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November 29, 2021
Our File: EB20210149

Attn: Christine Long, Registrar

Dear Ms. Long:

Re: EB-2021-0149 – Enbridge 2020 ESM/DVA – SEC Submission on Unsettled Issue

We are counsel to the School Energy Coalition ("SEC"). Pursuant to the *Decision on Settlement Proposal Procedural Order No. 2*, these are SEC's submissions on the unsettled issue, the Enbridge Gas Inc. ("Enbridge") proposal to exclude 100% of the accelerated CCA impacts related to 2020 amalgamation/integration capital projects from the Tax Variance Deferral Account ("TVDA").

SEC agrees with Enbridge that it is entitled to 100% of the impact of the accelerated CCA for these capital projects as they are not funded by ratepayers.

Where SEC departs from Enbridge is that, not only are the costs for these 2020 amalgamation/integration projects not funded by ratepayers during the deferred rebasing period, they not to be funded from ratepayers ever, including beginning at rebasing in 2024.

Background

In the OEB's *Decision and Order* in the 2019 Deferral and Variance Account application ("2019 TVDA Decision"), the OEB determined that, until rebasing, Enbridge is required to credit 100% of the balances into the TVDA related to impacts of accelerated CCA changes made to the *Income Tax Act* and deducted by the company. These accelerated CCA rules allow taxpayers, in this case Enbridge, the ability to claim additional CCA deductions in the first year the underlying capital asset is put in-service.[1] Since the total amount to be deducted over the life of the asset does not change, "a larger CCA deduction in the first-year results in smaller CCA deductions in future years."[2]

[1] *Decision and Order* (EB-2020-0134), May 6, 2021, p.6
[2] *Decision and Order* (EB-2020-0134), May 6, 2021, p.6

The OEB determined that Enbridge must refund 100% of the 2019 TVDA balance to ratepayers, as it "is consistent with the "benefits follow costs" principle and ensures that ratepayers are no worse off."[3]

In this application, Enbridge proposes to exclude from the calculation of the TVDA balance approximately $3.7M related to the impact of the company taking accelerated CCA on certain amalgamation and integration capital projects brought in-service in 2020.[4]

Enbridge has excluded these capital projects from the calculation of the TVDA balance on the basis that, until Enbridge rebases, ratepayers are not paying the capital costs for these projects. Consistent with the OEB's policy related to MAADs transactions[5], and the MAADs approval decision[6], capital spending on amalgamation/integration projects is not part of the capital budget for ratemaking purposes. For example, in Enbridge's 2019 ICM Application (EB-2019-0194), the Board ordered Enbridge to remove amalgamation/integration capital projects from the capital budget used to determine the ICM eligible amounts.[7]

Customers Do Not Get The Benefit of Accelerated CCA Since Merger Related Costs Are Never Recoverable From Ratepayers

SEC agrees with Enbridge that since ratepayers are not paying for these amalgamation/integration capital projects, they should not receive any amounts related to the company taking advantage of the accelerated CCA. To share those benefits with the ratepayers would result in ratepayers receiving a windfall benefit. It would be inconsistent with the Board's stated purpose in crediting customers the benefit of accelerated CCA, i.e. customers should be held whole because there will be less CCA in the future to deduct, and customers will pay higher taxes. That does not apply here, because customers do not have any CCA on capital projects that never enter rate base.

The problem is that Enbridge takes the position that customers will pay for these capital projects beginning at rebasing, and that Enbridge only is expected to fund these costs during the deferred basing term.[8] That is, in 2024, Enbridge will seek to add to rate base the remaining undepreciated capital costs related to these 2020 amalgamation/integration projects[9], which it forecasts to be $12.8M.[10]

SEC submits, that Enbridge cannot seek recovery of any amalgamation, integration, or any other merger related costs, capital or otherwise, at any time. That includes not just during deferred rebasing, but also after.

The OEB MAADs Handbook is clear that "[i] Incremental transaction and integration costs are not generally recoverable through rates" [emphasis added].[11] In return, the OEB allows distributors to

[3] *Decision and Order* (EB-2020-0134), May 6, 2021, p.15;Supplementary Evidence, para.7
[4] OEB Staff-7a
[5] *Handbook to Electricity Distributor and Transmitter Consolidations,* January 19, 2016,, p.8-9
[6] *Decision and Order* (EB-2017-0306/307), August 30, 2018, p.22
[7] See the response to Interrogatory Response SEC-1, p.2
[8] OEB Staff-28a; Argument-in-Chief, para. 20
[9] OEB Staff-28a
[10] SEC-2b
[11] *Handbook to Electricity Distributor and Transmitter Consolidations,* January 19, 2016, p.8

defer rebasing "to enable distributors to fully realize anticipated efficiency gains from the transaction and retain achieved savings for a period of time to help offset the costs of the transaction."[12]

In the OEB's *Decision and Order* in EB-2017-0306/0307 approving the merger between Enbridge Gas Distribution and Union Gas Ltd. ("Enbridge MAADs Decision"), the Board approved a deferred rebasing period for the new combined Enbridge of five years, on the basis that it "provides a reasonable opportunity for the applicants to recover their transition costs".[13] In fact, the evidence before the OEB panel in the proceeding was that, by 2021, the savings from the merger would already exceed any additional costs.[14]

The MAADs Handbook and the Enbridge's MAADs Decision do not provide any limit on the exclusion of merger related costs from recovery. They are, by their terms, absolute. To exclude only part of the costs from recovery would defeat the purpose of the deferred rebasing period, which is an opportunity for the consolidated utility to recover these types of costs.

Enbridge's evidence in its MAADs proceeding to support its proposed deferred rebasing period was based on the time it required to recover the total integration capital costs – not just the revenue requirement during that period.[15] By its own admission, the capital projects at issue are amalgamation/integration related, and that is why they have been excluded from the calculation of the annual capital budgets used for the purpose of determining the appropriate ICM eligible capital recovery.[16]

The Enbridge Proposal for Future Tax Costs is Not Appropriate

SEC notes that, even if the Enbridge plan to start recovering transaction costs after the deferred rebasing plan were allowed, their proposal to credit ratepayers for higher taxes due to reduced CCA would be inappropriate in any case as it retains the entire value of the accelerated CCA. Enbridge admits this by noting that the revenue requirement in 2024 will include "higher taxes payable (as compared to had accelerated CCA not been taken)".[17] Enbridge's proposal is that 100% of the value of the timing difference would go to the company, even though the ratepayers would still be paying much of the capital cost beginning in 2024. The way to correct this is to credit the TVDA with the future increased taxes, dollar for dollar, today. Based on the information provided in response to SEC-2a, this would result in a credit of $327,699.[18]

Of course, that would only apply if Enbridge were entitled to recover integration costs after its next rebasing. As noted above, that would be inconsistent with both the intent and express words of the MAADs Decision and the OEB's MAADs policy.

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[12] *Handbook to Electricity Distributor and Transmitter Consolidations,* January 19, 2016, p.9. In this context, the "costs of the transaction" include the costs to integrate the amalgamation entities and their operations.

[13] *Decision and Order* (EB-2017-0306/307), August 30, 2018, p.22

[14] *Decision and Order* (EB-2017-0306/307), August 30, 2018, p.20

[15] EB-2017-0306/307, Reply Argument, para. 75-77; EB-2017-0306/307, Exhibit B-1, p.26; EB-2017-0306/307, Undertaking J2.4;

[16] SEC-1

[17] OEB Staff-7a

[18] This represents the revenue requirement impact of the difference in opening 2024 UCC (closing 2023 UCC) under the accelerated CCA rules ($289,198) as compared to the opening balance under the regular CCA rules ($1,198,100). See SEC-2a for this information. The calculation of the Revenue Requirement of $326,699.40 is the following: ($1,198,100-$289,109) * Tax Rate of 26.5% * Tax Gross-up (1/1-Tax Rate of 26.5%)

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Summary

SEC submits that 100% of the accelerated CCA for 2020 amalgamation/integration capital projects should be excluded from the TVDA. This is because the capital costs of these projects, both during and after the deferred rebasing period, are entirely the responsibility of the shareholders, not the ratepayers. In fairness, therefore, the benefit of taking accelerated CCA should remain with the company for the benefit of the shareholders.

Yours very truly,
Shepherd Rubenstein P.C.

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cc: Ted Doherty, SEC (by email)
Applicant and intervenors (by email)