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DECISION AND ORDER

EB-2018-0305

ENBRIDGE GAS INC.

Application for 2019 Rates

BEFORE: **Lynne Anderson**
Presiding Member

Susan Frank
Member

September 12, 2019

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1 INTRODUCTION AND SUMMARY OF FINDINGS

On August 30, 2018, the Ontario Energy Board (OEB) approved the amalgamation of Enbridge Gas Distribution Inc. (EGD) and Union Gas Limited (Union Gas) under the OEB's policy on mergers, acquisition, amalgamation and divestiture (MAADs) to form Enbridge Gas Inc. (Enbridge Gas).¹ In its decision, the OEB also approved a rate-setting framework and associated parameters for the deferred rebasing period of 2019 to 2023 (MAADs Decision). Enbridge Gas is the largest natural gas distribution utility in Canada serving over 3.5 million customers.

Enbridge Gas filed a complete rate application with the OEB on December 14, 2018 under section 36(1) of the *Ontario Energy Board Act, 1998* (OEB Act) seeking approval for changes to its natural gas rates effective January 1, 2019. On December 3, 2018, the OEB declared the current rates of Enbridge Gas to be interim effective January 1, 2019 based on the initial application dated November 23, 2018,² until the OEB issues a final rate order in this matter.

In Decision and Procedural Order No. 2 dated April 1, 2019, the OEB approved an Issues List for the proceeding. Parties settled some of the issues through a settlement conference, but the major issues remained unresolved. A settlement proposal was filed on May 29, 2019. The OEB accepted the settlement proposal and scheduled a written process for hearing the unsettled issues.

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

1. The OEB will maintain the status quo of the Open Bill Revenue Variance Account. Any changes will be determined in the open bill access proceeding.
2. The proposed one-time rate base adjustment related to the capital pass-through projects is denied. The treatment of the capital pass-through deferral and variance accounts will continue under the existing methodology as approved in the MAADs Decision.
3. The 2019 PCI of 1.07% shall be used to calculate the Incremental Capital Module (ICM) materiality threshold value for the Union Gas rate zone.
4. Enbridge Gas is directed to remove spending related to Customer Experience Transformation and HANA software implementation from the 2019 in-service capital

¹ EB-2017-0306 / 0307 (the MAADs Decision).

² The initial application requested interim rates.

forecast that is used to determine the Maximum Eligible Incremental Capital for the ICM.

5. The Don River Replacement Project does not qualify for ICM funding as there is no eligible incremental capital available for the EGD rate zone.
6. The Sudbury Replacement Project will be funded under a capital pass-through mechanism the same as was used during Union Gas' last IRM framework starting January 1, 2019. A capital pass-through deferral account for the project will be approved with the net book value of the asset as at January 1, 2019.
7. The Kingsville Transmission Reinforcement project is found to be eligible for ICM funding.
8. The Stratford Reinforcement Project is eligible for ICM funding. The ICM funding amount represents the difference between the amount approved for the Kingsville Transmission Reinforcement project (excluding property taxes) and the \$120.0 million Maximum Eligible Incremental Capital approved for the Union Gas rate zone.
9. Indirect overhead costs are eligible to be included in the ICM project costs. Incremental O&M expenses and property taxes related to ICM funded projects will not be eligible for recovery as per the ICM policy.
10. The rate riders related to recovery of ICM funded projects shall be implemented November 1, 2019 and shall be calculated to recover the total revenue requirement for the Kingsville Transmission Reinforcement and ICM funding of approximately \$1.8 million for the Stratford Reinforcement projects from 2019 to 2023 (up to the Maximum Eligible Incremental Capital of \$120 million per year).
11. The OEB concludes that the material change to the customer connection policy for the EGD rate zone should not have been made during an IRM period, and should have been reviewed by the OEB in a rate application prior to implementation. Enbridge Gas is required to refund all customers who paid additional amounts under EGD's revised customer connection policy since 2015. Furthermore, Enbridge Gas is required to continue with the previous EGD customer connection policy until any new policy is accepted by the OEB.
12. At this time the OEB is not approving an effective date for rates of January 1, 2019, as requested by Enbridge Gas. The OEB is considering an effective date of April 1, 2019, but is inviting submissions on this issue before making a final determination.

2 THE PROCESS

The OEB issued a Notice of Hearing on January 15, 2019. In Procedural Order No. 1 issued on February 22, 2019, the OEB approved a list of intervenors, provided for submissions on the issues list, interrogatories and scheduled a technical and a settlement conference.

In Decision and Procedural Order No. 2 dated April 1, 2019, the OEB approved an Issues List for the proceeding. In that decision, the OEB determined that gas supply planning is out of scope for this proceeding and the OEB would not review the gas cost consequences of the 2019 Gas Supply Plan for the EGD rate zone. The OEB acknowledged that 2019 is a period of transition and that there was no approved gas supply plan for 2019. To the extent that any approvals are essential to the continued adjudication of Quarterly Rate Adjustment Mechanism (QRAM) applications that adjust natural gas commodity rates, the OEB established that these could be identified by Enbridge Gas and filed in a stand-alone application.

While gas supply costs for the Union Gas rate zone are entirely adjusted through the QRAM process, gas supply costs for the EGD rate zone are adjusted in the annual rate application and through the QRAM.

In a letter dated April 11, 2019, Enbridge Gas maintained that gas supply costs were Y factors and should be in the purview of the current rates application. Enbridge Gas further clarified that the OEB's upcoming Gas Supply Planning Framework review³ will address the gas supply plan for the 2020-2024 period and not for 2019. Enbridge Gas further noted that filing a stand-alone application would result in regulatory inefficiency and further delay Enbridge Gas' ability to recover the costs.

The OEB in Procedural Order No. 3 noted that a review of a new 2019 Gas Supply Plan is a significant undertaking and is not appropriate in the current proceeding, which is fundamentally about making mechanistic adjustments based on a rate-setting framework approved in a prior application. However, the OEB was prepared to establish a 2019 Gas Supply Plan Cost Consequences deferral account for the EGD rate zone that would track the proposed amounts from January 1, 2019, for review and disposition as part of a future proceeding.

A settlement conference was held on May 13 and 14, 2019. Some issues were settled but the major issues remained unresolved. In Decision and Procedural Order No. 4

³ EB-2019-0137

dated June 10, 2019, the OEB accepted the settlement proposal and scheduled a written process to address the unsettled issues.

Enbridge Gas filed its argument-in-chief on June 17, 2019. Intervenors and OEB staff filed their submissions on the unsettled issues on July 4, 2019. The following intervenors filed submissions in this proceeding:

- Association of Power Producers of Ontario (APPrO)
- Building Owners and Managers Association (BOMA)
- Canadian Manufacturers and Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe Research Foundation (Energy Probe)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Industrial Gas Users Association (IGUA)
- London Property Management Association (LPMA)
- Ontario Greenhouse Vegetable Growers (OGVG)
- Quinte Manufacturers Association (QMA)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

Enbridge Gas filed its reply on July 12, 2019.

The OEB received 143 letters of comment that expressed a range of concerns about the proposed rate increase. Many ratepayers argued that the proposed increase was unaffordable, particularly for low-income families.

The OEB considered these comments in assessing the applicant's proposal.

3 STRUCTURE OF DECISION

The structure of this decision follows the broader topics in this proceeding. The first topic is OEB directives, which aligns with Issue 1: Has Enbridge Gas responded appropriately to all relevant OEB directions from previous proceedings?

The second topic is accounting orders, which deals with deferral and variance accounts (Issues 3 and 5).

The third topic deals with all issues related to the OEB's ICM. This topic addresses the one-time base rate adjustment (Issue 7), materiality threshold, Utility System Plan and Asset Management Plans (Issue 9) and all the ICM projects including the related rate rider calculations (Issues 10, 11 and 12).

The last topic deals with Issue 13: Customer Connection Policy (of the EGD rate zone).

Issues 2, 4 and 8 were addressed through the settlement proposal.

4 DECISION

In November 2017, EGD and Union Gas filed an application with the OEB for approval to effect the amalgamation of EGD and Union Gas into a single company (MAADs Proceeding).⁴ The applicants also filed another application in November 2017 for approval of a ten-year rate setting mechanism for the proposed company, effective January 1, 2019.⁵ The OEB heard the two applications together.

On August 30, 2018, the OEB approved the amalgamation and approved a five-year Price Cap Incentive Regulation (IR) plan. The main elements of the approved IR Plan included:

- A Price Cap Index (PCI), which included an annual rate change driven by an inflation factor using the Gross Domestic Product Implicit Price Index Final Domestic Demand (GDP IPI FDD), less a productivity factor of zero and a stretch factor of 0.3%
- A deferred rebasing period of five years
- Y factor adjustments that included pass through of routine gas commodity and upstream transportation costs, demand side management cost changes, lost revenue adjustment mechanism changes for the contract market, and average use/normalized average consumption adjustments for each of the rate zones
- An asymmetrical earnings sharing mechanism
- Approval of ICM eligibility
- Z-factor materiality threshold of \$5.5 million
- Continuation and changes to certain deferral and variance accounts
- Base rate adjustments (Union Gas deferred tax drawdown, EGD customer information system and customer care costs, EGD pension and OPEB costs and EGD tax adjustment related to site restoration costs refund)

Pursuant to the OEB's MAADs Decision, Enbridge Gas filed an application in December 2018 for rates and other charges effective January 1, 2019.

Enbridge Gas requested the following approvals in its application:

⁴ EB-2017-0306

⁵ EB-2017-0307

- Approval of the calculation of the PCI
- Approval to amend wording of existing deferral and variance accounts to reflect rate zone applicability
- Establishment of new deferral and variance accounts as per the amalgamation decision
- Closure of certain deferral and variance accounts
- Approval for changes to the EGD rate zone rate handbook
- Approval for the rate design proposals related to Union Gas rate zones
- Approval for rate schedule changes to Union Gas rate zones including elimination of certain rate schedules
- Approval for ICM rate recovery associated with the NPS 30 Don River Replacement Project in the EGD rate zone
- Approval for ICM rate recovery associated with the Sudbury Replacement Project in the Union Gas North rate zone, and the Kingsville Transmission Reinforcement and Stratford Reinforcement projects in the Union Gas South rate zone

Some of these issues were dealt with in the settlement proposal (changes to and establishment of certain deferral and variance accounts, some rate design proposals and rate schedule changes) that was approved by the OEB on June 10, 2019.

4.1 OEB Directions

This issue assessed whether Enbridge Gas has responded appropriately to all relevant OEB directions from previous proceedings. The concerns of a number of intervenors under Issue 1 focused on the one-time adjustment for the capital pass-through projects, the corresponding changes to the projects' deferral accounts and the request for ICM funding. These concerns have been addressed in section 4.3.

In its reply, Enbridge Gas noted that it had responded appropriately to all relevant OEB directions from previous proceedings, including the MAADs Decision. In the MAADs Decision, the OEB directed Enbridge Gas to track the actual costs and the amounts recovered through rates related to the Parkway Delivery Obligation (PDO) during the deferred rebasing period for review at the time of rebasing. PDO costs refer to the costs incurred by Enbridge Gas to move the gas from Dawn to Parkway in order to eliminate

the delivery obligation of large volume direct purchase customers that were formerly required to deliver gas at Parkway.

In EGD's 2017 Earnings Sharing proceeding,⁶ EGD indicated that it had changed its approach to determine the feasibility analysis to connect residential infill customers. Prior to 2015, EGD provided a threshold of 20 metres for standard residential service connections and customers were required to pay the appropriate contribution in aid of construction (CIAC) when the service length exceeded the threshold. In August 2015, Enbridge Gas refined its approach to determine the Profitability Index (PI) for each infill customer. In the 2017 EGD Earnings Sharing proceeding, EGD committed to filing evidence with respect to this issue in its 2019 rate application.⁷ The evidence is provided in Appendix H.

In the 2018 Rate Adjustment proceeding,⁸ the OEB did not permit Enbridge Gas to include certain pension and Other Post-Employment Benefits (OPEB) costs in rates as the legislative amendments triggering the changes had not been formally passed. Parties agreed in the revised settlement proposal that Enbridge Gas would recover the actual amount of its pension and OPEB costs and related revenue requirement in 2018 through amounts to be recorded in the Post-Retirement True-Up Variance Account (PTUVA).⁹ On December 14, 2017, Bill 177 received royal assent. Enbridge Gas in this application has adjusted its 2019 revenue requirement by \$6.5 million (increase) to account for the impact of amendments to the *Pension Benefits Act* legislation. This adjustment was approved in the MAADs Decision and is reflected in this application.

In Union Gas' 2015 Deferral Account Disposition and Earnings Sharing proceeding, Union Gas committed to filing a study assessing the continued appropriateness of its forecasting methodology to determine Normalized Average Consumption as part of its 2019 rates application.¹⁰ In the MAADs Decision, the OEB directed the applicants (EGD and Union Gas) to develop a revenue neutral approach to NAC/Average Use and file a proposal with its next rebasing application.¹¹

⁶ EB-2018-0131

⁷ EB-2018-0131 Settlement Proposal, October 3, 2018, p.8.

⁸ EB-2017-0086

⁹ EB-2017-0086 Amended Settlement Proposal, December 6, 2017.

¹⁰ EB-2016-0118 Settlement Proposal, July 7, 2016, p.11.

¹¹ MAADs Decision, EB-2017-0306/0307, August 30, 2018, p.35.

Findings

The OEB finds that apart from the items addressed in section 4.3, Enbridge Gas has responded appropriately to all relevant OEB directions from previous proceedings.

Several directives were made in the MAADs Decision. Some directives related to future obligations to be filed with the next rebasing application, by the end of 2019, or with the 2020 rate application.

Enbridge Gas addressed certain requirements with this current application as follows:

- The ongoing commitment to post the design day Dawn-Parkway system was provided at Exhibit F1, Tab 2, Rate Order, Working Papers, Schedule 11
- The allocation of PDO and PDCI costs has been updated for the 2019 forecast to reduce any variance between the allocated costs included in 2019 rates and the actual 2019 PDO and PDCI costs for each rate class
- EGD filed evidence at Appendix H about the refined feasibility analysis approach for residential infill customers to meet its commitment. This issue is discussed in detail in section 4.4.
- Previous EGD commitments from the 2018 Rate Proceeding¹² and 2016 ESM Proceeding¹³ were addressed as part of the directives for the MAADs proceeding
- Union Gas' commitment from the 2015 Deferrals and Earnings Sharing proceeding¹⁴ related to a review of the NAC methodology was addressed as part of the directives from the MAADs Decision

The OEB agrees with Enbridge Gas' summary of intervenor positions on Issue 1 that the focus of a number of parties was Enbridge Gas' proposals in relation to a one-time adjustment for the capital pass-through projects, the corresponding changes to the projects' deferral accounts or the request for ICM funding. These concerns are addressed in section 4.3.

¹² EB-2017-0086

¹³ EB-2017-0102

¹⁴ EB-2016-0118

4.2 Accounting Orders

4.2.1 Tax Variance Deferral Account (Bill C-97)

Issue 3, which includes the Tax Variance Deferral Account (TVDA), was settled. However, OEB staff in its submission noted a recent tax change that is expected to have a material impact on Enbridge Gas' revenue requirement.

The Government recently introduced a tax incentive program, the Accelerated Investment Incentive (AII), which provides for accelerated tax deductions through the Capital Cost Allowance (CCA) on eligible capital assets (Bill C-97). The AII allows for an increase in CCA deductions in the year of acquisition on eligible capital assets acquired after November 20, 2018. The AII does not change the total CCA deductions allowed to be claimed for an asset, but accelerates the timing of the claim so that the CCA deduction is larger in the first year of acquiring an asset than was allowed prior to the AII program.

In the MAADs Decision, the OEB approved the continuation of Union Gas' Tax TVDA and expanded the applicability of the account to both the EGD and Union Gas legacy areas. The purpose of the account is to record 50% of the difference between actual taxes and approved taxes due to tax changes resulting from, among other things, changes to federal or provincial tax legislation.

OEB staff observed that in recent decisions, the OEB directed some utilities to establish a sub-account for the purposes of recording the impact of changes in CCA rules, effective November 1, 2018.¹⁵ OEB staff noted that the sharing of tax impacts from the AII program was not in scope for this proceeding as it was not included in the approved Issues List. OEB staff recommended that the OEB direct Enbridge Gas to provide information on the AII, including the current 50/50 sharing for Tax Variance Deferral, in its 2020 rate application.

LPMA in its submission argued that for all projects granted ICM eligibility, Enbridge Gas should update the calculation of the CCA to take into account the AII.

In reply, Enbridge Gas submitted that there is no issue relating to the TVDA in this proceeding. The TVDA treatment was determined as part of the MAADs decision and the issue was essentially settled in this proceeding. Enbridge Gas noted that the impact

¹⁵ EB-2017-0049 Interim Rate Order, June 6, 2019 and EB-2018-0028 Decision and Order, June 13, 2019.

of the All legislation will next arise in the context of Enbridge Gas' application to dispose of 2018 non-commodity deferral account balances and earnings sharing.

Findings

On July 25, 2019, subsequent to the close of record for this proceeding, the OEB issued a letter directing all regulated utilities to establish a new Tax Variance Deferral sub-account. The purpose of the account is to record the impact of changes in CCA rules, effective November 21, 2018 (the date when accelerated CCA was first implemented). The OEB finds that it is appropriate for Enbridge Gas to follow the directions in the July 25, 2019 letter.

4.2.2 Deferral and Variance Account

Open Bill Revenue Variance Account (Issue 3)

A number of deferral and variance accounts were settled. The Open Bill Revenue Variance Account (OBRVA) related to the EGD rate zone remained unsettled.

Open Bill Access (OBA) services allow third parties to access the Enbridge Gas bill for the purpose of billing charges (such as water heater rental) and for the purpose of distributing third party marketing information in the form of bill inserts. The OBRVA for the EGD rate zone records any net revenue variances between actual versus forecast revenues and costs. Enbridge Gas proposed adjusting the wording of the existing OBRVA to refer to the most recently OEB-approved Open Bill Access Settlement Agreement from the EB-2013-0099 proceeding. The OBRVA is related to the OBA program currently under consideration by the OEB in a separate proceeding (OBA proceeding).¹⁶ The current rates of Enbridge Gas include a \$5.389 million credit to recognize net revenues from the OBA.

OEB staff recommended that the OEB maintain the status quo and defer to the OEB panel for the OBA proceeding to make a determination on the OBRVA. SEC submitted that it is not good regulatory practice for the OEB to make changes to an OEB-approved program when that program is under active consideration by another OEB panel. Energy Probe and VECC agreed that any changes to the OBA program should be considered in the OBA proceeding. Enbridge Gas indicated that the proposed change

¹⁶ EB-2018-0319

was administrative and does not change the nature of the account, but it could be dealt with as part of the OBA proceeding.

Findings

The OEB sees no need to make the Enbridge Gas proposed change to the OBRVA at this time. The OBA proceeding panel has more complete information on which to make a decision.

g. to i. Union Rate Zones – Capital Pass-Through Projects

The proposed changes to the Union Gas rate zone capital pass-through deferral accounts are tied to the OEB's decision with respect to the proposed one-time capital pass-through base rate adjustment. These changes have been addressed in section 4.3.1.

4.3 Incremental Capital Module

In the MAADs Decision, the OEB confirmed the availability of ICM funding for Enbridge Gas. As set out in the OEB's ICM Policy (also referred as capital funding policy), the ICM is a funding mechanism available to distributors whose rates are established under a Price Cap IR regime.¹⁷ The ICM is a regulatory tool that allows for recovery of the revenue requirement for qualifying material and incremental capital additions, beyond what is funded through approved rates.

4.3.1 One-time Rate Base Adjustment for Capital Pass-through Projects

The MAADs Decision directed Union Gas to add the rate base and depreciation associated with the capital pass-through projects to the 2013 OEB-approved rate base and depreciation to determine the ICM threshold value for the Union Gas rate zones.¹⁸ In this application, Enbridge Gas proposed a one-time adjustment to base rates (a credit of \$10.4 million) associated with the capital pass-through projects that were included in Union Gas' rates during the 2014-2018 Incentive Rate-setting Mechanism (IRM) term.

¹⁷ *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, EB-2014-0129, September 18, 2014.

¹⁸ MAADs Decision, p.33.

The proposed adjustment represents the difference between the 2018 revenue requirement of \$127.6 million included in 2018 rates for the capital pass-through projects and the 2019 forecasted revenue requirement of \$117.2 million.¹⁹ Essentially Enbridge Gas proposed to treat the cumulative revenue requirement associated with the capital pass-through projects from Union Gas' 2014 to 2018 IRM term as a component of rate base and no longer as a Y-factor adjustment. Moving from a Y factor adjustment to base rates has no impact on what Enbridge Gas would recover from customers in 2019 but affects the calculation of the ICM materiality threshold used to determine whether a capital addition is eligible for ICM funding.

Enbridge Gas argued that the proposal for a one-time adjustment to rates is appropriate as it aligns rates with the amount assumed to be funded through rates, as determined in the ICM threshold value calculation. Enbridge Gas stated that its approach addresses the disconnect between the annual capital investment supported by rates and the ICM threshold calculation.

Enbridge Gas requested that the capital pass-through deferral accounts continue only to record utility tax timing differences. Enbridge Gas identified that there will be higher utility taxes in the remainder of the deferred rebasing period. Absent continuation of the capital pass-through deferral accounts to record utility tax timing differences (i.e. incremental tax payment obligations), Enbridge Gas submitted that the amounts included in rates would not provide sufficient recovery to support capital already invested in the projects.²⁰

A number of intervenors (APPo, CME, LPMA, OGVG, SEC) argued that the OEB approved the existing treatment of the capital pass-through deferral accounts in the MAADs Decision and Enbridge Gas should have brought forward a motion to review if it did not agree with the OEB's decision on this matter. LPMA and SEC submitted that Enbridge Gas was attempting to partially rebase by implementing the one-time rate base adjustment and the proposal of the utility should be denied.

SEC, BOMA, CCC and LPMA noted that the initial proposed credit of \$10.4 million under Enbridge Gas' proposal actually results in a rate increase of \$46.5 million over five years. SEC argued that building the amount into base rates results in a recovery of \$117.2 million in 2019 and \$117.2 million plus the PCI escalator in 2020 and subsequent years. SEC submitted that Enbridge Gas wants the benefit of being able to escalate costs (depreciation and return on rate base, net of incremental revenue) that

¹⁹ Exhibit B1, Tab 1, Schedule 1, p.26.

²⁰ *Ibid*, p.8.

are not actually increasing each year, and wants to recover additional increases in tax consequences that naturally arise through the tax system. Accordingly, SEC submitted that Enbridge Gas' proposal should be denied and the capital pass-through accounts should continue under the current approved recovery mechanism.

Intervenors further argued that this matter was identified and argued in the MAADs proceeding, and the OEB concluded that the rate base and depreciation associated with the capital pass-through projects would be included in the determination of the eligible incremental capital for Union Gas' service territory.

OEB staff submitted that the ICM materiality threshold determines a proxy for capital additions that can be funded through existing rates. On the other hand, the Y-factor allows recovery of revenues on items approved by the OEB but not included in base rates.²¹ OEB staff submitted that the OEB did not direct Union Gas to add rate base and depreciation related to the capital pass-through projects to rates but only to include them in the calculation of the ICM materiality threshold.

In its reply, Enbridge Gas submitted that the OEB did not deal with the consequences to base rates resulting from its determination on the ICM threshold for the Union Gas rate zones, and the OEB was silent on the proper rate treatment of previous Y factor capital pass-through projects. Enbridge Gas disagreed with SEC that the OEB considered and denied the one-time adjustment in the MAADs Decision, arguing that the particular issue was not before the OEB and only arose as a result of the MAADs Decision.

Enbridge Gas further argued that the existence of the materiality threshold is premised on the fact that the utility should be able to fund a certain amount of capital spending through existing rates. For rates to support the capital funding contemplated by the ICM formula, Enbridge Gas submitted that there must obviously be an amount in rates that can be escalated during the deferred rebasing period and not passed through as a Y factor.

Findings

The OEB finds no reason to deviate from the MAADs Decision. The OEB denies the proposed one-time adjustment to base rates.

The OEB concludes that the MAADs Decision identified in Section 5.8 the specific adjustments that were permitted to base rates during the deferred rebasing period, and

²¹ In essence, under Union Gas' previous IRM plan, the Y-factor was analogous to the ICM or the C-factor, in some Custom IR plans, used for electricity distributors.

an adjustment to base rates related to the capital pass-through projects was not among them. The OEB finds it clear that the addition of the rate base and depreciation for the Union Gas capital pass-through projects was only for the purpose of the materiality threshold calculation used to determine the eligible incremental capital amount for ICM funding. If further adjustments to base rates were to be considered, they would have been identified in the MAADs Decision. The OEB finds it reasonable to take into consideration the funding from the capital pass-through mechanism in determining future funding through the ICM mechanism.

4.3.2 Materiality Threshold

In its application, Enbridge Gas used a PCI of 0.72% for calculating the Union Gas ICM materiality threshold, which is the average of the actual annual PCI used to increase rates during its price cap plan from 2014 to 2018. For the EGD rate zone, the 2019 PCI of 1.07% has been used to calculate the ICM materiality threshold.

Enbridge Gas submitted that the average PCI for the Union Gas rate zone more accurately reflects the impact PCI has had on rates and revenues since the base year (2013 rates for Union Gas) than the use of the current year PCI.

Almost all intervenors (BOMA, CCC, CME, Energy Probe, FRPO, IGUA, LPMA, SEC and VECC) and OEB staff objected to the use of the average PCI for calculating the Union Gas ICM materiality threshold. Intervenors (OGVG, LPMA and SEC) and OEB staff quoted the OEB's policy on this matter. In the *Report of the Board on New Policy Options for the Funding of Capital Investments*, the OEB states, "For ICM requests and ACM [Advanced Capital Module²²] rate rider approvals in a Price Cap IR application, distributors should use the most recently approved IPI and stretch factors".²³ LPMA and BOMA submitted that Enbridge Gas had not provided any meaningful evidence to support a deviation from the OEB policy.

OGVA described the ICM as a simple funding mechanism that is an exception to the decoupling of costs and rates during an IRM period. OGVA submitted that the OEB is "largely engaged in a balancing exercise between providing relief for utilities whose capital requirements materially exceeded the notion[al] capital funding in their rates and maintaining both the decoupling of costs from rates and regulatory simplicity over the

²² An ACM advances the review and approval process for incremental capital from the year in which the proposed projects will be entering service (i.e. the IR Term) to the preceding rebasing application.

²³ Report of the Board – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, EB-2014-0219, September 18, 2014, p.21.

IRM period”. OGVG submitted that tinkering with one aspect of the materiality threshold, in this case the calculation of the applicable PCI Index, undermines the ICM structure as a whole.²⁴

Using the current year PCI, the materiality threshold value for the Union Gas rate zone increases from \$375.2 million as per the pre-filed evidence, to \$398.5 million.²⁵ The resulting Maximum Eligible Incremental Capital drops from \$143.3 million to \$120 million for the Union Gas rate zone.²⁶

CME noted that a lower materiality threshold would allow Enbridge Gas to request more funding over time through ICM, even though revenues from rates would escalate at the PCI.

OEB staff argued that the former companies (EGD and Union Gas) are one entity now and there is no reason for the same company to use two different PCI values to determine the ICM materiality threshold.

Enbridge Gas in reply quoted the OEB’s capital funding policy which states:

A distributor could apply for an ICM as part of its annual IRM rate adjustment for any year subsequent to its cost of service application. The single year-over-year formula does not take into account the passage of time over the subsequent IRM period (i.e. the cumulative impacts of cost, inflation, productivity and changes in customers and demand).

...Having reviewed more than a dozen ICM applications since adopting the ICM, the OEB is of the view that the materiality threshold should change over time during the IR term. The amount of capital that is funded each year should change relative to what was funded in rebased rates to reflect the current price cap adjustment and growth in demand.²⁷

Enbridge Gas noted that the policy emphasizes the importance of taking into account the passage of time over the IRM period and the cumulative impacts of inflation, productivity and other changes. Union Gas last rebased in 2013 and its rates were not adjusted pursuant to the OEB’s prescribed formula but rather a custom index. Under Union Gas’ last IRM framework, rates were increased by only

²⁴ OGVG Submission, p.10.

²⁵ LPMA IRR#11.

²⁶ 2019 In-Service Capital Forecast of \$518.5 million less Materiality Threshold Value of \$398.5 million = \$120.0 million of Maximum Eligible Incremental Capital.

²⁷ Report of the Board – New Policy Options for the Funding of Capital Investments: Supplemental Report, EB-2014-0219, January 22, 2016, p.13.

40% of inflation, which was much less than the rate of increase applicable to any electricity distributor. Enbridge Gas further noted that the OEB's capital funding policy was developed with electricity distributors in mind.

Having regard to Union Gas' specific context, applying the OEB's standard policy for determining the threshold would be wrong according to Enbridge Gas, as it fails to take into account changes over the subsequent IRM period.

Findings

The OEB has determined that the 2019 PCI of 1.07% shall be used to calculate the ICM materiality threshold for the Union Gas rate zone. It is appropriate for the same PCI to be used for all of Enbridge Gas' rate zones.

The OEB's capital funding policy²⁸ is very clear: distributors are required to use the most recently approved IPI and stretch factors. Enbridge Gas has not provided sufficient justification to warrant a departure from the OEB policy. The impact of PCI on Union Gas' rates under the previous IRM framework has no bearing on the current framework approved by the OEB. The ICM policy is being applied to the current framework, and the policy should apply in its entirety. An applicant should not be able to pick and choose elements of the policy that work in its favour.

Using the current year PCI, the materiality threshold value for the Union Gas rate zone increases from \$375.2 million to \$398.5 million.²⁹ The resulting Maximum Eligible Incremental Capital drops from \$143.3 million to \$120 million.³⁰

4.3.3 Utility System Plan and Asset Management Plans

Enbridge Gas filed a consolidated Utility System Plan (USP) and separate Asset Management Plans (AMPs) for the EGD and Union Gas rate zones in support of the request for ICM funding. The AMPs provide detailed information on the five-year capital spending plans for each of the EGD and Union Gas rate zones. It also provides details on the planning process including how Enbridge Gas plans, prioritizes and determines the capital investment requirement while balancing risk, performance and cost.

²⁸ *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, EB-2014-0129, September 18, 2014.

²⁹ LPMA IRR#11.

³⁰ Table 7, Exhibit B1, Tab 2, Schedule 1, p.16.

Enbridge Gas' projected total capital spending (EGD and Union Gas rate zones) over the next five years is \$5.18 billion with annual spending of approximately \$1 billion. The total 2019 in-service capital forecast for determining the maximum eligible incremental capital is \$481.7 million for the EGD rate zone and \$518.5 million for the Union Gas rate zones.³¹

Most parties provided general comments on the USP and AMPs. OEB staff provided detailed comments on the \$40 million in spending related to information technology (IT) for the EGD rate zone. OEB staff did not express concerns with IT spending in the Union Gas rate zones. OEB staff referred to an interrogatory response in which Enbridge Gas indicated that it was currently reviewing the IT business requirements and the process would be completed by the end of 2019.³² OEB staff submitted that some of the IT spending should be deferred until after this review was completed.³³

OEB staff identified two specific projects in the EGD rate zone: (1) Customer Experience Transformation and CIS hardware replacement (\$7 million), and (2) HANA software implementation (\$6.4 million).

OEB staff argued that both projects were discretionary and could be deferred until the integration review is complete. OEB staff further noted that it was only a matter of a year before the review was completed.

OEB staff submitted that the \$13.4 million in proposed IT spending for 2019 should be disallowed. Deferring the \$13.4 million that was proposed to be spent on these two projects in 2019 would result in lowering the 2019 in-service capital budget to \$468.3 million, according to staff. This is the starting point for determining the maximum amount of eligible incremental capital. Based on this reduction, OEB staff estimated that there was no available incremental capital funding for the EGD rate zone for 2019 ICM projects.³⁴

BOMA and Energy Probe did not identify any particular capital spend in their submissions but argued that the USP and AMPs do not support approval of the ICM funding request. BOMA alleged that Union Gas included low priority projects in its capital expenditure plans to act as a buffer in the event unexpected projects require incremental funding.

³¹ Exhibit B1, Tab 2, Schedule 1, p.16.

³² OEB Staff IRR#67.

³³ Technical Conference, Transcript, Vol. 2, pgs.67-68.

³⁴ Revised in-service capital \$468.3 million minus materiality threshold value of \$468.5 million = -\$0.2 million.

Enbridge Gas in reply argued that BOMA and Energy Probe did not provide any evidence to support their position. Enbridge Gas also took issue with LPMA's argument that capital in-service forecasts for the 2019 to 2023 period were lower than the 2014 to 2018 period, and on this basis the ICM funding should be denied. Enbridge Gas submitted that spending in the previous five-year period has no bearing on the proposed spend over the next five years or to the ICM request.

With respect to OEB staff's submission on the two specific IT projects, Enbridge Gas submitted that the scope of the Customer Experience Transformation project, which relates specifically to the EGD rate zone, was defined prior to the amalgamation being approved and has not been modified for any integration related purpose. In addition, the program commenced in 2017 and the remaining spend in 2019 will deliver final elements of functionality envisioned in the overall plan. With respect to the HANA project, Enbridge Gas submitted that it was required to run hardware associated with the legacy customer information system.

Findings

The OEB finds the USP and AMPs acceptable for the purposes of considering the ICM funding requests, with the exception of the IT spending discussed further below. The OEB notes that Enbridge Gas is not required to file a consolidated USP until the application for 2021 rates, as per the MAADs decision.

The OEB directs Enbridge Gas to remove spending related to Customer Experience Transformation (\$7 million) and HANA software implementation (\$6.4 million) from the 2019 in-service capital forecast used to determine the maximum eligible incremental capital.

The OEB concludes that the proposed IT spending is premature given assessments are still underway on investments related to the merger, and the review of IT business requirements will be completed by the end of 2019. The OEB is not persuaded that customers will be negatively impacted if the projects are deferred for a year.

The Customer Experience Transformation project may have been defined prior to the amalgamation, but the OEB concludes that it is appropriate for Enbridge Gas to complete its review before further spending.

4.3.4 ICM Projects

In its application, Enbridge Gas requested ICM funding for four projects: one in the EGD rate zone and three in the Union Gas rate zones. The OEB has granted leave to construct approval for all of the four projects that are subject of the ICM funding request in this application. Apart from QMA, all other intervenors and OEB staff disputed some or all of the requests for ICM funding related to the four projects.

As set out in the OEB's ICM policy, the ICM is a funding mechanism available to distributors whose rates are established under the Price Cap IR regime, as described in Section 3.3.2 of the Filing Requirements and in the OEB's ICM Policy.³⁵ The ICM is intended to address the treatment of a distributor's capital investment needs that arise during the Price Cap IR rate-setting plan which are incremental to a materiality threshold.³⁶ An ICM must meet tests for materiality, need and prudence.

Don River Replacement Project

The Don River project will replace 0.25 km of nominal pipe size (NPS) 30 XHP on the Don River crossing with a new NPS 30 XHP under the Don River through the use of trenchless technology. The project was granted leave to construct in November 2018.³⁷ The revised budget for the Don River Replacement project is \$35.4 million and the expected in-service date is December 2019.

The OEB's ICM materiality threshold calculation results in a 2019 threshold value of \$468.5 million for the EGD rate zone.³⁸ Enbridge Gas calculated the maximum eligible incremental capital for the EGD rate zone of \$13.1 million, and accordingly Enbridge Gas requested this amount for the Don River Replacement project.

BOMA, LPMA and CCC argued that the project is part of normal annual capital programs and therefore does not qualify for ICM funding. LMPA and CCC further argued that the revenue requirement related to the project is less than the materiality threshold of \$5.5 million established in the MAADs Decision. Energy Probe submitted

³⁵ *Filing Requirements For Electricity Distribution Rate Applications – 2018 Edition for 2019 Rate Applications- Chapter 3 Incentive Rate-Setting Applications*, July 12, 2018 ("IRM Filing Requirements"); *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, EB-2014-0129, September 18, 2014.

³⁶ *Ibid*, p. 4.

³⁷ EB-2018-0108

³⁸ Exhibit B1, Tab 2, Schedule 1, p.10.

that if the indirect overheads are excluded for the project, the project does not meet the materiality test and therefore ICM funding should not be approved.

OEB staff in its submission noted that if the OEB accepts staff's position on IT spending, Enbridge Gas does not have \$13.1 million in incremental capital funding available to cover the Don River project.

Enbridge Gas in reply responded to the submissions of parties that argued for excluding the Don River Project from ICM funding or requested a reduction to indirect overheads. Enbridge Gas submitted that the project met the OEB's criteria of materiality, need and prudence.

Findings

The OEB has previously determined that \$13.4 million related to IT spending will be removed from the 2019 in-service capital forecast used to determine the maximum eligible incremental capital for the EGD rate zone. This reduction reduces the starting point of the 2019 in-service capital from \$481.7 million to \$468.3 million. The resulting maximum eligible incremental capital drops from \$13.1 million to negative \$200,000.³⁹ Consequently, there is no room for any ICM funding for the EGD rate zone. Accordingly, the Don River project does not qualify for ICM funding.

Sudbury Replacement Project

The Sudbury Replacement Project is in the Union Gas North rate zone. Although Enbridge Gas requested ICM eligibility for 2019 rates, the project went into service in October 2018. The project replaced 20 km of NPS 12 pipeline in the Sudbury area. The actual cost of the project was \$95.3 million.

Enbridge Gas noted that due to its October 2018 in-service date, the project could not qualify for incremental rate treatment under Union Gas' capital pass-through mechanism under its previous IRM framework. Enbridge Gas noted that delaying the leave to construct application was not an option and if the project was delayed, integrity concerns could have become more serious. Given the magnitude of the investment, Enbridge Gas indicated that incremental funding is required. The cumulative revenue requirement of the project from 2018 through 2023 is over \$47 million.⁴⁰

³⁹ In-Service Capital of \$468.3 million minus Materiality Threshold Value of \$468.5 million = -\$0.2 million.

⁴⁰ Argument-in-chief, p.17.

A number of intervenors (APPo, BOMA, CCC, Energy Probe, LPMA, OGVG and SEC) submitted that the Sudbury project does not qualify for ICM funding as the request was contrary to ICM policy because the project did not go into service in the rate year (2019). SEC argued that the fact that the Sudbury project fell through the cracks of two different rate mechanisms is just one of the benefits and costs that arise naturally as a result of the applicant's decision to seek approval for deferred rebasing. Enbridge Gas in reply characterized this position as being opportunistic.

LPMA submitted that if the OEB were to approve the Sudbury project for ICM recovery, then the OEB should direct Enbridge Gas to take into account the incremental revenue that will be generated through higher demand and growth in customers. Using the 2018 data to calculate the materiality threshold for ICM purposes, LPMA estimated a maximum eligible amount of \$33.6 million and submitted that Enbridge Gas should be eligible for this amount for ICM recovery associated with the Sudbury project.

OEB staff in its submission noted the unique circumstances where a project falls between a previous capital funding mechanism and the incremental rate treatment under the ICM. OEB staff supported the view of other intervenors that the project does not qualify for ICM treatment. Since the project went into service in 2018, and at that time Union Gas had access to the capital pass-through mechanism, OEB staff submitted that the capital pass-through mechanism should apply. OEB staff submitted that Enbridge Gas should be granted the appropriate capital pass-through deferral account, which would be a Y-factor and operate like the other Union Gas capital pass-through deferral accounts. However, since no deferral account for this project existed in 2018, OEB staff submitted that the new deferral account should include the net book value of the asset as of January 1, 2019, the effective date of interim rates.

In reply, Enbridge Gas noted that the Sudbury project could not be delayed and Union Gas was not able to reprioritize 2018 capital investment in order to fund this investment using existing rates. Enbridge Gas submitted that the project should qualify for ICM treatment and denying the recovery would be overly formalistic. In the event that the OEB disagreed with the proposed ICM treatment for the Sudbury project, Enbridge Gas submitted that OEB staff's proposal should be adopted.

Findings

The OEB agrees with intervenors and OEB staff that the Sudbury project does not qualify for ICM funding. The project went into service in late 2018. The ICM is for investments during the 2019 to 2024 period, the term of the currently approved rate plan. However, the OEB recognizes the unique circumstances in this case. Accordingly, the OEB will approve the Sudbury project under a capital pass-through mechanism the

same as was used during Union Gas' last IRM framework starting January 1, 2019 (for clarity, the Sudbury project is not eligible for funding for 2018). Rates were declared interim effective January 1, 2019.

The OEB notes that system planning should be based on the needs of the system, not on the regulatory framework that is in place. Falling through the cracks of a transition from one regulatory framework to another should not be a determinative factor for system planning. Enbridge Gas indicated that delaying the leave to construct application and construction in order to confirm the funding mechanism for the project was simply not an option because integrity concerns could have become more serious.

The OEB approves a capital pass-through deferral account for the project effective January 1, 2019. The deferral account should include the net book value of the asset as of January 1, 2019. Enbridge Gas in reply has confirmed that the net book value of the Sudbury Replacement project as of January 1, 2019 was \$88.3 million.⁴¹ Accordingly, the OEB directs Enbridge Gas to use \$88.3 million to calculate the revenue requirement and resulting rate rider for 2019.

Kingsville Transmission Reinforcement

The project involves building a 19 km transmission pipeline in the County of Essex at a cost of \$121.4 million. The project is required to serve the increasing natural gas demand in the Kingsville-Leamington market as well as increasing demand on the overall Panhandle Transmission System. The project in-service date is November 2019. The OEB approved a leave to construct in September 2018. The total ICM funding request for this project is \$118.2 million.⁴²

OEB staff and VECC supported Enbridge Gas' request for ICM funding related to the project. OEB staff noted that the project reinforces a transmission system and addresses growth needs. With respect to increases in indirect overhead costs as compared to the original leave to construct application, OEB staff accepted Enbridge Gas' justification that the leave to construct application only included incremental costs and not fully burdened costs, which includes indirect overheads.⁴³ Energy Probe, while supporting ICM funding for the project, disputed the updated costs and submitted that the OEB should reduce the indirect overheads allocation and approve the original

⁴¹ Enbridge Gas Reply, footnote 54.

⁴² Exhibit B1, Tab 2, Schedule 1, p.18.

⁴³ Transcript Vol. 1, p.52.

amount of \$105.7 million approved in the leave to construct application. SEC also submitted that if the project is approved, the OEB should exclude indirect overheads and approve \$105.7 million. OGVG submitted that capitalized overhead amounts as claimed by Enbridge Gas do not qualify for incremental funding under the OEB's ICM/ACM policy. The policy states that the incremental capital amounts must be based on discrete projects and should be directly related to the claimed driver, and the amounts must be clearly outside the base upon which the rates were derived.⁴⁴

In reply, Enbridge Gas submitted that fully burdened costs include indirect overheads that are allocated to all projects, irrespective of whether these projects are ICM or not. These costs represent the support costs for departments such as planning, human resources, finance and IT that support each project through to completion. Enbridge Gas submitted that these costs are not self-sustaining and are incurred to support the implementation of capital projects required for the successful completion of all projects. Enbridge Gas further clarified that a leave to construct application is evaluated on the basis of need, timing, environmental assessment, and economic feasibility. Economic feasibility is conducted on an incremental basis and considers only the direct revenues and costs of the proposed project. According to Enbridge Gas, this allows the OEB to assess the costs and revenues that are specifically triggered or arise as a result of the project being undertaken. Enbridge Gas further noted that the leave to construct application does not need to determine rates or rate riders. This is done in a rate application.

LPMA agreed that the project is a significant, incremental and discrete capital project that is likely to have a significant influence on the operation of the distributor. LPMA submitted that if the OEB were to grant ICM funding for the project, then it should direct Enbridge Gas to take into account the incremental revenue generated from the increase in volumes delivered and growth in customers. LPMA submitted that this can be done either through a reduction in the net revenue requirement to be recovered through the ICM rate riders or through separate tracking of the incremental revenue generated by the project for refund to ratepayers upon rebasing. In reply, Enbridge Gas submitted that any incremental revenues are already captured in the growth factor used to determine the materiality threshold.

⁴⁴ *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, EB-2014-0129, September 18, 2014, p.17.

Findings

The OEB approves ICM funding of \$118.2 million (less any property taxes that are included in this amount, for the reasons discussed later in this section) for the Kingsville Transmission Reinforcement project based on the tests for materiality, need and prudence.⁴⁵ The need and the prudence for the project were addressed in the leave to construct approval. These elements do not need to be re-examined in this proceeding. However, the need for ICM funding for the project still needs to be assessed based on the ICM criteria.

Materiality

There are two materiality tests related to ICM applications. The first test is the ICM materiality threshold formula, which serves to define the level of capital expenditures that a distributor should be able to manage within current rates. The test states, “Any incremental capital amounts approved for recovery must fit within the total eligible incremental capital amount” and “must clearly have a significant influence on the operation of the distributor”.⁴⁶

In the previous section 4.3.2, the OEB directed Enbridge Gas to use the 2019 PCI to calculate the materiality threshold value for the Union Gas rate zone. The revised calculation provides a Maximum Eligible Incremental Capital of \$120 million.⁴⁷ This allows ICM funding for the Kingsville Transmission Reinforcement project.

The OEB has a second, project-specific materiality test for ICMs as follows:

Minor expenditures in comparison to the overall capital budget should be considered ineligible for ACM or ICM treatment. A certain degree of project expenditure over and above the Board-defined threshold calculation is expected to be absorbed within the total capital budget.⁴⁸

The OEB concludes that the cost of the project at \$118.2 million is material in comparison to the overall budget and has a significant impact on Enbridge Gas’ operations.⁴⁹

⁴⁵ Exhibit B1, Tab 2, Schedule 1, p.18.

⁴⁶ ACM Report, p.17.

⁴⁷ 2019 In-Service Capital Forecast of \$518.5 million less Materiality Threshold Value of \$398.5 million = \$120 million of Maximum Eligible Incremental Capital.

⁴⁸ *Ibid*

⁴⁹ 2019 In-Service capital of \$518.5 million for the Union Gas rate zone.

Need

As noted previously, the OEB already determined that the project itself is needed as part of the leave to construct proceeding. The ICM policy also requires assessment of whether ICM funding is needed by meeting the following criteria:

- passing the Means Test
- the amounts must be based on discrete projects, and should be directly related to the claimed driver
- the amounts must be clearly outside of the base upon which the rates were derived⁵⁰

The OEB agrees that the Means Test has been satisfied. Under the Means Test, if a distributor's regulated return on equity (ROE) exceeds 300 basis points above the deemed ROE embedded in the distributor's rates, then the funding for any incremental capital project would not be allowed. Enbridge Gas in the application confirmed that its ROE for the past three years did not exceed 300 basis points above the deemed ROE, and therefore it had satisfied the Means Test. No party took issue with Enbridge Gas passing the Means Test.

The OEB agrees that the project is discrete and outside the base upon which the rates were derived.

LPMA argued that Enbridge Gas should be required to take into account the incremental revenue generated from the increase in volumes delivered and growth in customers. The OEB notes that the ICM policy does not require utilities to record possible incremental revenues in a deferral account or include it in the rate rider. As discussed under section 4.3.2, the ICM policy is being applied to the current framework, and the policy should apply in its entirety. The materiality threshold calculation for determining the maximum eligible incremental capital includes a growth factor that accounts for incremental revenues and growth in customers that may arise due to the implementation of an ICM eligible project. The OEB further notes that Enbridge Gas is under a Price Cap IR wherein revenues and costs are decoupled.

The OEB is satisfied that the project has met the criteria of need, prudence and materiality. Accordingly, the OEB finds that the Kingsville Transmission Reinforcement project is eligible for ICM funding. The OEB approves the requested amount less any

property taxes that have been included in the \$118.2 million, as discussed later in this section. Enbridge Gas is instructed to provide the revised amount in the draft rate order.

Stratford Reinforcement Project

This project involves construction of 10.8 kms of NPS 12 pipeline and ancillary facilities in order to increase the capacity of the Forest, Hensall and Goderich Transmission System serving the northern portions of the Counties of Middlesex and Lambton, and the Counties of Perth and Huron. The projected in-service date is November 2019. The OEB granted leave to construct in March 2019.⁵¹ Enbridge Gas requested ICM funding of \$25.1 million for the project.⁵²

A number of intervenors (BOMA, Energy Probe, CCC, LPMA and SEC) and OEB staff argued that the Stratford Reinforcement project was a routine project and therefore should not be eligible for ICM funding. Intervenors submitted that the OEB's capital funding policy defines ICM projects as being discrete, incremental, necessary, material and not part of typical annual capital programs. In reply, Enbridge Gas maintained that there is no requirement that a project must be "extraordinary" in order to qualify.

LPMA and CCC submitted that the annual revenue requirement of the project is in the \$2.1 million to \$2.3 million range in 2020 through 2023. Given that the materiality threshold for Enbridge Gas approved in the MAADs decision is \$5.5 million, LPMA and CCC argued that the project should not qualify for ICM funding. In reply, Enbridge Gas submitted that contrary to LPMA's submission, the OEB in the MAADs Decision determined that a project required \$10 million in total capital cost along with other required criteria in order to qualify for ICM funding, and the Stratford project exceeds this amount.

OEB staff noted that if the recent PCI was used for the threshold calculation, then the Maximum Eligible Incremental Capital would drop from \$143.3 million to \$120 million, which would be mostly exhausted by the Kingsville Reinforcement Project that requires \$118.2 million of ICM funding. The remaining \$1.8 million in OEB staff's view could be easily absorbed by the utility within its existing capital budget. OEB staff cited the capital funding policy that states that a certain degree of project expenditure over and above the threshold calculation is expected to be absorbed within the total capital budget.

⁵¹ EB-2018-0306

⁵² Exhibit B1, Tab 2, Schedule 1, p.18.

Findings

The OEB approves ICM funding of approximately \$1.8 million for the Stratford Reinforcement Project based on the tests for materiality, need and prudence.

The Stratford Reinforcement Project is required to meet the increasing demand in certain communities for natural gas starting in winter 2019. Intervenors submitted that the project is routine and represents “business as usual”, and therefore does not qualify for ICM funding. Some intervenors (Energy Probe, CCC, LPMA) suggested that the project is part of typical annual capital programs and therefore does not qualify according to the OEB’s ICM policy.

OEB notes that in order to qualify for ICM funding a project must meet the criteria of materiality, need and prudence. The ICM policy does not exclude a project on the basis that several such projects are completed by the utility in a specific year (such as reinforcements to an existing system).

With respect to the test for materiality, the revised Maximum Eligible Incremental Capital for the Union Gas rate zone is \$120 million (per section 4.3.2 of this Decision).⁵³ Enbridge Gas has requested \$25.1 million in ICM funding for the Stratford Reinforcement project. Approval of the Kingsville Reinforcement project utilizes \$118.2 million of the \$120.0 million available. Only \$1.8 million in capital funding is available for ICM funding related to the Stratford Reinforcement project.

The OEB concludes that the total cost of the project at \$27.9 million (of which ICM funding has been requested for \$25.1 million) is material in comparison to the overall capital budget of the Union Gas rate zone, and has a significant impact on Enbridge Gas’ operations.

The OEB recognizes that the ICM funding remaining for the Stratford Reinforcement project is small. Alternatively, the OEB could have approved the Stratford Reinforcement project in its entirety and only the portion of the Kingsville Reinforcement project up to the Maximum Eligible Incremental Capital. The choice of which project is assessed first should not be the deciding factor on whether the project meets the materiality test for ICM funding.

As noted for the Kingsville Transmission Reinforcement project, Enbridge Gas has passed the Means Test, and the need and prudence for the Stratford Reinforcement

⁵³ 2019 In-Service Capital Forecast of \$518.5 million less Materiality Threshold Value of \$398.5 million = \$120 million of Maximum Eligible Incremental Capital.

project was established in the leave to construct approval. The OEB agrees that the project is discrete and outside the base upon which the rates were derived.

The OEB concludes that the project fulfils the criteria required for ICM funding. The OEB therefore grants ICM eligibility for the Stratford Reinforcement project. However, the approved ICM eligible capital amount is approximately \$1.8 million or the difference between \$120.0 million of Maximum Eligible Incremental Capital and the revised amount for the Kingsville Transmission Reinforcement project (excluding property taxes).⁵⁴ Enbridge Gas is directed to provide the revised ICM eligible amount in the draft rate order and use that number to calculate the rate riders related to the project.

4.3.5 Indirect Overheads

The OEB approves the inclusion of indirect overheads in the ICM project costs. The OEB accepts Enbridge Gas' explanation that the ICM funding request is based on fully burdened costs, unlike a leave to construct application. Whether costs provided as part of a leave to construct proceeding should be inclusive of indirect overheads or not is out of scope of this proceeding. The OEB has never previously excluded indirect costs from ICM funding, and therefore the OEB considers Enbridge Gas' approach consistent with the OEB's policy for ICMs.

4.3.6 Operations and Maintenance (O&M) and Property Taxes

Enbridge Gas requested incremental operating expenses (O&M) and property taxes as part of the incremental revenue requirement calculation for ICM eligible projects. In the description of ICM funding deferral accounts, Enbridge Gas included O&M and property taxes to capture future capital projects that may give rise to incremental O&M costs or property tax costs. At the technical conference, Enbridge Gas clarified that the request was meant to cover material incremental operating expenses for projects like replacement of compressor stations where the incremental O&M constitutes a significant component of the revenue requirement.⁵⁵

⁵⁴ The total ICM funding for both projects totals \$120 million.

⁵⁵ Technical Conference transcript, Volume 1, May 1, 2019, p.115.

CCC, OGVG, LPMA, SEC and OEB staff argued that O&M and property taxes should not be included because the OEB's ICM policy does not provide for the recovery of incremental O&M or property taxes through the ICM.⁵⁶

LPMA noted that Enbridge Gas has included incremental property taxes in the incremental revenue requirement for ICM projects in 2019. LPMA submitted that Enbridge Gas should be ordered to remove the property tax expenses for all 2019 ICM eligible projects and be instructed to only include the capital related components of the revenue requirement in future ICM funding requests.

OEB staff noted that the OEB has never made an exception to the ICM policy for O&M or property taxes. OEB staff cited a recent OEB decision wherein the OEB denied Halton Hills Hydro's request for the associated O&M costs related to a new transformer station that was found eligible for ICM funding. The OEB determined that Halton Hills Hydro should be able to manage this incremental amount within its approved revenue requirement.⁵⁷

OEB staff submitted that pipeline expansions or extensions would normally result in higher revenues, which could be used to fund any incremental O&M and property taxes. OEB staff further noted that Enbridge Gas had not provided any quantum on the incremental O&M costs, and costs that are indeterminate in nature and/or quantum should not be approved as part of an ICM request.

In reply, Enbridge Gas noted that property taxes are not material in this application. For purposes of this application, Enbridge Gas agreed to exclude the property taxes in the determination of the relevant rate riders. However, Enbridge Gas noted that it reserves the right to revisit the issue of incremental O&M and property taxes in future, if the amounts are material.

Findings

The ICM policy is designed to address the treatment of incremental capital investments. It does not contemplate approval of incremental O&M expenses associated with the new asset. Just as the ICM policy does not take into account any potential O&M savings as a result of the replacement of an aging asset, it does not provide for recovery of incremental O&M expenses. These costs were denied in the Halton Hills Hydro

⁵⁶ *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module (EB-2014-0219)*, September 18, 2014; *Report of the OEB: New Policy Options for the Funding of Capital Investments: Supplemental Report (EB-2014-0219)*, January 22, 2016.

⁵⁷ Decision and Rate Order, EB-2018-0328, April 4, 2019.

proceeding. The OEB has never made an exception to the ICM policy for O&M or property taxes.

In its evidence, Enbridge Gas has indicated that incremental O&M related to ICM projects has not been included in this application for 2019 rates. The OEB directs Enbridge Gas to exclude property taxes in the determination of the relevant rate riders for ICM projects approved in this application. These costs are not recoverable under the existing ICM policy.

4.3.7 Rate Rider Calculation

In its evidence, Enbridge Gas indicated that at times the revenue requirement in the first calendar year of an ICM project may be a credit balance due to utility timing differences associated with the difference between utility income and taxable income. To reduce volatility in the impact to customers resulting from credit balances in the revenue requirement, Enbridge Gas proposed to net the credit balance in the in-service year with the balance in the second year and defer the ICM refund until the second year of the project. Enbridge Gas stated that it made this proposal to maintain stable predictable rate impacts during the deferred rebasing period.

While OGVG and IGUA supported Enbridge Gas' proposal, BOMA, LPMA and OEB staff opposed it. OEB staff for simplicity and administrative purposes preferred that the revenue requirement impact related to all ICM projects be included in rates for that year. BOMA submitted that credits and debits should be addressed in the year incurred as a matter of fairness. LPMA noted that while 2019 credit balances would attract interest rates at the OEB approved rate for deferral and variance accounts, Enbridge Gas would be able to recover amounts from customers based on the weighted average cost of capital that is significantly higher than interest rates on deferral and variance accounts. LPMA submitted that customers should be given the same cost of capital as the utility is recovering from them. Should LPMA's proposal not be accepted, LPMA submitted that the OEB should not accept Enbridge Gas' proposal of deferring the 2019 customer credits to 2020.

Findings

The OEB does not agree with Enbridge Gas' approach to setting the rates for funding the ICM. The OEB directs Enbridge Gas to calculate new ICM rate riders based on the criteria established by the OEB in these findings.

Enbridge Gas has calculated ICM unit rates for 2019 and proposes to embed these unit rates in the delivery and transportation charges on the applicable rate schedule and customer bills. Enbridge Gas has also stated its intent to calculate the 2020-2023 ICM unit rates as part of each of the respective annual rate proceedings based on the annual revenue requirement and updated annual forecast billing units.

While this is a 2019 rate application, the standard approach for an ICM is to calculate rate riders that persist until the next rate rebasing application, i.e. until December 31, 2023. The OEB directs Enbridge Gas to calculate rate riders based on the following criteria:

1. The approved ICM capital is \$118.2 million for the Kingsville Transmission Reinforcement project and approximately \$1.8 for the Stratford Reinforcement project (less any property tax in these amounts) up to the \$120 million Maximum Eligible Incremental Capital.
2. The implementation date for the rate riders shall be November 1, 2019.
3. The expected in-service date is November for both ICM projects. Enbridge Gas shall calculate the revenue requirement based on the approved ICM capital and this expected in-service date for each year until the next rebasing rate application, i.e. from 2019 to 2023.
4. The smoothed rate rider will recover the approved requirement for the ICM projects for the entire term until the next rebasing application. The rate rider will not be changed during this period. Given the expected in-service date is November for both ICM projects, no retroactive rate adjustment is required related to the ICM rate riders.
5. The charge for the ICM rate riders will be included with the delivery and transportation charges (as applicable for the customer class) on natural gas bills.

The ICM rate riders continue until the next rebasing application. In that rebasing application, the OEB will review the spending against plan. The OEB has approved ICM funding to the Maximum Eligible Incremental Capital of \$120 million. It would be inappropriate for Enbridge Gas to seek additional funding beyond the \$120 million for the ICM projects during the 2019 to 2023 period, therefore the ICM deferral account for 2019 ICM approved projects is only relevant to underspending.

The OEB does not require Enbridge Gas to track any variances between the revenue requirement related to actual project costs and revenue requirement collected through the ICM rate riders for the Stratford Reinforcement Project because it has approved

funding for only a portion of the project costs (approximately \$1.8 million). Tracking the entire project costs in the ICM deferral account is not relevant in this case.

For the Sudbury Replacement Project, the OEB determined that the capital pass-through mechanism would be used. Enbridge Gas is directed to calculate the unit rates for the Sudbury Replacement Project effective January 1, 2019 using the methodology established for the previous 2014 to 2018 rate-setting term. There will be no revenue requirement recovery for 2018, the year the asset went into service, because rates for 2018 were set on a final basis. Enbridge Gas shall file a draft accounting order for a capital pass-through deferral account for the Sudbury Replacement Project consistent with the existing capital pass-through deferral accounts.

The OEB notes that Enbridge Gas did not file live Excel models with its application. This 2019 rate application is intended to be largely mechanistic. The lack of live models makes it difficult for the OEB and parties to assess the calculations. As Enbridge Gas works towards common approaches to rate filings for the EGD and Union Gas rate zones, the OEB expects Enbridge Gas to develop rate setting models that can be filed in a live format for future rate applications.

4.4 Customer Connection Policy

Prior to 2015, EGD provided a threshold of 20 metres for standard residential service connections and customers were required to pay the appropriate contribution in aid of construction (CIAC) when the service length exceeded the threshold. In its argument-in-chief, Enbridge Gas noted that the CIAC amount was determined at a rate of \$32 per additional metre as prescribed in Rider G of the EGD rate handbook.⁵⁸

Since August 2015, Enbridge Gas refined its approach to determine the Profitability Index (PI) for each infill customer. The CIAC amount for residential infill customers is now determined by individually estimating the revenue allowance and the service cost estimate, which is typically a regionally tailored estimate based on historical data from similar services in the same area. The amount of service cost in excess of the revenue allowance is the CIAC amount, which is recovered from the customers who are having a service installed. The PI of each customer connection is brought to 1.0 under this scenario.

⁵⁸ Argument-in-Chief, p.19.

CCC, SEC, VECC and OEB staff argued that Enbridge Gas should not have changed the policy without OEB approval and submitted that Enbridge Gas should revert back to its prior policy for the EGD rate zone. CCC submitted that if Enbridge Gas wants to change the policy, the OEB must review and approve the changes.

SEC and OEB staff noted that Enbridge Gas recovers an additional \$8 million per year as a result of the change in the customer connection policy.⁵⁹ OEB staff submitted that the existing rate structure for the EGD rate zone was set on a cost of service basis in 2014, prior to the implementation of the new policy. The current rates for the EGD rate zone therefore underpin the costs to connect customers under the previous policy. According to OEB staff, the fact that the Investment Portfolio dipped below 1.0 in a particular year was not a sufficient reason to unilaterally change the policy. Enbridge Gas in response to an interrogatory noted that the Investment Portfolio for the EGD rate zone dipped below 1.0 in 2015 and was fairly close to 1.0 in 2014 and 2016.⁶⁰

VECC submitted that Enbridge Gas lacks the authority to make such changes without OEB approval. VECC and SEC submitted that all customers that were charged under the revised policy should be refunded the excess amount.

Enbridge Gas submitted that the change in the customer connection policy was required to ensure that the company's Investment Portfolio achieves a PI of greater than 1.0 and to remain compliant with the OEB's policy on natural gas expansion (EBO 188).⁶¹ Enbridge Gas noted that its refined approach to feasibility analysis results in higher contributions than its prior approach. Enbridge Gas submitted that upon rebasing, the refined approach to feasibility analysis will benefit ratepayers, because the new amounts being added to utility rate base for residential infill customers will be lower than would be the case under the prior approach.

Findings

The OEB concludes that the material change to the customer connection policy for the EGD rate zone should not have been made during an IRM period, and should have been reviewed by the OEB in a rate application prior to implementation. Enbridge Gas is required to refund all customers who paid additional amounts under EGD's revised customer connection policy since 2015. Furthermore, Enbridge Gas is required to continue with the previous EGD customer connection policy until any new policy is accepted by the OEB.

⁵⁹ Undertaking JT1.11.

⁶⁰ Response to Energy Probe IR#25.

⁶¹ Final Report of the Board, E.B.O. 188, January 30, 1998, section 2.1.5.

It is important during an IRM period that charges to customers are not increased for providing the same services, and services to customers are not diminished. A utility is expected to manage its costs through productivity improvements, not through material changes to the condition of services to customers.

In a previous proceeding, the OEB concluded that a capital contribution is a rate.⁶² Section 36 of the OEB Act requires that a gas distributor have an order of the OEB to charge for the distribution of natural gas, and the OEB may make orders fixing just and reasonable rates for the distribution of gas using any method or technique it considers appropriate.

In its last rebasing application, EGD provided its customer connection policy.⁶³ Rider G to the rate handbook provided details of the charges for customer connections and specified that a charge of \$32 would be applied for each metre beyond the 20 metre threshold. The rates set out in the rate handbook were approved by the OEB.⁶⁴ EGD stated that “The Company has concluded that no change will be required to these fees throughout the 2014 through 2016 incentive rate period.”⁶⁵ EGD revised the charges in August 2015.

The OEB acknowledges the Investment Portfolio of the Enbridge Gas Distribution rate zone dipped below 1.0 in 2015 and was fairly close to 1.0 in 2014 and 2016. This raises questions of whether the projects that made up the portfolio were economic. It is not simply a matter of charging individual customers more. Addressing this situation should be done at the time that the OEB is considering Enbridge Gas’ costs to serve customers.

Because Enbridge Gas charged some customers for connections based on a methodology other than the one that was included in its last rebasing application and approved by the OEB, those customers were in essence charged the wrong rate. They are therefore entitled to refunds in the amount representing the difference between what they were actually charged and what they should have been charged, under the pre-August 2015 connection policy.⁶⁶ For clarity, in the event a customer was actually

⁶² EB-2012-0396, Decision with Reasons, February 7, 2013, p.14.

⁶³ EB-2012-0459, Exh A1, Tab 5, Sch. 1, Appendix A

⁶⁴ EB-2012-0459, Decision and Rate Order, August 22, 2014, p. 6

⁶⁵ EB-2012-0459, Ex A1, Tab 5, Sch. 2, p. 1.

⁶⁶ Such a refund is in keeping with what the OEB ordered in the EB-2012-0406 / EB-2013-0081 proceeding, which involved the overpayment by a customer of a capital contribution to Natural Resource Gas Limited.

charged less than what the customer should have been charged, the underpayment is not recoverable by Enbridge Gas.

The review of a customer connection policy would generally be best as part of a rebasing rate application (expected for 2024 rates for Enbridge Gas). However, the OEB recognizes that Enbridge Gas is expected to file a consolidated USP with its 2021 rate application. This may be an appropriate time to review Enbridge Gas' customer connection policy.

The OEB directs Enbridge Gas to file detailed evidence regarding its customer connection policies either as part of its 2021 rate application with a consolidated USP, or with its next rebasing rate application.

5 EFFECTIVE AND IMPLEMENTATION DATE

Enbridge Gas filed its application on December 14, 2018 seeking rates effective January 1, 2019. The OEB determined that the application was complete on January 8, 2019.

In a December 3, 2019 decision, the OEB approved Enbridge Gas' current rates on an interim basis effective January 1, 2019. The decision stated:

This determination of interim rates continues to be without prejudice to the OEB's decision on Enbridge Gas' application and should not be construed as predictive, in any way whatsoever, of the OEB's final determination of the effective dates for rates arising from the application.

The OEB finds that it was unreasonable for Enbridge Gas to expect that an application filed on December 14, 2018 could be processed in time for rates effective January 1, 2019. The OEB acknowledges that Enbridge Gas could not file the application until after the OEB issued its MAADs Decision on August 30, 2018. However, the timing of the filing of the MAADs application, and the timing of the amalgamation following the OEB's approval, was at the discretion of Enbridge Gas. As the OEB has noted in a recent decision for Ontario Power Generation,

The OEB expects any applicant to make a reasonable assessment of the time that it will take to process its application based on the nature of that application and the experience of previous applications, and to file with sufficient time before the requested effective date. To the extent that this assessment is not reasonable, customers should not bear any negative consequence.⁶⁷

Parties did not make submissions on the effective date for rates, and the settlement proposal filed by the parties did not include settlement of the effective date for rates. Based on the record of this proceeding, the OEB is considering an April 1, 2019 effective date. This would be approximately two months shorter than the OEB's current performance standard of 165 days for complex incentive rate-setting applications, taking into consideration the timing of the MAADs Decision. However, recognizing that the parties have not made submissions on this matter, the OEB is providing an opportunity for intervenors and OEB staff to make submissions on the effective date for base rates,

⁶⁷ Decision and Order on a motion to review and vary by Ontario Power Generation Inc. (OPG), August 30, 2018 (EB-2018-0085), in which a review panel upheld the decision to set an effective date for OPG payment amounts that was later than what OPG had requested.

and for Enbridge Gas to reply, before a final determination is made. The OEB will issue its final decision on the effective date prior to Enbridge Gas submitting a draft rate order.

Rates will be implemented on November 1, 2019. As part of the draft rate order, Enbridge Gas shall calculate the forgone revenue from base rates from the effective date to October 31, 2019, and shall calculate rate riders to recover this forgone revenue. The OEB expects that the recovery of several months of forgone revenue over only two months could result in a material bill impact for customers. Enbridge Gas is expected to provide options for the recovery of this forgone revenue over different periods of time from two months (November 1, 2019 to December 31, 2019) to 14 months.

As noted in section 4.3.6, no retroactive adjustment is required for the ICM rate riders. For the Sudbury reinforcement capital pass-through, Enbridge Gas shall calculate options for the unit rates to recover the 2019 revenue requirement over different periods of time from two months to 14 months for implementation November 1, 2019.

For each of the rate-setting options provided, Enbridge Gas shall provide the estimated bill impacts.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Intervenors and OEB staff may file brief written submissions on the appropriate effective date for rates, copying all other parties, by **September 16, 2019**.
2. Enbridge Gas may file brief reply submissions on the appropriate effective date for rates, copying all other parties, by **September 18, 2019**.
3. Enbridge Gas shall file with the OEB, and forward to all intervenors a draft rate order attaching a proposed Tariff of Rates and Charges reflecting the OEB's findings in this Decision (and its decision on the effective date for rates), by **September 30, 2019**. The draft rate order shall include customer rate impacts and detailed supporting information showing the calculation of final rates and the associated rate riders for the approved ICM projects.
4. The draft rate order shall also include draft accounting orders related to the deferral accounts established, revised or approved by the OEB in this proceeding which were not included in the settlement proposal of May 29, 2019. This includes the Enbridge Gas Distribution 2019 Gas Supply Plan Cost Consequences Deferral Account approved in Procedural Order No. 3 dated April 17, 2019.
5. Intervenors and OEB staff shall file any comments on the draft rate order with the OEB and forward them to Enbridge Gas on or before **October 4, 2019**.
6. Enbridge Gas shall file with the OEB and forward to the intervenors responses to any comments on its draft rate order on or before **October 10, 2019**.
7. As soon as practicable Enbridge Gas shall refund any customer who paid for a connection under the revised connection policy released in August 2015. The amount of the refund shall be the difference between what the customer actually paid for the connection and what the customer would have paid for the connection under the previous connection policy. Any charges for new connections made after the date of this Decision and Order shall be in accordance with the previous connection policy.
8. Cost eligible intervenors shall file their cost claims with the OEB and forward them to Enbridge Gas on or before **October 25, 2019**.

9. Enbridge Gas shall file with the OEB and forward to the intervenors any objections to the claimed costs by **November 4, 2019**.
10. Intervenors shall file with the OEB and forward to Enbridge Gas any responses to any objections for cost claims by **November 8, 2019**.
11. Enbridge Gas shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto, September 12, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary