Ontario

Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER
EB-2017-0319

ENBRIDGE GAS DISTRIBUTION INC.

Application for the Renewable Natural Gas Enabling Program

BEFORE: **Susan Frank**
Presiding Member

Lynne Anderson
Member

Emad Elsayed
Member

October 18, 2018

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1 INTRODUCTION AND SUMMARY

On January 17, 2018, Enbridge Gas Distribution Inc. (Enbridge) filed an application with the Ontario Energy Board (OEB) seeking approval for its proposed Renewable Natural Gas (RNG) Enabling Program and Geothermal Energy Service (GES) Program.

Enbridge is a rate-regulated gas distribution, storage and transmission company serving over 2.1 million residential, commercial and industrial customers in 121 franchise areas of central and eastern Ontario, including the Greater Toronto Area (GTA), the Niagara Peninsula, Ottawa, Brockville, Peterborough and Barrie.

On June 26, 2018, the OEB received a letter from Enbridge requesting to hold the portion of the application related to its proposed GES Program in abeyance at this time.[1] In a letter dated June 26, 2018, the OEB granted Enbridge's request.

In this application, Enbridge is seeking approval for the cost consequences of its proposed RNG Enabling Program which includes:

- Approval of the methodology to set site-specific monthly service fees that RNG producers would be charged
- Approval to record any annual sufficiency/deficiency of the RNG Enabling Program within the Cap and Trade Greenhouse Gas Emissions Compliance Obligation-Customer-Related Variance Account (GHG-Customer VA) to be cleared to ratepayers each year[2]

Enbridge's proposed RNG Enabling Program will provide two services to RNG producers:

- RNG Injection Service where Enbridge will build a pipeline to attach RNG producers to its distribution system
- RNG Upgrading Service where Enbridge will clean the biogas to pipeline quality[3]

The RNG Injection Service would be mandatory for all RNG producers seeking to move RNG using Enbridge's distribution network. The RNG Upgrading Service would be

[1] On August 29, 2018, EGD, in a letter to the OEB, requested that the OEB continue to hold the GES Program in abeyance until it has more clarity about the provincial government's carbon pricing and carbon reduction plans.
[2] Ex. B, T1, S1, pp. 9-10
[3] Ex. B, T1 S1, p. 16, #48

optional – RNG producers could do it themselves, have a third-party do it for them or have Enbridge do it. [4]

Enbridge is proposing that its RNG Enabling Program be part of its regulated business activities as Enbridge believes it fits within the activities that the OEB rate regulates under Section 36 of the *Ontario Energy Board Act, 1998* (OEB Act).[5]

In this proceeding, the OEB considered the evidence filed by Enbridge and the submissions of a broad spectrum of stakeholder representatives and OEB staff.

For the reasons that follow, the OEB has made the following key determinations:

1. The OEB finds that the RNG Upgrading Service is not the sale, transmission, distribution or storage of gas. Therefore, the OEB is not setting rates for this service under Section 36 of the OEB Act. However, the OEB finds that the proposed RNG Upgrading Service is a permitted business within Enbridge (the utility).

2. The OEB finds that the RNG Injection Service is a distribution activity and therefore, approves a rate-setting methodology under Section 36 of the OEB Act. The OEB approves the use of E.B.O. 188 methodology for the calculation of site-specific monthly service charges for the RNG Injection Service.

3. The OEB approves the Rate Schedule for Rate 401 (RNG Injection Service). However, the OEB imposes a condition of approval that requires Enbridge to take steps to ensure that ratepayers are not harmed by potential default of service customers.

4. The OEB approves the establishment of a new variance account to record the annual sufficiency/deficiency of the RNG Injection Service. The balance in the RNG Injection Service variance account will be cleared to distribution customers and disposed with Enbridge's rate rebasing application.

5. The OEB finds that it is premature to require Aboriginal consultation as part of this application.

[4] Ex. B, T1 S1, p. 17, #49 and #50
[5] Ex. B, T1 S1, p. 10, #29

2 THE PROCESS

The OEB issued a Notice of Hearing on February 20, 2018.

In Procedural Order No.1 issued on March 27, 2018, the OEB granted intervenor status to the following parties (* intervenors granted cost award eligibility):

- Anwaatin Inc. (Anwaatin)*
- Association of Power Producers of Ontario (APPrO)*
- Building Owners and Managers Association (BOMA)*
- Canadian Biogas Association (CBA)*
- Consumers Council of Canada (CCC)*
- E2 Energy Inc. (E2)
- Energy Probe Research Foundation (Energy Probe)*
- Enwave Energy Corporation (Enwave)
- Federation of Rental-housing Providers of Ontario (FRPO)*
- Ontario Climate Change Solutions Deployment Corporation (GreenON Fund)
- Industrial Gas Users Association (IGUA)*
- Ontario Greenhouse Vegetable Growers (OGVG)*
- Ontario Sustainable Energy Association (OSEA)*
- School Energy Coalition (SEC)*
- TransCanada PipeLines Limited (TransCanada)
- Union Gas Limited (UGL)
- Vulnerable Energy Consumers Coalition (VECC)*

Also, Procedural Order No. 1 included a draft Issues List on which the OEB provided parties an opportunity to comment.

On April 23, 2018, the OEB issued Procedural Order No. 2 where it determined the Final Issues List (in Appendix A) for this proceeding and the dates on which the parties were to file interrogatories and the applicant was to file responses to interrogatories. The OEB also granted Ontario Geothermal Association (OGA) intervenor status and determined that OGA is eligible to apply for an award of costs under the OEB's Practice Direction on Cost Awards.

On May 30, 2018, the OEB issued Procedural Order No. 3 that made provisions to hold a transcribed Technical Conference on June 27, 2018. On June 26, 2018, the OEB received a letter from Enbridge requesting to hold the portion of the application related to its proposed GES Program in abeyance. Enbridge also asked the OEB to continue to

process the relief requested in relation to its proposed RNG Enabling Program. In a letter dated June 26, 2018, the OEB granted Enbridge's requests. A Technical Conference was convened on June 27, 2018 that only addressed Enbridge's proposed RNG Enabling Program.

On July 18, 2018, the OEB received a letter from the GreenON Fund stating that it was withdrawing from this proceeding.

On July 23, 2018, in Procedural Order No. 4, the OEB noted that at the Technical Conference parties raised questions on the applicability of the proposed RNG Enabling Program to Section 36 of the OEB Act and indicated its interest in receiving submissions from the applicant, OEB staff and intervenors on this matter and on the relevance of:

- Undertakings provided to the Lieutenant Governor in Council
- Directives to the OEB

Also in Procedural Order No. 4, the OEB determined that it would proceed with a written hearing, and outlined the dates to file: Enbridge's argument-in-chief, OEB staff's and intervenors' written submissions, and Enbridge's reply argument.

3 STRUCTURE OF THE DECISION

The Decisions on the OEB's Jurisdiction, Ratemaking Methodology, Terms and Conditions, Deferral and Variance Accounts and Aboriginal or Treaty Rights align with the Final Issues List and Procedure Order No. 4 as follows:

OEB's Jurisdiction

- Issue 1 – New Business Activities
  - 1.1 Should the new business activity – RNG Enabling Program – be considered as part of the utility's regulated business?

- Procedural Order No. 4
  - The applicability of the RNG Enabling Program to Section 36 of the OEB Act.
  - The relevance of the Orders-in-Council and the associated documents: (i) undertakings provided to the Lieutenant Governor in Council and (ii) directives to the OEB.

Ratemaking Methodology

- Issue 2 – Cost Consequences
  - 2.1. Is the methodology to set services fees for the RNG Enabling Program – Upgrading Service reasonable and appropriate?
  - 2.2. Is the methodology to set services fees for the RNG Enabling Program – Injection Service reasonable and appropriate?

Terms and Conditions

- Issue 2.4. What are the appropriate terms and conditions of the RNG Enabling Program – Upgrading Service and RNG Enabling Program – Injection Service?

Deferral and Variance Accounts

- Issue 3 – Deferral and Variance Accounts
  - 3.1. Is the proposal to include the annual sufficiency / deficiency of the RNG Enabling Program within the Cap and Trade Compliance Obligation Variance Accounts reasonable and appropriate?
  - 3.2. Is the disposition methodology appropriate?

Aboriginal or Treaty Rights

- Issue 4 – Aboriginal or Treaty Rights
  - 4.1. Are any Aboriginal or treaty rights impacted by this application? If so, what Aboriginal or treaty rights?

- 4.2. To the extent any Aboriginal or treaty rights are potentially impacted, has the duty to consult been adequately discharged with respect to these rights?

4 JURISDICTION FOR RNG ENABLING PROGRAMS

Enbridge's proposed RNG Enabling Program will provide two services to RNG producers:

- RNG Injection Service where Enbridge will build a pipeline to attach RNG producers to its distribution system
- RNG Upgrading Service where Enbridge will clean the biogas to pipeline quality[6]

The RNG Injection Service would be mandatory for all RNG producers seeking to move RNG using Enbridge's distribution system. The RNG Upgrading Service would be optional. RNG producers could do it themselves, have a third-party do it for them or have Enbridge do it for them.[7] All the customers who use the RNG Upgrading Service would also use the RNG Injection Service (since the RNG Upgrading Service will not be offered on a standalone basis). The RNG Injection Service would facilitate the introduction of RNG volumes into Enbridge's distribution system so that the RNG can be transported to a location of the customer's choice. Enbridge argued that separately and together, these activities are properly seen as distribution activities.[8]

Restrictions on business activities for Enbridge were established through the December 9, 1998 Order-in-Council, which accepted and approved undertakings by Consumers Gas Company Ltd., Enbridge Consumers Energy Inc., 311594 Alberta Ltd., Enbridge Pipelines (NW) Inc. and Enbridge Inc. (the Enbridge Undertakings). The Enbridge Undertakings are applicable to Enbridge Gas Distribution Inc. The Enbridge Undertakings initially limited the utility activities to transmission, distribution or storage of gas. The permitted activities were then expanded through directives to the OEB on August 10, 2006 (the 2006 Directive) [9] and September 8, 2009 (the 2009 Directive)[10]. In particular, the 2006 Directive dispenses with future compliance related to the Enbridge Undertakings for "the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources".[11]

[6] Ex. B, T1 S1, p. 16, #48
[7] Ex. B, T1 S1, p. 17, #49 and #50
[8] AIC, pp. 11-12
[9] Ex. B, T1, S1, Appendix 1, pp. 9-10 (Minister's Directive dated August 10, 2006)
[10] Ex. B, T1, S1, Appendix 1, pp.12-13 (Minister's Directive dated September 8, 2009)
[11] The 2006 Directive states that "renewable energy source" has the same meaning as in the *Electricity Act 1998*. The *Electricity Act, 1998* defines "renewable energy source" as "an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations…"

Section 36 of the OEB Act requires an order from the OEB for a gas transmitter, gas distributor or storage company to "sell gas or charge for the transmission, distribution or storage of gas". Activities for which the OEB issues an order under Section 36 are generally referred to as rate-regulated activities.

Enbridge argued that the 2006 Directive expanded the scope of Enbridge's permitted business activities, and that RNG Enabling Program falls within the scope of these activities.

Most of the parties (Energy Probe, IGUA, SEC, OSEA and OEB staff) did not challenge Enbridge's position that the expanded scope of Enbridge's permitted business activities includes both services proposed under the RNG Enabling Program.

While CCC accepted Enbridge's position that the RNG Upgrading Services could be a permitted business activity, it submitted that this service should only be provided through an unregulated affiliate.

While agreeing that Enbridge is permitted to provide the RNG Enabling Program, the majority of intervenors stated that the 2006 and 2009 Directives do not alter the OEB's ratemaking powers. The OEB can only set regulated rates (or regulated service fees) for the sale, distribution, transmission and storage of gas.

Most parties agreed that Enbridge's RNG Injection Service should be part of the utility's regulated distribution business because this service fits within the scope of a gas distribution service under Section 36 of the OEB A*ct*. As a result, these parties stated that the OEB has the ratemaking authority to set a regulated rate for Enbridge's RNG Injection Service.

There were a variety of views on whether Enbridge's proposed RNG Upgrading Service should be considered rate-regulated business.

CBA supported Enbridge's position that its RNG Upgrading Services should be rate-regulated. CBA agreed with Enbridge's argument that the upgrading of raw biogas into pipeline quality RNG is a necessary precondition before injecting RNG into a distribution system, and as such is a natural extension of Enbridge's role as the ultimate distributor of that natural gas.

However, most other parties (APPrO, CCC, Energy Probe, IGUA, SEC and OEB staff) did not support Enbridge's position. These parties submitted that the RNG Upgrading Service is not the sale, transmission, distribution or storage of gas, and therefore should

not be considered part of Enbridge's regulated business for which the OEB can set rates. Therefore, Enbridge could undertake the RNG Upgrading Service but at its own risk.

Further, several of these parties argued that the RNG Upgrading Service is a competitively available service as there are other companies capable of providing the design of RNG upgrading facilities, supplying the necessary equipment, installing this equipment and operating it.[12]

IGUA suggested that the OEB could consider applying Affiliate Relationships Code[13] type standards in respect of any financial dealings as between Enbridge's regulated and unregulated business activities, pursuant to Section 36 of the OEB Act's rate-making authority.

Enbridge is of the view that both services in its RNG Enabling Program should be part of its regulated business activities.[14] Enbridge argued that the proposed RNG Upgrading and Injection Services are gas distribution services as they fit within the activities that the OEB rate regulates under Section 36 of the OEB Act. Specifically, Enbridge stated that the activities associated with the RNG Enabling Program are properly characterized as "distribution" of gas. For these purposes, the definition of "gas" in the OEB Act includes "natural gas", "substitute natural gas", "synthetic gas", "manufactured gas" or "any mixture of any of them".[15] Enbridge also argued that the OEB Act does not define "distribution" in relation to natural gas, but it does indicate that a "gas distributor" means a person who delivers gas to a consumer (and indicates that "distribute" and "distribution" have corresponding meanings).

Enbridge argued that a functional review of the nature of its proposed RNG Upgrading Service supports the conclusion that this is a "distribution" service that is subject to Section 36 of the OEB Act. Enbridge defined the activity of distributing gas to a customer as accepting gas into the distribution system and ensuring that the gas entering the distribution system meets applicable codes and standards. Enbridge sees the RNG upgrading as the first step of Enbridge's distribution activities offered to RNG producers. RNG upgrading is a required activity to enable an RNG producer to transport RNG to end-use customers.[16]

[12] Exhibit 1.1.EGDI.STAFF.1, p. 2, part a) iii)
[13] https://www.oeb.ca/oeb/_Documents/Regulatory/Affiliate%20Relationships%20Code%20for%20Gas%20Utilities%20ARC.pdf
[14] Ex. B, T1 S1, p. 10, #29
[15] OEB Act, Section 3
[16] Reply Argument, pp. 3-4

Enbridge also disagreed with parties' argument that allowing Enbridge to offer the RNG Upgrading Service through the regulated utility could impede future competition. As stated by Enbridge, the RNG Enabling Program is intended to enable RNG production, and is being proposed because there is little or no current activity in this area.[17]

Findings

A key consideration for this application is whether Enbridge is permitted to undertake the RNG Enabling Program, and if so, whether the proposed services should be rate-regulated under Section 36 of the OEB Act.

Is the RNG Enabling Program a permitted business?

The OEB finds that both the proposed RNG Upgrading Service and RNG Injection Service are permitted businesses within Enbridge (the utility).

The Enbridge Undertakings initially limited the utility activities to transmission, distribution or storage of gas. The permitted activities were then expanded through the 2006 Directive and 2009 Directive.

In particular, the 2006 Directive dispenses with future compliance related to the Enbridge Undertakings for the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources.[18] This means Enbridge is now permitted to do these activities.

The OEB finds that both services under the RNG Enabling Program promote the use of renewable energy sources and therefore Enbridge is permitted to undertake the RNG Upgrading Service and the RNG Injection Service either within the utility or through an affiliate. This does not mean; however, that both services will be rate-regulated.

Can and should rates be set under Section 36 of the OEB Act for the RNG Enabling Program?

[17] Reply Argument, p. 10
[18] The 2006 Directive states that "renewable energy source" has the same meaning as in the *Electricity Act 1998*. The *Electricity Act, 1998* defines "renewable energy source" as "an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations…"

RNG Upgrading Service

The OEB finds that the RNG Upgrading Service is not the sale of gas or the transmission, distribution or storage of gas. Rates will not be set for this service under Section 36 of the OEB Act. While Enbridge is permitted to undertake this program within the utility, it must be done as a non rate-regulated activity.

RNG Upgrading is about changing raw biogas into RNG that is interchangeable with conventional natural gas. It is not about the sale of gas, the delivery of gas to a consumer (distribution), the transportation of gas by hydrocarbon transmission line (transmission) or the storage of gas (storage).

Even if RNG Upgrading had been found to be a distribution activity, the OEB concludes that it is not appropriate for the RNG Upgrading Service to be a rate-regulated activityfor two reasons. First, RNG Upgrading Service is potentially a competitive activity in Ontario. Enbridge itself acknowledges that the RNG Upgrading Service can also be done by RNG producers. This is the reason that Enbridge has proposed this to be an optional service.[19] Enbridge has argued that there is "no evidence of any current market players who will be adversely impacted by EGD offering a regulated RNG Upgrading service".[20] The OEB notes that the effect on competitors is only one consideration. Second, the OEB must also consider whether natural gas customers should bear any risk for this competitive service. The OEB finds that they should not.

In 2009, the OEB issued a Decision on a Preliminary Motion (2009 Decision) with respect to the plan by Enbridge to pursue certain Green Energy Initiatives.[21] Enbridge provided details of those initiatives which were included as Appendix D to the 2009 Decision. One initiative was described as follows:

> Another Green Energy Initiative that Enbridge plans to pursue in 2010 is the capture and use of biogas from landfills or anaerobic digesters. The project would include Enbridge's involvement with facilities and associated pipelines required to convert raw biogas from either a landfill operation or from an anaerobic digester to bio-methane. The resulting biomethane would have the same chemical characteristics as natural gas and the biomethane would be injected into the natural gas pipeline system.

There are many aspects of this Green Energy Initiative in common with the current proposed RNG Enabling Program.

[19] Argument-In-Chief, p. 7
[20] Reply Argument, p.10
[21] EB-2009-0172 Decision on a Preliminary Motion, Appendix "D", pp. 4-5

The OEB panel for the 2009 Decision specifically found it unnecessary to make any finding on whether these green energy initiatives were distribution activities. However, the OEB panel determined that these activities would be non rate-regulated. The OEB panel expressed concern that the Green Energy Initiatives took place in the broad competitive market and rate regulating these initiatives would be unfair to other market participants, and would shift risk to natural gas ratepayers. There are the same concerns in this proceeding, and the 2009 Decision supports the OEB's determination that the RNG Upgrading Service will not be rate-regulated.

Following the 2009 Decision, the OEB established the G-2010-0030 Guidelines: Regulatory and Accounting Treatments for Natural Gas Utility-Owned Qualifying Facilities or Assets (the 2010 Guidelines). Under these 2010 Guidelines the natural gas utilities are required to segregate activities pertaining to qualifying facilities or assets from the utility's rate-regulated activities. Detailed regulatory and accounting guidance was provided. The OEB finds that if Enbridge intends to pursue RNG Upgrading Services within the utility as a non rate-regulated activity, it must follow a similar approach to that set out in these 2010 Guidelines. This will ensure a ring-fencing between the utility's rate-regulated and non rate-regulated activities. The 2010 Guidelines are attached as Appendix B for ease of reference.

RNG Injection Service

The OEB finds that the RNG Injection Service is a distribution activity and therefore the OEB approves a rate setting methodology under Section 36 of the OEB Act*,* discussed in detail later in this Decision.

Enbridge explained that the RNG Injection Service would "build the pipeline attaching the producer to the broader distribution system, odourize the bio-methane, measure the gas volumes and energy content of the gas, manage pressures and ensure that the gas meets required specifications".[22] These are activities that Enbridge does for its distribution system, and therefore the OEB agrees it can be considered a distribution activity. It is appropriate for Enbridge to have responsibility for the injection of RNG to its system.

[22] Ex. B, T1, S1, p.17 #50

5 RATEMAKING METHODOLOGY

Enbridge is seeking OEB approval for:

- The methodology to set monthly service fees for its RNG Upgrading and RNG Injection Services[23] [24]
- A new Rate 400 for its RNG Upgrading Service[25]
- A new Rate 401 for its RNG Injection Service[26]

Each service fee will be derived from a discounted cash flow (DCF) analysis. The DCF analysis will be based on the principles and parameters set out in the OEB's E.B.O. 188 Distribution System Expansion Report.[27]

The fee for each service would be specific to the location of the project and based on fully allocated costs.[28] The site-specific service fees will be set to recover O&M costs, depreciation, distributor's return on investment, and taxes[29] while achieving a Profitability Index (PI) of 1.02 or greater[30] over the term of the contract.

For both services, Enbridge is proposing a levelized (constant) service fee for each month of the term of the contract so that RNG producers will have cost certainty, which is an important factor to enable and facilitate RNG production in Ontario.[31]

Enbridge indicated that the final rate to be included in the RNG producer's contract will be based on the actual costs of the facilities and will be updated at the time the project is completed.[32]

Enbridge stated that it does not expect any substantial unforecast future capital costs associated with the RNG Enabling projects as it will establish suitable warranties and protections from manufacturers and installation contractors to cover future unanticipated capital costs for the facilities.[33]

Many parties did not provide a submission on this issue.

[23] Ex. B, T1, S1, pp.16-17, #48
[24] EGD is not seeking approval for each customer-specific rate or contract for its Program
[25] Ex. B, T1, S1, p. 20, #58
[26] Ibid
[27] Ex. B, T1, S1, p. 18, #54
[28] Ex. B, T1, S1, p. 19, #56
[29] Ex. B, T1, S1, p. 18, #54
[30] AIC, p. 14
[31] AIC, p. 8
[32] Ibid
[33] Exhibit I.2.EGDI.APPrO.5 and AIC, pp. 14-15

OEB staff, BOMA, CBA and OSEA submitted that Enbridge's proposed methodology to set levelized monthly service fees is appropriate as it is based on the OEB's E.B.O. 188 and that for each contract, Enbridge will ensure a PI of 1.02 or greater.

OEB staff also submitted that Enbridge should describe its ratemaking methodology in its tariff. In addition, as part of Enbridge's annual rate application, it should include a description of any new facilities related to its RNG Enabling Program and a statement confirming that the rates for these facilities are in accordance with the OEB's approved methodology.

CCC and SEC submitted that it is not appropriate for Enbridge to seek approval of a methodology and not specific rates. They raised concerns over cross subsidization and the lack of clarity on how direct and indirect costs would be determined. They also argued that this ratemaking methodology:

- Delegates the OEB's rate-setting process (i.e., the full calculation of the base unit rates) to Enbridge resulting in Enbridge having far too much discretion
- Fixes the rates for the life of the service contract and therefore transfers forecast cost (such as O&M, capital[34]) risk onto existing distribution and transmission customers

They proposed that the OEB should require Enbridge to file an application for approval[35] of the fee for each project. They also submitted that when costs change over the term of the contract, the service fees should be adjusted accordingly. This is similar to how all other customers have their rates change as costs increase (or decrease). SEC noted that no other Enbridge customer class is provided with 20 years of rate certainty.

Energy Probe submitted that Enbridge has not assessed the allocation of risk to RNG producers, ratepayers and the utility, and the evidence to support the rate design is inadequate.

Enbridge submitted that its proposed ratemaking approach is appropriate and consistent with other OEB-approved rates. Enbridge outlined several examples (such as Rate 125 and contributions in aid of construction) where these outcomes are not specifically reviewed or approved by the OEB. Enbridge argued that a requirement for the OEB to approve each service fee would be unduly onerous and could delay the provision of service to interested customers.

[34] SEC also included costs such as the tax rate and cost of capital
[35] SEC suggested that the OEB could devise a streamlined process to balance the need for oversight with regulatory efficiency

Enbridge argued that a levelized rate will provide RNG producers with the certainty required to proceed with their projects. That is what is needed for this "enabling program", which is aimed at increasing the breadth and depth of RNG supply in Ontario.

Enbridge clarified that the derivation of the revenue requirement and service fees for Rates 400 and 401 does include overhead costs and fully allocated costs. Also, Enbridge submitted that it does not expect any substantial unforecast future capital costs associated with the projects because it will establish suitable warranties and protections.

Enbridge stated that it is open to OEB staff's suggestions to describe the rate-setting methodology in its rate schedule, and provide a list of new RNG Enabling facilities in its annual rate applications and a statement that the rates associated with those facilities are in accordance with the OEB-approved methodology.

Findings

The OEB has directed the use of E.B.O. 188 for gas distribution expansions to determine the economics of the project. This approach is long standing and provides clear direction on costs to include and changes required over time. In addition to the certainty associated with E.B.O. 188, the contractual arrangements between RNG producers and the applicant will ensure a fair determination of the service fee. As always if there are disputes regarding utility rate-regulated activities (e.g., the RNG Injection Service) the parties can contact the OEB to investigate the issue.

The OEB finds that approval of a common methodology rather than specific rates is appropriate for Rate 401. Given the number of municipalities and other parties interested in RNG projects, approving rates on an individual basis would be unduly onerous.

While the OEB understands the intervenor concerns, the use of E.B.O. 188, which has been used for more than 20 years, should alleviate these concerns. E.B.O. 188 requires that the capital costs include an estimate of all costs directly associated with the capital work, an estimate of incremental overheads and future reinforcement costs. In addition, the expense forecast is to include incremental operating and maintenance costs; income and capital taxes and municipal property taxes. OEB staff submitted, and Enbridge agreed, that the rate-setting methodology should be described in the schedule for Rate 401.

The OEB approves the use of E.B.O. 188 methodology for the calculation of the site-specific monthly service charges (rates) for Rate 401. The OEB agrees with OEB staff's proposal to include a description of the rate-setting methodology in the Rate Schedule for Rate 401. Enbridge shall file an updated version of the Rate Schedule for Rate 401 for approval by the OEB.

6 TERMS AND CONDITIONS

Enbridge provided a *pro forma* version of the contracts that will be completed for the RNG Enabling Program.[36] Enbridge also outlined its high-level terms and conditions associated with its Upgrading Service and RNG Injection Service which are set out in the proposed Rate Schedules for Rates 400 and 401.[37]

Enbridge indicated that it will negotiate project-specific contracts with each RNG producer. These contracts will be similar in scope and content to those entered into with new large volume contract customers. Enbridge is not seeking approvals of the forms of contracts to be used.[38]

Enbridge stated that its current practice regarding financial assurance is that the form and amount of such security is determined on a case-by-case basis taking into consideration the size of the investment and the credit worthiness of the counterparty. This is not something that is specifically prescribed or described in Enbridge's Conditions of Service or Rate Schedules. Therefore, Enbridge indicated that it does not intend to add language to its Conditions of Service or Rate Schedules that would specifically require financial assurances from RNG producers to cover all undepreciated cost of the assets related to the provision of these services (decommissioning (removal), site remediation, etc.).[39]

OEB staff submitted that it has not identified any issues with Enbridge's proposed standardized contracts for these services and noted that Enbridge's primary focus for these services has been on municipalities.

Several parties submitted suggestions about additional terms and conditions to be included in Enbridge's contracts with RNG producers, and also proposed conditions of approval for this application.

BOMA[40] and SEC submitted that the contracts should include sufficient financial assurance to ensure that non-RNG ratepayers do not bear the cost of any potential default, especially with counterparties that are private parties (not public sector entities) where that risk could be significant.

[36] Exhibit I.2.EGDI.STAFF.6, Attachment 1
[37] Ex B, T1, S1, Appendices 9 and 10
[38] AIC, p. 15
[39] Undertaking JT1.15
[40] BOMA also wanted the financial assurance to cover any cost overruns and contractual breaches; and a condition of approval should include financial assurance in the Biogas Services Agreement.

FRPO submitted that if the OEB approves any ratemaking methodology, that order ought to require the shareholder to be responsible for all costs in the event of early termination where Enbridge, in its discretion, determined that financial assurances were not required.

CCC submitted that Enbridge's shareholder should be required to bear all of the risks associated with any stranded assets that could arise if the RNG producer no long wants the service or goes bankrupt.

CBA outlined a number of concerns and requested Enbridge to clarify these concerns in its Reply Argument and/or address them in the contract.

BOMA also suggested that the contract should include a dispute resolution provision. Further, BOMA submitted that Enbridge should file an updated model contract for OEB approval and at least two or three RNG Enabling Program contracts for OEB for review (including the City of Toronto contract which Enbridge should file the contract within 90 days).

Enbridge submitted that financial assurances should not be required for every RNG Enabling contract as many of the expected counterparties will be municipalities, who pose very little default risk. Enbridge stated that its current approach has been used for many years with its large volume customers and Enbridge sees no reason for a more prescriptive financial assurances requirement for RNG producers. A blanket requirement will increase costs for RNG producers and make the RNG Enabling Program less successful in its goal of enabling the market.

Enbridge addressed and/or clarified a number of concerns raised by CBA. With respect to the option of allowing RNG producers to make an upfront capital contribution to reduce their service fees, Enbridge stated that this was not appropriate. Enbridge submitted that it currently does not allow large volume customers to "buy down" their rates through up-front payments beyond what is required to bring the PI to a reasonable level – the same should hold true for its RNG Enabling Program. Also, Enbridge indicated that the service fees are designed to recover the costs of the facility, therefore the RNG producer would be responsible to pay these fees, regardless of the actual injections and upgrading provided.

Enbridge did not support BOMA's additional suggestions (such as including a dispute resolution provision in the contract) and does not believe it is necessary for the OEB to specifically review and approve the form of contract.

Findings

The OEB approves the proposed Rate Schedule for Rate 401 (RNG Injection Service) subject to the required update. The OEB agrees with Enbridge that the OEB need not approve the proposed Biogas Services Agreement. However, the OEB agrees with several intervenors that there needs to be some assurance that ratepayers not participating in the RNG Injection Service are held harmless in circumstances such as service customer default.

The OEB does not consider the provisions under Article 13 of the Biogas Services Agreement (Financial Assurance) are sufficient. The provisions state that Enbridge may require customers to provide financial assurances and may use a third party to review the creditworthiness of customers. It is the OEB's opinion that there should be more definitive articulation of the principle that ratepayers should not bear the cost of any potential default.

The OEB agrees with Enbridge that the risk associated with public sector entities (e.g., municipalities) is very low. However, the risk still exists for other entities where Enbridge may find it difficult to establish their creditworthiness.

The OEB does not agree with Enbridge's assertion that ratepayers should bear the risk of default because of the potential benefit from the RNG Enabling Program associated with the PI for each contract being set at 1.02 or better. It is the OEB's opinion that ratepayers should not be subjected to risks associated with services that they have not contracted to receive.

It is Enbridge's responsibility to exercise its due diligence when assessing the requirement for financial assurance or creditworthiness. The OEB imposes a condition of approval in this proceeding that requires Enbridge to take steps to ensure that ratepayers are not harmed by potential default of service customers. The impact of such default should be borne by Enbridge's shareholder. Enbridge is expected to provide evidence regarding these steps and their effectiveness when Enbridge applies to clear the deferral account in a future rebasing rate application to the OEB.

7 DEFERRAL AND VARIANCE ACCOUNTS

Enbridge indicated that by applying the OEB's E.B.O. 188 principles there will a deficiency in terms of the revenues versus the costs of the RNG Enabling Program in their early years and a sufficiency in the later years.[41]

Initially, Enbridge proposed to capture these differences in the GHG Emissions Compliance Obligation-Customer-Related Variance Account (GHG-Customer VA) and be periodically cleared to ratepayers.[42] Enbridge indicated that its RNG Enabling Program is designed to facilitate the development of the RNG market in Ontario and this will allow Enbridge to meet the federal government's CFS requirements more cost-effectively (thereby benefitting customers) and will contribute to reduced GHG emissions in the Province.[43]

However, Enbridge stated that the GHG-Customer VA may not exist indefinitely into the future and that it may be necessary to create a new RNG Enabling Variance Account at a later date, and to transfer any existing balances to that account.[44] Enbridge proposed that the disposition methodology for the new RNG Enabling Variance Account should be determined at the time when the account is established or alternatively when the account is first brought forward for disposition.[45]

Most parties did not provide a submission on this issue.

BOMA and CBA supported Enbridge's use of a variance account to capture any annual revenue deficiencies/sufficiencies over the life of the service contract. CBA agreed that the annual balances should be cleared to ratepayers while BOMA submitted that the balances should be cleared to ratepayers only when the variance account is in a credit position (i.e., ratepayers are owed money).

OEB staff however did not support Enbridge's: 1) use of a variance account to capture any annual revenue deficiencies/sufficiencies of the program and 2) proposed disposition methodology. First, OEB staff submitted that with a proposed PI of 1.02, it is not appropriate for ratepayers to foot the bill for the hiatus between revenues and costs over the length of the contract. OEB staff was of the view that an RNG facility project is no different than any other natural gas expansion project (which are also subject to the

[41] Ex B, T1, S1, p. 10, #28
[42] Ex. B, T1, S1, p. 10, #30
[43] AIC, p. 16
[44] AIC, p. 16
[45] AIC, pp. 16-17

OEB's E.B.O.188) where Enbridge would recover the costs over the lifespan of the project and where annual true ups are not performed. Second, OEB staff submitted that any annual deficiencies/sufficiencies should be captured from the specific RNG producer, not the non-RNG ratepayer. There are too many uncertainties related to provincial government's Bill 4 and the federal government's CFS to fully understand Enbridge's GHG compliance obligation, if any.

In addition, BOMA and OEB staff[46] submitted that it was not appropriate for Enbridge to capture any annual deficiencies/sufficiencies of its RNG Enabling Program within its GHG-Customer VA given that the Ontario government is winding down the Cap and Trade Program. They supported the creation of a new RNG Enabling Program Variance Account. OEB staff also submitted that since these are new services, the new variance account should track costs separately for each service.

Enbridge submitted that having a variance account is appropriate because it is using a levelized rate (which is different from the rate design used for other projects) which is expected to result in an overall sufficiency for each project. If there was no variance account treatment for the net revenues for each project, then all variances (cumulating to an expected net sufficiency) would accrue to Enbridge rather than to ratepayers.

Enbridge also submitted that it is not appropriate for any annual deficiencies/sufficiences over the life of the service to be cleared to RNG producers. This would result in RNG producers paying a variable rate and will make potential customers less interested in proceeding.

Enbridge agreed that it was appropriate to establish a new RNG Enabling Program Variance Account immediately to avoid future confusion.

Findings

Recording of the Annual Sufficiency/Deficiency of the RNG Injection Service

The OEB has previously determined in this decision that the RNG Upgrading Service will not be rate-regulated, therefore there will be no variance account for this service.

The OEB approves the establishment of a new variance account to record the annual sufficiency/deficiency of the RNG Injection Services. Having determined that this is a distribution activity, it is appropriate to have such an account and to have it cleared to

[46] Relevant only if the OEB determines that a variance account is appropriate

distribution customers, not RNG producers. This is not inclusive of default risk which the OEB determined is the responsibility of Enbridge.

Disposition Methodology

The OEB finds that the balance in the RNG Injection Service variance account will be disposed with a rebasing rate application.

This is consistent with the policy of the OEB for electricity distributors that variance accounts for which a review of prudence is required should only be disposed in a rebasing application. Under the rate-setting options for the Renewed Regulatory Framework, the period between rebasing applications is typically at least five years.[47] Consistency with the approach for electricity distributors is reasonable.

In addition, Enbridge itself has acknowledged that there may be "deficiencies some years and sufficiencies in other years"[48]. Having a period of time between disposition of the account may have the effect of smoothing the balance to provide more stability for customers.

Reporting Requirement

Consistent with the common treatment for deferral and variance accounts, annual reporting of the balance in this account will be required.

[47] Report of the Board Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach, p. 13
[48] Reply Argument, p. 18

8 ABORIGINAL OR TREATY RIGHTS

Enbridge indicated that it is not aware that there are Aboriginal rights or treaty rights impacted by the relief sought in the RNG Enabling Program Application, but would respond to any issues raised in submissions from OEB staff and intervenors.

Enbridge stated it would address any Aboriginal rights and treaty rights that arise in relation to specific RNG Enabling Program projects as those projects are proposed and proceed.[49]

OEB staff submitted that it may be premature to address this issue at this time. Also, OEB staff stated that the OEB has specific processes that will be engaged where Aboriginal or treaty rights may be impacted in an OEB proceeding. In Chapter 3 of the OEB's *2016 Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (the Guidelines)[50], the OEB provides further direction to parties on what is expected with respect to consultations including the duty to consult with potentially affected Indigenous communities.[51]

Anwaatin submitted that the relief sought in this case impacts on treaty and Aboriginal rights, and that therefore the duty to consult has been triggered. Specifically, Anwaatin stated that the Supreme Court of Canada's decision in *Carrier Sekani*[52] has ruled that the duty to consult extends to "strategic, higher level decisions"[53]. Therefore, Anwaatin argued that the duty to consult must apply to this strategic, high level decision regarding new RNG services and the affected Anwaatin First Nation Communities should be consulted prior to the OEB's decision in this matter. Anwaatin stated that this is supported by the Federal Court of Appeal's recent decision in *Tsleil-Waututh Nation v Canada (Attorney General)*.[54]

Anwaatin noted that the three maps of southern Ontario provided by Enbridge in a response to an interrogatory[55], setting out the potential locations for RNG facilities show that the proposed facilities are in and around the lands, treaty areas and traditional territories of a number of the Anwaatin First Nation Communities and communities

[49] AIC, p. 17
[50] https://www.oeb.ca/oeb/_Documents/Regulatory/Enviro_Guidelines_HydrocarbonPipelines_2016.pdf
[51] OEB's *2016 Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*, section 3.3 Indigenous Consultation
[52] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43
[53] Anwaatin's submission – Amendment, p. 4
[54] *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153. See also Anwaatin's submission – Amendment , p. 8
[55] Exhibit I.2.EGDI.STAFF.7

represented by the Chiefs of Ontario. Anwaatin asserted that the construction and the ongoing purification and injection services may negatively impact aboriginal title, rights to self-government, harvesting rights (fishing and hunting for ceremonial or other processes), and specific treaty rights, reserve lands, and any payments and implied rights associated with them.[56]

Enbridge submitted that the relief sought in this application is not of the nature that would trigger the duty to consult as no approvals are being sought for any specific RNG projects. Enbridge is seeking approval to be able to offer RNG Injection and Upgrading Services and these services will only be taken by parties who contract for them.

Enbridge argued that the cases noted by Anwaatin in support of the proposition that the duty to consult may be engaged even where no specific land rights are at issue have a very different context from Enbridge's RNG Enabling Program application. Each of these cases involved Crown conduct that might adversely affect Aboriginal or treaty rights or interests. Enbridge stated that this is not the case here and noted that when specific RNG Enabling Program projects are proposed in the future, and such projects do give rise to a duty to consult, then Enbridge expects that the Ministry of Energy, Northern Development and Mines and/or the OEB will provide direction to Enbridge about how that duty is to be honoured, taking account of the OEB's existing processes as set out in the Guidelines.

Findings

In *Carrier Sekani*, the Supreme Court of Canada summarized the three elements that are required for the Duty of Consult to be triggered. Briefly these are:

- The Crown must have real or constructive knowledge of a claim to the resource or land
- There must be Crown conduct or a Crown decision that engages a potential Aboriginal right.
- The claimant must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights.[57]

The OEB does not agree with Anwaatin that the *Carrier Sekani* and *Tsleil-Waututh Nation v. Canada* cases apply in this proceeding. These cases are more closely aligned with actual projects while this application deals with a methodology for pricing RNG

[56] Anwaatin's submission – Amendment, p. 5
[57] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, paragraphs 40 to 45

services. No projects or even areas for future development are being approved at this time.

The OEB accepts that strategic, higher level decisions can trigger the duty to consult. However, in the current case it is not clear that the matters before the OEB have any impact on any identified Aboriginal or treaty right. This Decision approves a rate-setting methodology for an RNG Injection Service and a deferral account under Section 36 of the OEB Act. It does not authorize anyone to build anything.The OEB does not see any direct material impact that this Decision will have on Aboriginal or treaty rights.

Projects have not yet been defined. Accordingly, information does not exist on the specific sites or when projects might proceed in order to assess any impacts on Aboriginal and treaty rights. The lack of any specific Aboriginal or treaty rights identified by Anwaatin regarding this application reinforces the OEB's finding that it is premature to require Aboriginal consultation as part of this application. As indicted in the *Carrier Sekani* case, "mere speculative impacts, however, will not suffice".[58] It is certainly possible that the actual RNG Enabling projects themselves will trigger a duty to consult; however the OEB is unable to make any determinations on that given the paucity of information on those projects currently available. The OEB further notes that Anwaatin has been a full participant in the current process, and its views have been carefully considered as part of this Decision.

[58] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, paragraph 46

9 ORDER

THE OEB ORDERS THAT:

1. Enbridge shall take steps to ensure ratepayers are held harmless from potential default of service customers (i.e., any default risk is the responsibility of Enbridge).

2. Enbridge shall file a draft Rate Order for Rate 401 (RNG Injection Service), including all supporting documentation that reflects this Decision and Order, and forward to the intervenors, no later than **November 8, 2018.**

3. Enbridge shall establish one new variance account to record any annual sufficiency/deficiency of the RNG Injection Service. The balance in the RNG Injection Service variance account will be cleared to distribution customers and disposed with Enbridge's rebasing rate application. Enbridge shall report, on an annual basis, any balances in this new variance account with the OEB. Enbridge shall file its draft accounting orders with the OEB, and forward to the intervenors, no later than **November 8, 2018.**

4. OEB staff and intervenors shall file any responding submissions on Enbridge's draft Rate Order and accounting order with the OEB, and forward to Enbridge no later than **November 22, 2018.**

5. Enbridge shall file with the OEB, and forward to intervenors, any reply to the submissions of OEB staff and intervenors' on Enbridge's draft Rate Order and accounting order no later than **December 6, 2018.**

6. Eligible parties shall submit their cost claims no later than **December 6, 2018.**

7. Enbridge shall file with the OEB, and forward to all parties, any objections to the claimed costs no later than **December 14, 2018.**

8. Parties shall file with the OEB, and forward to Enbridge any responses to any objections for cost claims no later than **December 21, 2018.**

9. Enbridge shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All filings to the OEB must quote the file number, **EB-2017-0319** and be made electronically in searchable / unrestricted PDF format through the OEB's web portal at www.pes.ontarioenergyboard.ca/eservice/. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.ca/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary

E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto October 18, 2018

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

Enbridge Gas Distribution Inc.

EB-2017-0319

Final Issues List

EB-2017-0319

Final Issues List

1. New Business Activities:

1.1. Should the new business activity – RNG Enabling Program – be considered as part of the utility's regulated business?

1.2. Should the new business activity – Geothermal Energy Service Program – be considered as part of the utility's regulated business?

1.2.1. Does the OEB have the authority to set a service fee for the Geothermal Energy Service Program, and if so, under, what section?

2. Cost Consequences:

2.1. Is the methodology to set services fees for the RNG Enabling Program – Upgrading Service reasonable and appropriate?

2.2. Is the methodology to set services fees for the RNG Enabling Program – Injection Service reasonable and appropriate?

2.3. Are the services fees for the Geothermal Energy Service Program reasonable and appropriate?

2.4. What are the appropriate terms and conditions of the Geothermal Energy Service Program, RNG Enabling Program – Upgrading Service, and RNG Enabling Program – Injection Service?

3. Deferral and Variance Accounts:

3.1. Is the proposal to include the annual sufficiency / deficiency of the RNG Enabling and Geothermal Energy Service Programs within the Cap and Trade Compliance Obligation Variance Accounts reasonable and appropriate?

3.2. Is the disposition methodology appropriate?

4. Aboriginal or Treaty Rights:

4.1. Are any Aboriginal or treaty rights impacted by this application? If so, what Aboriginal or treaty rights?

4.2. To the extent any Aboriginal or treaty rights are potentially impacted, has the duty to consult been adequately discharged with respect to these rights?

APPENDIX B

Enbridge Gas Distribution Inc.

EB-2017-0319

2010 Guidelines

Regulatory and Accounting Treatments for Natural Gas Utility-Owned Qualifying Facilities or Assets

Ontario Energy Board

G-2010-0030

Guidelines:

Regulatory and Accounting Treatments for Natural Gas Utility-Owned Qualifying Facilities or Assets

February 25, 2010

1. Purpose

This document sets out a regulatory framework for the regulatory and accounting requirements for natural gas utilities, namely Enbridge Gas Distribution Inc. ("Enbridge") and Union Gas Limited ("Union"), in relation to the ownership and operation of renewable energy generation facilities, combined power and thermal (heat) energy generation facilities, energy storage facilities and assets in relation to energy conservation (collectively referred to below as "qualifying facilities or assets").

This document contains the Board's guidance to natural gas utilities in relation to the Minister's Directive issued to the Board and approved by Order in Council No. 1540/2009 dated September 8, 2009, which effectively authorized Enbridge and Union to own and operate qualifying facilities or assets. In terms of generation and energy storage facilities, this authorization mirrors the amendment to the *Ontario Energy Board Act, 1998* ("*OEB Act*") that allows electricity distributors to own and operate the same qualifying facilities. The amendment to the *OEB Act* came into effect when the relevant provisions of the *Green Energy and Green Economy Act, 2009* came into force on September 9, 2009.

The purpose of this document is to describe the ownership scenarios that are potentially applicable in relation to assets and activities associated with qualifying facilities or assets that are not rate-regulated (i.e., whose costs are not included in rate base),[1] and to set out the regulatory and accounting requirements applicable to each scenario.

2. Legal Framework

2.1. The Undertakings

The activities of Enbridge and Union are governed in part by certain undertakings given to the Lieutenant Governor in Council.[2] Under section 2.1 of these undertakings, Enbridge and Union cannot, except through an affiliate, carry on

[1] In its December 22, 2009 Decision on a Preliminary Motion (EB-2009-0172), the Board declined to allow the costs of Enbridge's "Green Energy Initiatives" to be included in rate base.
[2] The undertakings that are currently in effect were approved by Order in Council 2865/98 dated December 9, 1998.

any business activity other than the transmission, distribution or storage of gas without the prior approval of the Board.

2.2. Minister's September 2009 Directive

Order in Council No. 1540/2009 dated September 8, 2009 approved a Minister's Directive to the Board that effectively permits Enbridge and Union to own and operate qualifying facilities or assets.

The Minister's Directive, a copy of which is reproduced in Appendix A together with Order in Council No. 1540/2009, specified among other things, the following:

> *Pursuant to section 27.1 of the Ontario Energy Board Act, 1998, and in addition to a previous directive issued thereunder on August 10, 2006 by Order in Council No. 1537/2006, in respect of the Enbridge Undertakings and the Union Undertakings, I hereby direct the Ontario Energy Board to dispense,*
>
> - *under section 6.1 of the Enbridge Undertakings, with future compliance by Enbridge Gas Distribution Inc. with section 2.1 ("Restriction on Business Activities") of the Enbridge Undertakings, and*
> - *under section 6.1 of the Union Undertakings, with compliance by Union Gas Limited with section 2.1 ("Restriction on Business Activities") of the Union Undertakings,*
>
> *in respect of the ownership and operation by Enbridge Gas Distribution, Inc. and Union Gas Limited, of:*
>
> *(a) renewable energy electricity generation facilities each of which does not exceed 10 megawatts or such other capacity as may be prescribed, from time to time, by regulation made under clause 71(3)(a) of the Ontario Energy Board Act, 1998 and which meet the criteria prescribed by such regulation;*
>
> *(b) generation facilities that use technology that produces power and thermal energy from a single source which meet the criteria prescribed, from time to time, by regulation made under clause 71(3)(b) of the Ontario Energy Board Act, 1998;*
>
> *(c) energy storage facilities which meet the criteria prescribed, from time to time, by regulation made under clause 71(3)(c) of the Ontario Energy Board Act, 1998; or*

(d) assets required in respect to the provision of services by Enbridge Gas Distribution Inc. and Union Gas Limited that would assist the Government of Ontario in achieving its goals in energy conservation and includes assets related to solar-thermal water and ground-source heat pumps;

(e) for greater certainty, the use of the word "facilities" in paragraphs (b) and (c) above shall be interpreted to include stationary fuel-cell facilities each of which does not exceed 10 Megawatts in capacity.

This directive is not in any way intended to direct the manner in which the Ontario Energy Board determines, under the Ontario Energy Board Act, 1998, rates for the sale, transmission, distribution and storage of natural gas by Enbridge Gas Distribution Inc. and Union Gas Limited.

3. Ownership Scenarios for Qualifying Facilities or Assets

This section provides an overview of two potential business scenarios for the ownership of qualifying facilities or assets.

The approach selected will determine the extent of regulatory oversight. These business scenarios are discussed in sections 3.1 and 3.2.

3.1. Qualifying Facilities or Assets Owned by an Affiliate

There are no legal or regulatory prohibitions imposed or enforced by the Board that preclude affiliates of natural gas utilities from owning and operating qualifying facilities or assets. However, if the affiliate intends to generate electricity for sale through the IESO-administered markets or directly to another person, the affiliate would require a licence from the Board pursuant to section 57 of the *OEB Act* unless exempt by regulation.

In addition, where a utility's affiliate owns and operates a qualifying facility or asset, the utility must comply with all applicable requirements of the Affiliate Relationships Code for Gas Utilities ("ARC").

3.2. Qualifying Facilities or Assets Owned by Natural Gas Utility and Non Rate-Regulated

A natural gas utility may also choose to directly own and operate a qualifying facility or asset. Under this scenario, costs would not be recovered through rates and a regulatory return would not be earned on the investment. The investment

project or asset would be debt and/or equity financed. The utility may enter into a Feed-in Tariff contract with the Ontario Power Authority with respect to generation facilities. These contracts are long-term in nature and the contract prices vary depending on the type of generation technology and the capacity of the facility.

Like any other generator, a natural gas utility that chooses to generate electricity for sale through the IESO-administered markets or directly to another person is required to obtain a licence from the Board pursuant to section 57 of the *OEB Act* unless exempt by regulation.

4. Accounting Requirements

4.1. Qualifying Facilities or Assets Owned by a Natural Gas Utility's Affiliate

Under this ownership scenario, the utility will need only to review its policies, procedures and processes to ensure compliance with the ARC requirements. ARC requirements that the utility may need to consider include:

- A utility shall ensure accounting and financial separation from all affiliates and shall maintain separate financial records and books of accounts.
- Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate.
- A utility may provide loans, guarantee the indebtedness of, or invest in the securities of an affiliate, but shall not invest or provide guarantees or any other form of financial support if the amount of support or investment, on an aggregated basis over all transactions with all affiliates, would equal an amount greater than the specified percentage of the utility's total equity.

The allocation of costs consistent with applicable ARC requirements should be followed by the utility in developing its policies and procedures for allocating the cost of transactions, products or services between the utility and its affiliates.

To the extent possible, all direct and allocable costs between rate-regulated and non rate-regulated lines of business, services or products shall be traceable on the books of the regulated utility to the Uniform System of Accounts for Class "A" Gas Utilities ("Gas USOA"). Section 2.1.8 of the Natural Gas Reporting & Record Keeping Requirements (RRR) Rule for Gas Utilities ("RRR") contains the current reporting requirements for affiliate arrangements and transactions, and

section 2.2 of the RRR sets out certifications that must be provided annually in relation to ARC compliance. Furthermore, additional documentation shall be retained and made available to the Board upon request regarding transactions between the utility and its affiliates.

4.2. Qualifying Facilities or Assets Owned by Natural Gas Utility and Non Rate-Regulated

Although under this scenario utility activities pertaining to qualifying facilities or assets will not affect the setting of rates for the natural gas utility, the accounting treatment requires a segregation of these activities from the utility's rate-regulated activities. This segregation of information requires the use of specified accounts to record qualifying facility activities. A utility should follow these accounting procedures to ensure that information reported for rate setting purposes relates only to the utility's rate-regulated business and does not include the assets, liabilities, revenues and costs associated with its non rate-regulated activities. In this manner, the utility will continue to provide financial information on a "stand alone" rate-regulated basis in order to support the utility rate setting and other requirements of the Board.

Appendix B provides a methodology whereby a utility can allocate direct costs and a proportional share of indirect costs (such as payroll burden) to its non rate-regulated activities including its qualifying facility or asset business activities. Adhering to this methodology will ensure that utility ratepayers are not liable for non rate-regulated costs for which shareholders are responsible.

The utility should document and maintain records of its fully allocated costing methodology for qualifying facility or asset activities, including its application of this methodology to the accounts under the Gas USOA.

For accounting and reporting purposes, the utility would use the following asset, liability, shareholders' equity, revenue and expense accounts and sub-accounts to record transactions associated with non rate-regulated utility-owned qualifying facilities or assets.

- Account xxx, Non-Utility Plant in Service, Sub-account Qualifying Facility or Asset. Amounts recorded in this account shall include capital assets (property, plant and equipment) and intangible assets. These assets are not included in rate base and the associated amortization expenses are not included in the revenue requirement of the utility.

- Account xxx, Non-Utility Debt-Current, Sub-account Qualifying Facility Liabilities. Amounts recorded in this account shall include current liabilities associated with qualifying facilities or assets. These liabilities are not included in the utility rates.

- Account xxx, Non-Utility Debt-Non-Current, Sub-account Qualifying Facility Liabilities. Amounts recorded in this account shall include the liability portion not due within one year associated with qualifying facilities or assets. These liabilities are not included in the utility rates.

- Account xxx, Non-Utility Shareholders' Equity, Sub-account Qualifying Facilities. This sub-account shall include shares, paid-in capital, appropriated and unappropriated retained earnings, balance transferred from income and dividends associated with utility-owned qualifying facilities or assets. Sub-accounts may be used to distinguish the components of non rate-regulated shareholders' equity.

- Account 312, Non-Gas Operating Revenue, Sub-account Qualifying Facility Revenues. Amounts recorded in this account shall include revenues for qualifying facilities or assets from all sources, including Feed-in tariff contract revenues if applicable.

- Account 313, Non-Gas Operating Expense, Sub-account Qualifying Facility Expenses. Amounts recorded in this account shall include expenses associated with qualifying facilities or assets. Additional accounts shall be used under this sub-account to record the following categories of costs: (1) energy supply expenses (e.g. fuel), (2) operation, (3) maintenance (4) administration, (5) taxes and (6) amortization expenses.

A natural gas utility may use sub-accounts in addition to those specified in the above-noted accounts, as necessary to provide full details of the transactions related to utility-owned qualifying facility activities. Accounting information details should be maintained and made readily available to support Board review of these transactions.

These accounts are in effect for use to record transactions starting in 2010. The Board intends to include the above accounts in the Gas USOA as part of the updating of the Gas USOA related to the transition to International Financial Reporting System, and at that time will also assign numbers to those of the above accounts that currently have none. In addition, the Board intends to update the RRR section 2.1.7 USOA trial balance to include these accounts.

A natural gas utility is required to file annual audited financial statements under the RRR. The reporting requirements for financial statements in section 2.1.6 of the RRR specify the following:

> *…Where the financial statements of the corporate entity regulated by the Board contain material businesses not regulated by the Board, the utility shall disclose the information separately according to the segment disclosure provisions in the Canadian Institute of Chartered Accountants Handbook.*

Where non rate-regulated activities are undertaken by the utility, the natural gas utility should ensure that any such activities that represent "material businesses" are reported as operating segments consistent with provisions of Section 1701, Segment Disclosures, of the Canadian Institute of Chartered Accountants Handbook in the utility's audited financial statements. In addition, for rate setting purposes a utility will need to file financial information in rate applications that clearly delineates the utility's rate-regulated activities from its non rate-regulated activities. The rate applications should provide a description of the procedures and processes that were used to segregate the accounting information.

Appendix A

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

WHEREAS Enbridge Gas Distribution Inc. and related parties ("Enbridge") gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Enbridge Undertakings"), and Union Gas Limited and related parties ("Union") gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Union Undertakings");

AND WHEREAS the Minister of Energy and Infrastructure has the authority under section 27.1 of the *Ontario Energy Board Act, 1998* to issue directives, approved by the Lieutenant Governor in Council, that require the Ontario Energy Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management and the use of cleaner energy sources including alternative and renewable energy sources;

AND WHEREAS The Government of Ontario has, with the passage of the *Green Energy and Green Economy Act, 2009,* embarked upon a historic series of initiatives related to promoting the use of renewable energy sources and enhancing conservation throughout Ontario;

AND WHEREAS certain amendments to the *Ontario Energy Board Act, 1998* provided for by the above-noted statute authorize electricity distribution companies to directly own and operate renewable energy electricity generation facilities with a capacity of ten (10) megawatts or less, facilities that generate heat and electricity from a single source, or facilities that store energy, subject to criteria to be prescribed by regulation;

AND WHEREAS it is desirable that both Enbridge and Union are accorded authority similar to those of electricity distributors to own and operate the kinds of generation and storage facilities referenced above, while clarifying that the latter two activities, namely the ownership and operation of facilities that generate heat and electricity from a single source, or facilities that store energy, are to be interpreted to include stationary fuel-cell facilities each of which does not exceed 10 Megawatts in capacity, as well as to allow Enbridge and Union the authority to own and operate assets required in respect of the provision of services by Enbridge and Union that would assist the Government of Ontario in achieving its goals in energy conservation including where such assets relate to solar-thermal water and ground-source heat pumps;

AND WHEREAS the Minister of Energy has previously issued a directive pursuant to section 27.1 in respect of the Enbridge Undertakings and the Union Undertakings, under Order-in-Council No. 1537/2006, dated August 10, 2006.

NOW THEREFORE the directive attached hereto is approved and is effective as of the date hereof.

Recommended: _____
Minister of Energy and Infrastructure

Concurred: _____
Chair of Cabinet

Approved and Ordered: SEP 0 8 2009
Date

_____
Lieutenant Governor

O.C./Décret 1540/2009

MINISTER'S DIRECTIVE

Re: Gas Utility Undertakings Relating to the Ownership and Operation of Renewable Energy Electricity Generation Facilities, Facilities Which Generate Both Heat and Electricity From a Single Source and Energy Storage Facilities and the Ownership and Operation of Assets Required to Provide Conservation Services.

Enbridge Gas Distribution Inc. and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Enbridge Undertakings"); and Union Gas Limited and related parties gave undertakings to the Lieutenant Governor in Council that were approved by Order in Council on December 9, 1998 and that took effect on March 31, 1999 ("the Union Undertakings").

The Government of Ontario has, with the passage of the *Green Energy and Green Economy Act, 2009,* embarked upon a historic series of initiatives related to promoting the use of renewable energy sources and enhancing conservation throughout Ontario.

One of those initiatives is to allow electric distribution companies to directly own and operate renewable energy electricity generation facilities of a capacity of not more than 10 megawatts or such other capacity as is prescribed by regulation, facilities which generate both heat and electricity from a single source and facilities for the storage of energy, subject to such further criteria as may be prescribed by regulation.

The Government also wants to encourage initiatives that will reduce the use of natural gas and electricity.

Pursuant to section 27.1 of the *Ontario Energy Board Act, 1998*, and in addition to a previous directive issued thereunder on August 10, 2006 by Order in Council No. 1537/2006, in respect of the Enbridge Undertakings and the Union Undertakings, I hereby direct the Ontario Energy Board to dispense,

- under section 6.1 of the Enbridge Undertakings, with future compliance by Enbridge Gas Distribution Inc. with section 2.1 ("Restriction on Business Activities") of the Enbridge Undertakings, and

- under section 6.1 of the Union Undertakings, with future compliance by Union Gas Limited with section 2.1 ("Restriction on Business Activities") of the Union Undertakings,

in respect of the ownership and operation by Enbridge Gas Distribution, Inc. and Union Gas Limited, of:

(a) renewable energy electricity generation facilities each of which does not exceed 10 megawatts or such other capacity as may be prescribed, from time to time, by

regulation made under clause 71(3)(a) of the *Ontario Energy Board Act, 1998* and which meet the criteria prescribed by such regulation;

(b) generation facilities that use technology that produces power and thermal energy from a single source which meet the criteria prescribed, from time to time, by regulation made under clause 71(3)(b) of the *Ontario Energy Board Act, 1998*;

(c) energy storage facilities which meet the criteria prescribed, from time to time, by regulation made under clause 71(3)(c) of the *Ontario Energy Board Act, 1998*; or

(d) assets required in respect of the provision of services by Enbridge Gas Distribution Inc. and Union Gas Limited that would assist the Government of Ontario in achieving its goals in energy conservation and includes assets related to solar-thermal water and ground-source heat pumps;

(e) for greater certainty, the use of the word "facilities" in paragraphs (b) and (c) above shall be interpreted to include stationary fuel-cell facilities each of which does not exceed 10 Megawatts in capacity.

This directive is not in any way intended to direct the manner in which the Ontario Energy Board determines, under the *Ontario Energy Board Act, 1998,* rates for the sale, transmission, distribution and storage of natural gas by Enbridge Gas Distribution Inc. and Union Gas Limited.

George Smitherman
Deputy Premier, Minister of Energy and Infrastructure

Appendix B

Fully Allocated Costing Methodology for Non Rate-Regulated Activities

1. DEFINITIONS

In this Appendix:

"Allocable Costs" means indirect costs (i.e., costs that would be incurred regardless of whether or not the Non Rate-Regulated Activities were undertaken);

"Cost Driver" means a measure used to allocate, to a Non Rate-Regulated Activity, the costs of any functions performed within the utility to undertake that Non Rate-Regulated Activity;

"Fully Allocated Costs" means the sum of Marginal Costs and Allocable Costs;

"Marginal Costs" means direct costs (i.e., costs that would be eliminated or reduced if the Non Rate-Regulated Activities were no longer undertaken); and

“Non Rate-Regulated Activities” means activities that are carried out by a utility but not rate-regulated by the Board.

2. COST ALLOCATION PROCESS

2.1 Marginal Costs can be directly assigned to the Non Rate-Regulated Activity. Allocable Costs must be allocated, using a Cost Driver, to determine the proportional share of the Allocable Costs attributable to the Non Rate-Regulated Activities.

2.2 In order to determine the costs associated with the Non Rate-Regulated Activities, utilities shall use an activity analysis to assess the nature and extent of the functions being performed throughout the utility to undertake the Non Rate-Regulated Activities. The analysis must include the identification of all activities performed within the utility regardless of whether or not these activities directly or indirectly support the Non Rate-Regulated Activities.

2.3 The activity analysis referred to in section 2.2 must include the following Marginal Costs and Allocable Costs, where applicable:

(a) all salaries and labour costs including benefits;
(b) contractor expenses;
(c) billing and collection;
(d) customer care, marketing and advertising;
(e) administration and general expenses;
(f) IT costs;
(g) office equipment; and
(h) any other cost that the utility can show is relevant and necessary for the program analysis.

2.4 A utility must determine an appropriate Cost Driver for each Allocable Cost. Cost Drivers must be:

(a) representative of how costs are being incurred;
(b) implemented in a cost effective manner; and
(c) verifiable and justifiable.

The types of Cost Drivers that utilities may use are included below in sections 2.5 to 2.7.

2.5 Utilities may use headcount as a Cost Driver for the allocation of salaries, other labour related costs, administration and general expenses, and IT costs. This Cost Driver is based on the number of full-time equivalents needed to support the Non Rate-Regulated Activities. Utilities shall calculate full time equivalents in accordance with the following examples:

(a) if six employees each devoted 25% of their time to the Non Rate-Regulated Activity, the full-time equivalent for those employees would be 1.5; and
(b) if six part-time employees each devoted 25% of their time to the Non Rate-Regulated Activities, the part-time positions would first need to be translated into a full-time position (i.e., if an employee works 3 days per week, the full-time position would be 0.6) and then apply the percentage (i.e., 6 X 0.6 = 3.6 and 25% of 3.6 = 0.9) so the full-time equivalent would be 0.9.

2.6 Utilities may use time as a Cost Driver for the allocation of executive and administrative functions, legal services, and financial analysis because these functions are typically project specific. Utilities shall calculate the percentage of time to be allocated to the Non Rate-Regulated Activities by using the base hours per employee. A utility shall calculate an employee's base hours by determining the hours that the employee can be considered

to be available for work for the period being measured. Utilities shall calculate the percentage of time in accordance with the following example:

(a) if an employee's base hours are 40 hours per week and the employee actually worked 40 hours that week, which included four hours of his/her time spent on a Non Rate-Regulated Activities, the percentage of time allocation would be 10 percent; and
(a) If an employee's base hours are 40 hours per week and the employee actually worked 60 hours that week, which included four hours of his/her time spent on a Non Rate-Regulated Activities, the percentage of time allocation would still be 10 percent.

2.7 Utilities may use the frequency of an activity as a Cost Driver for the allocation of call centre costs and accounts payable processing because these activities can be repetitive in nature and consistent over time in terms of the level of effort required to provide the service. Call centre costs shall be allocated based on number of calls received in relation to the Non Rate-Regulated Activities and accounts payable processing costs shall be allocated based on the number of invoices processed for Non Rate-Regulated Activities.