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DECISION ON SETTLEMENT PROPOSAL AND PROCEDURAL ORDER NO. 2

EB-2024-0125

ENBRIDGE GAS INC.

**2023 Deferral and Variance Account Disposition and Earnings
Sharing Application**

BEFORE: David Sword
Presiding Commissioner

Allison Duff
Commissioner

January 28, 2025

1 OVERVIEW

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) on May 31, 2024, under section 36 of the *Ontario Energy Board Act, 1998*, for an order approving the disposition of amounts recorded in certain deferral and variance accounts (DVAs) to December 31, 2023, together with interest to December 31, 2024, and for a review of the 2023 earnings sharing amount.

A settlement conference was conducted on September 16, 17 and 18, 2024. The parties participating in the settlement conference reached a complete settlement on the disposition of all 2023 DVA balances that were requested for disposition in this proceeding. The settlement proposal and a draft rate order were filed on October 10, 2024.

As a result of the settlement proposal, the principal balance of all DVA balances requested for disposition decreased from a \$4.834 million debit from customers to a \$2.068 million credit to customers with an implementation date of January 1, 2025, as proposed.¹ The decrease is due to the agreed reduction in the Getting Ontario Connected Variance Account (GOCVA). The parties agreed to reduce the principal balance of the GOCVA from \$31.9 million to \$25.0 million.

Other key elements of the settlement proposal are discussed further below. OEB staff filed a submission supporting the settlement proposal and the draft rate order filed by Enbridge Gas.

The OEB has reviewed the settlement proposal and does not approve it as filed. The OEB accepts the settled principal balances in 49 deferral and variance accounts with a total balance of \$2.068 million as of December 31, 2023² for clearance as a credit to ratepayers.

The OEB also accepts the settled allocation and disposition of those balances³ as it would result in just and reasonable rates and reflect the public interest.

While the OEB is supportive of much of the settlement, the OEB has concerns relating to the scope of the settlement proposal and certain implications to Enbridge Gas's approved IRM framework.

¹ The total net balance of all DVA balances requested for disposition, inclusive of interest to December 31, 2024, increased from a \$2.216 million credit to customers, to a \$9.416 million credit.

² Settlement Proposal, Appendix A – Updated Balances of Deferral and Variance accounts

³ Settlement Proposal, Settled issue #6, p. 26

The OEB also has concerns with the settled issues related to the Fugitive Emissions Measurement Plan, the proposed new deferral account and the interim disposition of 2023 Unaccounted For Gas (UFG) related accounts. The OEB's findings in this regard are discussed further below.

As a result, the OEB is making provision for the continuation of the settlement conference to give the parties an opportunity to consider amending the settlement proposal for the OEB's consideration.

2 THE PROCESS

The OEB approved the amalgamation of Enbridge Gas Distribution (EGD) and Union Gas Limited (Union Gas) effective January 1, 2019.⁴ Following the amalgamation, Enbridge Gas has maintained the EGD rate zone, and the Union North West, Union North East and Union South rate zones.

In its amalgamation 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. Enbridge Gas's actual 2023 utility earnings did not exceed the OEB-approved return on equity (ROE) by more than the threshold for sharing. Accordingly, no earnings sharing mechanism amount was proposed to be shared with ratepayers in this application.

Enbridge Gas has maintained most of the deferral and variance accounts previously established for each rate zone. The amalgamation decision also created additional DVAs that apply to the merged entity.

A Notice of Hearing for this application was issued on June 26, 2024. The following parties were approved as intervenors in the proceeding:

- Canadian Manufacturers & Exporters (CME)
- Consumers Council of Canada (CCC)
- Energy Probe
- Environmental Defence (ED)
- Federation of Rental-housing Providers of Ontario (FRPO)
- Kitchener Utilities (Kitchener)
- Minogi Corp. (Minogi)
- Ontario Greenhouse Vegetable Growers (OGVG)
- Pollution Probe
- School Energy Coalition (SEC)
- Six Nations Natural Gas Company Limited (SNNG)

The OEB issued Procedural Order No. 1 on July 22, 2024, in which the OEB approved a list of intervenors, provided for discovery, and scheduled a settlement conference.

⁴ EB-2017-0306 / 0307 Decision and Order August 30, 2018, application by Enbridge Gas Distribution and Union Gas Limited to amalgamate under the OEB's policy on mergers, acquisition, amalgamation and divestiture (MAADs Decision).

The settlement conference was held on September 16, 17 and 18, 2024 with the objective of reaching a settlement on the issues between the intervenors and the applicant. Enbridge Gas filed a settlement proposal and Draft Rate Order on October 10, 2024, for the OEB's consideration.

The parties reached a settlement on all DVA balances requested for disposition in the proceeding and the method for allocating and disposing these balances. The parties also reached a settlement on the proposed Fugitive Emissions Measurement Plan and the Indigenous Working Group's budget for 2025.

OEB staff filed a submission supporting the settlement proposal on October 17, 2024.

3 DECISION ON SETTLEMENT PROPOSAL

3.1 The Settlement Proposal

As a result of the settlement proposal, the principal balance of all DVA balances requested for disposition decreased from a \$4.834 million debit from customers to a \$2.068 million credit to customers with an implementation date of January 1, 2025, as proposed.⁵ The decrease is due to the agreed reduction in the Getting Ontario Connected Variance Account (GOCVA). The parties agreed to reduce the principal balance of the GOCVA from \$31.9 million to \$25.0 million.

As part of the settlement proposal, Enbridge Gas committed to filing, in future Integrated Resource Planning (IRP) Deferral Account clearance requests, details on the outcomes and ratepayer benefits related to IRP costs proposed to be cleared.

The parties agreed to the disposition of 2023 UFG-related accounts⁶ on an interim basis until Enbridge Gas provides further evidence describing its investigations related to fugitive emissions in its 2024 Deferral Account Clearance application.

As part of the settlement proposal, the parties also agreed to the proposal, timing and budget for Enbridge Gas's Fugitive Emissions Measurement Plan, subject to additional commitments by Enbridge Gas.

Enbridge Gas also made commitments to file additional reporting items in the next proceeding in which it seeks to clear a UFG account. In addition, Enbridge Gas made certain commitments to Indigenous stakeholders related to fugitive emissions.

Enbridge Gas requested a new Fugitive Emissions Measurement Administration Deferral Account to record and recover incremental costs associated with the Fugitive Emissions Measurement Plan. The parties agreed to a time-limited 2025 Fugitive Emissions Measurement Plan Pilot deferral account which would be capped at \$2.6 million.

The parties agreed on the \$800,000 budget for the Indigenous Working Group for 2025 as set out in the 2024 Indigenous Working Group Report filed by Enbridge Gas.

⁵ The total net balance of all DVA balances requested for disposition, inclusive of interest to December 31, 2024, increased from a \$2.216 million credit to customers, to a \$9.416 million credit.

⁶ Unaccounted for Gas Variance Account (EGD rate zone), Unaccounted for Gas Volume Deferral Account (Union Gas rate zone) and Unaccounted for Gas Price Variance Account (Union Gas rate zone)

Findings

The OEB does not approve the settlement proposal as filed.

While the OEB is supportive of much of the settlement, the OEB has concerns regarding the following aspects of the settlement proposal:

- **Scope:** The scope of the settlement proposal appears to exceed Enbridge Gas's requests for approval as stated in its application⁷ and the OEB's [Notice of Application](#).
- **IRM framework and term:** There are aspects of the settlement proposal with implications to the approved IRM framework during Enbridge Gas's 2024-2028 rate term.
- **Settled issue 5 – fugitive emissions measurement:** Implementing Enbridge Gas's proposed Fugitive Emissions Measurement Plan does not appear to be warranted at this time. The settlement appears based on the premise that the Plan would be accepted and implemented, as nine additional items and a pilot project were proposed.
- **Settled issue 5 – new deferral account:** Enbridge Gas's proposed deferral account as well as the settlement's pilot deferral account, do not appear to meet OEB criteria for establishing a new deferral account.
- **Settled issues 2c, 3q and 3r – interim disposition:** The OEB questions the basis for interim disposition of the three 2023 UFG account balances.

The OEB accepts the remainder of the settlement proposal.

Specifically, the OEB accepts the settled principal balances in 49 deferral and variance accounts with a total balance of \$2.068 million as of December 31, 2023⁸ for clearance as a credit to ratepayers. The OEB also accepts the settled allocation and disposition of those balances⁹ as it would result in just and reasonable rates and reflect the public interest.

The OEB encourages parties to consider whether they can agree to an amended settlement proposal, given the OEB's concerns as further explained in this Decision. Parties would also need to address the implementation date and the accrual of interest on the 49 account balances after January 1, 2025.

⁷ Exhibit A, Tab 3 "2023 Deferral account disposition and earning sharing overview and approvals requested"

⁸ Settlement Proposal, Appendix A – Updated Balances of Deferral and Variance accounts

⁹ Settlement Proposal, Settled issue #6, p. 26

The OEB notes that the settlement proposal was presented as a package, and was subject to the condition that if it was not accepted by the OEB in its entirety, then unless amended by the parties, it was null and void and of no further effect.

The OEB recognizes the time and effort to reach a settlement in this proceeding. The OEB remains committed to the settlement conference process as part of its objective of improving regulatory efficiency and effectiveness.

Therefore, subject to notification from parties, the OEB is prepared to make provision to reconvene the settlement conference so that parties may consider amending the settlement proposal given the OEB's concerns.

It appears to the OEB that there are several possible outcomes, ranging from the parties determining that there is no settlement on any issue, which would mean that the OEB would have to determine all issues, to the parties arriving at an amended complete settlement proposal for consideration by the OEB.

The OEB will establish the process for the completion of this proceeding after the parties advise on the outcome of the reconvened settlement conference, but at this time, the OEB expects to address any unsettled issues by way of a written hearing.

Scope of the Settlement Proposal

The OEB is concerned that the settlement proposal goes beyond the scope of OEB approvals sought in Enbridge Gas's application.

Enbridge Gas applied:

- to dispose of the balances of certain deferral and variance accounts, with the specific accounts identified;
- for a review of Enbridge Gas Inc.'s 2023 earnings and earnings sharing calculations;
- for a review of the 2023 Performance Scorecard;
- for approval of a new Fugitive Emissions Measurement Administration Deferral Account in conjunction with Enbridge Gas's proposed Fugitive Emissions Investigation Plan

The settlement proposed the disposition of 49 deferral and variance account balances, and did not take issue with the earnings sharing calculations or the 2023 Performance Scorecard.

The issue of fugitive emissions was raised in the EB-2022-0200 Phase 1 rebasing proceeding, and the OEB approved a settlement proposal (Phase 1 settlement proposal) in which Enbridge Gas committed to providing "a robust investigation plan

related to fugitive emissions for consideration and determination in the 2023 deferral and variance account proceeding” (the Plan). Enbridge Gas filed a Plan as evidence in this proceeding¹⁰.

As the parties noted at p.23 of the settlement proposal, “In the evidence in this proceeding, Enbridge Gas describes its plans, timing and budget for the Fugitive Emissions Measurement Plan that it has developed with support from its consultant Highwood Emissions Management Inc.” However, the Phase 1 settlement proposal should not bind future panels in other OEB proceedings or preclude them from taking different positions, including deciding a proceeding’s appropriate scope.

The settlement proposal in the current proceeding added a number of items to the Plan filed by Enbridge Gas. One of those required Enbridge Gas to “develop a plan to run a pilot to explore the use of top-down emissions measurements (e.g. from towers, aerial, or satellite data) in one or two Ontario cities to test the accuracy of bottom-up emission estimates, including the disaggregation of methane sources. The plan, including forecast costs and potential benefits and barriers, will be filed in the next proceeding in which Enbridge Gas seeks to clear a UFG account.” The cost would be tracked, and potentially funded by customers, through “a time-limited 2025 Fugitive Emissions Measurement Plan Pilot Deferral Account (FEMPPDA) which would be capped at the proposed budget of \$2.6M.”¹¹ The parties also agreed on additional reporting items and commitments related to Indigenous stakeholders.

Stakeholders interested in new pilot projects related to fugitive emissions measurement may have chosen to intervene had they been aware this issue was within the scope of the proceeding.

As a result, the OEB is concerned about a pilot project at a potential cost to customers being approved in this proceeding.

Enbridge Gas’s Approved IRM Framework

The OEB must consider this settlement proposal within the context of Enbridge Gas’s approved IRM framework for the 2024-2028 rate term.

The OEB approved a partially settled IRM framework in Enbridge Gas’s Phase 2 rebasing proceeding.¹² The approved IRM framework includes explicit financial incentives, budget caps, and Y-factor provisions that, among other things, provide rate predictability for customers.

¹⁰ Exhibit D

¹¹ Settlement Proposal, Oct. 10, 2024, p.25.

¹² EB-2024-0111, Decision on Settlement Proposal and Interim Rate Order, November 29, 2024

The OEB notes that the 11 intervenors, parties to this settlement proposal, are a subset of the 21 intervenors that were parties to the Phase 2 settlement proposal.

The OEB is concerned that the approval of a new DVA creates an expectation of cost recovery through rate riders to customers. DVA proceedings should not be a "back door" or "policy forum" or a "Y-factor proxy" by which new ideas, pilots or projects are considered and potentially funded through additional rate mechanisms during the 2024-2028 rate term.

The OEB emphasizes that all rate setting for Enbridge Gas during 2024-2028 rate term must consider the approved IRM framework, while ensuring stakeholder involvement and transparency.

As such, the OEB expects DVA proceedings during the IRM rate term to be largely mechanistic proceedings to review a prior year's DVA balances and consider allocation and disposition proposals.

Fugitive Emissions Measurement Plan

Enbridge Gas filed a Fugitive Emissions Measurement Plan for consideration and determination in this proceeding, in response to the EB-2022-0200 Phase 1 settlement proposal. The top-down measurement options included aircraft, satellite and/or towers and the location of specific sources included transmission, rural and urban distribution and storage assets. The settlement proposal in the current proceeding added a provision for a plan to run a pilot project, as discussed above.

After considering the Plan filed in evidence and the related interrogatory responses, implementation of the Plan does not appear to be warranted at this time.

Enbridge Gas did not conduct a business case for this Plan.¹³ However, Enbridge Gas estimated a \$4.3 million cost to customers for leaks related to 2023 total UFG account balances in an interrogatory response.

From what the OEB understands of the Fugitive Emissions Measurement Report by third-party consultant Highwood Emissions Management Inc. filed by Enbridge Gas¹⁴, the proposed \$2.6 million expense would be the cost of preliminary work to investigate measurement options and to locate sources specific to Enbridge Gas's diverse asset base.

¹³ Ex I.SEC-4

¹⁴ EB-2024-0125, Exhibit D, Tab 1, Attachment 1

Enbridge Gas clarified that fugitive emissions are but one component of UFG¹⁵. It is unclear to the OEB how the measurement of fugitive emissions reduces the cost of leaks or the cost of UFG for customers.

The OEB questions the timing of this new initiative, embarking on this Plan in 2025.

In 2023, the actual cost of UFG was lower than budget in the EGD rate zone, resulting in a proposed refund to customers¹⁶. For customers in Union rate zones, zero balance is proposed to be disposed related to volume measurement¹⁷. Enbridge Gas's current leak survey program is compliant with regulatory requirements, and it applies industry-standard methods¹⁸.

Enbridge Gas indicated that it operates within more stringent internal measurement error tolerances than those established by Measurement Canada. Specifically, it operates within +/- 1% compared to Measurement Canada's required +/- 3%¹⁹. Enbridge Gas described its own Plan as going "above and beyond current regulatory requirements and standard practices"²⁰ and at a potential cost to ratepayers.

While the OEB acknowledges that fugitive emissions are an important environmental issue and that any related cost recovery from ratepayers must be approved by the OEB, the OEB does not set any industry standards for fugitive emissions.

Further, the settlement appears to be based upon the premise that the Plan would be accepted and implemented, as nine additional items and a pilot project were proposed.

New Deferral Accounts

Enbridge Gas proposed a new deferral account to track the costs of implementing the Plan in 2025. Enbridge Gas assumed that its Fugitive Emissions Measurement Plan would be approved by the OEB and proposed a deferral account in 2025 to track the costs of implementation.

The OEB has three criteria for establishing a new deferral account:²¹

Causation – The forecasted expense must be clearly outside of the base upon which rates were derived

¹⁵ Ex I.SEC-5

¹⁶ 2023 UAFVA

¹⁷ UAF Account 179-135

¹⁸ Exhibit I.EP-12

¹⁹ Exhibit I. STAFF-7

²⁰ *Ibid.*

²¹ Filing Requirements for Natural Gas Rate Applications, February 16, 2017, p.38.

Materiality – The forecasted amounts must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the distributor, otherwise they must be expensed in the normal course and addressed through organizational productivity improvements

Prudence – The nature of the costs and forecasted quantum must be reasonably incurred although the final determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating as to why the option selected represents a cost-effective option (not necessarily least initial cost) for ratepayers

The proposed deferral account, does not appear to meet the OEB’s materiality criterion. Enbridge Gas’s proposed account had an expenditure cap of \$2.6 million. In the context of the approved 2024 OM&A budget of \$821 million,²² \$2.6 million would not appear to have a significant influence on the operation of the distributor.

In addition, the OEB notes that an expense of \$2.6 million is below the materiality threshold specified in the Phase 2 settlement proposal. A revenue requirement threshold of \$3 million for establishing a new deferral or variance account during the 2024-2028 rate term was settled as part of the IRM framework approved by the OEB on November 29, 2024. A \$2.6 million expense is below the \$3 million threshold on a revenue requirement basis.

As discussed previously, the OEB is not prepared to accept the settlement proposal as it relates to the Plan, and the proposed deferral account relates directly to the Plan. Should the Plan and related deferral account remain unsettled, the OEB would consider all applicable criteria in its final decision.

Settled Issues 2c, 3q and 3r – Interim Disposition

The parties to the settlement agreed to the principal balances and clearance for three UFG variance accounts as of December 31, 2023 as part of settled issues 2c, 3q and 3r.

However, the parties also agreed to the clearance of these three account balances on an interim basis “until further evidence describing the Company’s investigations related to fugitive emissions is provided in the 2024 Deferral Account Clearance application”.

²² Decision on Phase 1 Settlement Proposal p.4. The \$821 million envelope is net of overhead capitalization and exclusive of Demand Side Management costs

The OEB questions the basis for interim disposition of the three UFG account balances. How would the evidence describing Enbridge Gas's investigations be related to the unaccounted for gas balances as of December 31, 2023 accrued during the previous deferred rebasing term?

The customer implications of interim disposition should be considered as well. In the EGD rate zone, customers are expected to receive a refund in 2025 related to UFG. Interim disposition implies that EGD customers may have their refunds adjusted, and amounts clawed back, retroactive to 2023. The OEB is not inclined to support this approach when it is not clear how the results of Enbridge Gas's investigations will affect the December 31, 2023, balances.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The OEB is providing for a one-day continuation of the settlement conference on **February 4, 2025**.
2. If Enbridge Gas and the other parties to the settlement proposal are prepared to amend the settlement proposal, the amended settlement proposal shall be filed with the OEB by **February 18, 2025**.
3. If the parties cannot agree on an amended settlement proposal, the OEB directs Enbridge Gas to advise the OEB by **February 6, 2025**.
4. Any submission from OEB staff on an amended settlement proposal shall be filed with the OEB and served on all parties by **February 25, 2025**.

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*.

All materials filed with the OEB must quote the file number, **EB-2024-0125**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>.

Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must 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. We encourage the use of RESS; however, parties who have not yet set up an account, may email their documents to registrar@oeb.ca.

Cost claims are filed through the OEB's online filing portal. Please visit the File documents online page of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the Practice Direction on Cost Awards.

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

Email: registrar@oeb.ca

Tel: 1-888-632-6273 (Toll-Free)

Fax: 416-440-7656

DATED at Toronto, January 28, 2025.

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar