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DECISION AND ORDER

EB-2020-0134

**Application by Enbridge Gas Inc. for approval to dispose
2019 balances in certain deferral and variance accounts
and to review amounts for earnings sharing**

BEFORE: Allison Duff
Presiding Commissioner

Robert Dodds
Commissioner

May 6, 2021

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1 OVERVIEW

This is a decision by the Ontario Energy Board (OEB) regarding an application from Enbridge Gas filed under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B). Enbridge Gas applied for an order approving the disposition of certain deferral and variance account balances and the sharing of earnings.

Enbridge Gas and the intervenors in this proceeding reached a settlement on the disposition of all deferral and variance account balances, except for the Tax Variance Deferral Account. The OEB accepted the settlement proposal in a decision issued January 25, 2021 and scheduled a written process to hear the unsettled item – the Tax Variance Deferral Account. The Tax Variance Deferral Account balances excluding interest are credits of \$25.134 million in 2019 and \$4.897 million in 2018.

The Tax Variance Deferral Account balances result from the accelerated capital cost allowance deductible for tax purposes, which is not reflected in current rates. In accordance with Bill C-97 which took effect in the *Budget Implementation Act, 2019*, the annual deductions available to companies for specific assets are significantly accelerated. The accelerated capital cost allowance does not change the total amount that can be deducted for tax purposes over the life of an asset. Claiming a larger capital cost allowance tax deduction in the first-year results in smaller tax deductions in future years.

Enbridge Gas's preferred proposal is to use 100% of the cumulative balance over the 2019 to 2023 period as a source of funding for two initiatives: Economic Development Projects and Integrated Resource Planning pilot projects. Alternatively, if the OEB did not accept the preferred proposal, Enbridge Gas proposed that the balance be cleared on a 50/50 basis between its ratepayers and shareholders.

For the reasons that follow:

1. The OEB has determined that 100% of the 2019 balances in the Tax Variance Deferral Account (100% of \$25.134 million plus interest as of June 30, 2021¹) shall be disposed as a credit (refund) to ratepayers.
2. The OEB has determined that 50% of the 2018 balances in the Tax Variance Deferral Account (50% of \$4.897 million plus interest as of June 30, 2021²) shall be

¹ Simple interest calculated on the opening monthly balance of the account using the OEB-approved EB-2006-0117 interest rate methodology. Interest amount as at June 30, 2021 provided in Settlement Proposal dated January 5, 2021, page 25, column 5.

² *ibid*

disposed as a credit (refund) to ratepayers with the other 50% credited to the shareholders of Enbridge Gas.

3. To determine rate riders, the approved balances will be allocated to the Enbridge Gas Distribution and Union Gas rate zones in proportion to the actual 2018 rate base amounts³. The allocation to rate classes within each rate zone will be in proportion to the allocated 2018 rate base for the Enbridge Gas Distribution rate zone and 2013 rate base for the Union Gas rate zones.
4. Enbridge Gas's performance scorecard is accepted as filed and the OEB will continue to monitor annual results and trends.

³ Enbridge Gas continues to have rates set for its Enbridge Gas Distribution and Union rate zones, which existed pre-amalgamation

2 THE PROCESS

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, amalgamations, acquisitions and divestitures (MAADs) and the provisions of the OEB Act.⁴ In its decision, the OEB also approved a rate-setting framework and associated parameters including an earnings sharing mechanism for the deferred rebasing period of 2019 to 2023 (MAADs Decision).

The companies amalgamated to form Enbridge Gas Inc. (Enbridge Gas) on January 1, 2019. Following the amalgamation, Enbridge Gas maintained the existing rates zones of EGD and Union Gas (the EGD rate zone, and the Union North West, Union North East and Union South rate zones).⁵ Enbridge Gas maintained most of the existing deferral and variance accounts (DVAs) for each rate zone. The MAADs Decision also created additional DVAs that applied to the merged entity.

In this proceeding, Enbridge Gas requested disposition of certain 2019 deferral and variance account balances and the review of its 2019 earnings. The OEB issued a Notice of Hearing on September 18, 2020. In Procedural Order No. 1, issued on October 21, 2020, the OEB approved a list of intervenors, provided for discovery of the evidence and scheduled a settlement conference between the parties.

A settlement conference was held between the applicant and the intervenors on December 3, 4 and 7, 2020, with the objective of reaching a settlement amongst the parties. The parties reached a settlement on all DVAs considered in this proceeding, with the exception of the Tax Variance Deferral Account (TVDA). Enbridge Gas did not propose any earnings sharing as actual utility earnings did not exceed the threshold for sharing. Enbridge Gas filed a settlement proposal for the OEB's consideration on January 5, 2021. Under the settlement, the calculation of the recorded balance in the TVDA, the disposition of the balance, and the allocation of the balance to customer classes remained unsettled. In its cover letter to the settlement proposal, Enbridge Gas disclosed the possibility of filing supplementary evidence related to the TVDA and suggested a discovery process related to the supplementary evidence.

OEB staff filed a submission on the settlement proposal on January 15, 2021. OEB staff submitted that the settlement proposal was in the public interest and information provided was adequate to support the settlement proposal. However, OEB staff noted that the settlement between the parties did not include any reference to the

⁴ EB-2017-0306 / 0307 (the MAADs Decision).

⁵ Collectively Union North West, Union North East and Union South are referred to as the Union Gas rate zones.

performance scorecard and suggested that parties should be permitted to make submissions on the 2019 performance scorecard as part of the written hearing.

The OEB accepted the settlement proposal in a decision issued on January 25, 2021. A written process was scheduled to address the TVDA. The OEB allowed for the filing of supplemental evidence on the TVDA and discovery of the supplementary evidence. With respect to the performance scorecard, the OEB determined that the scorecard was within the scope of the proceeding and the OEB would allow parties and OEB staff to file submissions regarding the performance scorecard.

Enbridge Gas filed its argument-in-chief on February 26, 2021. Intervenors and OEB staff filed final arguments on March 8, 2021. The following intervenors filed submissions in this proceeding:

- 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)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

Enbridge Gas filed its reply submission on March 15, 2021.

3 DECISION

The OEB approves the balances of \$4.897 million for 2018 and \$25.134 million for 2019, excluding interest, for disposition.

The OEB denies Enbridge Gas's preferred approach to apply the TVDA balances to fund Economic Development and Integrated Resource Planning pilot projects. The OEB finds that 100% of the 2019 TVDA balance shall be disposed as a credit, or refund, to ratepayers. The OEB finds that the 2018 balance, accumulated pre-amalgamation, shall be shared on a 50/50 basis between ratepayers and shareholders.

The OEB approves Enbridge Gas's proposed allocation of the approved 2018 and 2019 TVDA balances to ratepayers.

3.1 History of the Tax Variance Deferral Account

In the legacy Union Gas 2014-2018 incentive ratemaking framework, the TVDA was established as part of a settlement between the intervenors and Union Gas. The parties agreed in the settlement that through the incentive rate-setting term (which ended in 2018), the impact of tax changes resulting from federal/provincial legislation would be shared 50/50 between shareholders and ratepayers. In EGD's previous incentive regulation (IR) framework, which was a Custom IR (2014 to 2018), there was no specific account for sharing the impacts of tax changes. The Custom IR included an earning sharing mechanism and a Z-factor.⁶

In the MAADs Decision, the OEB retained the TVDA for the Union Gas legacy areas and expanded the account for the EGD rate zone.⁷ In the Enbridge Gas 2019 rates proceeding, the OEB provided direction on a number of parameters regarding the rate-setting framework established in the MAADs Decision.⁸ In that proceeding (2019 rates), the OEB directed Enbridge Gas to follow the direction issued by the OEB in its July 25, 2019 letter.⁹ In that letter, the OEB provided accounting direction to regulated utilities regarding Bill C-97. Bill C-97 provides for, among other matters, accelerated capital cost allowance (accelerated CCA) deductions for eligible capital assets acquired after November 20, 2018, also known as the Accelerated Investment Incentive. CCA is the portion of the capital cost of depreciable property that is deductible for tax purposes each year, with the CCA rate for each class of property prescribed in the income tax regulations.

⁶ EB-2012-0459, Enbridge Gas Distribution Inc. 2014-2018 Rate Application Decision with Reasons, pp. 18-21, July 17, 2014.

⁷ EB-2017-0306/0307

⁸ EB-2018-0305

⁹ OEB July 25, 2019 [Letter](#)

Bill C-97 took effect in the *Budget Implementation Act, 2019* (June 2019). Bill C-97 implemented CCA measures that were announced in the November 21, 2018 Fall Economic Statement and certain tax measures announced in the 2019 Federal Budget. Specifically, one measure in Bill C-97 significantly accelerated CCA deductions in the calculation of income taxes.

The accelerated CCA has two components that constitute the tax benefits available to a company. The first component is a 50% increase in the available CCA deduction in respect of assets acquired after November 20, 2018 that become available for use before 2024. The second component is a suspension of the existing CCA half-year rule in the first year in respect of assets acquired after November 20, 2018 that become available for use before 2028.

The accelerated CCA does not change the total amount that can be deducted over the life of an asset. Claiming a larger CCA deduction in the first-year results in smaller CCA deductions in future years.

The OEB in its July 25, 2019 letter, directed utilities to record the impacts of CCA rule changes in the appropriate variance account from the effective date of the Bill C-97 rule changes until the effective date of the utility's next cost-based rate order. The OEB also noted that its long-standing practice of sharing the impact of changes in taxes due to regulatory or legislated tax changes during an incentive rate-setting period between utility shareholders and ratepayers on a 50/50 basis should not be expected to necessarily apply in respect of the accelerated CCA rule changes, and determinations as to the appropriate disposition methodology will be made at the time of each utility's cost-based application (July 2019 letter).

The OEB's long-standing practice of 50/50 sharing of tax changes was established in the OEB's decision on applications from Union Gas and EGD for rates effective January 1, 2008 (2008 Decision)¹⁰. In the 2008 Decision, the OEB found that it was appropriate to share unexpected tax changes between ratepayers and shareholders during the IR period. The 50/50 sharing would continue until rates were updated to reflect the tax changes after the IR period. In particular, the OEB found that tax changes would be assumed to be partially reflected in the inflation rate, one element of the Price Cap IR formula. During the remaining years of the IR term, which could range from one to five years, the OEB recognized the uncertainty regarding the extent to which the tax change would change the inflation rate. The OEB found that the impact on the inflation rate was not 0% and was not 100% either. The OEB determined that a 50/50 sharing of the revenue requirement impact of the tax change between a utility's ratepayers and shareholders was appropriate until rates were rebased. Subsequent to the 2008

¹⁰ OEB Decision EB-2007-0606/EB-2007-0615, July 31, 2008, pp. 8-9.

Decision for the natural gas distributors, the OEB extended the 50/50 sharing practice to electricity distributors in its *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors*¹¹.

3.2 Enbridge Gas's Tax Variance Deferral Account Balances

The OEB's July 2019 letter indicated that determinations of accelerated CCA changes would be made at a utility's next cost-based application.

Intervenors proposed that the OEB should make a determination on the disposition of the TVDA balance in this proceeding, even though it was not a cost-based application to rebase rates. Enbridge Gas agreed and submitted that all parties would benefit from clarity regarding the treatment of the TVDA balance now rather than at the next rebasing application. The OEB agreed to hear the unsettled TVDA issue in the current proceeding and established written procedural steps as part of its Decision on the Settlement Proposal¹².

As a result of making capital investments that qualify for the accelerated CCA during 2018 and 2019, Enbridge Gas was able to claim higher CCA deductions for tax purposes than it otherwise would have been able to under the previous CCA measures. This resulted in lower corporate income taxes payable by the utility. The balance in the TVDA as of December 31, 2019 was \$30.03 million (excluding interest), comprised of the following;

- 2018 impact of Bill C-97 accelerated CCA measures - \$4.897 million
- 2019 impact of Bill C-97 accelerated CCA measures - \$25.134 million

Apart from the impact of Bill C-97, there were no other tax rate changes that impact the balance in the TVDA through to December 31, 2019.

To calculate the income tax impact of the accelerated CCA, Enbridge Gas determined the total capital additions which qualified for accelerated CCA and removed additions related to any capital pass-through and incremental capital module projects. For the remaining qualifying additions, the CCA was calculated using the accelerated rates and compared against the CCA calculated at the non-accelerated rates. The income tax (or earnings) impact of the variance between the two methodologies was then grossed-up by the effective corporate tax rates to determine the revenue requirement impact. This amount, representing 100% of the revenue requirement impact, was recorded in the

¹¹ EB-2007-0673 Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors, p. 35, September 17, 2008

¹² EB-2020-0134 Decision on Settlement Proposal, January 25, 2021, pp. 9-10

Enbridge Gas TVDA. The accelerated CCA impacts related to approved capital pass through projects for Union Gas and approved incremental capital module projects are recorded in the respective project deferral accounts.

The quantum of annual balances within the TVDA were not disputed. All parties accepted the calculation of the balances provided by Enbridge Gas.

Findings

The OEB approves the balances of \$4.897 million for 2018 and \$25.134 million for 2019, excluding interest, for disposition (see Implementation section of this Decision).

3.3 Disposition

3.3.1 Enbridge Gas's Preferred Proposal For Balance Disposition

Enbridge Gas proposed two alternate proposals to deal with the TVDA balance:

- Enbridge Gas's preferred proposal was to use 100% of the TVDA balance for two kinds of capital initiatives: Economic Development Projects and Integrated Resource Planning pilot projects (Economic Development and IRP projects). Enbridge Gas proposed to use the balance in the TVDA over the 2019 to 2023 period as a source of funding for the two initiatives. Enbridge Gas estimated that the total cumulative balance in the TVDA for the 2019 to 2023 period will be in the range of \$80 to \$115 million.
- Should the OEB not accept Enbridge Gas's preferred proposal, Enbridge Gas proposed that the TVDA balance be cleared in accordance with the OEB's long-standing practice that impacts of tax changes during the term of an IR plan are shared equally between utility ratepayers and shareholders.

Enbridge Gas proposed that a portion of the TVDA balance up to \$115 million would be directed towards funding the capital investment of the combined Hamilton-Nanticoke-Dunnville project. The Economic Development projects were filed with the OEB in response to the OEB's Natural Gas Expansion Program. The Economic Development projects are a subset of expansion projects which are considered under the *Access to Natural Gas Act, 2018*, to financially support the expansion of natural gas distribution for projects that would otherwise be considered uneconomic under existing policies.

Enbridge Gas also proposed to access up to \$20 million of the TVDA balance to use towards the cost of IRP pilot projects that Enbridge Gas expects to implement after the

OEB approves an IRP framework.¹³ At this time, Enbridge Gas has not determined the details of potential pilot projects that might be pursued. Enbridge Gas noted that the pilot projects would be targeted for implementation no later than the end of 2022.¹⁴ Any pilot project that is considered would be presented to the OEB for approval before being implemented. Enbridge Gas submitted that using the TVDA balance to fund the pilot projects would benefit ratepayers as they would not be required to be funded through rates.

From a rate base perspective, Enbridge Gas confirmed that if the Economic Development and IRP projects are funded through the TVDA balance, the amount that would be included in rate base would be each project's capital cost, net of any funding provided through the TVDA balance.¹⁵

Enbridge Gas indicated that Economic Development and IRP projects are aligned with the objectives of the accelerated CCA which is to encourage more businesses to invest in assets that will help drive business growth over the long-term and create jobs.¹⁶

Submissions regarding Enbridge Gas's preferred proposal

Intervenors and OEB staff did not support Enbridge Gas's preferred proposal to use the TVDA balance from 2019-2023 to fund specific projects.

CCC, IGUA, LPMA, OGVG and SEC referenced the OEB's generic proceeding on community expansion¹⁷ wherein the OEB determined that it was not appropriate for existing customers to subsidize community expansion projects. These intervenors submitted that using the TVDA balances to fund Economic Development projects would result in existing customer subsidizing new or other existing customers.

IGUA, LPMA, SEC, VECC and OEB staff submitted that the Ontario government already has a mechanism in place to provide financial support for the expansion of natural gas distribution projects that would be considered uneconomic under existing policies. These intervenors claimed it was inappropriate for the OEB to approve an additional funding mechanism for these projects or to anticipate federal fiscal policy by using TVDA funds to drive economic growth.

¹³ EB-2020-0091

¹⁴ Enbridge Gas argument-in-chief, p. 13.

¹⁵ OEB staff IRR #32(f).

¹⁶ Exhibit H, p. 12, para 44, February 4, 2021.

¹⁷ EB-2016-0004

CME and SEC submitted that Enbridge Gas is not the only entity that can help drive business growth. If 100% of the TVDA balance was returned to ratepayers, CME submitted that its members would be able to invest in assets, drive growth, create jobs and recover from the economic impacts of the COVID-19 pandemic.

LPMA raised the issue of intergenerational equity. If the TVDA balances were used to fund Economic Development and IRP projects, the projects would provide benefit to ratepayers over the life of the assets. Given that the life of the assets is 40 years or more, LPMA submitted that there would be significant difference between the customers that contribute to the projects and the customers that derive the benefit from the projects. OGVG submitted that to maintain intergenerational equity as closely as possible, the TDVA should be cleared to ratepayers in a timely and straightforward manner.

OEB staff, SEC and VECC were concerned that the cost allocation amongst the customer classes for the proposed Economic Development and IRP projects would be different from a disposition of the TVDA balance, given as a direct credit to ratepayers.¹⁸ OEB staff submitted that Enbridge Gas's proposal was not appropriate from a ratemaking perspective.

CCC, Energy Probe, IGUA, SEC and OEB staff further submitted that it is premature to approve any funding mechanism for such projects at this time. The proposed Economic Development projects have not yet been approved by the government and would be subject to a Leave to Construct application with the OEB. Similarly, the OEB has yet to issue a decision to determine an IRP framework and provide guidance regarding the nature, timing and expectation for any IRP pilot projects. LPMA submitted that since the pilot projects are likely to be implemented in 2022, the OEB could consider using the 2020 TVDA balance to fund these projects.

In reply, Enbridge Gas claimed that intervenors were assuming that the TVDA balances were "ratepayer funds". Enbridge Gas argued that until the OEB decides on the disposition, it is not known whether the balances are "ratepayer funds" or "shareholder funds", or a combination of both.

If the OEB were to refund 100% of the TVDA balance to ratepayers, Enbridge Gas stated that it would receive none of the incentive on which the accelerated CCA was based. Enbridge Gas submitted that the accelerated CCA is to encourage businesses to invest in assets that will help drive business growth. Enbridge Gas noted that its proposal to fund Economic Development projects would lead to the creation of over

¹⁸ OEB Staff IRR #32(c)

14,000 new jobs and \$1.75 billion of direct investment. In contrast, with a refund of 100% to ratepayers, a typical residential customer would receive less than \$5 while a small commercial customer would receive about \$37¹⁹. Enbridge Gas submitted that the fragmented nature of a ratepayer credit would not result in any meaningful capital investment in Ontario.

Regarding concerns of intergenerational inequity, Enbridge Gas argued that inequity also exists if current ratepayers receive 100% of the TVDA balance because future ratepayers will pay higher taxes through rates.

Enbridge Gas argued that its preferred proposal was not premature as Economic Development projects have been filed with the OEB as part of the Natural Gas Expansion Program and IRP pilot projects would be considered as part of an approved IRP framework.

Findings

The OEB denies Enbridge Gas's preferred proposal to apply the TVDA balances to fund Economic Development and IRP projects.

The OEB considers the preferred proposal premature. The Ontario government has yet to approve funding for any projects submitted under the Natural Gas Expansion Program. If an Economic Development project is approved for funding, it would require Leave to Construct approval by the OEB. The IRP framework has yet to be established as the OEB has yet to issue a decision in the proceeding. Similarly, an IRP pilot project would likely require some manner of approval by the OEB.

In addition, the OEB finds the potential cross-subsidization unacceptable in using current TVDA balances, sourced from all rate zones, to fund projects located in specific rate zones. The OEB also finds the potential intergenerational issues unacceptable in using the 2019 balance, for example, to fund projects with future, unspecified in-service dates.

Enbridge Gas submitted that its preferred approach was consistent with the federal government's objective for the accelerated CCA to provide an economic stimulus by providing incentives to encourage businesses to invest in assets.

As an economic regulator, the OEB's objectives include the facilitation of a financially viable gas industry for the transmission, distribution and storage of gas, and the facilitation of rational expansion of transmission and distribution systems. The OEB does not have a specific objective or mandate relating to business and job growth.

¹⁹ Refund estimates for EGD rate zone

While Enbridge Gas argued that stage 3 of the OEB's economic feasibility test considers public and economic benefits, the OEB understands that the stage 3 test is only considered in a Leave to Construct application.

Given the OEB's concerns regarding prematurity, cross subsidization, and intergenerational inequity, this is not the appropriate proceeding to consider capital project funding.

3.3.2 Enbridge Gas's Second Proposal For Balance Disposition

Should the OEB not accept Enbridge Gas's preferred proposal, Enbridge Gas proposed that the TVDA balance be cleared in accordance with the OEB's long-standing practice that impacts of tax changes during the term of an IR plan are shared equally on a 50/50 basis between utility ratepayers and shareholders.

Enbridge Gas submitted that the 2008 Decision considered a variety of tax changes and the extent to which tax changes will work their way through the economy and reflected in a price cap index through the inflation factor. The OEB found that 50/50 sharing of the impacts of tax changes was a reasonable balance. Enbridge Gas argued that 50/50 sharing of the balances for the Union Gas and EGD rate zones takes account of the flow-through effect of accelerated CCA on the inflation factor during the term of the Enbridge Gas IR plan.

For 2018 in particular, Enbridge Gas submitted that the 2018 balance of \$4.897 million for the Union Gas and EGD rate zones occurred prior to amalgamation. In 2018, Union Gas's TVDA was in place to record 50% of the variance in costs resulting from the difference between actual and approved tax rates included in rates. In the case of the EGD IR plan, impacts of tax changes were shared with ratepayers through the earning sharing mechanism on a 50/50 sharing basis, in years where earnings exceeded the earnings sharing threshold.

After the amalgamation in 2019, Enbridge Gas submitted that the balances be shared on a 50/50 basis in line with the long-standing policy and intent of a deferred rebasing period.

Submissions regarding Enbridge Gas's second proposal

Intervenors and OEB staff did not support Enbridge Gas's second proposal to dispose of the 2018 and 2019 TDVA balances on a 50/50 basis between ratepayers and shareholders. The unanimous position of intervenors and OEB staff was to credit 100% of the TVDA balances to ratepayers. They argued that the accelerated CAA is unlike a change to the income tax rate, as it is a change in the timing of taxes to be paid. The accelerated CCA is not permanent and merely defers the taxes to be paid over-time.

LPMA considered the period after rebasing and estimated that ratepayers would effectively pay \$40 to \$57.5 million more in lifetime taxes if the TVDA balance from 2018-2023 was shared on a 50/50 basis. LPMA based its calculation on Enbridge Gas's tax reduction estimate of \$80 to \$115 million from 2018 to 2023 and Enbridge Gas's expectation that ratepayers would pay 100% of the tax increase after rebasing in 2024.

At rebasing, the Company anticipates that utility income taxes, that will be included within its application and proposed rates, will reflect the cumulative impact of the All [referred to as accelerated CCA in this Decision] to that point (i.e. opening 2024 undepreciated capital cost (UCC) balances will reflect the impact of accelerated CCA amounts claimed or forecast through 2023, and will also reflect the actual/anticipated All tax rules for 2024 (i.e. that the suspension of the half-year rule will be in place) as well as other actual anticipated income tax rates and rules for 2024.²⁰

LPMA and OEB staff raised the “benefits follow costs” principle that was considered in the 2008 Decision. They submitted that if ratepayers are expected to absorb all the costs of incremental income taxes in future years after rebasing, ratepayers should be entitled to all the benefits of the accelerated CCA change.

VECC submitted that Enbridge Gas's argument was fundamentally flawed as it relied on the 2008 Decision yet did not lead any evidence with respect to that case. VECC claimed the OEB did not turn its mind specifically to the distinction between CCA and tax rate changes and Enbridge Gas's proposal is fundamentally flawed as it conflates the concept of a tax rate and CCA schedule changes.

Many submissions referred to three recent settlement proposals approved by the OEB in which 100% of the accelerated CCA tax savings were refunded to ratepayers:

- Hydro Ottawa Limited 2021 Custom IR rate proceeding²¹
- Waterloo North Hydro Inc. 2021 rates proceeding²²
- Niagara Peninsula Energy Inc. 2021 rates proceeding²³

In reply, Enbridge Gas argued that characterizing tax rate changes as permanent and accelerated CCA changes as timing differences, obfuscates the real question, which is whether the accelerated CCA impacts flow through to affect the inflation factor to benefit ratepayers during the IR term. Enbridge Gas submitted that the OEB considered this

²⁰ LPMA Supplementary IRR #28.

²¹ Decision on Settlement Proposal and Procedural Order No. 8, EB-2019-0261, October 2, 2020.

²² EB-2020-0059 Settlement Proposal, November 16, 2020.

²³ EB-2020-0040 Settlement Proposal, January 7, 2021.

question in the 2008 Decision and determined that tax changes are reflected in the price cap index through the inflation factor.²⁴

Enbridge Gas disagreed with the proposal to dispose of the TVDA credit balances with 100% benefit to ratepayers, particularly for the 2018 balance. Enbridge Gas submitted that the July 2019 letter was issued after the conclusion of the 2018 rate year and after the amalgamation of EGD and Union Gas. Enbridge Gas argued that intervenors and OEB staff have not provided any rationale on how the OEB can or should determine disposition of 2018 tax savings that are not consistent with the ratemaking framework and 50/50 sharing that was in effect for EGD and Union Gas in 2018.

Regarding the approved settlement proposals, Enbridge Gas submitted that these proposals are the result of trade-offs and in approving them, the OEB did not consider, address or comment on the impacts of the accelerated CCA changes.

Findings

The OEB finds that 100% of the 2019 TVDA balance shall be disposed of as a credit, or refund, to ratepayers. The OEB finds that the 2018 balance, accumulated pre-amalgamation, shall be shared on a 50/50 basis between ratepayers and shareholders.

The OEB finds that the accelerated CCA at issue in this proceeding, is different from the tax changes considered in the 2008 Decision, which included federal corporate tax rates, federal CCA rates and Ontario capital tax rates²⁵. Although the 2008 Decision considered CCA rates changes, those CCA changes did not result in accelerated first-year claims for all eligible assets. The accelerated CCA is unique as it is temporary, starting on November 20, 2018 and ending in 2027. In effect, the accelerated CCA program frontloads tax deductions for corporations to encourage near-term capital investment. It changes the timing of tax deductions, without changing total tax deductions, over the life of the asset.

Given the differences in the tax changes at issue in this proceeding, any precedent established in the 2008 Decision, which led to the long-standing practice of 50/50 sharing, requires further consideration to determine the appropriate ratemaking treatment for the accelerated CCA. The OEB does not consider that the 50/50 sharing, found appropriate in the 2008 Decision, applies to the evidence and circumstances in this proceeding.

During Enbridge Gas's IR term, current rates do not reflect the accelerated CCA tax deductions and the lower taxes paid by Enbridge Gas starting in the 2018 fiscal year.

²⁴ EB-2007-0606/0615, Decision, July 31, 2008.

²⁵ EB-20107-0606/2007-0615, p. 7

Current rates are set to recover tax calculations based on the prior CCA deduction schedule. The TVDA was created for the express purpose of capturing these types of tax changes. If 2021 was a rebasing year, the accelerated CCA impacts would flow through to reduce rates. There would be no 50/50 sharing. As indicated in the 2008 Decision, ratepayers should be no worse off in an IR term than in a cost of service year when rates are rebased.

Enbridge Gas argued that the real question is the impact on inflation, yet it led no evidence to support the claim that the accelerated CCA would impact inflation during its IR period. The OEB is not convinced that the accelerated CCA leads to a decrease in inflation. The OEB agrees with VECC that the 2008 Decision did not differentiate corporate and capital tax changes from CCA changes, in concluding that inflation would be affected. With the accelerated CCA at issue now, total tax deductions do not change over the life of the asset. Even assuming that some inflationary pressures could exist with frontloaded CCA deductions, it follows that those pressures are countered, or cancelled out, in subsequent years with lower CCA deductions.

In approving the 50/50 sharing, the 2008 Decision indicated that it wanted to avoid a “double recovery” or a “windfall gain” for ratepayers. Such windfall gains were associated with allocating 100% of tax savings to ratepayers and also allowing ratepayers to benefit from lower inflation rates during the IR term. Given the unique aspects of the accelerated CCA, the OEB finds that disposing the TVDA with 100% benefit to ratepayers is just and reasonable and that the risk of windfall gains for ratepayers is limited.

The OEB finds that refunding 100% of the 2019 TVDA balance to ratepayers is consistent with the “benefits follow costs” principle and ensures that ratepayers are no worse off under an IR plan than under a Cost of Service.

2018 TVDA Balance

The OEB approves Enbridge Gas’s proposal to dispose the 2018 TVDA balance of \$4.897 million on a 50/50 basis between ratepayers and shareholders. The OEB finds that the 2018 rate year is unique for Enbridge Gas given the amalgamation of EGD and Union Gas effective January 1, 2019.

In 2018, EGD did not have a TVDA similar to Union Gas; it had an Earning Sharing Mechanism. Effective January 1, 2019, the OEB approved the continuation of Union Gas’s TVDA, expanding the applicability to both the EGD and Union Gas rate zones²⁶. After amalgamation, the OEB issued its July 2019 letter with accounting directions for all

²⁶ EB-2017-0306 / 0307 (the MAADs Decision).

rate-regulated utilities²⁷ to record the impacts of the accelerated CCA in the appropriate account from November 21, 2018 until the utility's next cost-based rate order. In the 2019 rates proceeding, the OEB found it appropriate for Enbridge Gas to utilize Union Gas's TVDA account in 2018 for recording the impacts of the accelerated CCA.²⁸

In reply, Enbridge Gas questioned how OEB orders or decisions made after the amalgamation could "reach back" to change the 50/50 sharing treatment of the impacts of tax changes under previous regulatory models in place until the end of 2018. In these circumstances, given that the January 1, 2019 amalgamation effectively changed the ratemaking framework (particularly with respect to the TVDA) for EGD and Union Gas, the OEB has determined that the best approach would be to allocate the 2018 TVDA balance equally between ratepayers and shareholders (50/50) as proposed by Enbridge Gas, recognizing the rate frameworks in effect prior to amalgamation.

3.4 Allocation of Approved Balances to Ratepayers

In response to an interrogatory, Enbridge Gas proposed to allocate the ratepayers' share of the TVDA balances plus interest between the EGD and Union Gas rate zones in proportion to the 2018 actual rate base amounts of \$6,729 million and \$6,018 million, respectively. Enbridge Gas further proposed to allocate the balances to rate classes in proportion to the 2018 rate base for the EGD rate zone and the 2013 rate base for the Union Gas rate zones. The rate base allocation for each rate zone is taken from the last fully allocated cost study.²⁹

LPMA, OEB staff and VECC supported Enbridge Gas's proposed allocation methodology while other intervenors expressed no concerns.

Findings

The OEB accepts Enbridge Gas's proposed allocation of the approved 2018 and 2019 TVDA balances to ratepayers. The TVDA balances to ratepayers shall be allocated to each rate zone based on the actual 2018 rate base and then allocated to rate classes within each rate zone. The allocation to rate classes within each rate zone is based on the last OEB-approved rate base allocation, which was 2018 for EGD and 2013 for Union Gas.

²⁷ July 25, 2019 Letter, to all rate-regulated electricity and natural gas utilities and Ontario Power Generation Inc.

²⁸ EB-2018-0305

²⁹ OEB Staff IRR#8 and Energy Probe IRR#13(e).

3.5 Performance Scorecard

The purpose of the scorecard is to measure and monitor performance over the deferred rebasing period. In the MAADs Decision, the OEB approved a performance scorecard for the amalgamated Enbridge Gas. The scorecard submitted in this proceeding is the first scorecard of the amalgamated utility. Enbridge Gas met or exceeded all elements of the scorecard apart from two measures: Time to Reschedule Missed Appointments and Meter Reading Performance.

The measure “Time to Reschedule Missed Appointments” (TMRA) tracks the percentage of customers contacted to reschedule the work within two hours of the end of the original appointment time. While the metric is 100%, Enbridge Gas achieved 97% in 2019. Enbridge Gas attributed the achieved performance to human error or the customer not being available to reschedule appointments.³⁰ Enbridge Gas confirmed that its efforts towards meeting the TMRA metric are ongoing and a cross-functional team meets monthly to review performance and to reinforce training where necessary.

Enbridge Gas also concurred with OEB staff that a review of Service Quality Requirements metrics was desirable and a more balanced approach in determining certain standards could be adopted. With respect to the TRMA, Enbridge Gas recommended a more appropriate target of 90% to 95%.

The measure Meter Reading Performance represents the number of meters with no read for four consecutive months or more, divided by the total number of active meters to be read. The target for the metric is 0.5% and Enbridge Gas achieved a level of 0.7% in 2019. Enbridge Gas noted that it was unable to meet the metric due to extreme weather in the first and second quarters and the transition to a new vendor for the Union Gas rate zones. Enbridge Gas explained that it sends monthly e-mails to customers to submit a reading and its vendor has implemented incentive programs to assist in the process of obtaining meter reads.

Energy Probe submitted that filing the scorecard in the DVA proceeding makes it retrospective. Energy Probe suggested that the scorecard should be filed in the annual rates proceeding and include prior year performance and targets for the rate year, similar to electric utilities. Enbridge Gas confirmed that the 2020 Performance Scorecard will include the previous year’s results to demonstrate trend.

Findings

The OEB finds that the performance scorecard metrics continue to provide valuable information during the deferred rebasing period and the performance scorecard will

³⁰ OEB staff IRR #29.

remain unchanged. The OEB acknowledges that two metrics were not met in 2020 yet accepts Enbridge Gas's explanation and plans to improve its results. By monitoring the scorecard over time, the OEB is informed of issues faced by Enbridge Gas and may potentially adjust the metrics as the industry and its customers evolve.

4. IMPLEMENTATION

In the settlement proposal, Enbridge Gas and intervenors agreed that the relevant balances in the 2019 DVAs should be disposed of in conjunction with the July 1, 2021 Quarterly Rate Adjustment Mechanism (QRAM) application.

Findings

The OEB accepts the proposed implementation date of July 1, 2021 for all DVA balances approved for disposition in this proceeding, including Appendix A of the approved settlement proposal³¹.

The OEB directs Enbridge Gas to provide calculations of the final net balances of the 2018 and 2019 TVDA separately with interest up to June 30, 2021 in its draft Rate Order. Enbridge Gas shall calculate rate riders such that the total due to ratepayers, 50% of the final 2018 balance and 100% of the final 2019 balance, will be disposed on a basis that is consistent with the disposition in the approved settlement proposal for other DVA balances.

³¹ EB-2020-0134 Decision on Settlement Proposal, January 25, 2021

5. ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. 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, by **May 14, 2021**. The draft rate order shall include customer rate impacts and supporting information showing the calculation of final rates/rate riders.
2. The draft rate order shall also include draft accounting orders for any accounts that have been revised as a result of the settlement proposal or findings in this Decision and Order.
3. 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 **May 21, 2021**.
4. Enbridge Gas shall file with the OEB and forward to the intervenors responses to any comments on its draft rate order on or before **May 27, 2021**.
5. Cost eligible intervenors shall file their cost claims with the OEB and forward them to Enbridge Gas on or before **June 10, 2021**.
6. Enbridge Gas shall file with the OEB and forward to the intervenors any objections to the claimed costs by **June 16, 2021**.
7. Intervenors shall file with the OEB and forward to Enbridge Gas any responses to any objections for cost claims by **June 22, 2021**.
8. Enbridge Gas shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

How to File Materials

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2020-0134**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>.

- Filings should clearly state the sender's name, postal address, telephone number, fax number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the web portal can contact registrar@oeb.ca for assistance.

All communications should be directed to the attention of the Registrar at the address below and be received by end of business on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Khalil Viraney at Khalil.Viraney@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, May 6, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar