



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

Ontario

DECISION AND ORDER

EB-2019-0247

ENBRIDGE GAS INC.

2020 Federal Carbon Pricing Program Application

BEFORE: Lynne Anderson
Presiding Member

Susan Frank
Member

Michael Janigan
Member

August 13, 2020

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1 INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) requested Ontario Energy Board (OEB) approval under section 36(1) of the *Ontario Energy Board Act, 1998* (OEB Act) to increase rates to recover costs associated with meeting its obligations under the federal *Greenhouse Gas Pollution Pricing Act* (GGPPA) and the Federal Carbon Pricing Plan (FCPP), and to dispose of the 2019 balances recorded in its FCPP-related deferral and variance accounts.

Under the GGPPA, Enbridge Gas is required to pay to the federal government a federal carbon charge for greenhouse gas emissions from the natural gas that it delivers to its non-exempt customers, and further payments for its own facility emissions. On April 1, 2020, the federal carbon charge under the GGPPA increased to \$30/tonne of carbon dioxide equivalent (CO_{2e}), equivalent to a charge of 5.87 ¢/m³ of natural gas use.

Enbridge Gas requested approval to increase the Federal Carbon Charge from 3.9100 ¢/m³ to 5.8700 ¢/m³ to match the volumetric charge it must remit to the federal government for its customers' emissions, and to increase the Facility Carbon Charge to reflect its forecast facility costs.

On February 11, 2020, the OEB approved Enbridge Gas's proposed rates for the Federal Carbon Charge and Facility Carbon Charge on an interim basis, effective April 1, 2020. In this Decision and Order, the OEB approves these charges on a final basis effective April 1, 2020.

The incremental bill impact of the 2020 Federal Carbon Charge and 2020 Facility Carbon Charge for typical residential customers was \$47.07 per year in the Enbridge Gas Distribution (EGD) rate zone (based on annual consumption of 2,400 m³) and \$43.15 per year in the Union rate zones (based on annual consumption of 2,200 m³). This was the incremental bill impact on April 1, 2020, the effective date for the interim rates. No change was requested from the interim rates, therefore there are no further bill impacts for the Federal Carbon Charge and Facility Carbon Charge.

Enbridge Gas's application also requested approval to dispose of the 2019 balances in the FCPP deferral and variance accounts (DVAs):

- \$145.70 million in the Customer Variance Accounts, recording the variance between FCPP customer-related costs incurred by Enbridge Gas and costs recovered in rates

- \$0.98 million in the Facility Variance Accounts, recording the variance between FCPP facility-related costs incurred by Enbridge Gas and costs recovered in rates
- \$1.60 million in the Administration Deferral Accounts, recording Enbridge Gas's administration costs associated with the FCPP

The large balance in the Customer Variance Accounts was due to costs incurred in the four-month period between April 1, 2019 and July 31, 2019. For this period, Enbridge Gas was required to remit a federal carbon charge to the federal government for its customers' emissions, but a Federal Carbon Charge was not included on the bills of Enbridge Gas customers to recover this cost.

The OEB approves the 2019 balances in all FCPP DVAs, subject to an adjustment regarding the interest rate used for the balances in these accounts in the 3rd quarter of 2020. This will have a minor impact on the balances in these accounts.

The OEB approves the disposition of all FCPP deferral and variance account balances in three monthly installments beginning October 1, 2020 for all Enbridge Gas customers. Enbridge Gas estimated the total bill impact (over the three-month period) of the proposed 2019 FCPP DVA disposition to be an increase of \$21.85 for a typical residential customer in the EGD rate zone with annual consumption of 2,400 m³, and increases of \$16.01 and \$16.58 for typical residential customers with annual consumption of 2,200 m³ in the Union South and Union North rate zones, respectively. The OEB does not expect that the changes resulting from this Decision and Order will materially change the estimated total bill impacts.

The OEB previously determined that it would defer consideration as to whether the FCPP charges are constitutionally applicable in light of the *Indian Act*, relevant treaties, and section 35 of the *Constitution Act, 1982* until the Supreme Court of Canada (SCC) rendered its decision on appeals currently before the SCC concerning the constitutionality of the GGPPA.

Enbridge Gas shall file a draft rate order with updated rates reflecting this Decision and Order. Absent unforeseen circumstances, Enbridge Gas will be able to incorporate the outcomes of this Decision and Order as part of its October 1, 2020 quarterly rate adjustment mechanism (QRAM) application.

2 BACKGROUND

The federal *Greenhouse Gas Pollution Pricing Act* established a federal carbon pricing program. Under the GGPPA, Enbridge Gas is required to pay to the federal government a federal carbon charge for greenhouse gas emissions from the natural gas that it delivers to its non-exempt customers, and further payments for its own facility emissions.¹ The federal carbon charge under the GGPPA came into effect on April 1, 2019, at a rate of \$20 per tonne of CO_{2e}, which is equal to 3.91 ¢/m³ of natural gas used. On April 1, 2020, the federal carbon charge under the GGPPA increased to \$30/tonne of CO_{2e} (equal to 5.87 ¢/m³ of natural gas).

In a previous proceeding,² the OEB approved a Federal Carbon Charge of 3.91 ¢/m³ on Enbridge Gas customer bills to recover Enbridge Gas's FCPP costs related to customer emissions, and a Facility Carbon Charge to recover Enbridge Gas's FCPP costs related to facility emissions, both of which became effective on August 1, 2019. The OEB also established three sets of FCPP deferral and variance accounts:³

- Federal Carbon Charge – Customer Variance Accounts (Customer Variance Accounts), to record the variance between actual FCPP costs related to customer emissions and FCPP costs recovered in rates related to customer emissions
- Federal Carbon Charge – Facility Variance Accounts (Facility Variance Accounts), to record the variance between actual FCPP costs related to facility emissions and FCPP costs recovered in rates related to facility emissions
- Greenhouse Gas Emissions Administration Deferral Accounts (Administration Deferral Accounts), to record the administration costs associated with the FCPP

¹ Certain customers (e.g. industrial customers and greenhouses) are eligible for full or partial exemption from the federal carbon charge under the GGPPA for their emissions, and are thus also exempt from Enbridge Gas's Federal Carbon Charge.

² EB-2018-0205

³ For each of the three sets of DVA, two accounts exist, one for customers in the EGD rate zone and one for customers in the two Union rate zones (Union North and Union South).

3 THE PROCESS

Enbridge Gas applied to the OEB on November 18, 2019 for approval under section 36(1) of the *Ontario Energy Board Act, 1998* to increase rates effective April 1, 2020 to recover costs associated with meeting its obligations under the GGPPA. Enbridge Gas's application also requested approval to dispose of the 2019 balances in the FCPP DVAs.

Following issuance of notice and requests for intervention status, the OEB issued [Procedural Order No. 1](#) on February 6, 2020. In Procedural Order No. 1, the OEB denied the requests of several parties for intervention status, on the grounds that these parties had not adequately explained their interest in the proceeding, or that their stated interests (in particular, abatement efforts to reduce greenhouse gas emissions) were not expected to be within the scope of this proceeding.

On February 11, 2020, the OEB issued an [Interim Decision and Order](#), to address Enbridge Gas's request for interim rates effective April 1, 2020. The OEB approved Enbridge Gas's proposed rates for the Federal Carbon Charge and Facility Carbon Charge on an interim basis, effective April 1, 2020. The OEB did not approve interim disposition of the balances in Enbridge Gas' FCPP DVAs and directed Enbridge Gas to file updated evidence with the final December 31, 2019 balances in these accounts when audited numbers became available. The OEB also directed Enbridge Gas to propose options for the approach to disposition of the DVA balances that would smooth bill impacts. The OEB also clarified that the scope of this proceeding would be limited to considering recovery of Enbridge Gas's costs related to the FCPP.

After being initially denied intervention status through Procedural Order No. 1, several parties subsequently submitted updated requests for intervention status, which the OEB addressed in its [Decision on Updated Intervention Requests and Scope of Proceeding](#), issued on March 19, 2020. The final list of parties granted intervenor status and cost eligibility in this proceeding is as follows:

- Anwaatin Inc. (Anwaatin)
- Building Owners and Managers Association, Greater Toronto (BOMA)
- Chiefs of Ontario
- Energy Probe Research Foundation (Energy Probe)
- London Property Management Association (LPMA)
- School Energy Coalition (SEC)

In that decision, the OEB also indicated that it would defer consideration of issues raised by Anwaatin and the Chiefs of Ontario, as to whether the FCPP charges are constitutionally applicable in light of the *Indian Act*, relevant treaties, and section 35 of the *Constitution Act, 1982* (the Deferred Issues), until such time as the Supreme Court of Canada has rendered its decision on the appeals concerning the constitutionality of the GGPPA. The OEB also indicated that the issues of energy poverty and energy poverty in indigenous communities and the differential impact of natural gas rates on remote and near remote communities were not within the scope of this proceeding.

Anwaatin subsequently filed several letters with the OEB, objecting to the OEB's approach to the Deferred Issues, which the OEB responded to. The OEB's approach to the Deferred Issues is discussed in more detail in section 4.3 of this Decision.

On May 14, 2020, Enbridge Gas filed an [updated Application](#), which included final audited December 31, 2019 balances in the FCPP DVAs, and a proposed methodology for disposition.

On May 22, 2020, the OEB issued [Procedural Order No. 2](#), which indicated that the OEB would proceed by way of a written hearing, and established the procedural steps to address all issues in scope of this proceeding, other than the Deferred Issues.

On or before June 4, 2020, intervenors and OEB staff filed written interrogatories to be answered by Enbridge Gas. Enbridge Gas filed responses on June 18, 2020.

On June 25, 2020, Enbridge Gas filed its argument-in-chief. On or before July 9, 2020, intervenors and OEB staff filed final submissions.⁴ On July 16, 2020, Enbridge Gas filed its reply submission.

⁴ Anwaatin filed an updated submission on July 29, 2020, to reflect new information arising from the SCC proceeding that Anwaatin believed to be material to this proceeding.

4 DECISION

This decision provides the OEB's determinations regarding:

- Enbridge Gas's request for approval of final rates for the Federal Carbon Charge and Facility Carbon Charge, to reflect forecast 2020 costs.
- Enbridge Gas's request for approval to dispose of the 2019 balances in the FCPP-related deferral and variance accounts. The OEB addresses the balances proposed for disposition in each of the three types of accounts (Customer Variance Accounts, Facility Variance Accounts, Administration Deferral Accounts), as well as the methodology proposed to allocate these balances to rate classes, and the disposition period for these balances.
- Treatment of the Deferred Issues, and how this affects implementation of the OEB's determinations regarding the carbon charges and disposition of the 2019 balances in the FCPP-related deferral and variance accounts.

4.1 Federal Carbon Charge and Facility Carbon Charge

Enbridge Gas requested approval, on a final basis, of rates for the Federal Carbon Charge and Facility Carbon Charge, effective April 1, 2020.

Enbridge Gas requested final approval of the increase⁵ to the Federal Carbon Charge from 3.9100 ¢/m³ to 5.8700 ¢/m³, and the increase to the Facility Carbon Charge: from 0.0036 ¢/m³ to 0.0049 ¢/m³ for the EGD rate zone, and from 0.0084 ¢/m³ to 0.0088 ¢/m³ for the Union rate zones.

These rates requested by Enbridge Gas were identical to those previously approved by the OEB on an interim basis, in its Interim Decision and Order of February 11, 2020.

Enbridge Gas estimated that the incremental bill impact of the 2020 Federal Carbon Charge and 2020 Facility Carbon Charge for typical residential customers was \$47.07 per year in the EGD rate zone (based on annual consumption of 2,400 m³) and \$43.15 per year in the Union rate zones (based on annual consumption of 2,200 m³). This was the incremental bill impact on April 1, 2020, the effective date for the interim rates. No change was requested from the interim rates, therefore there would be no further bill impacts for the Federal Carbon Charge and Facility Carbon Charge.

⁵ Relative to the rates approved on a final basis in EB-2018-0205

Enbridge Gas calculated these rates by forecasting the costs it expected it would need to remit to the federal government for its customers' emissions and its own facility emissions for 2020, and the customer volumes over which these costs would be recovered. The requested rate of 5.8700 ¢/m³ (or \$30/tonne of CO_{2e}) for the Federal Carbon Charge matches the volumetric charge that Enbridge Gas must remit to the federal government for its customers' emissions.

No parties objected to the rates requested by Enbridge Gas, or the methodology used by Enbridge Gas to determine the requested rates.

Energy Probe commented that it was concerned with approving 2020 FCPP rates on a final basis, due to several uncertainties, including impacts related to the COVID-19 emergency that may affect Enbridge Gas's forecasts of customer volumes and FCPP costs. Energy Probe requested that, should the updated rates be approved on a final basis, Enbridge should provide the OEB with an update on its forecasts. Enbridge Gas submitted that this was unnecessary, as it does not have any more current 2020 forecast information available and does not anticipate any significant impact to its proposed FCPP-related rates at this time. Enbridge Gas also noted that deferral and variance accounts are already in place to track any variances from forecast that do occur.

Findings

The OEB approves, on a final basis effective April 1, 2020, the Federal Carbon Charges and Facility Carbon Charges proposed by Enbridge Gas that were previously approved by the OEB on an interim basis. No parties submitted any concerns with the approach to setting these charges, the calculation for which is largely mechanistic. Energy Probe's concern related to the uncertainty of forecasts. The OEB has determined that an update to Enbridge Gas's forecasts is not required, as proposed by Energy Probe. The approved Customer Variance Accounts and Facility Variance Accounts were established to track variances between forecast and actual costs.

4.2 2019 Deferral and Variance Accounts

4.2.1 Customer Variance Accounts

Enbridge Gas sought disposition of a 2019 balance of \$145.70 million⁶ in the Customer Variance Accounts. This balance was due entirely to costs incurred in the four-month period between April 1, 2019 and July 31, 2019, plus accumulated interest costs. For this period, Enbridge Gas was required to remit a federal carbon charge to the federal government for its customers' emissions, but a Federal Carbon Charge was not included on the bills of Enbridge Gas customers to recover this cost.

With the exception of the approach used to calculate interest (discussed further in section 4.2.4), no party objected to the balance proposed for disposition in these accounts.

Findings

The OEB approves the disposition of the balance in the Customer Variance Accounts with interest projected to September 30, 2020. No parties raised any concerns with the principal balance in the Customer Variance Accounts. These accounts track the difference between the amount remitted to the federal government related to the FCPP and the amount collected from customers, and therefore are largely mechanistic. Interest on the balance is discussed later in this Decision.

4.2.2 Facility Variance Accounts

Enbridge Gas sought disposition of a 2019 balance of \$0.98 million in the Facility Variance Accounts (updated in Enbridge Gas's interrogatory responses from an earlier value of \$1.22 million, due to a change to the calculation of Enbridge Gas's required payment to the federal government, related to Enbridge Gas's facility emissions from flared volumes of natural gas).⁷ The Facility Variance Accounts record the variance between actual facility-related FCPP costs, and the facility-related costs recovered through rates. Actual facility-related FCPP costs in 2019 were \$2.34 million.⁸

More than 90% of the 2019 balance in the Facility Variance Accounts is attributable to period prior to July 31, 2019, when no Facility Carbon Charge had been included on the

⁶ This was the account balance in Enbridge Gas's updated application. The exact amount to be disposed of will change slightly based on the method of calculating interest for Q3 2020, as discussed in this Decision. This adjustment will also affect the balances in the Facility Variance Accounts and Administration Deferral Accounts.

⁷ Exhibit I.Staff.9 (a)

⁸ Exhibit I.Staff.9 (a)

bills of Enbridge Gas customers to recover the costs of Enbridge Gas's facility-related emissions. The remainder of the balance is due to the variance between the actual facility-related costs and the revenue collected from customers, due to the differences in forecast versus actual customer volumes, and in forecast versus actual facility-related costs.⁹

OEB staff submitted that it had no concerns with Enbridge Gas's calculations regarding the 2019 balance in the Facility Variance Accounts, but that Enbridge Gas had provided little information on either the factors impacting Enbridge Gas's actual 2019 facility-related costs and emissions, or on Enbridge Gas's efforts to manage these costs. OEB staff noted that facility-related costs are forecast to increase in 2020 and future years as the federal carbon charge payable to the federal government under the FCPP increases, and submitted that Enbridge Gas should be directed to include supporting evidence of its actions to manage facility-related emissions and costs in future FCPP applications. Enbridge Gas replied that it intends to bring forward further details of its actions to manage facility-related emissions and costs in its 2021 FCPP application and that there is no need for the OEB to direct Enbridge Gas in this regard.

OEB staff also noted that Enbridge Gas has not yet remitted payment for the majority of its facility-related costs to the federal government. The bulk of Enbridge Gas's facility-related emissions are from its transmission and storage compressor stations. These emissions are covered under the Output-Based Pricing System (OBPS) of the FCPP. The FCPP provided several options for Enbridge Gas to meet its OBPS obligation, including paying the federal carbon charge on excess emissions, or making use of other options such as purchasing surplus or offset credits.

Enbridge Gas's OBPS payment is not due to the federal government until April 15, 2021, and there is the potential for the final amount to change (e.g., due to use of surplus credits or offset credits, or further adjustments due to the third-party verification of Enbridge Gas' 2019 OBPS report). Enbridge Gas noted that it did not expect to be able to use surplus credits or offset credits for its 2019 OBPS obligation, but that it would record any variance in its final 2019 OBPS obligation in the Facility Variance Accounts, and seek to dispose of this variance through a future FCPP application.

Findings

The OEB approves the disposition of the balance in the Facility Variance Accounts with interest projected to September 30, 2020, including the update by Enbridge Gas to the principal balance noted in its interrogatory responses and Argument-In-Chief. Enbridge

⁹ Exhibit I.Staff.9 (a)

Gas shall file revised rates to reflect the updated balance as part of the draft rate order (DRO). Interest on the balance is discussed later in this Decision.

If Enbridge Gas takes further actions to reduce the amounts to be remitted to the federal government related to its 2019 OBPS emissions, this amount shall be recorded in the Facility Variance Accounts at the time that the action is taken, for future disposition.

Enbridge Gas shall also record in the Facility Variance Accounts the interest on the amounts collected from customers prior to the time of payment made to the federal government, for future disposition.

OEB staff expressed concern about the level of detail provided by Enbridge Gas on factors affecting its facility-related costs. Enbridge Gas intends to bring forward more details in its application for 2021 FCPP charges. The OEB finds Enbridge Gas's proposal appropriate.

4.2.3 Administration Deferral Accounts

Enbridge Gas sought disposition of \$1.60 million in the Administration Deferral Accounts, from 2019 FCPP-related administration costs. Major cost elements were staffing costs (\$0.72 million) and information technology (IT) billing costs (\$0.52 million), including revenue requirement for previous IT capital expenditures on Cap-and-Trade related billing system functionality that Enbridge Gas re-purposed to collect FCPP-related charges.

No parties objected to the balances proposed for disposition in these accounts.

Enbridge Gas also included in its Application, for information purposes only, a forecast of 2020 administration costs. Enbridge Gas noted that ongoing COVID-19 related conditions may impact 2020 FCPP-related bad debt beyond Enbridge Gas's forecast, although it did not provide an estimate for what these incremental bad debt costs might be.¹⁰

On March 25, 2020, the OEB established a new sub-account for natural gas distributors to track incremental identifiable costs related to the COVID-19 emergency, which could include bad debt. The OEB is conducting a consultation to establish further detailed accounting guidance, including policy direction, regarding the use of these accounts.¹¹

¹⁰ Application and Evidence (updated), Exhibit C, Page 17 of 18

¹¹ EB-2020-0133 proceeding.

SEC submitted that incremental FCPP-related bad debt attributable to COVID-19 should be tracked in this new COVID-specific sub-account, not in the Administration Deferral Accounts. Enbridge Gas objected to SEC's proposal, noting that bad debt amounts resulting from the FCPP are incremental to bad debt amounts included in Enbridge Gas's base rates, and for this reason, FCPP-related bad debt amounts are recorded in FCPP-specific Administration Deferral Accounts.

Findings

The OEB approves the disposition of the balance in the Administration Deferral Accounts, with interest projected to September 30, 2020. Parties either made no submission or submitted that Enbridge Gas's administrative costs to date have been reasonable, and have built upon the work Enbridge Gas did to prepare for the previous Cap-and-Trade program.

The OEB finds it appropriate for Enbridge Gas to record bad debt expense for the FCPP related to the COVID-19 emergency in the COVID-specific sub-account so that all matters related to the COVID-19 emergency are recorded in the same account. Enbridge Gas can keep records to distinguish between the bad debts for FCPP and other bad debt amounts.

4.2.4 Interest Expense on Deferral and Variance Accounts

The 2019 FCPP DVA balances that Enbridge Gas requested for clearance included \$3.75 million of interest charges in the Customer Variance Accounts (due to the large balance in these accounts accumulated between April 1, 2019 and July 31, 2019).¹²

Enbridge Gas's methodology for calculating interest charges used the quarterly Prescribed Interest Rate for DVAs set by the OEB, including a prescribed interest rate of 1.38% for the third quarter of 2020. The Q3 2020 interest rate was set by the OEB in a [letter](#) of June 16, 2020. The OEB's approach to setting the 2020 Q3 DVA prescribed interest rate departed from the OEB's Approved Prescribed Interest Rates Methodology, due to the extreme volatility in reference interest rates in early 2020 caused by the COVID-19 emergency.

¹² This value was updated in Enbridge Gas's interrogatory responses (from a value of \$4.02 million in Enbridge Gas's FCPP application), to use the Q3 2020 interest rate (1.38%) set by the OEB after Enbridge Gas had filed its updated FCPP application. Enbridge Gas's application had used a forecast interest rate of 2.18% for Q3 2020 in its interest calculations, which was the Q2 2020 interest rate. Exhibit I.Staff.9.

LPMA and SEC submitted that the Q3 interest rate used to calculate interest on the balance in the Customer Variance Accounts (and the very minor interest balances in the other FCPP-related DVAs) should be set based on the OEB's longstanding methodology. Using this methodology would result in a rate of 0.57%, not 1.38%, and a reduction in total interest charges of approximately \$30,000.

In its [letter](#) of July 30, 2020 (filed after the submissions of the parties), the OEB indicated that, after considering comments filed by stakeholders, the 2020 Q3 DVA prescribed interest rate has been revised to 0.57%, based on the OEB's Approved Prescribed Interest Rates Methodology.

LPMA also submitted that ratepayers should not have to pay interest costs accumulated after April 1, 2020 (\$1.26 million), as the OEB could have approved disposition of DVA balances on an interim basis, effective April 1, 2020, to avoid continued accumulation of interest costs. Enbridge Gas noted that it did not accept LPMA's assertion that Enbridge Gas should be disallowed recovery of these reasonable and prudently incurred costs.

Findings

The OEB agrees that interest expense is a cost to Enbridge Gas and can be recorded on the balances in the FCPP deferral and variance accounts, at the interest rate prescribed by the OEB. The OEB is not persuaded that the approach to accruing interest on the FCPP deferral and variance accounts should be changed from the OEB's policy or standard practice.

Separate from this proceeding, the OEB considered comments on the approach to setting the prescribed interest rate for deferral and variance accounts for the 3rd quarter of 2020, and amended the interest rate to 0.57% based on the established mechanism. The OEB is adopting this prescribed interest rate for the FCPP deferral and variance accounts. Enbridge Gas shall revise the interest projected to September 30, 2020 on all deferral and variance accounts and file updated balances and rate riders as part of the DRO.

4.2.5 Allocation Methodology and Disposition Period for Deferral and Variance Accounts

Enbridge Gas proposed to allocate balances in the Customer Variance Accounts and Facility Variance Accounts to rate classes in proportion to the actual customer volumes in each rate class that were subject to the Federal Carbon Charge and Facility Carbon Charge, respectively, from April 1, 2019 to July 31, 2019.

Enbridge Gas proposed to allocate balances in the Administration Deferral Accounts to rate classes in proportion to the number of customers within each rate class for the EGD rate zone, and in proportion to each rate class's share of 2013 OEB-approved administrative and general expenses for the Union rate zones. Enbridge Gas noted that this allocation methodology was consistent with the OEB's previous decision on allocation of the administrative costs associated with the previous Cap-and-Trade program.¹³

Within each rate class, Enbridge Gas proposed to allocate costs for all FCPP DVA balances to individual customers based on each customer's actual consumption volume within the April 1 to July 31, 2019 period (except for general service customers in the Union rate zones, as discussed below). Enbridge Gas noted that customers' consumption over this period contributed to nearly 99% of 2019 FCPP-related deferral and variance account balances (considering the combined balances from all three sets of FCPP DVAs).¹⁴

No parties objected to Enbridge Gas's proposed allocation approach.

For general service customers in the Union rate zones, Enbridge Gas proposed that the FCPP DVA balances would be disposed of on a prospective basis (i.e., based on a customer's natural gas consumption during the disposition period). For all other customers (i.e., non-general service customers in the Union rate zones, and all customers in the EGD rate zone), Enbridge Gas proposed that the FCPP DVA balances would be disposed of based on their actual natural gas consumption between April 1, 2019 and July 31, 2019.

Enbridge Gas indicated that this difference in disposition approaches was necessary as it is limited to prospective recovery for the Union rate zones' general service customers (Rate M1, Rate M2, Rate 01 and Rate 10) due to billing system constraints.¹⁵ Enbridge Gas indicated that it will not be able to adopt a common disposition period and approach for all customers until mid-2021 at the earliest.¹⁶

OEB staff noted that the prospective disposition approach would lead to a degree of misalignment of costs for general service customers in Union rate zones within each rate class, due to different consumption patterns between the times of year when the FCPP costs were incurred and when they would be recovered. However, OEB staff

¹³ Application and Evidence, Exhibit D, p. 10 of 15. The OEB decision referenced is in proceeding EB-2018-0331

¹⁴ Arg. In Chief, par. 23.

¹⁵ Application and Evidence (updated), Exhibit D, Page 11 of 15

¹⁶ Exhibit I.Staff.13 (d)

acknowledged that it did not see a preferable alternative, due to the billing system constraints identified by Enbridge Gas.

Disposition Period and Bill Smoothing

In its Interim Decision and Order, the OEB required Enbridge Gas to propose options for the approach to disposition of the balances in FCPP DVAs that would smooth bill impacts. Enbridge Gas calculated the total bill impact of the proposed 2019 FCPP DVA disposition to be an annual increase of \$21.85 for a typical residential customer in the EGD rate zone with an annual consumption of 2,400 m³, and annual increases of \$16.01 and \$16.58 for typical residential customers with annual consumption of 2,200 m³ in the Union South and Union North rate zones, respectively.¹⁷ The monthly bill impact will depend on the disposition period.

In its updated Application and Evidence, Enbridge Gas considered one-month, three-month, and six-month disposition periods.

Enbridge Gas proposed disposition over a six-month basis (beginning October 1, 2020) for general service customers in the Union rate zones, noting that a six-month disposition period is consistent with past practice for disposition of DVA balances for these customers.

Enbridge Gas proposed a one-time adjustment based on actual consumption between April 1, 2019 to July 31, 2019, disposed of in three monthly installments (beginning October 1, 2020), for all other customers. Enbridge Gas noted that a one-time billing adjustment (in one monthly installment) is consistent with past practice for disposition of DVA balances for these customers. However, due to the large balance in the FCPP DVAs, Enbridge Gas proposed a three-month disposition period to smooth bill impacts.

Enbridge Gas noted that a six-month disposition period is not proposed for customers in the EGD rate zone in particular, because it would limit the ability to dispose of other deferral and variance account balances for the EGD rate zone during any part of the six-month period, due to billing system constraints.¹⁸ Enbridge Gas submitted that a three-month disposition period (from October 1, 2020 to December 31, 2020) would enable other account dispositions to begin the following quarter, such as other 2019 DVA balances and the 2019 earnings sharing and the 2017 and 2018 Demand Side Management DVA balances.

¹⁷ Application and Evidence (updated), Exhibit A, Page 15 of 15

¹⁸ Application and Evidence (updated), Exhibit D, Page 13 of 15

Energy Probe submitted that it would prefer similar disposition periods for EGD and Union rate zones, but accepted the proposed different disposition periods at this time.

Both LPMA and OEB staff submitted that there should be greater alignment of the disposition period across rate zones, and made different proposals to this effect.

LPMA submitted that a three-month disposition period beginning October 1, 2020 should be used for all Enbridge Gas customers, as the proposed six-month disposition period for general service customers in the Union rate zones could correspond with additional costs (such as disposition of other DVA balances, and an increase in gas commodity costs) that would impact customers at the time of year when natural gas consumption is at its highest (January to March 2021).

OEB staff submitted that, based only on the bill impact of the FCPP DVAs, a six-month disposition period would best achieve the OEB's goal of smoothing bill impacts. However, OEB staff accepted that a six-month disposition period in the EGD rate zone would impact Enbridge Gas's ability to dispose of balances in other DVAs in the following quarter. Therefore, OEB staff recommended a six-month disposition period for all customers in the Union rate zones and a three-month period for customers in the EGD rate zone.

OEB staff further submitted that the evidentiary record in this proceeding did not enable a full comparison of the combined bill impact of a three-month versus six-month disposition period, taking other factors impacting the bill into account (e.g. changes in commodity cost, seasonal differences in customer natural gas use). For this reason, OEB staff submitted that a final decision on the appropriate disposition period of the FCPP DVA balances should be made as part of the OEB's review of Enbridge Gas's next QRAM application, when the combined bill impact of all rate adjustments being implemented could be considered.

In its reply submission, Enbridge Gas indicated that it would be able to facilitate disposition over a three-month period for all customers (LPMA's proposal), and had no concerns with proceeding in this manner if that was the OEB's preference. Enbridge Gas noted that it could facilitate disposition over a six-month period for all customers in the Union rate zones (OEB staff's proposal), but that it believed this would provide limited incremental benefit and place additional administrative burden on Enbridge Gas. Enbridge Gas also expressed a preference for the OEB to make a final decision on the disposition period within this proceeding, not in a future QRAM proceeding.¹⁹

¹⁹ Enbridge Gas reply argument, par. 14-19

Findings

The OEB accepts Enbridge Gas's proposal for the allocation of balances from the FCPP deferral and variance accounts. No parties took exception to the approach and it is consistent with the past practice for the EGD and Union rate zones.

The OEB approves the disposition of account balances in three monthly installments beginning October 1, 2020, as proposed by Enbridge Gas, except that the OEB concludes this approach should be used for all Enbridge Gas customers, including the general service customer classes in the Union rate zones. The OEB is persuaded by the argument brought forward by LPMA that it is appropriate to conclude the clearing of balances before the high consumption quarter that starts in January 2021.

A consistent approach to disposition of balances for each rate zone is preferable, and Enbridge Gas should provide a proposal for aligning its approach for the EGD and Union rate zones as soon as practical, and no later than its next rebasing rate application.

4.3 Deferred Issues

Anwaatin and the Chiefs of Ontario raised for consideration in this proceeding as to whether the FCPP charges are constitutionally applicable in light of the *Indian Act*, relevant treaties, and section 35 of the *Constitution Act, 1982*. In its intervention request, the Chiefs of Ontario argued that provisions in the *Indian Act* provide legislative recognition of First Nation immunity from taxes or charges on any property situated on a reserve.

The OEB determined that it would defer consideration of the Deferred Issues until the SCC rendered its decision on appeals before the SCC concerning the constitutionality of the GGPPA.²⁰ The hearing of these appeals was originally scheduled for the spring of 2020, but, due to the COVID-19 emergency, was subsequently delayed to September 2020.²¹ It is not known at this time when a final SCC decision will be issued.

OEB staff submitted that, of the approvals requested by Enbridge Gas in this proceeding, only the finalization of the Federal Carbon Charge and the disposition of the 2019 balance in the Customer Variance Accounts required consideration of the Deferred Issues, as the FCPP facility-related and administrative costs are operational

²⁰ Decision on Updated Intervention Requests and Scope of Proceeding, March 19, 2020

²¹ Supreme Court of Canada, "[Docket 38781: Attorney General of Ontario v. Attorney General of Canada](#)"

costs recovered from all Enbridge Gas customers, including those customers who are exempt from paying the Federal Carbon Charge.

OEB staff proposed two options to allow for the Deferred Issues to be considered at a future date:

1. Set final rates for the 2020 Federal Carbon Charge and Facility Carbon Charge and provide for the disposition of balances in the 2019 FCPP-related DVAs on a final basis, but require Enbridge Gas to record the FCPP-related revenues that could potentially be impacted by consideration of the Deferred Issues in the variance account.
2. Postpone the approval of the 2020 Federal Carbon Charge and the disposition of the 2019 balance in the Customer Variance Accounts on a final basis until the deferred issues have been considered.

OEB staff indicated a preference for the first option. OEB staff submitted that the revenues that should be tracked in the variance account are the Federal Carbon Charge revenues, and any revenues from the disposition of the 2019 balance in the Customer Variance Accounts, that are collected from on-reserve customers (approximately 3,500 customers in 21 communities). Should the OEB eventually determine that these customers should not have been required to pay the Federal Carbon Charge, Enbridge Gas would then be in a position to refund these payments.

Anwaatin submitted that the OEB's actions to date have predetermined that FCPP charges will apply to the Anwaatin communities without hearing from Anwaatin, and denied its members their legislative, constitutional, and common law right to be heard contrary to each and all of: sections 2, 19, 20, and 36 of the OEB Act; sections 87 and 89 of the *Indian Act*, section 35 of the *Constitution Act, 1982* and various common law decisions. Anwaatin also argued that the OEB had refused to hear its issues on energy poverty in indigenous communities and the differential impact of natural gas rates on remote and near remote communities.

Anwaatin further stated that it expected that the SCC proceeding would deal only with the constitutional *validity* of the GGPPA, and would not address the issues raised by Anwaatin as to whether FCPP charges are constitutionally *applicable* in light of the *Indian Act*, relevant treaties, and section 35 of the *Constitution Act, 1982*. To support this position, Anwaatin attached to its submission several documents from the SCC proceeding: a letter from the Attorney General of Canada (filed in response to an intervention request from Thunderchild First Nation in that proceeding) stating that arguments regarding the tax exemption of the fuel charge under the GGPPA for Indians

and Indian bands should not be permitted; and the SCC's decision on the intervention request, which granted leave to intervene, but stated that "the intervener is not entitled to raise new issues".²²

In response to OEB staff's submission, Enbridge Gas stated that, should the OEB find it necessary to make a provision to enable the possible exemption of on-reserve customers from Federal Carbon Charges, then it agreed with OEB staff's first option with a modification. With this modified option, the OEB should finalize rates and direct Enbridge Gas to track 2019 and 2020 Federal Carbon Charge revenues, not to record these revenues in a variance account, as it would not be consistent with the purpose of the existing FCPP variance accounts to "record" revenues already collected from on-reserve customers and remitted to the Canadian Revenue Agency.²³

Enbridge Gas submitted that it did not support the second option, but that if the OEB determined that it would postpone its final determination on 2020 Federal Carbon Charges and clearance of 2019 balances in the Customer Variance Accounts, that the OEB should clarify that this postponement only applies to on-reserve customers.

Findings

The OEB approves the Federal Carbon Charge and the disposition of the 2019 balances in the Customer Variance Accounts on a final basis for all customers except First Nations on-reserve customers.

The Federal Carbon Charge for First Nations on-reserve customers will remain interim until the OEB's determination on the Deferred Issues. In addition, the rate riders for disposition of the 2019 balances in the Customer Variance Accounts are approved on an interim basis for First Nations on-reserve customers, until the OEB's determination of the Deferred Issues.

The OEB is also establishing a new tracking account for each rate zone, as proposed by Enbridge Gas, to record the Federal Carbon Charges (including disposition of the balances in the Customer Variance Accounts) for First Nations on-reserve customers until the final determination of the Deferred Issues.

The OEB notes the submissions of Anwaatin concerning its allegation that the OEB has denied Anwaatin its right to be heard on the issue of the application of sections 87 and 89 of the *Indian Act* and section 35 of the *Constitution Act, 1982* to the charges imposed

²² Anwaatin final submission, Exhibit A and B (updated July 29, 2020).

²³ EGI Reply Argument, par. 26-31

by the GGPPA. The OEB's consideration of this issue has been deferred pending a determination of the SCC as to the challenge to the constitutionality of the GGPPA.

The OEB notes that, consistent with previous intervention requests, the SCC has determined that Thunderchild First Nation "is not entitled to raise new issues or to adduce further evidence or otherwise to supplement the record of the parties". However, the OEB remains of the view that there may be relevant factors for the OEB to consider in its determination of the challenge raised by Anwaatin and the Chiefs of Ontario that arise as an outcome of the SCC's consideration of the constitutional validity of the GGPPA. While the decision of the SCC may not be determinative of the issue raised by Anwaatin and the Chiefs of Ontario, it may provide guidance to the OEB in its own consideration of the positions advanced by these parties concerning the applicability of the GGPPA to First Nations on-reserve customers.

The OEB has not dispensed with its consideration of the Deferred Issues, nor has the OEB denied a right to be heard to the relevant parties. By setting the relevant FCPP charges on an interim basis effective April 1, 2020, the OEB has ensured that the matters raised by Anwaatin can be heard at a future time, and the FCPP charges being determined in this proceeding can be amended for First Nations on-reserve customers if warranted.

Anwaatin has also asserted that the OEB decision to exclude from consideration the issues of energy poverty affecting indigenous communities and the differential impact on remote and near remote communities is a denial of its right in law to be heard. The OEB does not agree.

The issues of energy poverty in indigenous and remote communities as well as accessibility to affordable energy by all Ontario consumers are issues of significant importance to the OEB. While there are programs to assist vulnerable customers, the OEB does not assert that the problems associated with energy poverty in indigenous communities and the access to affordable energy by rural and remote customers have been resolved by these existing measures. However, not every OEB proceeding for the determination of rates and charges for customers of natural gas distribution utilities presents an occasion for the comprehensive examination that these issues would require. In accordance with the *OEB Rules of Practice and Procedure*, the OEB has determined that this is not an appropriate proceeding for these issues to be considered, particularly given the largely mechanistic approach used to pass costs of the FCPP through to customers.

The Facility Carbon Charge, the disposition of the 2019 balances in the Facility Variance Accounts and the disposition of the 2019 balances in the Administration

Deferral Accounts are approved on a final basis for all Enbridge Gas customers. The OEB agrees with the submission by OEB staff that the Facility Carbon Charge, the disposition of the 2019 balances in the Facility Variance Accounts, and recovery of the 2019 FCPP administration costs should not be impacted by consideration of the Deferred Issues. The OEB concludes that the costs Enbridge Gas incurs for its own emissions, and for managing the FCPP program, are costs of doing business as a natural gas distributor to be borne by all customers, even those that are potentially exempt from the Federal Carbon Charge.

4.4 Future Federal Carbon Pricing Program Applications

Under the GGPPA, changes to the carbon charge that Enbridge Gas must remit to the federal government for customer and facility emissions come into effect on April 1 of each year, with future increases scheduled in 2021 and 2022.²⁴ Enbridge Gas's preference is for updates to the Federal Carbon Charge and Facility Carbon Charge for its customers to also be made effective on April 1 of each year to match the timing of changes to the federal carbon charge under the GGPPA, and to avoid the accumulation of unbilled and uncollected amounts from customers.

In this proceeding, Enbridge Gas filed its original application on November 18, 2019, requesting updates to the Federal Carbon Charge and Facility Carbon Charge, effective April 1, 2020, and clearance of the 2019 balances in its FCPP DVAs based on nine months of actual 2019 costs and three months of forecast 2019 costs. In its Interim Decision and Order of February 11, 2020, the OEB approved interim rates for the Federal Carbon Charge and Facility Carbon Charge effective April 1, 2020, but directed Enbridge Gas to file updated evidence on the FCPP DVA balances, based on actual costs incurred and recorded up to December 31, 2019. Enbridge Gas filed an updated Application on May 14, 2020 that included actual year-end balances in the FCPP DVAs.

Enbridge Gas submitted that in future years, it would be in a position to file an FCPP application by the end of September each year.²⁵ Enbridge Gas proposed to introduce a one-year lag in the clearance of FCPP DVAs. The 2021 FCPP application (to be filed in September 2020) would request any April 1, 2021 Federal Carbon Charge or Facility Carbon Charge rate changes, and would not request clearance of any FCPP DVA balances. The 2022 FCPP application (to be filed in September 2021) would request any April 1, 2022 rate changes, and request clearance of the year-end 2020 FCPP DVA balances.

²⁴ Application and Evidence (updated), Exhibit A, Page 5-6 of 15

²⁵ Exhibit I.Staff.1

OEB staff supported this approach, noting that a September filing should provide adequate time for Federal Carbon Charge and Facility Carbon Charge rate changes to be brought into effect on a final basis by April 1 of the following year (avoiding the need for interim rates), and would also enable the OEB to consider the disposition of DVA balances based on audited year-end balances and third-party verification of Enbridge Gas's facility-related emissions. OEB staff noted that the balances in FCPP DVAs in future years are likely to be small, reducing the urgency to dispose of these balances promptly.

Findings

The OEB agrees with Enbridge Gas's proposed approach for seeking rate changes related to the FCPP program for 2021. The OEB concludes that Enbridge Gas's approach of delaying the clearance of FCPP deferral and variance accounts by one year will improve regulatory efficiency.

5 NEXT STEPS

Enbridge Gas shall file a draft rate order with updated rates reflecting this Decision and Order.

This draft rate order should include updated calculations detailing the balances proposed for disposition in the 2019 FCPP deferral and variance accounts, the clearance unit rates, and the bill impacts, for each of the EGD and Union rate zones, similar to that filed in Exhibit D, Tab 1, Schedules 3-5 and Exhibit D, Tab 2, Schedules 4-6, of Enbridge Gas's Application and Evidence.

The OEB does not expect that the changes resulting from this Decision and Order will materially change the estimated total bill impacts for the disposition of the deferral and variance accounts, as presented in Enbridge Gas's Application and Evidence (an increase of \$21.85 for a typical residential customer in the EGD rate zone with annual consumption of 2,400 m³, and increases of \$16.01 and \$16.58 for typical residential customers with annual consumption of 2,200 m³ in the Union South and Union North rate zones, respectively). There will be no change in bill impacts related to the Federal Carbon Charges and Facility Carbon Charges because rates were approved and implemented on an interim basis effective April 1, 2020, at the rates now approved on a final basis.

The OEB has established a schedule such that, absent unforeseen circumstances, Enbridge Gas will be able to incorporate the outcomes of this Decision and Order as part of its October 1, 2020 QRAM application. The review of the draft rate order is largely mechanistic, and therefore the OEB will not grant cost awards for subsequent procedural steps.

The OEB has also scheduled a process for consideration of intervenor costs to this point in the proceeding.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc.'s proposed unit rates for the Federal Carbon Charge and Facility Carbon Charge, as set out in Exhibit D, Tab 1, Schedule 1, and Exhibit D, Tab 2, Schedule 1 of its Application, and previously approved on an interim basis, are approved on a final basis, effective April 1, 2020, for all customers except First Nations on-reserve customers, for whom the Federal Carbon Charge rates remain interim.
2. Enbridge Gas Inc. shall update its 2019 Federal Carbon Pricing Program deferral and variance account balances, to reflect this Decision and Order. Subject to these changes, Enbridge Gas Inc.'s 2019 Federal Carbon Pricing Program deferral and variance account balances and its allocation of the 2019 Federal Carbon Pricing Program deferral and variance account balances by rate class are approved.
3. The amounts in the 2019 FCPP deferral and variance account balances allocated to general service Rate M1, Rate M2, Rate 01, and Rate 10 customers in the Union rate zones shall be recovered over a three-month period, in Enbridge Gas Inc.'s October 1, 2020 QRAM application. Disposition unit rates for the Federal Carbon Charge – Customer Variance Account shall apply on an interim basis for First Nations on-reserve customers.
4. The amounts in the 2019 FCPP deferral and variance account balances allocated to customers in the EGD rate zone and to all other customers in the Union rate zones shall be recovered in three equal monthly installments, in Enbridge Gas Inc.'s October 1, 2020 QRAM application. Disposition unit rates for the Federal Carbon Charge – Customer Variance Account shall apply on an interim basis for First Nations on-reserve customers.
5. Enbridge Gas Inc. shall file a draft rate order consistent with this Decision and Order for each of the EGD rate zone and Union rate zones by August 20, 2020.
6. OEB staff and intervenors may file any comments on the draft rate order by no later than August 27, 2020. No cost awards will be granted for this procedural step.
7. Intervenors shall file with the OEB, and forward to Enbridge Gas Inc., their respective cost claims by August 27, 2020.

8. Enbridge Gas Inc. shall file with the OEB, and forward to intervenors, any objections to the claimed costs by September 3, 2020.
9. Intervenors shall file with the OEB, and forward to Enbridge Gas Inc., any responses to any objections for cost claims by September 10, 2020.
10. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto August 13, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar and Board Secretary