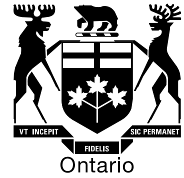
Ontario Energy Board

Commission de l'énergie de l'Ontario



EB-2012-0055

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 the clearance or disposition of amounts recorded in certain deferral or variance accounts.

BEFORE: Paula Conboy
Presiding Member

DECISION AND ORDER
March 14, 2013

Enbridge Gas Distribution Inc. ("Enbridge") filed an application dated May 11, 2012 with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998*, S.O. c.15, Schedule B, for an order or orders approving the disposition of balances in certain deferral or variance accounts established by the Board's Decision and Order in EB-2010-0146 dated November 25, 2010. The Board assigned File Number EB-2012-0055 to this Application.

On June 4, 2012, the Board issued its Notice of Application and Procedural Order No. 1 which included an Issues List, a process for written interrogatories, and dates for a Settlement Conference as well as the filing of a Settlement Proposal.

A Settlement Conference was held on August 1, 2012 and August 2, 2012. Enbridge filed a partial Settlement Agreement on August 24, 2012. On September 17, 2012 the Board issued a Decision and Order on the Settlement Agreement accepting the proposed Settlement Agreement and setting November 22, 2012 as the date for an oral hearing of two unsettled issues.

The first unsettled issue pertains to the 2011 Earnings Sharing Mechanism Deferral Account ("ESMDA"), specifically concerning:

a) the allocation of costs between regulated gas storage activities and unregulated gas storage activities for the purposes of the 2011 earnings sharing calculation; and

b) the amount of the provision for uncollectibles for the purposes of the 2011 earnings sharing calculation.

The Settlement Agreement provided that the issue relating to the allocation of costs between regulated and unregulated gas storage activities be dealt with in accordance with the outcome of Enbridge's 2013 Cost of Service proceeding (EB-2011-0354). This issue was settled in the EB-2011-0354 proceeding and the Board has accepted this part of the 2011 ESMDA issue as having been settled in this proceeding. Therefore, the issue remaining for the Board to address is the amount of the provision for uncollectibles for the purposes of the 2011 earnings sharing calculation.

The second unsettled issue is related to the 2011 Transactional Services Deferral Account ("TSDA") and whether Enbridge has treated the upstream transportation optimization revenues appropriately in 2011 in the context of Enbridge's existing IRM agreement.

The Board issued Procedural Order No. 2 on November 29, 2012 which set out dates for submissions and reply submissions.

Submissions were received from the following parties: the Canadian Manufacturers & Exporters ("CME"), the Consumers Council of Canada ("CCC"), Energy Probe, the Federation of Rental-housing Providers of Ontario ("FRPO"), the Vulnerable Energy Consumers Coalition ("VECC") and Board staff.

2011 Provision for Uncollectibles

Enbridge's provision for uncollectibles rose from $11.5 million in 2010 to approximately $21.54 million in 2011. Enbridge indicated that this increase is mainly due to adjustments correcting for deficiencies in accounts receivable reporting that were

recognized in 2011. Enbridge stated that during the conversion of its legacy system to the new Customer Information System ("CIS"), it became aware that the detail in its customer accounts did not reconcile with the balance in its general ledger accounts. Furthermore, Enbridge made an adjustment to the allowance for doubtful accounts to better reflect more precise information it had on the data for uncollectibles.

Energy Probe, VECC and Board staff made submissions on this issue.

Board staff submitted that after making an adjustment in the allowance for doubtful accounts, the write-off rate in Enbridge's bad debt model became 0.56%, up from 0.44%, which was in line with the percentages from 2003 to 2008 which ranged from 0.47% to 0.58%.

Board staff submitted that Subsection 05 (b) of the Canadian Institute of Chartered Accountants ("CICA") handbook section 1506 provides the definition of changes in accounting estimates which indicates that they result from new information or new developments and, accordingly, are not corrections of errors. Board staff stated that Enbridge's estimate of the allowance for doubtful accounts was made using the best information available at the time and was the result of new information provided by the implementation of the CIS rather than the correction of an accounting error.

Accordingly, Board staff stated that it does not oppose Enbridge's provision for uncollectibles in 2011 and that in its view no adjustment is required to the 2011 ESMDA with respect to uncollectibles. CCC adopted Board staff's submissions.

Energy Probe submitted that it does not believe the adjustment made by Enbridge constitutes a material change in accounting practices, but rather a refinement of the methodology used to provide an estimate of the provision for uncollectibles based on new and more accurate information being available. Energy Probe argued that if the refinement had been in place in 2009 and 2010, the earnings sharing would have been reduced in those years and increased in 2011 as a result of the shift in timing of the recording of the of the provision. On an aggregate basis, Energy Probe stated it does not believe the adjustments applied in 2011 would have a net impact on ratepayers.

VECC did not agree with Enbridge that the adjustment is a refinement of methodology but rather submitted that it was an accounting error requiring a correction. VECC stated that the issue is one of responsibility and who should bear the cost. VECC argued that

there is no evidence that Enbridge attempted to collect any of the bad debt from customers rather than assigning the amounts to the provision for uncollectibles and charging all customers.

VECC also questioned why, if the new CIS has been in place since early 2010 did Enbridge just “discover” these discrepancies in 2012. VECC also submitted that accounting is under the control of the company and any errors not resulting from either Board direction or other external circumstances, such as changes to accounting rules, are the responsibility of the shareholder

Finally VECC submitted that there would be a material intergenerational inequity if the Board allows the requested provision for 2011 uncollectible amounts since the differences between the general ledger and the amounts collected in rates appear to go back several years.

VECC did not dispute the quantum but submitted that the $10 million increase in the provision for uncollectibles should be added back to utility net income prior to calculating the 2011 earnings sharing between shareholder and ratepayers, with a consequential increase in the earnings shared with ratepayers.

In its reply submission, Enbridge noted that of all the intervenors in this proceeding, only VECC argued that the outcome of the issue regarding the provision for uncollectible amounts should be an increase in the amount shared with ratepayers through the 2011 ESMDA. Enbridge took note that VECC did not participate in the oral hearing to questions the Enbridge’s witness panel regarding the provision for uncollectibles and yet the arguments were based on its own uncertainty and request for clarity about aspects of the evidence. As such, Enbridge submitted that the Board should give little or no weight to VECC's final argument

Enbridge submitted that it followed Section 1506 CICA standards which notes that many items in financial statements can only be estimated and, in this regard, it refers specifically to bad debts. Enbridge indicated that the section goes on to say that "the use of reasonable estimates is an essential part of the preparation of financial statements and does not undermine their reliability". Section 1506 also explicitly recognizes that an estimate may need revision in different situations, including "new information".

Enbridge stated that the Board-approved Settlement Agreement which established the terms and parameters of Enbridge's IRM plan contains the following provision regarding the ESM:

> ...for the purpose of the ESM, Enbridge shall calculate its earnings using the regulatory rules prescribed by the Board, from time to time, and shall not make any material changes in accounting practices that have the effect of reducing utility earnings [1]....

Enbridge submitted that there has been no material change in accounting practices and it has used the same accounting treatment with respect to its Accounts Receivable and provision for uncollectible accounts in a consistent manner for at least last twenty years; more specifically, there has been no change to Enbridge's accounting practices in these areas during the IRM term. Therefore, Enbridge agreed with the submission of Board staff that no adjustment is required.

Board Finding - 2011 Provision for Uncollectibles

The Board finds that no adjustment is required to the 2011 ESMDA.

The Board notes that while intervenors are not required to participate in oral hearings, it is true that the purpose of cross examination is to question witnesses about areas in evidence that are uncertain and require clarity. VECC did not avail itself of the opportunity to seek such clarity on Enbridge’s treatment of its uncollectible amounts and as such the Board will not draw any conclusions from VECC’s uncertainty.

The Board finds that the adjustment made by Enbridge does not constitute a material change in accounting practices. Rather it is a refinement of the methodology used to provide an estimate of the provision for uncollectibles based on new and more accurate information becoming available.

2011 Upstream Transportation Optimization Revenues

Section 5.1 of the EB-2007-0615 IRM Settlement Agreement, which was approved by the Board, set out that upstream gas costs and upstream transportation, storage and supply mix costs were to be treated as Y factors. This means that the costs associated with these items would be recorded in the Purchase Gas Variance Account (“PGVA”)

[1] Exhibit N1, Tab 1, Schedule 1, Page 27

and passed through to rates. The IRM framework also states that transactional services revenues that accrue during the IRM period are to be recorded in the TSDA. Seventy five percent of the amount recorded in the TSDA is returned to ratepayers; 25 percent flows to Enbridge shareholders.

The essential characteristic of transactional services is that they are arrangements made to generate revenue from unplanned, temporary surplus transportation capacity that Enbridge may have, from time to time, as part of its gas supply arrangements. The portion of utility gas supply assets that is available to support transactional services activities is only the portion of those assets that are temporarily surplus because of factors beyond Enbridge's control (e.g. weather, market demand).

During the IRM term, Enbridge optimized its upstream transportation portfolio in three ways. The first was through base exchanges. The second was through Storage Transportation Service Risk Alleviation Mechanism ("STS-RAM") credit transactions. The third was through capacity releases. These methods are explained below.

The question in this proceeding was whether Enbridge has treated the revenues from its upstream transportation portfolio optimization appropriately in 2011 in the context of its existing IRM agreement.

Enbridge submitted that all three methods, with the exception of one form of STS-RAM credit transaction, are appropriately classified as transactional services and the revenues therefore are appropriately recorded in the TSDA. Intervenors took different positions.

In their submissions, many parties made reference to the Board's decision in Union Gas Limited's ("Union") application in connection with its sharing of 2011 earnings under the IRM (EB-2012-0087). In that decision, the Board determined that Union's 2011 gas supply related upstream transportation Firm Transportation Risk Alleviation Mechanism ("FT-RAM") optimization revenues were to be classified and treated as gas cost reductions. In rendering its decision, the Board found that Union generated revenue by creating unabsorbed demand charges on a planned basis and then concurrently either assigned or exchanged its FT contracts on the TransCanada Pipelines Limited ("TCPL") Mainline to monetize the FT-RAM credit value of the unused FT contracts. The Board found that, on a planned basis, Union left pipe empty and flowed gas on a different and cheaper path which meant that higher upstream transportation costs paid for by Union's

customers were substituted with lower upstream transportation arrangements. Some parties in this proceeding also pointed to Union's 2013 rebasing decision (EB-2011-0210) where the Board found that Union's optimization activities have become a driver of the gas supply plan as opposed to a consequence of it. In both decisions, the Board determined that 90% of all optimization net revenues shall accrue to ratepayers and 10% shall accrue to Union as an incentive to continue to undertake these activities on behalf of ratepayers.

During periods of reduced demand, Enbridge optimizes underutilized transportation capacity by conducting base exchanges with a third party between two points (i.e. receive gas at Dawn and redeliver to the Central Delivery Area). Such a transaction would arise in an instance where a third party wants gas at a specific location but has no way of getting it there and thus Enbridge would conduct an exchange for a fee to the third party.

All parties agreed that revenues from base exchanges are appropriately treated as transactional services revenue and should be recorded in the 2011 TSDA. CCC noted that the evidence was that base exchanges had formed part of Enbridge's transactional services business for some time. The revenue flowing from those base exchanges is $11.8 million, (75% of which is to be returned to ratepayers) and is not, for intervenors, an issue.

Since 2007, TCPL has offered RAM credits to firm shippers under short-term services if they do not fully utilize their contracted capacity. If Enbridge does not fully utilize 100 percent of its contracted capacity under its STS contract it would generate RAM credits. These RAM credits, which are only available from November 15 to April 15, accumulate and can bring value in two ways:

1. By applying credits to interruptible transportation ("IT") needed to meet utility demand; or

2. By applying credits to an STS-RAM exchange transaction conducted with a third party.

Credits expire at the end of the month in which they are generated. If they expire, they provide no value. If IT is required for the utility business, the credits are used to offset

IT costs and in turn this benefit accrues entirely to ratepayers as the credits are recorded in the PGVA as gas cost reductions.

If Enbridge anticipates that IT will not be needed for the utility business (Enbridge has indicated that it waits until near the end of the month to make this assessment), credits can be used to facilitate the use of IT by a third party. Enbridge's transactional services group factors in the cost of the IT and the benefit of the credits, which get rolled into the revenue associated with the exchange deal. The revenue is recorded in the TSDA. Enbridge noted that if this transaction was not conducted, the credits would expire and ratepayers would receive no benefit. In 2011, the total revenue from STS-RAM transactions recorded in the TSDA was approximately $800,000, of which 75% is proposed to be returned to ratepayers.

The third method that Enbridge uses to generate transportation optimization revenue is through capacity releases. Capacity releases involve Enbridge providing gas to a third party at one location (i.e. Empress) and assigning that third party a portion of its long haul capacity on TCPL. The third party then gives the gas back to Enbridge at another location (i.e. Dawn). Enbridge receives a credit from TCPL for the amount of the assignment which is greater than the amount being paid to the counterparty. Enbridge records the difference as transactional services revenue. In 2011, Enbridge generated approximately $3 million through capacity releases. If deemed to be transactional services revenue, $2.25 million would be returned to ratepayers.

All parties agreed Enbridge's use of STS-RAM credit transactions to offset IT costs, referred to as "own use" credits, are appropriately treated as cost reductions reflected in the PGVA. In 2011 Enbridge collected a total of $2.3 million in STS-RAM Credits from TCPL of which $200,000 went to offset IT transportation costs incurred on behalf of ratepayers.

However, parties differed on how revenues from STS-RAM exchange transactions conducted with a third party and how revenues from capacity releases should be treated whether they are appropriately transactional services revenues or gas supply cost reductions.

Energy Probe, CME, FRPO and Board staff all submitted that the revenue Enbridge realizes from STS-RAM credit transactions for third party use satisfies the Board's

definition in the 2011 Deferral Account Decision of "transactional" activities and should be treated as transactional services revenue.

These intervenors submitted that Enbridge does not need to use the credits to move gas for its own ratepayers and as such it would not be appropriate to include any net revenues as reductions to gas costs. This type of transaction, argued these parties, is true optimization of assets that are not needed for Enbridge's ratepayers. Enbridge could elect not to use these credits, and there would be no impact on the actual cost of gas or on upstream transportation costs. Similarly, some parties pointed out that if Enbridge elected not to enter into the exchange transactions, the ratepayer would receive no benefit and the credit would expire. By engaging in transactional services, Enbridge benefits, but the ratepayers also benefit by receiving 75% of the revenues generated through the sharing agreement.

In regards to capacity releases, Board staff concluded that Enbridge is generating transportation optimization revenue in a different manner than Union. Enbridge flows gas at 100% load factor and not leaving the pipe empty on a planned basis, as was found to be the case in the EB-2012-0087 Union proceeding. As such Board staff suggested that capacity releases should also be treated as transactional services revenues.

Energy Probe, CME and FRPO argued that capacity releases should be treated as gas cost reductions. Energy Probe and CME argued that capacity release is similar in nature to Union's FT-RAM optimization revenues. In its submission on the appropriate treatment of capacity releases, Energy Probe quoted Enbridge's response to Exhibit J1.1, where the company stated that "*the purpose of Transactional Services is to generate revenue from transportation and storage assets that are surplus to the utilities needs on a short term or seasonal basis*." Energy Probe submitted that capacity releases, do not use surplus transportation or storage assets on a short term or seasonal basis. Rather, it is an exchange to get the needed gas where Enbridge wants it to be delivered. These actions, in contrast to the STS-RAM third party use transactions have a direct impact on the landed cost of gas for use by Enbridge's ratepayers.

Energy Probe submitted that the effect of the capacity release is that the higher upstream transportation cost being paid for by Enbridge's ratepayers have been

replaced with lower cost landed gas through the upstream transportation arrangements used, and this saving, in its entirety, should be passed on to the ratepayers.

Energy Probe also argued that the use of capacity release appears to be very similar to the use of STS-RAM own use credits and IT to supply gas to Enbridge's ratepayers. Energy Probe submitted that in both cases, the gas purchased at Empress is delivered to Enbridge at Dawn for the ultimate use by Enbridge's ratepayers. The fact that Enbridge can get the gas at Dawn at a lower landed price through the use of capacity releases should be a benefit that is passed through in its entirety to ratepayers. FRPO made similar submissions.

Further, Energy Probe argued that the capacity releases are done on a planned basis. Energy Probe submitted that as indicated by Enbridge's witness Mr. Small, "each and every year Enbridge's gas control group evaluates what they think is required to accumulate these STS credits for winter time use and it then becomes their decision as to the amount of STS capacity that is released to the transactional services group to take to the market".[2] Energy Probe submitted that this is clearly an ongoing, annual planning exercise. CME supported Energy Probe's submission.

CCC and VECC submitted that *all* STS-RAM credit transaction and capacity release transactions are firm transportation paid for by ratepayers, and as such should be treated as offsets to gas costs.

VECC submitted that although Enbridge has not sought to gain any undue profit, the Board's reclassification of FT-RAM transactions as gas cost-related, in its EB-2011-0210 decision, should also apply to Enbridge's STS-RAM third party use and capacity release.

CCC pointed to the Board's decision in EB-2012-0087 where the Board characterized Union's use of TCPL's FT-RAM program as gas cost reductions. CCC argued that is important that there be regulatory consistency in the analysis of the appropriate treatment of the same upstream transportation optimization activities, as between Union and Enbridge.

[2] Transcript, Pages 12-13

CCC acknowledged that the scale of Union's use of its RAM credits, and the Board's findings that its deliberate creation of unabsorbed demand charges, makes Union's activities in the upstream transportation market "superficially" different from those of Enbridge. However, CCC submitted that the critical feature is that the transactions are, at their core, part of the gas supply plan and therefore subject to pass-through treatment under Enbridge's IRM framework. CCC concluded that the Board should render a consistent decision in this case.

Energy Probe, VECC, CME, and FRPO all submitted that where the Board finds that Enbridge's upstream transportation optimization revenues are appropriately gas supply cost reductions, 100% of the amount in question should be allocated to ratepayers. However, VECC, CME, and FRPO submitted that if the Board were to determine in this proceeding that capacity release optimization revenues were to be treated in the same manner as FT-RAM related optimization revenues in Union's cases, then 90% of the optimization revenues should be allocated to ratepayers rather than the 75% proposed by Enbridge.

Enbridge argued that it has been treating the revenues at issue in this proceeding in accordance with the agreed historic treatment of these revenues and its existing IRM agreement. Enbridge submitted that classifying 2011 STS-RAM third party credit transactions and capacity release revenues as an offset to gas costs would not be appropriate in the context of Enbridge's existing IRM agreement. Under the existing agreement, Enbridge's rates are set over a multi-year term on the basis of agreed-upon, Board-approved parameters and Enbridge submitted that overall outcomes within the context of this plan should not be disrupted by changes to the "agreed historic" treatment of revenue from transactional services.

Enbridge also highlighted that the primary reason given by intervenors for a change to the agreed historic treatment of revenues from upstream transportation optimization seems to be consistency or compatibility with decisions rendered by the Board in cases involving Union Gas.

Enbridge submitted that, from the point of view of "regulatory consistency", it is more important that the Board be consistent in its regulation of Enbridge, especially when Enbridge's approach is in accord with the "agreed historic" treatment, than the Board be consistent as between Enbridge and Union, especially when the circumstances of Enbridge and Union are so fundamentally different.

Enbridge submitted that the deliberate creation of unabsorbed demand charges referred to by CCC is “fundamentally and radically” different from anything done by Enbridge. Enbridge argued that CCC stated that the "critical feature" of Union's activities was that "the transactions were, at their core, part of the gas supply plan". This "critical feature" of the Union case, in Enbridge’s view has no application in the case of Enbridge. Enbridge submitted that its upstream transportation optimization activities are not, and cannot reasonably be perceived to be, at the core of Enbridge's gas supply plan.

Enbridge stated that the evidence in this case is clear that the company does not develop a gas supply plan with a view to achieving future optimization transactions. Opportunities for Enbridge to carry out transactional services do not arise from the gas supply plan; they arise from weather and other circumstances that occur as Enbridge proceeds to implement the gas supply plan during the year in respect of which it was made; the “ongoing annual planning exercise” describes the implementation of the plan.

Enbridge further argued that the implementation of the gas supply plan by its Gas Control group is entirely in line with the underlying premise of transactional services, which is that when, during the course of a particular year, circumstances are such that the assets put in place for the purpose of meeting the demands of utility customers do not need to be fully utilized for that purpose, the use of the assets can be optimized through transactional services.

Enbridge submitted that FRPO's argument explicitly accepts that there is no evidence in this case of "incremental contracting in 2011 beyond the utilities' *[sic]* needs".[3] Enbridge argued, given that its gas supply contracting was in accordance with the needs of the utility, the actions taken by Enbridge to optimize upstream transportation arrangements as the gas supply plan was implemented are in line with the purpose of transactional services.

For these reasons, Enbridge submitted that the Board should not change the "agreed historic" treatment of revenues from upstream transportation optimization.

[3] FRPO Argument, Page 7

Board findings

The Board finds that the revenues generated through base exchanges are appropriately treated as transactional services revenues in the context of the IRM agreement and should be recorded in the TSDA to be shared with ratepayers. Base exchanges rely on assets which are, for reasons beyond Enbridge's control, surplus to the needs of Enbridge's gas supply plan. They have formed part of Enbridge's transactional services business for some time.

With respect to the revenues generated through STS-RAM, the Board notes that Enbridge uses accumulated STS-RAM credits to reduce the costs of the IT service. Enbridge streams the benefit of the gas cost reduction related to its own use of the STS-RAM credits to ratepayers through the PGVA. The Board finds that Enbridge's treatment of its own use of STS-RAM credits as a Y factor and a reduction to the cost of gas reflected in the PGVA is appropriate.

The Board finds that the STS-RAM credits are, in the situation where Enbridge cannot use them to move gas for its ratepayers, assets that are temporarily surplus to the needs of system gas customers. Therefore, the net revenues generated through the STS-RAM third party use transactions are properly characterized as transactional services revenues in accordance with the definition set out by Enbridge at Exhibit J1.1 where the company stated that "the purpose of Transactional Services is to generate revenue from transportation and storage assets that *are surplus to the utilities needs* on a short term or seasonal basis."

In this proceeding there is no evidence that Enbridge generated revenue by managing its upstream transportation arrangements on a planned basis and creating unabsorbed demand charges by leaving pipe empty and flowing gas on a different and cheaper path, as was found to be the case in the EB-2012-0087 Union proceeding. The Board does not agree that transactional services are a core part of Enbridge's gas supply plan. Rather, the Board accepts that they are a function of circumstances that arise, and factors taken into account as the gas supply plan is implemented.

For the reasons set out below, the Board finds that the capacity release related revenues should be treated as gas cost reductions. As such, the Board finds that the capacity release related revenues should be passed-through, in their entirety, to ratepayers in accordance with Enbridge's IRM Framework.

The Board notes that in a capacity release, the gas purchased by Enbridge at Empress is required to serve its customers. Enbridge could use the underlying assets, which support the capacity release transaction, to transport the purchased gas to its customers. Instead, Enbridge utilizes an exchange to ensure that the gas purchased for its customers is delivered to the location where it requires that gas; these transactions are not relying on temporarily surplus assets.

The Board finds that there are fundamental similarities between capacity release transactions and Enbridge's own use of STS-RAM credits. In both situations, Enbridge purchases gas at Empress for delivery to Enbridge for use by its ratepayers. In the STS-RAM own use situation, Enbridge reduces the cost of the delivered gas through its use of the credits. In the case of the capacity releases, Enbridge reduces the cost of the delivered gas through the capacity release transaction. The outcome of both situations is that the landed price of the gas to be used by Enbridge's ratepayers is reduced. Therefore, the Board finds that similar treatment of the gas cost reductions from both of these types of activities is warranted.

The Board does not agree that Enbridge's capacity release activities occur on a planned basis. The Board notes that, in this proceeding, there is no evidence that Enbridge generated revenue by managing its upstream transportation arrangements on a truly planned basis. Rather, they are a function of circumstances that arise, and factors taken into account by Enbridge's Gas Control group, as the gas supply plan is implemented.

Regardless of the Board's conclusion that Enbridge's capacity releases occur on an unplanned basis, the outcome of these transactions is that gas, which is required by Enbridge's customers, is delivered to these same customers at a reduced cost. Therefore, it is clear to the Board that the revenues generated from capacity release transactions should be treated as gas cost reductions.

The Board notes that in Enbridge's 2013 rebasing proceeding (EB-2011-0354) the Board accepted that going forward all transactional services net revenues will be shared 90/10 between ratepayers and Enbridge's shareholder; however the specific issue in this proceeding is framed to determine the treatment of transactional services revenues in 2011 "in the context of Enbridge's existing IRM agreement". In finding that capacity releases are to be classified and treated as gas cost reductions and in accordance with

Section 5.1 of the existing IRM agreement, the capacity release related net revenues, in their entirety, should be passed onto ratepayers. Therefore, the Board will not provide a 10% incentive on the net revenues generated by Enbridge from the capacity release activities in 2011.

The Board notes that a number of parties made arguments regarding the consistency of Board decisions. It is true that consistency in decision making is good regulatory practice as it promotes stability, predictability and fairness. While a Board panel should endeavour to consider other similar cases and the associated decisions, no prior decision of the Board can fetter the discretion of a later panel. Each panel must make its decision on the basis of the facts before it and the relevant policies and principles affecting the decision. In this proceeding, the Board is rendering a decision on the treatment 2011 optimization revenues in the context of the existing IRM agreement. The Union and Enbridge 2013 cost of service decisions differ because they are prospective in nature. In addition, the Board finds that the facts presented in this proceeding are sufficiently different from those in the Union EB-2012-0087 decision where it was found that the company was creating business opportunities on a planned basis.

The Board notes that Enbridge disposed of the TSDA balance as part of its October 2012 QRAM. This included the disposition of capacity release related net revenues. The findings in this Decision require Enbridge to stream additional capacity release related revenues to ratepayers. The Board directs Enbridge to propose a methodology for disposing of the incremental amount resulting from the Board's findings in this Decision in its Draft Rate Order filing. The Board also directs Enbridge to discuss how it proposes to dispose of the 2012 capacity release net revenues in its Draft Rate Order filing.

THE BOARD ORDERS THAT:

1. Enbridge shall file with the Board, and shall also forward to all intervenors a Draft Rate Order reflecting the Board's findings in this Decision, within 10 days of the date of this Decision.

2. Intervenors and Board staff shall file any comments on the Draft Rate Order with the Board and forward a copy to Enbridge within 14 days of the filing of the Draft Rate Order.

3. Enbridge shall file with the Board and forward a copy to the intervenors and Board staff responses to any comments on its Draft Rate Order within 14 days of the receipt of any submissions.

4. Intervenors shall file with the Board and forward to Enbridge, their respective cost claims within 14 days from the date of the Final Rate Order.

5. Enbridge shall file with the Board and forward to the intervenors any objections to the claimed costs within 21 days from the date of the Final Rate Order.

6. Intervenors shall file with the Board and forward to Enbridge any responses to any objections for cost claims within 28 days of the date of the Final Rate Order.

7. Enbridge shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, March 14, 2013
ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary