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November 18, 2021

VIA RESS AND EMAIL

Christine Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Christine Long:

Re: Enbridge Gas Inc. (Enbridge Gas)
Ontario Energy Board (OEB) File No.: EB-2021-0149
2020 Utility Earnings/Disposition of Deferral Variance Account Balances
Argument In Chief

In accordance with the OEB's Decision on Settlement and Procedural Order #2 dated October 21, 2021, the Argument In Chief of Enbridge Gas for this proceeding is enclosed with this letter.

If you have any questions, please contact the undersigned.

Sincerely,

Richard Wathy
Digitally signed by Richard Wathy
Date: 2021.11.18 13:43:31 -05'00'

Richard Wathy
Technical Manager, Regulatory Applications

c.c.: David Stevens, Aird and Berlis LLP
Intervenors (EB-2021-0149)

EB-2021-0149

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an order or orders clearing certain commodity and non-commodity related deferral or variance accounts

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ENBRIDGE GAS INC.

ARGUMENT IN CHIEF

UNSETTLED ISSUE – TAX VARIANCE DEFERRAL ACCOUNT

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A. INTRODUCTION

1. Enbridge Gas Inc. (Enbridge Gas, or the Company) filed an Application with the Ontario Energy Board (OEB) on June 4, 2021 in which it sought an Order for, among other things, approval of the disposition of amounts recorded in certain deferral and variance accounts (DVAs).

2. A Settlement Conference was held between Enbridge Gas and intervenors and the parties to the settlement conference reached a settlement with respect to all of the DVAs except for the Tax Variance Deferral Account (the TVDA).

3. A Settlement Proposal was filed with the OEB on October 4, 2021. It included the following comments in relation to the TVDA:

   … the purpose of the TVDA is to record 50% of the revenue requirement impact of any tax rate changes, versus the tax rates included in rates that affect Enbridge Gas. In accordance with the OEB's July 25, 2019 letter titled Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance, the TVDA also includes 100% of the revenue requirement impact of changes in Capital Cost Allowance (CCA) that are not reflected in base rates.

   As noted in the account description, the TVDA does not include the accelerated CCA impacts related to capital pass-through and incremental capital module projects, which have been reflected in the determination of variances recorded in deferral accounts associated with those respective projects. In addition, the 2020 TVDA balance also reflects the removal of accelerated CCA impacts of capital additions related to amalgamation/integration capital projects. The rationale for that removal is set out in prefiled evidence and interrogatory responses.

   Intervenors do not agree that accelerated CCA impacts related to amalgamation/integration capital projects should be removed from the TVDA.[1]

4. The OEB issued its Decision on Settlement Proposal (the Decision) on October 21, 2021. In the Decision, the OEB accepted the Settlement Proposal and found that a condensed hearing schedule was reasonable to hear the one unsettled item relating to the TVDA.[2] The OEB also noted that the Settlement Proposal did not reference Enbridge Gas's consolidated 2020 performance scorecard filed in this proceeding (the

[1] Settlement Proposal (Exhibit N1, Tab 1, Schedule 1), at pages 9-10.
[2] Decision on Settlement Proposal and Procedural Order No. 2 (Decision), October 21, 2021, at page 6.

2020 Scorecard), and agreed with OEB staff that parties should be permitted to file submissions related to the 2020 Scorecard that are relevant to the application and actionable by the OEB in this proceeding.[3]

5. The Decision set out a schedule for supplementary evidence, interrogatories, responses to interrogatories and argument on the unsettled item and the 2020 Scorecard.[4] In accordance with the schedule set out in the Decision, Enbridge Gas filed its Supplementary Evidence on October 28, 2021. The Company's responses to interrogatories on the Supplementary Evidence were filed on November 11, 2021.

6. This Argument in Chief sets out Enbridge Gas's position on the unsettled TVDA item. As explained more fully below, Enbridge Gas is spending on amalgamation and integration projects during its deferred rebasing term, and those costs are not recovered in rates. Instead, the Company is expected to fund these projects itself through cost savings or other means during the deferred rebasing term. Therefore, it is appropriate that all benefits during the deferred rebasing term, including the accelerated CCA benefit associated with such projects, also remain with Enbridge Gas. As a result, the CCA benefit amount associated with integration/amalgamation projects need not be included in the TVDA.

B. BACKGROUND

7. The purpose of the TVDA is to record 50% of the revenue requirement impact of any tax rate changes, versus the tax rates included in rates that affect Enbridge Gas. In accordance with the OEB's July 25, 2019 letter, Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance (July 2019 Accounting Direction)[5], the TVDA also records 100% of the revenue requirement impact of any changes in Capital Cost Allowance (CCA) that are not reflected in base rates. This includes impacts related to Bill C-97 CCA rule

[3] Decision, at page 7.
[4] Decision, at page 8.
[5] OEB letter, dated July 25, 2019, Re: Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance (July 2019 Accounting Direction).

changes (Accelerated CCA), which became effective November 21, 2018, as well as any future CCA changes instituted by relevant regulatory or taxation bodies.[6]

8. CCA is the portion of the capital cost of depreciable property that is deductible for tax purposes each year, with the CCA rate for each class of property prescribed in the income tax regulations.[7] Accelerated CCA results in near-term savings because income tax deductions are available earlier. The Accelerated CCA resulting from Bill C-97 has two components that constitute the tax benefits available to a company.[8]

9. Enbridge Gas Distribution and Union Gas amalgamated on January 1, 2019. This transaction was approved by the OEB in the August 2018 MAADs Decision.[9] Among other things, the OEB approved a five year deferred rebasing period.[10]

10. In the Enbridge Gas 2019 Deferral Account Clearance Proceeding, there was an unsettled issue about how amounts recorded in the TVDA related to Accelerated CCA should be treated. In the Decision and Order in that case (the 2019 TVDA Decision), the OEB decided that during the Company's deferred rebasing term (2019-2023), 100% of the balances in the TVDA related to Accelerated CCA should be credited to ratepayers.[11] The OEB found that:

> *During Enbridge Gas's IR term, current rates do not reflect the accelerated CCA tax deductions and the lower taxes paid by Enbridge Gas starting in the 2018 fiscal year. Current rates are set to recover tax calculations based on the prior CCA deduction schedule. The TVDA was created for the express purpose of capturing these types of tax changes. If 2021 was a rebasing year, the accelerated CCA impacts would flow through to reduce rates. There would be no 50/50 sharing. As indicated in the 2008 Decision, ratepayers should be no worse off in an IR term than in a cost of service year when rates are rebased.*
>
> …

[6] Supplementary Evidence (Exhibit H), at para. 1.
[7] See EB-2020-0134 Decision and Order, May 6, 2021 (TVDA Decision), at page 5. The discussion and findings in the TVDA Decision provide more context and explanation about CCA, Bill C-97 and the TVDA.
[8] The first component is a 50% increase in the available CCA deduction in respect of assets acquired after November 20, 2018 that become available for use before 2024. The second component is a suspension of the existing CCA half-year rule in the first year in respect of assets acquired after November 20, 2018 that become available for use before 2028. See TVDA Decision, at page 6.
[9] EB-2017-0306/0307 Decision and Order, August 30, 2018 (MAADs Decision).
[10] MAADs Decision, at page 22.
[11] TVDA Decision, at pages 14-15.

> *The OEB finds that refunding 100% of the 2019 TVDA balance to ratepayers is consistent with the "benefits follow costs" principle and ensures that ratepayers are no worse off under an IR plan than under a Cost of Service.*[12]

11. The findings in the 2019 TVDA Decision are premised on the determination that Enbridge Gas rates during the deferred rebasing (incentive regulation/IR) term do not reflect accelerated CCA tax deductions as would be the case in a cost of service year, and therefore these benefits should flow to ratepayers.

12. Under Enbridge Gas's approved rate-setting mechanism for the deferred rebasing term, capital projects related to the amalgamation/integration are not included in the determination of annual ICM eligible amounts. Specifically, amalgamation/integration related capital projects are excluded from the annual total in-service capital forecasts, which are compared to the annual ICM threshold values to determine maximum ICM eligible capital amounts, as part of the Company's annual rate proceedings over the deferred rebasing term. As such, amalgamation/integration related capital projects are not assumed to be recovered through base rates, cannot receive funding through ICM, nor can they cause other capital to be recovered through ICM. Enbridge Gas is expected to fund such projects during the deferred rebasing period through synergies/savings.[13]

13. The 2019 TVDA Decision did not consider the question of how to treat Accelerated CCA impacts from projects/expenditures that are not funded through rates. Enbridge Gas did not raise that issue in the 2019 deferrals clearance proceeding, as the focus of that proceeding was on the Company's proposal to use the TVDA balance to fund economic development and IRP projects. When the OEB determined that 100% of the accelerated CCA benefit was to be returned to ratepayers, and specifically noted "…that refunding 100% of the 2019 TVDA balance to ratepayers is consistent with the "benefits follow costs" principle and ensures that ratepayers are no worse off under an IR plan than under a Cost of Service", it caused the Company to re-evaluate the appropriate treatment of accelerated CCA in relation to its amalgamation/integration

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[12] TVDA Decision, at page 15.
[13] Supplementary Evidence, at para. 4.

related capital spending.[14] That is what led to the position taken by Enbridge Gas in relation to the 2020 TVDA.

C. THE 2020 TVDA BALANCE

14. The 2020 TVDA balance of $16.9 million (credit to ratepayers) is solely comprised of Bill C-97 Accelerated CCA impacts.

15. The $16.9 million balance does not include Accelerated CCA impacts attributable to 2020 capital additions related to amalgamation/integration capital projects.[15] The 2020 Accelerated CCA revenue requirement impact associated with 2020 amalgamation/ integration related capital additions, which is not included in the 2020 TVDA balance, was $3.7 million.[16]

16. Enbridge Gas does not believe that there is any dispute that the recorded balance in the 2020 TVDA should be credited to ratepayers, nor is there any dispute about the amount of the recorded balance ($16.9 million).

17. The unsettled item is whether the $3.7 million Accelerated CCA revenue requirement impact associated with 2020 amalgamation/integration related capital additions should be included in the TVDA (and credited to ratepayers).

D. ENBRIDGE GAS'S APPROACH TO THE 2020 TVDA IS SUPPORTED BY THE BENEFITS FOLLOWS COSTS PRINCIPLE

18. Enbridge Gas's position is that no aspect of the revenue requirement related to amalgamation/integration project capital additions is currently recovered in rates, and as a result, there is no associated Accelerated CCA impact to be captured in the 2020 TVDA.

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[14] Exhibit I.STAFF.29(b).
[15] Supplementary Evidence, at para. 3. The calculation supporting the balance is provided at Exhibit C, Tab 1, Schedule 3.
[16] Supplementary Evidence, at para. 7. Details of the 2020 Accelerated CCA revenue requirement impact associated with 2020 amalgamation/integration related capital additions were originally set out at Exhibit I.STAFF.7.

19. Enbridge Gas notes, though, that the Accelerated CCA impact related to amalgamation/integration projects is reflected in the determination of actual utility results subject to earnings sharing, consistent with the inclusion of the associated capital costs and benefits (synergies/savings) related to those projects. As such, in years when the Company is in an earnings sharing position, ratepayers will share in the benefit of Accelerated CCA related to amalgamation/integration projects.[17]

20. The Enbridge Gas position recognizes that the Company is expected to fund integration and amalgamation costs and activities during the deferred rebasing term following amalgamation. At the same time, the Company is also permitted to retain savings and benefits achieved, subject to earnings sharing. At rebasing, the Company will include the net book value of costs incurred for integration/amalgamation projects during the deferred rebasing period into rate base, and ratepayers will benefit from efficiencies and savings achieved through integration.[18] This is the ordinary approach that the Company would follow during a deferred rebasing term, if regular CCA was in place and accelerated CCA was never enacted.

21. The existence of Accelerated CCA (versus regular CCA) should not change the approach or paradigm described above. The Company's amalgamation/integration project costs were never going to be part of base rates during the deferred rebasing term. Therefore, if Accelerated CCA had been in place earlier (i.e. prior to when the Company's base rates were established) there would have been no rate impact (savings) for ratepayers resulting from the impacts of Accelerated CCA on amalgamation/integration project costs. That being the case, ratepayers are not somehow "losing out" on benefits relevant to amalgamation/integration project costs during the deferred rebasing term because of the fact that the Accelerated CCA only became available after base rates were set. Using the OEB's words from the 2019

[17] Supplementary Evidence, at para. 6.
[18] See Exhibit I.STAFF.28 and Exhibit I.Staff.7(d). The undepreciated costs for 2020 integration/amalgamation projects that Enbridge Gas expects to include as part of the 2024 opening rate base are set out at Exhibit I.SEC.2(b).

TVDA Decision[19], under Enbridge Gas's proposal ratepayers are no worse off under an IR plan (deferred rebasing) than under a cost of service. Just as the Company is expected to fund these amalgamation/integration project costs itself, it should also be permitted to retain associated Accelerated CCA benefits.

22. Given that the amalgamation/integration capital is not recovered in rates, the Company does not believe it is appropriate to credit ratepayers for 100% of the accelerated CCA benefit associated with these projects through the TVDA. Doing so effectively transfers one discrete component of the revenue requirement associated with these projects, or a benefit of these projects, to ratepayers, without recognition of the other associated costs/revenue requirement components. In addition, while accelerated CCA on these projects provides a favourable tax timing difference during the deferred rebasing term, as compared to regular CCA, the tracking of this benefit in the TVDA would not be consistent with other timing variances associated with these projects, that would not be captured in a deferral account. For instance, for many of the amalgamation/integration capital projects, the capital will be incurred before savings are realized (i.e. there will be a lag, or it will take time for savings to be generated).[20]

23. The Company's position that the revenue requirement impacts of Accelerated CCA relevant to amalgamation/integration projects should be excluded from the TVDA is consistent with existing OEB guidance, as explained below.

    i. The OEB policy related to mergers and amalgamations (MAADs) contemplates that the deferred rebasing period provides an opportunity for distributors to offset transition and integration costs of a MAADs transaction with achieved savings and efficiencies over the deferred rebasing term.[21] Effectively MAADs transaction costs (or amalgamation/integration costs) and associated savings are excluded

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[19] TVDA Decision, page 15, where the OEB stated: "The OEB finds that refunding 100% of the 2019 TVDA balance to ratepayers is consistent with the "benefits follow costs" principle and ensures that ratepayers are no worse off under an IR plan than under a Cost of Service."

[20] Supplementary Evidence, at para. 8. In the MAADs proceeding, Enbridge Gas took the position that a ten year deferred rebasing period was required for the Company to undertake a large and complex integration and to deliver significant integration savings and synergies to ratepayers on rebasing: see MAADs Decision, at page 20.

[21] Supplementary Evidence, at para. 5. See OEB Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, at pages 11-12.

from ratemaking over the deferred rebasing term. This is confirmed for Enbridge Gas in its MAADs Decision: "*The OEB approves a deferred rebasing period of five years. The next rebasing application will therefore be expected for 2024 rates. The OEB finds that five years provides a reasonable opportunity for the applicants to recover their transition costs*."[22]

ii. The OEB's July 2019 Accounting Direction specifically references recording tax rate rule change impacts (inclusive of Accelerated CCA) relevant to the tax amount that underpins rates into the TVDA.[23] The theory is that where such impacts would have been included in rates in a cost of service proceeding, then it is appropriate to record and refund these impacts in the IR years between cost of service determinations. That theory does not apply in the current scenario, where Enbridge Gas would never have been permitted to include the impacts of amalgamation/ integration projects in rates during the initial five year term following amalgamation.

iii. The Accounting Order for the TVDA articulates that its purpose is to record the revenue requirement impact of any CCA changes as compared to the CCA rates/rules included in rates.[24] Implicit within that description is that CCA has to be applied, or is relative to, capital that is recovered through rates. That is not the case for the amalgamation/integration project costs that have been excluded from the 2020 TVDA.

iv. The 2019 TVDA Decision expressly premises the required 100% recovery of the TVDA to ratepayers on the finding that the account recovers Accelerated CCA impacts that would have been reflected in rates had they been known/in place at the time that cost of service rates were set.[25] That is not a relevant consideration for the impacts of the amalgamation/integration project costs that have been excluded from the 2020 TVDA, because Enbridge Gas does not recover those costs in rates during the deferred rebasing term.

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[22] MAADs Decision, at page 22. As noted above, Enbridge Gas's position in the MAADs position was that it required a ten year deferred rebasing term to recover all amalgamation/integration costs.

[23] See July 2019 Accounting Guidance at page 1: "Under the Accounting Procedures Handbook, electricity distributors and transmitters are to record the impact of any differences that result from a legislative or regulatory change to the tax rates or rules assumed in the OEB Tax Model that is used to determine the tax amount that underpins rates. The impact of any differences that are not reflected in rates (due to such factors as timing of known changes) are to be recorded in Account 1592 - PILs and Tax Variances. Natural gas utilities and OPG have similar accounts."

[24] Supplementary Evidence, at para. 2. The Accounting Order for the TVDA can be found at Exhibit I.LPMA.10, Attachment 1.

[25] See the passage from the 2019 TVDA Decision reproduced at para. 10 above (reproduced from page 15 of the TVDA Decision).

E. 2020 SCORECARD

24. As part of its evidence, Enbridge Gas filed the 2020 results for the OEB-approved Scorecard, which is intended to measure and monitor performance over the deferred rebasing period.[26] This is the second presentation of the scorecard for the amalgamated utility. Enbridge Gas does not request any relief in relation to the 2020 Scorecard.

25. Enbridge Gas met or exceeded almost all of the metrics in the 2020 Scorecard. Explanations are provided for the two items where the Company narrowly missed the target metrics.[27] Only four interrogatories were asked about the scorecard results, and Enbridge Gas provided full answers to each of these.[28]

26. Enbridge Gas is not aware that there are any in-scope issues related to the 2020 Scorecard, but will respond to any submissions received on this topic.

F. RELIEF REQUESTED

27. Enbridge Gas respectfully requests the following relief in relation to the outstanding items in this proceeding:

    i. Approval of the as-filed balance in the 2020 TVDA, to be cleared in conjunction with the April 1, 2022 QRAM application, along with the other Deferral and Variance Accounts approved in Settlement Proposal.

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David Stevens, Aird & Berlis LLP
Counsel to Enbridge Gas
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[26] See Exhibit G, Tab 1, Schedule 1.
[27] See Exhibit G, Tab 1.
[28] See Exhibit I.STAFF.25; I.STAFF.26; I.EP.11;. and I.VECC.8.