its mandate. As articulated above, in the context of consideration of NPAs the OEB's mandate is to approve for inclusion in rates the costs incurred in providing transmission, distribution or storage of natural gas, and potentially to pre-approve business initiatives for EGI beyond the sale, transmission, distribution and storage of natural gas.
- 23. While consideration of these statutory objectives, and beyond these specific objectives broader consideration of public policy, is appropriate and important to the effective discharge by the OEB of its legislative mandate, neither the legislated objectives nor public policy at large create or expand that mandate.
- 24. IGUA does agree, however, that there is an appropriate place for consideration of broader public policy in the context of developing an IRP Framework.
- 25. For example, it is important for the OEB to consider expected increases in the legislated price of carbon in considering EGI's load forecasts and the extent to which those forecasts properly take account of the future impacts of carbon pricing on demand and the consequent need for expansion or reinforcement of gas delivery infrastructure. While it is not the OEB's job to direct EGI to undertake initiatives to reduce carbon emissions for the sake of reducing carbon emissions, it is completely appropriate for the OEB to direct and

approve initiatives that may be prudent to minimize the costs of carbon incurred in the delivery of gas to, and the charges thereby included in rates payable by, EGI's customers.

26. It is further appropriate for the Board to consider the risk of future underutilization of proposed gas distribution infrastructure in a carbon constrained future and, as advocated below, to include in any NPA to baseline utility infrastructure comparison a value of flexibility and for hedging against the risk to the gas distribution system and its dependant customers of a carbon constrained future.
27. It is the OEB's mandate to include in utility rates the costs of prudent utility investments in support of the sale and delivery of natural gas in a reliable, cost effective, economically rational, energy efficient, and financially viable way. The OEB has no mandate, however, to direct or approve inclusion in utility rates the costs of investments made primarily to reduce carbon emissions *per se*, or create jobs, or lower health care costs. These are not costs which natural gas delivery rate payers should bear.⁶
28. One of the traditional roles of economic utility regulation, and a rationale for "ring fencing" the utility business (i.e. limiting the scope of regulated utility business initiatives to the utility function; in this case the sale and delivery of natural gas) is to preclude unfair competition by the utility, whose revenues are protected and whose risks are to a large extent borne by ratepayers, with competitors or would be competitors. Competition in the provision of energy services is the best way to protect the interests of energy consumers in respect of costs and risk allocation, and it is the role of the OEB in regulating EGI to protect energy services competition where it exists or is developing.
29. EGI acknowledges that its proposal for engagement in NPAs could include nascent technologies.⁷ It is important that any IRPA Framework expressly include measures to protect and foster competition in respect of such nascent technologies. EGI should be required to procure NPA solutions whenever there are competitive suppliers for those solutions, rather than engaging itself in the provision of those solutions.

⁶ Transcript Volume 4, pages 152-154.

⁷ AIC, paragraph 58.

NPA Assessment Process

30. IGUA generally supports the NPA assessment process laid out by EGI in its AIC. IGUA endorses in particular EGI's proposal to first identify a baseline infrastructure solution to meet forecast customer demands for gas delivery, and then to evaluate NPA alternatives against the net costs of such baseline infrastructure. The advisability of pursuing an NPA should be assessed expressly in comparison to natural gas delivery facilities alternatives.⁸
31. IGUA also generally supports the screening criteria proposed by EGI at paragraphs 76–78 of its AIC.

Cost Effectiveness Test

32. The objectives for NPAs should be to minimize the utility's costs of meeting its gas delivery service requirements. To the extent that an NPA is identified that the OEB determines is appropriate for EGI to deploy, and that NPA can be reliably expected to reduce EGI's future gas delivery service costs and rates, that NPA should be pursued.
33. To the extent that an NPA drives a higher cost than the baseline utility infrastructure which it is intended to avoid, it should not be approved. This is true even if its overall societal benefit is calculated to be superior to that of the baseline utility infrastructure solution.
34. As argued above, the objective of an IRPA Framework should not be to minimize overall energy costs for customers or to minimize overall societal costs of energy services (even if such costs and associated benefits could be derived with the necessary precision to ultimately validate that net costs would be minimized, which is not self-evident).
35. Several parties will argue in favour of using a "Total Resource Cost +" test or a "Societal Cost Test" to determine whether an NPA should be pursued in the alternative to identified baseline utility infrastructure. EGI opposes that proposal arguing that;
 - (a) these tests are used in Ontario to measure the cost-effectiveness of energy efficiency type programs, and have not been used to evaluate facility projects⁹; and

⁸ See in particular AIC paragraph 80.

⁹ AIC, paragraph 95.

- (b) these tests do not provide any indication of rate impacts or cross-subsidies.¹⁰
36. We agree with EGI in this respect. These tests compare the societal costs of alternatives for the purposes of identifying which alternative presents the lower net societal cost. As argued above, regulating total societal costs in the Ontario energy sector is not the OEB's job and should not be an objective of an IRP Framework.
37. Chris Neme of the Energy Futures Group commends the TRC+ test on the basis that this is the test already mandated by the OEB for evaluation of Demand Side Management (DSM) offerings, and it would, he posits, be irrational to use different tests to evaluate the same resource for different purposes. Mr. Neme's position is premised on a broad - i.e. societal - cost effectiveness analysis of NPAs as compared to baseline utility infrastructure.¹¹
38. As EGI has correctly noted¹², DSM and IRP have different purposes. DSM is aimed broadly at reducing overall demand, primarily to reduce customer energy costs and also (in the "+" part of the "TRC+" test) to address environmental and other social externalities consequent on natural gas consumption. In contrast, an IRP Framework should be aimed at reducing peak demand in specific areas with identified delivery infrastructure constraints, in order to reduce or avoid specific utility infrastructure costs. This fundamental difference in the appropriate purpose of an IRP Framework as compared to Ontario's existing DSM framework commends a different cost effectiveness test for approval of NPAs than the test used to approve DSM initiatives.
39. The question in respect of an NPA should be are utility costs and thus rates going to go up or down if the NPA is deployed in place of the baseline utility infrastructure. This commends a different, narrower test than the SCT use for DSM. It appears that on this basis, Mr. Neme actually agrees.¹³
40. EGI has proposed a Discounted Cash Flow, or "DCF+" test to evaluate NPAs as compared to baseline utility infrastructure investments, a test essentially mirroring the three-stage

¹⁰ AIC, paragraph 96.

¹¹ Transcript Volume 4, page 143.

¹² AIC, paragraph 123 and Transcript Volume 3, page 87, lines 6-10.

¹³ Transcript Volume 4, page 143, lines 7-11; page 145, lines 10-14; page 148, lines 16-19; and page 149, lines 2-9.

test established by the OEB some time ago in the EBO-134 proceeding and since used for evaluating the efficacy of natural gas transmission system expansion.

41. As noted by EGI, the proposed three stage “DCF+” test evaluates the net present value of;
 - (a) the incremental utility benefits and costs of a contemplated investment (the baseline utility infrastructure or the NPA);
 - (b) the incremental benefits and costs to customers arising from the contemplated investment; and
 - (c) the incremental societal benefits and costs from the contemplated investment.
42. EGI indicates that¹⁴ (our emphasis);

The NPVs from each Stage will be summed together. Enbridge Gas will compare the overall results from the DCF+ analysis for both the IRP Plan and the facilities alternative, and use that information to determine which alternative is optimal.

Ultimately, if an IRP Plan can meet the demands of the future system capacity, is more cost-effective from a gas ratepayer and overall perspective than facility alternatives and is consistent with public policy, then Enbridge Gas will include the IRPA in the [Asset Management Plan] as a future potential project.

43. This description does not actually indicate how EGI would determine which alternative – the baseline utility infrastructure or the NPA – is “optimal”. That is not EGI’s fault, that is the nature of what is essentially the EBO-134 test.
44. The EBO-134 test was developed and is used to determine whether a proposed gas transmission investment is warranted. If the proposed transmission investment passes stage 1 of the test, then it is cost effective on its own (i.e. it can be built without increasing gas delivery rates) and the inquiry ends there. If the proposed transmission investment does not pass stage 1 of the test, the OEB considers whether, even if the project would increase rates, it is warranted in a broader context of the customer and societal costs and benefits of enhancing Ontario natural gas transmission infrastructure. As the transmission system serves all Ontario natural gas delivery customers, cross-subsidy from existing

¹⁴ AIC, paragraphs 89-90.

customers to new customers (or, more accurately, by existing load of new, incremental load) is not considered an issue in respect of gas transmission investments.

45. Instructively, the existing (EBO-188) test for distribution system investments entails only Stage 1 of the EBO-134 test. The purpose of the EBO-188 test is to ensure that distribution system investments to serve new customers (or, more accurately, new incremental load) are not subsidized by existing customers. This is done by ensuring that the cost of the distribution system investment does not increase rates for all customers, but rather that its costs can be recovered within existing rates, taking into account the incremental distribution load to be served.
46. None of this has anything to do with comparing the cost of an investment in baseline utility infrastructure with an NPA. That comparison admits of a much more direct net present value analysis of the net costs to the utility of the two alternative investments. The higher cost alternative will increase costs, and rates, more than the lower cost alternative. If the NPA is the lower cost alternative, and it is otherwise appropriate for EGI to pursue it, then it should be pursued. Otherwise, it should not be pursued.
47. As already noted, however, IGUA does see a value to ratepayers of investments which mitigate the risk of underutilization of proposed gas distribution infrastructure in a carbon constrained future. There is merit to including in an NPA to baseline utility infrastructure comparison a valuation of the flexibility and the future underutilization risk hedging provided for by an NPA, which is of benefit to both the utility and its dependant customers. There has been little discussion of how to properly reflect this value, but IGUA believes that it should be reflected and a mechanism to do so appropriately should be developed and embedded in any directed IRP Framework cost effectiveness analysis.
48. Subject to development of such a future risk hedging valuation mechanism, IGUA recommends that the OEB indicate in its IRP Framework that that NPAs should be compared to baseline utility infrastructure that is otherwise determined to be economically justified based on a direct comparison of the net NPV of the baseline utility infrastructure to the NPV of the NPA.

49. If the OEB concludes that a test such as the “DCF+” test proposed by EGI should be used to evaluate NPAs, IGUA strongly endorses EGI’s view that the results of each stage of that test should be separately presented. In this way a view of NPVs, from the utility cost (and rate) perspective, of the NPA and the baseline utility infrastructure will be presented and can be compared.

Stakeholder & Regulatory Review

50. IGUA is of the view that EGI should have discretion in managing its stakeholding, and does not object to the IRP Framework stakeholding process proposed by EGI as set out in its AIC.
51. IGUA endorses EGI’s proposal to establish a “technical working group” as part of its stakeholding process, in particular given the nascency everywhere of a formalized gas IRP Framework. In this context more detailed consultation will improve both planning outcomes and regulatory efficiency.
52. IGUA also agrees that stakeholders should not have a “vote” in respect of EGI’s proposed NPAs¹⁵. That is what the regulatory process is for.
53. EGI’s proposed IRP Framework would essentially embed consideration of NPAs within a revised asset management framework and a revised resulting asset management plan (AMP). If ratepayers are to bear risks of IRPA Plans as EGI proposes¹⁶, then IRP Framework implementation as part of asset management planning should be subject to the same level of regulatory review as EGI’s AMPs.
54. Absent such annual regulatory reviews, the risk that EGI should have to bear in respect of its implementation of an IRP Framework is not denial of a LTC (which penalizes customers, not EGI), but rather a direction from the OEB to construct the required facility but recover less than its full cost of doing so. EGI should indicate in its Reply Argument if this is a risk that EGI is prepared to bear. We assume that EGI is not prepared to bear that

¹⁵ AIC, paragraph 11.

¹⁶ AIC, paragraph 49.

risk, ***but we invite EGI to correct us through its Reply Argument if this assumption is wrong.***

55. EGI proposes to report annually on its IRP Framework implementation either as part of its annual AMP filing within its annual rates application or as part of its annual non-commodity deferral account clearance and earnings sharing mechanism (ESM & VA) application.¹⁷ However, it is unclear to IGUA what scope of inquiry and review EGI is proposing in respect of the annual status of its IRP Framework implementation.
56. IGUA agrees with EGI that detailed review of its NPA decisions at each decision gate for each facility/NPA solution comparison is not appropriate.¹⁸ On the other hand, IGUA strongly disagrees that no regulatory inquiry or OEB direction is required prior to a leave to construct (LTC) or IRPA approval application.
57. Waiting until an LTC application is too late. As has been the case in the past, this would put the OEB Hearing Panel in a very difficult position if it is dissatisfied with EGI's lack of diligence in, or if it disagrees with EGI's determination regarding, investigation of NPAs.
58. EGI's implementation of, and compliance with, an IRP Framework should be subject to regulatory review annually. Whether that is in the annual rates proceeding when the AMP is filed or in the annual ESM & VA clearance application when there is a balance in the proposed IRP Framework deferral account which EGI seeks to dispose of is a matter that the Board can determine at the time, in the interests of ongoing regulatory efficiency. However, an annual review should be required.
59. IGUA has endorsed EGI discretion and self-determination in its approach to stakeholdering. Formal annual review of EGI's IRP Framework implementation will provide discipline to ensure the continued robustness of such stakeholdering (i.e. in management by EGI of its regulatory risk). EGI's proposed stakeholdering summaries¹⁹ should be filed annually as part of its AMP and be subject to annual review.
60. EGI seeks the freedom to pursue NPAs if they are (or perhaps if they are in aggregate, it is not entirely clear) forecast to cost less than the threshold for an LTC approval, which is

¹⁷ AIC, paragraph 136.

¹⁸ AIC, paragraph 42.

¹⁹ AIC, paragraph 107.

soon likely to be increased to \$10 million per pipeline project. IGUA submits that at this time, given the nascency of gas IRP both in and beyond Ontario, the IRP Framework should specify pre-approval for any NPA expenditure which EGI seeks to include in rates. This is consistent with EGI's expectations that *"in the immediate term [EGI] expects to seek OEB approval of every IRP Plan"*.²⁰

Cost Recovery

61. EGI proposes to be permitted to capitalize the costs of pursuing an approved NPA, whether those costs entail a capital investment or an operating expenditure to EGI, to recover that capitalized cost through amortization of the resulting "regulatory asset" over the life of the underlying NPA, and to earn an annual return on the unamortized balance of the capitalized costs.
62. Under EGI's proposal, shareholder profits are earned even if no shareholder capital is invested. This proposed cost treatment is a fundamental departure from the current longstanding utility economic regulatory construct.
63. IGUA does agree that such treatment would remove a structural disincentive for EGI to pursue least cost options for provision of natural gas delivery services, or their equivalent as appropriate, even if such delivery entails operating costs, which are historically treated on a flow-through basis, rather than capital investment. On this basis, and in pursuit of least cost utility services, IGUA endorses this proposal.
64. EGI also seeks approval of an IRPA Deferral Account (IRPADA) to record the revenue requirement impacts of NPA costs incurred. EGI has described the breadth of costs which it proposes to include in the IRPADA.²¹ IGUA supports the creation of an IRPADA, but, as with other deferral accounts, such account should be granted without guarantee or pre-determination in any way regarding the nature or quantum of costs properly recovered in rates. It is not clear that all of the various categories of costs described by EGI in its AIC are truly incremental to approved operating and capital budgets.

²⁰ AIC, footnote 82 and paragraph 129.

²¹ AIC, paragraphs 141-143.

65. While not directly advocated by EGI (though not opposed either), the suggestion has been raised that EGI should be provided with an incentive over and above capitalization and addition to rate base of the costs of NPAs which it is permitted to pursue. IGUA opposes such an incremental incentive. There are benefits to EGI inherent in an IRP Framework such as that under consideration in this proceeding, such that no further incentive for EGI to pursue NPAs is required or appropriate.
66. EGI proposes to be permitted to diversify its regulated business through deployment of, and earning of a return on, NPAs. At ratepayer expense, EGI would be “future proofing” its business,²² which many believe is under significant threat of underutilization and obsolescence in a carbon constrained future.
67. The risk to EGI of future underutilization is real, and the value of steps taken now to mitigate that risk is substantial.
68. EGI acknowledges this risk in its advice that it will be presenting some scenario planning around what the future might look like and around energy transition as part of its upcoming rebasing application.²³
69. Instructive comment on the nature and reality of such a risk, and the potential implications of the realization of such a risk on the regulated utility, was provided by the (then) National Energy Board in its March, 2013 decision on (then) TransCanada Pipeline Limited (TCPL) tolls and services restructuring proposal application [RH-003-2011]. IGUA commends the comments of the NEB, as follows²⁴:

TransCanada must not look to regulation to shield the Mainline from its fundamental business risk. It must address the underlying competitive reality in which the Mainline operates.

...

In our view, a regulatory rule that compels the Board to set tolls that allow the return of and on investment, irrespective of whether assets associated with that investment are used and useful for providing service, erodes management's responsibility for its investment decisions and management's responsibility to keep depreciation rates current. This situation, in our view, does not lend itself to

²² Transcript Volume 3, page 99, lines 3-11 and page 100, lines 11-24.

²³ Transcript Volume 2, page 116 and AIC footnote 83.

²⁴ NEB RH-003-2011 Reasons for Decision, excerpted from pages 43-46.

creating efficient energy infrastructure and markets. It also provides no incentive for a pipeline company to find better or higher uses for its assets.

...

In our view, there is a limit to the level of costs related to underutilization resulting from competition that Mainline shippers can absorb for tolls to remain just and reasonable. It is not just and reasonable for all of the costs of, and the risk associated with, competition to be borne by shippers on the system who do not have access to competing sources of supply for their energy needs. Tolls cannot continue to increase each year in response to throughput decline.

...

TransCanada has been compensated for the risk that its best estimate of depreciation rates may end up being different than forecast - which is what a cost disallowance, upon materialization of fundamental risk, could constitute.

70. These comments indicate to us that EGI's future risk is real. EGI proposes to pursue NPAs at ratepayer risk if such NPAs do not pan out, and the infrastructure sought to be avoided has to be built after all. Thus EGI proposes to be able to pursue "future proofing" of its business not only at ratepayer cost, but at ratepayer risk.
71. IGUA has endorsed EGI's proposal to be able to treat NPA costs as a "regulatory asset" and to earn return of and on that asset as if shareholder capital had been invested. IGUA agrees with the rationale for such treatments as advanced by EGI²⁵. We note, however, that shareholder capital will not necessarily actually be invested, so the cost recognition and cost recovery construct proposed is not a simple matter of conventional "*return of and on capital*". It is a construct which mimics a regulated (i.e. safe) return on investment, while likely freeing up shareholder capital that would otherwise have been invested in the avoided utility baseline infrastructure, and thus having that avoided capital investment available to earn a return on elsewhere, including potentially within the utility on other utility assets. This construct presents an additional benefit to the shareholder, potentially extending the reach of its available equity capital.
72. For all of these reasons, IGUA believes that an IRP Framework with cost recovery for permitted NPAs as proposed by EGI appropriately addresses structural disincentives for EGI to pursue NPAs, and the ability to pursue NPAs with the costs recovered from, and

²⁵ AIC, paragraph 115.

risks allocated to, ratepayers provides sufficient benefit to EGI and its shareholder such that no incremental incentives are required or appropriate.

73. IGUA also agrees with EGI that the recovery of such NPA costs should be allocated in the manner that the avoided capital costs would have been allocated. The benefit of the NPA to ratepayers is in avoidance of the baseline utility infrastructure at lower cost than would have otherwise been the case.

AMI “Acknowledgement”

74. EGI is seeking from the OEB:

... “acknowledgement that AMI [Automated Metering Infrastructure] is an enabler of IRP and IRPAs such as DR. This indication of support will give Enbridge Gas confidence to consider and potentially request approval for targeting key geographic areas for AMI deployment where future constraints are identified and where AMI might be useful in evaluating IRPA’s effectiveness.”²⁶

75. EGI’s AMI “acknowledgement” request is premature. There is no evidence on the record regarding the cost or benefits of AMI, either generically or in the context of a specific NPA or AMI deployment proposal.
76. Rather EGI’s discussion of AMI in this proceeding seems to be a warning to the effect that absent AMI, NPA benefits are less certain and NPAs need to be overbuilt or over-procured in order to ensure sufficient demand reduction to confidently defer or displace the need to invest in the comparator baseline utility infrastructure.
77. The OEB should decline to provide EGI with the requested acknowledgement at this time. If EGI is of the view that the benefits of a particular AMI deployment proposal outweigh its costs then it can advance such proposal for proper consideration with evidence and within context. Absent such a proposal, EGI’s actions in the interim should be judged on their merits, and not based on a counterfactual of what would have happened had AMI been deployed.

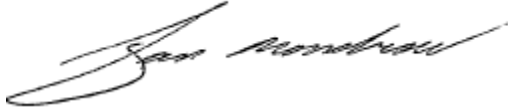
²⁶ AIC, paragraph 159.

Conclusion

78. IGUA supports the objective of facilitating the deployment by EGI of NPAs to conventional gas delivery infrastructure where to do so is more cost effective than such investment in more conventional infrastructure.
79. “Cost effective” in the context of NPAs should be determined to mean lower cost to the utility and thus for inclusion in regulated utility rates than the baseline facility infrastructure otherwise determined to be economically justified, but subject to development of an appropriate mechanism to value the future risk hedging provided by an NPA which avoids deployment of long-lived utility infrastructure.
80. EGI’s implementation of, and compliance with, an IRP Framework should be subject to regulatory review annually, and at this time, given the nascency of gas IRP both in and beyond Ontario, the IRP Framework should specify pre-approval for any NPA expenditure which EGI seeks to include in rates, consistent with EGI’s expectations.
81. In order to remove structural disincentives to what would otherwise be non-ratebase expenditures on NPAs, EGI should be permitted to capitalize the costs of pursuing an approved NPA, whether those costs entail a capital investment or an operating expenditure to EGI, to recover that capitalized cost through amortization of the resulting “regulatory asset” over the life of the underlying NPA, and to earn an annual return on the unamortized balance of the capitalized costs. However, no further incentive for EGI to pursue NPAs is necessary or appropriate, given the benefits to EGI of diversification and future risk hedging inherent in the proposed IRP Framework.
82. Permitted recovery of NPA costs should be allocated in the manner that the avoided capital costs would have been allocated, since the benefit of the NPA to ratepayers is in avoidance of the baseline utility infrastructure at lower cost than would have otherwise been the case.

83. The OEB should decline to provide EGI with the requested AMI acknowledgement at this time, pending better and more context specific information on the costs and benefits to NPA development and deployment of investment in AMI.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



GOWLING WLG (CANADA) LLP, per:
Ian A. Mondrow
Counsel to IGUA

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