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Enbridge Gas Inc. (EGI)

EB-2024-0078

Motion to review and vary EB-2022-0200 Decision and Order

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

July 29, 2024

Vulnerable Energy Consumers Coalition

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Overview

1. The Application is to vary the Board's Decision EB-2022-0200. In that Decision the Board made two decisions subject to this motion. Specifically, the request is for review of:

   i. The lengthening of the Average Useful Life of seven asset classes for depreciation purposes ("**Asset Lives Issue**"); and
   ii. The denial of the inclusion of undepreciated capital costs for integration capital in 2024 rate base ("**Integration Capital Issue**").

2. VECC submits that the Motion is without merit, adds no new information or analysis of the relevant law and simply reargues the positions of the Applicant in the original proceeding.

Board Motion Requirements

3. The Board's Rules of Practice and Procedure require grounds for a motion require the following be present:[1]

   > *i. the OEB made a material and clearly identifiable error of fact, law or jurisdiction. For this purpose, (1) disagreement as to the weight that the OEB placed on any particular facts does not amount to an error of fact; and (2) disagreement as to how the OEB exercised its discretion does not amount to an error of law or jurisdiction unless the exercise of discretion involves an extricable error of law;*
   > *ii. new facts that have arisen since the decision or order was issued that, had they been available at the time of the proceeding to which the motion relates, could if proven reasonably be expected to have resulted in a material change to the decision or order; or*
   > *iii. facts which existed prior to the issuance of the decision or order but were unknown during the proceeding and could not have been discovered at the time by exercising reasonable diligence, and could if proven reasonably be expected to result in a material change to the decision or order;*

4. The Motion provides no new facts nor do any of the reasons EGI sets out in the Notice of Motion or its Argument rely on new facts or facts which were unknown during the original proceeding. Furthermore, there are no grounds raised in this Moton which raise a question as to the correctness of the Board's Decision. The findings are not contrary to the evidence presented in this application and are not inconsistent or conflicting in any manner.

[1] Ontario Energy Board, Rules of Practice and Procedure, Revised July 13, 2023, page 31.

Grounds for the Motion

Depreciation Lives

5. EGI's motion with respect to depreciation rates is effectively that the Board ignored the evidence with respect to "energy transition" in failing to agree with its proposed ELG methodology.

6. This motion fails the threshold test in that there is no error in law or fact in the Board's Decision. EGI is wrong to imply the Board was oblivious to energy transition concerns when it rejected EGI's depreciation proposals. In fact, it was the opposite. EGI was largely oblivious to energy transition in its proposal. The Board's Decision is clearly made with an emphasis on those potential future challenges. It simply found EGI's evidence on the matter inadequate. No where in EGI's evidence was it said that the entire or even primary basis for making the proposed change was to mitigate what are currently largely speculative energy transition scenarios. It is somewhat ironic that in this motion EGI now claims what the evidence of its application never did.

7. EGI's claim that the Decision in this regard increases the company's risk is also speculative. There is no rigorous, or even antidotal, evidence to support that proposition. Even if true it is not unlawful to make decisions which might increase utility risk. If it were otherwise the Board might not have entertained deregulation of gas storage or non-utility gas commodity purchasing and EGI might still be in the business of renting hot water tanks. In any event, regulators are not limited to making only those decisions which are "good" for utilities.

8. The issue is not whether a particular aspect of a Board decision changes utility risk. Every decision changes risk is some way. The question is whether a particular decision changes risk to such an extent that one should revisit the approved rate of return upon which rates will be calculated. We do not recall EGI making the claim that failure to approve its depreciation proposal would necessitate a review the appropriate rate of return on its equity investments.

Integration Capital

9. EGI's grounds for review of the Board's decision to deny integration capital costs is simply a rearguing of its case. The Utility continues, as it did in Phase 1 to take umbrage to the idea that the undepreciated value of integration related investments which continue to produce value after 2024 cannot be recovered in rate base. EGI also places an unwarranted focus on what it sees as the failure of the Board "*to consider Enbridge Gas's evidence that 75% of the integration capital was focused on replacement of end-of-life IT systems that will benefit customers. Instead, the OEB made reference to real estate consolidation projects and other projects totaling $153.9 million, citing argument from SEC.*"

10. The latter point is a misplaced emphasis on an example used by the Board is not the thrust of its decision. A full reading of the Decision with respect to integration capital leaves no doubt as to the Board's consideration of the nature of the investments as a whole. Its emphasis is not on whether there is continuing value in integration related investments rather it is on whether the Utility has been sufficiently compensated for those investments as part of the benefit of rate deferral it received upon approval of its amalgamation.

11. The entirety of what remains on the issue of integration capital is a re-argument of the rather ambiguous "benefits follow cost principle" term used more by EGI than the Board in the proceeding. In fact, the Board does find that the benefits and costs are in line. It does by pointing out that EGI received benefits during the rate deferral period. Since what is largely in question are IT assets these benefits would have included the high CCA allowances associated with IT investments and which increased Utility earnings.

12. What EGI takes umbrage to is that some of these investments continue to provide benefits to customers yet there is undepreciated value that will not be recoverable. But this position entirely misses the point. It is EGI itself who identified the investments as being integration related. Presumably these investments were made on the basis that the near term (e.g., five year) benefits outweighed the alternative of deferring such investments until the time of the first post amalgamation cost of service application. The fact that investments made during the amalgamation period continue to produce benefits after the first cost of service proceeding is irrelevant to the issue. The Board lays out in its Decision the compelling case that the Utility did indeed profit from these investments during the rate period and that the investments were made (as identified by EGI itself) for the purpose of an efficient amalgamation and they provided shareholders with additional value.

13. Furthermore, notwithstanding their objection, the Board is quite right in observing: *That was a choice made by Enbridge Gas. Had Enbridge Gas chosen to fully depreciate its integration capital assets during the deferral period, depreciation expenses would have been higher, and earnings would have been lower than actually recorded from 2019 to 2023, but the savings retained by Enbridge Gas during this period would still exceed the cost of that investment*.[2]

14. Their response to that suggestion is that "*Enbridge Gas is subject to the OEB's Uniform System of Accounts. The Company's depreciation rates are approved by the OEB and there was no opportunity for Enbridge Gas to seek approval of an alternate depreciation rate until the Application"*[3]. But this objection has the tail waiving the dog.

[2] EB-2022-0200, Enbridge Gas Inc. Decision and Order, December 21, 2023, page 75
[3] Fresh as Amended Notice of Motion, page 8

15. The OEB establishes for the purpose of regulated rate making the Uniform System of Accounts. These are not the accounts from which one derives the actual market earnings of the company. And while it is true that the Board will, for the purpose of rate setting, review the continuity of UsoA accounts a utility may vary from those rules when required and as approved by its regulator. The Board is entitled to do this as part of the mechanic it employes to derive rates. The Board does not regulate continuity schedules rather its sets rules of accounting which are used in the derivation of just and reasonable rates. EGI was entitled to propose in its application a continuity schedule which fully depreciated the assets in question (i.e. proposing VECC's position of no recovery of integration costs). Instead, it chose to seek to try to recover these costs and it did so by proposing to continue to depreciate the asset. The effect of the Board's decision is a modified continuity schedule which will show the asset fully depreciated (written off) at the start of the new rate period. In this case the accounting follows the Board's decision not the other way around. That is perfectly reasonable.

Conclusions

16. We have had the opportunity to review the detailed submissions of the School Energy Coalition (SEC) and agree with their more detailed argument on the merits or lack thereof of this motion.

17. The motion offers nothing new on interpretation of the law or in the facts. It is made up of entirely of regurgitations of the original evidence, argument and reply argument. As such it fails both the threshold question and on merit, in its entirety.

VECC submits that it has acted responsibly and efficiently during this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED