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Enbridge Gas Inc. (EGI)

EB-2024-0078

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

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

November 4, 2024

Vulnerable Energy Consumers Coalition

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1. The Application is to vary the Board's Decision EB-2022-0200. Enbridge Gas Inc (EGI or Enbridge) argues that the OEB's Decision on the Integration Capital Issue improperly interprets the evidence presented and relies on that improper interpretation to deny future recovery of the costs, specifically integration capital cost investments.

2. VECC submits that the Motion should be dismissed. The arguments of EGI are without merit, repetitive of the arguments in the original decision. There is no new information or persuasive analysis that have been presented to refute the Board's findings. Furthermore, the error identified by EGI in the Board's decision is not determinative of the reasoning of the Board's decision in regards to integration capital.

3. In its argument on the threshold question with respect to this motion VECC argued The Board's Rules of Practice and Procedure require grounds for a motion require the following be present:[1]

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

4. Rather than repeat the material points we made in our argument on the threshold question we have focused in this submission on responding to EGI's motion arguments.[2]

5. The first third of EGI's motion argument is simply a protest against the Board's decision. Repetitive accusations that the Board ignored a "regulatory principle" of "benefits follow costs" are intended to persuade that the Panel ignored some long standing rate making principle. They did not – there is no "Bonbright" or otherwise widely accepted rate making principle nor any jurisprudence that instills a "benefit follows cost" principle. This is made up regulatory theory. It is a simple truism that generally -though not always – one is expected to pay for services rendered. EGI believes it is entitled to rate recovery of costs that were made in pursuit of the amalgamation of the two former utilities. The Board found, and intervening parties largely argued that these investments were part of the amalgamation investments that the Utility was entitled to recover costs of during the 5 year rate rebasing deferral period the Utility was granted as part of its amalgamation

[1] Ontario Energy Board, Rules of Practice and Procedure, Revised July 13, 2023, page 31.
[2] Enbridge Gas Inc., Submissions on Motion to Review and Vary OEB's December 21, 2023 Decision in Phase 1 of Enbridge Gas Inc.'s Rebasing Application, October 18, 2024 (EGI Motion Submission)

decision[3]. Repetitively stating that "benefits follows cost" does not make it some from of inviolate regulatory principle.

6. In any event, in this regard the Board was clear it observed that during the five-year deferred rebasing term capital expenditures related to integration were $252 million whereas the total cumulative savings over the deferred rebasing term is expected to be $327 million or a net gain for EGI's shareholder of $75 million (which does not include the invested value of those savings). As the Board also observed "The net savings were retained by Enbridge Gas during the five-year deferral period." It appears to us, whatever academic merit there might be (and we say none) of EGI's proposed rate making principle of "benefit following cost" - in this instance that appears to be precisely what happened – the benefits followed EGI's shareholder.

7. EGI's next complaint is that the Board failed to write a sufficiently robust set of reasons for such a weighty decision. Clearly, unlike intervenors, the Applicant is unused to reading brief accounts of how unsuccessful its arguments are. In this case perhaps the Panel "had the time to write the shorter letter" than was anticipated by Enbridge. We would argue the section is not brief as thought as it covers nearly 5% of the actual decision. The "Findings" section on the integration decision that EGI is so focused upon is two and half pages and longer than the single page and a half of findings of the more shareholder favourable decision of increasing EGI's equity thickness. Perhaps therein lies the grounds for us to complain about that portion of the decision? Such arguments are trite.

8. All that is required is that robust reasons are provided – and they are. The length of one's silique of no consequence. The Board lays out the relevant and material arguments of all the parties and culminates by finding:

> "*In this case, the benefits did follow the costs – Enbridge Gas made capital investments that yielded savings that exceeded the cost of those investments during the deferred rebasing period, savings that it got to keep. To allow some of that capital investment to now be added to the 2024 rate base, despite the MAADs Decision that concluded that a five-year deferral period would be sufficient to recover the cost of those investments with net savings to Enbridge Gas, which indeed occurred, would amount to a windfall to the utility.*
>
> *Despite the five-year deferral period, Enbridge Gas chose to depreciate these integration capital assets beyond 2023, resulting in a net book value of $119 million on its regulatory accounting books. That was a choice made by Enbridge Gas. Had Enbridge Gas chosen to fully depreciate its integration capital assets during the deferral period, depreciation expenses would have been higher, and earnings would have been lower than actually recorded from 2019 to 2023, but*

[3] Decision and Order EB-2017-0306/EB-2017-0307, August 30, 2018

the savings retained by Enbridge Gas during this period would still exceed the cost of that investment. Capital expenditures related to integration during the five-year deferred rebasing term were $252 million. Enbridge Gas indicated that it expected to achieve a total of $327.6 million in savings for the 2019 to 2023 period."

9. EGI then attempts to confuse this issue – whether there are net benefits to EGI shareholder during the deferred rate period by making the argument that:[4]

   Enbridge Gas's total costs classified as integration-related during the deferred rebasing term total $439 million. This amount exceeds the $327.6 million in integration savings that Enbridge Gas achieved during the deferred rebasing term by more than $110 million.

10. EGI's contention is not supported by the evidence. Below we have reproduced the tables provided in the updated EB-2022-0200 evidence.[5] The Integration OM&A costs for the 2019-2023 period equal $280.3 millions (Table 5). By our calculation the OM&A integration savings (Table 3) cumulatively for the 2019-2023 period equal $327.6 millions for a net gain of $47 million in favour of EGI's shareholder.

Table 5
Integration O&M Costs Schedule by Area

Line No.	Particulars ($ millions)	2019 Actual	2020 Actual	2021 Actual	2022 Estimate	2023 Bridge Year	Total
		(a)	(b)	(c)	(d)	(e)	(f)
	O&M Costs						
1	Business Development & Regulatory	-	0.3	0.9	0.4	0.5	2.1
2	Customer Care	2.0	14.0	13.8	0.4	0.5	30.8
3	Distribution Operations	2.6	18.0	21.9	22.7	10.9	76.2
4	Energy Services	0.7	1.0	0.5	0.6	0.6	3.3
5	Engineering & STO	1.6	8.3	6.9	8.9	6.2	31.9
6	Other Functions	3.2	4.8	5.8	2.2	0.9	16.9
7	Subtotal for O&M Integration Costs	10.2	46.4	49.8	35.2	19.5	161.1
8	Integration Severance	41.5	77.7				
9	Total Integration O&M Costs	51.7	124.1	49.8	35.2	19.5	280.3

[4] EGI Motion Submission, par. 43, pg. 19
[5] EB-2022-0200, 2022-10-31, Exhibit 1, Tab 9, Schedule 1

Table 3
Integration Savings as Achieved by Area

Line No.	Particulars ($ millions)	2019 Actual (a)	2020 Actual (b)	2021 Actual (c)	2022 Estimate (d)	2023 Bridge Year (e)
	O&M Savings					
1	Business Development & Regulatory	6.8	9.6	10.4	10.4	10.4
2	Customer Care	5.5	6.6	7.5	22.5	22.5
3	Distribution Operations	6.3	9.8	17.3	16.8	16.8
4	Energy Services	2.6	5.6	5.9	5.9	5.9
5	Engineering & STO	5.2	9.0	11.6	11.6	11.8
6	Central Functions	3.9	9.1	15.7	15.8	15.8
7	Other	2.0	2.7	2.8	2.8	2.8
8	Total Annual Savings	32.2	52.4	71.2	85.8	86.0

11. What EGI's motion submission does is to conflate the evaluation of O&M savings and costs with a different issue. As to the question of whether OM&A savings from integration outweigh its costs - the answer is clear – yes there was a net benefit to shareholders as shown in the tables above.

12. A very separate question is whether overall there was a net financial benefit to the utility shareholders. To answer that question, one would need to do a detailed analysis of not the regulatory returns of the utility, but its actual returns of the corporate entity as a whole. For example, EGI states that largest of integration capital investments were driven by technology investments to update and align key IT systems[6]. Information technology projects have a large upfront tax benefit which would have accrued to the benefit of shareholders during the rate deferral period. The mismatch between depreciation and tax shielded revenue is implied in the Board's reasoned decision as it quite correctly notes that the Utility might have fully depreciated its integration assets during the rate deferral period (and presumably better matched the amount of tax shield with the amount of depreciation). On this matter EGI is also incorrect when in its footnote its states the OEB made factual errors because "*Utility Enbridge Gas would not have been allowed to make that type of unilateral decision to depreciate certain assets at a different rate from OEB-approved levels*."[7] EGI could have done precisely what the Board insinuates and certainly the panel would have reviewed such a proposal at the first cost of service rate proceeding (i.e., this one). But it given it is always to the benefit of ratepayers when the shareholder volunteers to write down a serviceable asset it is hard to see why the Board would have objected to such a proposal.

[6] EGI Motion Submission, par 36, page 8.
[7] EGI Motion Submission, footnote 19, page 7

13. Because the upfront OM&A costs of integration are immediate and largely in labour severance costs the net benefits will be realized for the most part in the latter part of the rate deferral term. Therefore EGI's 2022 -2024 earnings would be the most revealing as to what net benefits have accrued to the Utility's shareholder. That information would not have been available to the Board – though we note that EGI staff seemed quite confident that the Utility would exceed in overearnings the costs of integration.[8]

14. The only question the Board could have answered at the time was whether it was reasonable to assume there were net benefits to the Utility during the rate deferral period. It made the reasonable answer that the EGI had benefited. Certainly, no evidence was proffered in this case to support an argument that the Utility had made an unwise decision in amalgamating. But now, to read their submission, one would think the opposite. Implied by EGI is that all has gone wrong, that there are no benefits to shareholders from amalgamation. Yet that sentiment is notably absent in the record of this proceeding.

15. In the end it is of no consequence whether EGI fully recouped its integration investments or not. The purpose of rate rebasing deferral period granted as part of the amalgamation decision was to allow the new combined utility to not just recoup costs, but if it acted quickly and efficiently to derive benefits to shareholders that would not otherwise be possible. This is clear in the Board's MAADs' policies and was clear in the amalgamation decision:[9]

> *The election of the ten-year deferred rebasing period in the MAADs Handbook was intended to promote consolidation in the electricity sector in Ontario and to allow consolidating utilities to recover transaction and integration costs. There was no mention of natural gas in the MAADs Handbook, and as there are only three natural gas utilities in the Province, there was no need to incent consolidation in the natural gas sector*

16. The above statement was made in light of the Board granting, for a number of reasons, a rate rebasing of only 5 years. However, the rate deferral period provides an opportunity – not a guarantee of financial success for the shareholder. The amalgamation decision left EGI with a less opportunistic time period in which to recover its integration costs. Nevertheless, EGI decided to proceed with the amalgamation under the ratemaking terms provided by the Board.

17. The Board decided to provide EGI a five rather than 10 year rate review free period in which to recoup its amalgamation costs and earn any incremental returns. Having read that decision, the Utility decided to proceed and therefore is required to live with the

[8] EB-2022-0200, Transcript Vol. 14, August 3, 2023, page 170
[9] Decision and Order EB-2017-0306/EB-2017-0307, August 30, 2018, page 20

consequences. It is that simple and no regrets or reminiscence on the policy are relevant to this motion.

18. The latter and largest part of EGI's motion amounts to an argument as to their interpretation of what the Board's MAADs policy does or does not intent. First let it be said that any "policy" of the Board is not binding on a Panel of the Board who are required by law to review the facts presented and make a just and reasonable decision. The policy was not made under the binding powers of rule making that the Act provides the Board. More to the point this part of part of EGI's argument is speculative and based its own interpretations of a policy and not on the findings of the Board in the actual Amalgamation decision.

19. The one issue where we somewhat agree with EGI on is whether the Board erred in considering the GTA East and West facilities as part of the integration costs being considered. However, EGI diminishes its argument by its hyperbolic claim that the Board found that "*Enbridge Gas had spent most of the integration capital amounts on property consolidation projects*."[10] This is simply misleading as demonstrated by the actual reference provided in the submission (without the leading emphasis):[11]

> *The OEB agrees that benefits should follow costs, yet the OEB must also consider the impetus for the specific costs incurred. For example, CCC and SEC referenced the GTA East and West facilities at a total cost of $67.3 million submitting that real estate consolidation projects would not have been undertaken in the absence of the amalgamation. CCC and SEC also identified similar integration projects totaling $153.9 million. The ongoing use of those buildings may provide benefits to ratepayers, yet the cost would not have been incurred in the first place in the absence of amalgamation*.

We can see nowhere in the reference provided that the Board sees these facility costs as where it "*had spent most of the integration capital*".

20. The Board was clearly using the facilities investment as an example of the principle it was applying. It may have erred in the example (easily done since a change to the evidence as made by the Applicant during the proceeding), but this as no bearing on the principle it was applying. In fact, it is quite the opposite. Since IT projects clearly provide a more opportunistic way for the Utility shareholder to benefit from integration costs recovery through its tax shield benefits the Board's point is made far stronger when applied to where the actual predominance of integration investments were made - on IT projects.

[10] EGI Motion Submission, page 7
[11] Ibid, page 7

21. In any event the consideration of the facility integration projects raises what VECC found to be an interesting quandary. In our submission in the main proceeding, we made the following observation[12]:

> *It is important that the Board consider that integration costs will continue to be incurred post 2024. These include the GTA West and East facilities project as well as all the costs that will go to implementing a harmonized rate system. As it stands these post 2024 projects will ultimately form part of the recoverable rate base of the Utility. It would be reasonable for the Board at the appropriate time to exclude these capital investments from recovery in rates. While that determination will necessarily be made at a later time it is also quite possible EGI will be allowed a disallowance of the integration capital costs in this proceeding does not mean that EGI may not ultimately recover some integration costs contrary to a strict reading of the MAADs policy*.

22. The point is that if the Board were to reevaluate its decision of whether to allow remaining integration costs proposed by EGI to be recovered rates it might consider that some integration costs – in fact the integration costs used as an example in the decision in question - are yet to be incurred. We submit rather than supporting the arguments of EGI a reviewing panel should consider a greater disallowance based on these future property transactions.

23. For all the reasons above VECC submits the motion should be rejected.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED

[12] EB-2022-0200, VECC Submissions, September 23, 2023, pages 16-17