



EB-2009-0154

IN THE MATTER OF the Ontario Energy Board Act 1998,
S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Enbridge Gas
Distribution Inc. for an order or orders approving its 2010
Demand Side Management Plan.

BEFORE: Paul Sommerville
Presiding Member

Cynthia Chaplin
Member

DECISION AND ORDER

Enbridge Gas Distribution Inc. (“Enbridge”) has filed an application with the Ontario Energy Board (the “Board”) dated June 1, 2009 seeking an order granting approval of its 2010 Natural Gas Demand Side Management (“DSM”) plan. The Board assigned File No. EB-2009-0154 to this application.

Enbridge was informed through a letter dated April 14, 2009, that the Board determined it would not be appropriate to consider developing a new multi-year DSM framework for implementation in 2010. The Board made this decision based on the uncertainties surrounding the forthcoming Bill 150, *An Act to enact the Green Energy Act, 2009, and to Build a Green Economy, to repeal the Energy Conservation Leadership Act, 2006, and the Energy Efficiency Act and to Amend Other Statutes*. On May 14, 2009, the Green Energy and Green Economy Act, 2009 (the “Green Energy Act”) received Royal Assent and on September 9, 2009, except for Section 3, the Green Energy Act, 2009, S.O. 2009, c. 12, Schedule A was proclaimed to be in force.

The current multi-year DSM plan for Enbridge expires on December 31, 2009. The one year DSM plan is intended to bridge the gap between the current DSM framework,

established in Board Proceeding EB-2006-0021 (the “Generic DSM Proceeding”), and the next generation DSM framework.

The Board requested that Enbridge file its 2010 DSM Plan consistent with the current DSM framework, with the exception that the Board directed the removal of the budgets and targets related to DSM programs directed to low-income energy consumers. Such programs were intended to be dealt with in a separate proceeding.

On June 25, 2009, the Board directed Enbridge to serve the Notice of Application on all intervenors in the Generic DSM Proceeding and to all of the parties in the DSM Guidelines proceeding (EB-2008-0346). In response to the Notice of Application, Building Owners and Managers Association of the Greater Toronto Area (“BOMA Toronto”), Consumers Council of Canada (“CCC”), Canadian Manufacturers & Exporters (“CME”), Energy Probe Research Foundation (“Energy Probe”), The Green Energy Coalition (“GEC”), Industrial Gas Users Association (“IGUA”), Low Income Energy Network (“LIEN”) and Pollution Probe requested intervenor status and requested eligibility for an award of costs. Union Gas Limited (“Union”) and Direct Energy requested intervenor status and indicated they were not seeking an award of costs while the City of Toronto requested observer status. All requests were granted.

On July 27, 2009, the Board issued Procedural Order No. 1 which outlined the schedule for parties to file interrogatories and submissions on Enbridge’s application. The interrogatories focused on five areas of Enbridge’s application: alleged deviation from the current DSM framework; the performance metrics tied to market transformation programs; the proposed new industrial sector pilot program; certain input assumptions; and an historical summary of Enbridge’s DSM spending and results.

On August 6, 2009, Enbridge provided its responses to all interrogatories. In its responses Enbridge asserted that, other than removing the requirements for targeted low-income programs, its 2010 DSM Plan was consistent with the framework established in the Generic DSM Proceeding. Enbridge noted that the new supplementary pilot program targeted at industrial customers was included as part of the 2010 DSM plan based on its recent market assessment.

A majority of the intervenors requested clarification as to how Enbridge derived the performance metrics scorecard for its proposed market transformation programs. Enbridge replied that it developed program metrics from its assessments of historical program results, general industry knowledge, learning’s developed through various

workshops, and its efforts to reflect its joint goals of energy savings and participation in programs. Enbridge also provided its 2007 and 2008 DSM independent audits as reference material in support of its proposal.

Intervenors were also interested in accessing Enbridge's historical results, in particular, the associated savings and performance bonuses awarded for its efforts. Enbridge provided figures representing its spending over the life of the Generic DSM Framework, as well as Total Resource Cost ("TRC") savings and Shared Savings Mechanism ("SSM") payouts.

On August 12, 2009, Enbridge filed its updated 2010 DSM Plan with the Board. The filing updated Enbridge's 2010 DSM input assumptions associated with the faucet aerator (kitchen and bathroom) measure.

On August 13, 2009 final written submissions from intervenors were filed with the Board. Submissions were received from IGUA, CCC, CME, BOMA, GEC and LIEN.

The submissions from the intervenors consistently urged the Board to conduct a robust and exhaustive review of a new multi-year DSM Framework for implementation in 2011 and beyond.

While intervenors acknowledged that the Enbridge proposal was generally consistent with the approved DSM framework, they continued to have concerns respecting certain elements of 2010 Plan.

First, intervenors sought clarification that the existing DSM Framework imposes a 150% cap on any single market transformation metric. BOMA argued that by not enforcing the 150% cap, Enbridge would be incented to concentrate on one metric in which it was doing well, at the expense of the other metrics. BOMA further noted that allowing this practice would be counter-productive for a market transformation program, insofar as all facets of the program should be taken into account in assessing the extent to which a market has actually been transformed.

CME noted that Union Gas Limited ("Union"), within its 2010 DSM plan application, accepted that a cap of 150% is an aspect of the approved framework.

GEC submitted that its interpretation of Enbridge's filing on market transformation incentives suggested that Enbridge can earn extra incentives on individual performance metrics, but only up to the point where it achieves 150% of the goal for that metric. GEC argued that there is no documentation supporting the proposition that Enbridge is permitted to exceed the 150% performance level for any individual performance metric and requested that the Board clarify this point in its decision.

Enbridge replied to these submissions and stated that it had never accepted that any such limit existed. Enbridge pointed out that the Board-approved DSM framework does not reference a cap on any individual performance metric and that the Board's Generic DSM Decision makes clear reference to a maximum SSM incentive of \$8.5 million and a maximum market transformation incentive of \$0.5 million. Enbridge submitted that intervenors are now looking to reduce the agreed upon fixed maximum incentive of \$500,000 by incrementally placing artificial restrictions and disincentives to performance on a metric-by-metric basis.

On another issue, a majority of intervenors expressed a concern respecting Enbridge's approach to the performance incentive scorecard for its market transformation programs. GEC, along with CME, CCC and BOMA, asserted that the performance metrics for the Home Performance Contractor and Drain Water Heat Recovery market transformation programs were too low. GEC and CCC suggested that the Board should require that Enbridge consult with the Evaluation and Audit Committee ("EAC") in the fourth quarter of 2009 to develop a consensus respecting the scorecard for these programs. CME endorsed this proposal.

Enbridge, after considering the feedback from intervenors, as well as input from previous auditor reports, decided that the issues identified by intervenors respecting the Home Performance Contractor Program have raised sufficient concern to warrant a cancellation of this program for 2010. Enbridge noted that it will review how to more effectively influence the renovation market to improve weatherization practices.

Enbridge submitted that it will proceed with the Drainwater Heat Recovery Program in 2010, and that the \$80,000 budget and \$150,000 SSM originally assigned to the Home Performance Contractor Program will be allocated to this program.

Enbridge stated that the current targets associated with the Drainwater Heat Recovery Program are appropriate given that the program will be launched in the latter part of 2009 and will only be in “ramp-up” mode in 2010, limiting the market penetration for 2010. Enbridge further submitted that these targeted performance levels reflect a challenging increase over 2009, considering the newness of the technology to the Enbridge franchise territory.

Enbridge noted that it recognizes the value of industry stakeholder input and welcomes the opportunity to consult on potential refinements to the metrics and targets for the Drainwater Heat Recovery Program. Enbridge stated, however, that it takes issue with the proposal by GEC to consult with the EAC in the fourth quarter as it has a concern that a timely consensus may not be achieved. Enbridge requested that the Board approve its 2010 Plan as filed, subject to the modifications outlined in the Market Transformation Metrics section of its written submission, and undertook to meet with the EAC following the Board’s decision to discuss opportunities to enhance its Market Transformation programs.

IGUA’s opposed Enbridge’s proposed industrial pilot program and urged the Board to disallow recovery of the incremental \$1.25 million from industrial customers in support of the program. IGUA suggested that current unfavourable economic circumstances could amplify the possibility that the program could have negative effects on non-participating industrial customers. IGUA also noted that the inclusion of the pilot program is a significant industrial DSM budget increase in a transitional year and that Enbridge did not discuss its inclusion with either Enbridge’s EAC or the DSM Consultative.

CCC submitted that Enbridge should be free to pursue the industrial pilot program, however, it argued that the funding should come from within Enbridge’s approved DSM budget and also that the pilot program should not have any SSM or TRC target impacts. GEC, CME and BOMA agreed with CCC’s submission on this proposed pilot project.

Both GEC and BOMA raised concern with what they considered a clerical correction on behalf of Enbridge with respect to the natural gas savings input assumption of 146 m³ for residential programmable thermostats. GEC submitted that it is inappropriate for Enbridge to revisit such assumptions unless they have been flagged by the Auditor as problematic and subsequently discussed with the EAC. BOMA noted that it appears Enbridge is using values recommended by Navigant Consulting in their Draft Report

(EB-2008-0346), while disregarding the final Navigant Measures and Assumptions Report which was adopted by the Board on April 20, 2009. The final Navigant report uses natural gas savings of 53 m³ for residential programmable thermostats.

Enbridge replied to these arguments and stated that it provided input to the Navigant value for residential programmable thermostats and does in fact agree with Navigant's methodology. Enbridge further noted that it proposed that the clerical error be corrected so that behavioral based impacts are not double counted for the gas savings.

GEC and IGUA both endorsed recommendations by the 2008 Auditor in regards to adjusting the values associated with industrial steam trap measure life. GEC further sought adjustments to align with the 2008 Auditor's recommendation respecting values associated with shower head savings, the Energy Star Home program, and the prescriptive approach for commercial boilers. Enbridge responded stating it has maintained consistency with the Navigant values which have received Board approval.

Board Findings

Subject to the findings below, the Board considers that Enbridge's proposal for its one year 2010 DSM plan, is generally consistent with the approved DSM framework established in the Generic DSM Proceeding.

With regard to the cap on any single market transformation metric, the Board considers that there is in fact a 150% cap on the elements of the market transformation performance metrics. The Board notes that Union Gas has explicitly confirmed that it considers that the approved framework does contain such a cap.

The approved framework certainly requires that the companies weight the respective effects of the programs in arriving at overall performance statistics. The Board finds that to adopt Enbridge's position that no cap exists, would have the effect of making the weighting of the program elements nugatory, and hence inconsistent with the approved framework.

With respect to the scorecard for the Drain Water Heat Recovery program, the Board directs Enbridge to participate with Union in consultation with the EAC for the resolution of outstanding issues. This consultation will be subject to a deadline and an agreement will need to be brought forward to the Board no later than October 30, 2009. On or before this date, Enbridge shall file a proposal reflecting a consensus of the EAC with

respect to the scorecard. If no such consensus is reached by that date, the Board will become engaged to resolve any unsettled elements on the basis of the existing record. The Board feels that there should be little difference in the performance incentive scorecards for market transformation programs involving both Union and Enbridge. Any differences will need to be appropriately supported by data and reasons. Otherwise, the scorecard for this program should be the same for each of the respective utilities

The Board approves the inclusion of the new industrial pilot program as proposed by Enbridge. The Board notes that it was not its expectation that the 2010 DSM Plan would include new projects. However, the Board finds that, given the nature of the program, its general acceptance by the intervenor community, and the limitations (set out below) on the use of its outcomes will provide a positive addition to Enbridge's 2010 DSM Plan and the development of knowledge for gas DSM moving forward. The Board confirms that the funding for the program must come from outside of Enbridge's DSM budget, and the outcomes shall not be incorporated into the TRC and SSM calculations.

In a number of instances Enbridge's proposals adopted the Navigant findings as opposed to the suggestions made by the auditor. In each case, the Board will accept Enbridge's proposal. This will apply to the prescriptive approach to commercial boilers, the industrial steam trap measure life, and the showerhead savings. With regard to the dispute as to the which is the correct natural gas savings figure to be associated with the residential programmable thermostats, the Board directs Enbridge to apply the 53m³ savings value, found within the Navigant Consulting final report to the Board, dated April 16, 2009.

The Board notes a sharp disagreement between Enbridge's position on the free rider rate for the Energy Star Home Program and the position advanced by the auditor. Given that this is a one-year plan, intended to be a stop-gap measure pending the development of a more comprehensive DSM approach for subsequent years, the Board will not impose a different free rider rate for this program at this time. The Board notes however, that free rider rates can, and should be changed at any point when more reliable information becomes available.

The Board accepts Enbridge's proposal, made in its final submission, to withdraw the Home Performance Contractor Program from its 2010 DSM Plan.

With respect to the issue raised by IGUA concerning unilateral changes to the utility's DSM programs, the Board expects that any material changes to programs or the introduction of new programs will be submitted to the EAC for its consideration. Such changes ultimately require Board approval. Mere operational changes can be undertaken by the utility without the input of the EAC and would not normally require Board approval. The Board emphasizes the importance of the utility's relationship with the EAC and expects this relationship to continue throughout 2010.

The Board notes the comments from the intervenors with regard to the development of a new, comprehensive multi-year DSM framework in Ontario. The Board has initiated its process to develop a new multi-year DSM framework (EB-2008-0346) and will continue its review of the long-term future of gas DSM in Ontario throughout the remainder of this year and into 2010.

In the Board's letter dated April 14, 2009, requiring the gas utilities to file one year DSM plans for 2010, the Board instructed the utilities that it would address DSM programs for low-income consumers separately. The Minister of Energy and Infrastructure (the "Minister") has since informed the Board, by letter dated September 8, 2009, that the government plans to develop a province-wide integrated program for low-income energy consumers. In light of these plans, the Minister requested that the Board not proceed to implement new support programs for low-income energy consumers in advance of a ministerial direction.

The Board issued a letter on September 28, 2009, updating interested stakeholders on the Board's Low-Income Energy Assistance Program (LEAP) initiative in light of the Minister's letter. In the letter, the Board requested Union and Enbridge to file a one year low-income DSM plan for 2010 by October 15, 2009, consistent with the framework established in the Generic DSM Proceeding, including increases based on the established budget escalators. The letter further indicates that the one year plans will be addressed in a second phase in these proceedings. The Board will communicate further regarding the process for considering those applications once the filings are made.

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with Enbridge within 15 days of the date of this Decision and Order. Enbridge may make submissions regarding the cost claims within 30 days of this Decision and Order and the intervenors

may reply within 45 days of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

THE BOARD ORDERS THAT:

Enbridge Gas Distribution Inc. is granted approval of its updated 2010 DSM Plan filed on August 12, 2009 subject to the findings noted above.

DATED at Toronto September 30, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary