



EB-2007-0932

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

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc., pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission, and storage of gas as of January 1, 2008;

BEFORE: Cynthia Chaplin
Presiding Member

Pamela Nowina
Vice-Chair

DECISION AND ORDER

The Application

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application on December 3, 2007, with the Ontario Energy Board (“Board”) for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission, and storage of gas effective January 1, 2008 (the “Application”). The Board assigned file number EB-2007-0932 to the Application.

In its Application, Enbridge is seeking approval to make changes to the Transactional Services (“TS”) Methodology approved as part of an Order in the EB-2005-0244 proceeding.

Background

In 2005, the Board initiated the EB-2005-0244 proceeding, on its own motion, to have Enbridge develop a new methodology for making surplus Transactional Services (“TS”) assets known to and available to unrelated market participants on a non discriminatory basis. One impetus for this proceeding was a concern that had been expressed about the relationship between Enbridge Gas Services Inc. (“EGS”) and Enbridge, and EGS's perceived advantage in being both the administrator of Enbridge's TS activities, as well as a potential counterparty in TS transactions with Enbridge. The parties in the TS Proceeding were able to reach a resolution of all issues in advance of the hearing and agree upon a new TS Methodology. The Settlement Proposal was approved by the Board on July 5, 2005.

Among other things, the Settlement Proposal, and the TS Methodology, set out in detail provisions for the repatriation of the functions being performed by EGS, the operation of an auction, restrictions on transactions with EGS, reporting requirements, and restrictions on changes.

Proposed Changes to the TS Methodology

On September 15, 2007, EGD circulated its Annual Transactional Services Performance Review (the “Review”) for 2006 to all parties who participated in the EB-2005-0244 proceeding. In the Review, the utility confirmed that all functions and services related to procurement and optimization of natural gas supply, transport and storage capacity had been repatriated to EGD from EGS on January 1, 2006 and that a complete separation of information systems had been effected to ensure that EGS does not have access to any information about TS functions beyond the information that is provided to all market participants. The Review also sets out the fact that the electronic auction process resulted in only 7 successful transactions or 1% of total TS revenue in 2006.

EGD surveyed its authorized TS counterparties in May 2007 in order to obtain their views about the flaws in the electronic auction system. Through this process, EGD concluded that counterparties have been unwilling to complete transactions through the auction mechanism, largely due to the rigidity and risks that a static system imposes on what would otherwise be a fluid marketplace.

EGD proposed that the electronic auction process be eliminated, and replaced with a more direct and iterative form of marketing through which the Company can solicit business from all authorized counterparties and maximize TS revenues.

EGD also proposed that restrictions on its ability to enter into transactions with EGS be lifted. EGS is no longer the administrator of EGD's TS activities. In consideration that EGS is completely disengaged from any role in EGD's TS activities, EGD believes it is appropriate that EGS be able to participate fully in EGD's TS opportunities with no limitations on transactions. This change would allow another potential counterparty to be active in TS activities with EGD.

Finally, all other aspects of the TS Methodology would continue in full force. EGD's reporting requirements for TS activity will continue, and EGD's obligation to report each month on all affiliate TS transactions would remain in effect. In order to implement the proposed changes to the TS Methodology, EGD requested that the Board issue an Order in this proceeding indicating that:

1. As of January 1, 2008, EGD is no longer required to use the electronic auction procedure set out in the TS Methodology when it makes TS assets available to the marketplace and can instead use such methods as are typical in the marketplace and that it deems appropriate to solicit bids and enter into TS transactions with authorized counterparties.
2. As of January 1, 2008, the limitations upon EGD's ability to enter into TS transactions with EGS will be lifted.
3. All other aspects of the TS Methodology, including all of EGD's reporting requirements for TS activity and affiliate transactions, will continue in full force and effect.

The Proceeding

The Board issued its Notice of Application, dated January 4, 2008, and Enbridge published the Notice of Application in local newspapers. The Board issued Procedural Order No.1, on February 7, 2008, to make provision for filing deadlines to this proceeding.

On March 5, 2008, the Board received Enbridge's interrogatory responses, and on March 12, 2008, Enbridge filed its Argument-in-Chief. Board staff filed its submissions on March 25, 2008. The Industrial Gas Users Association ("IGUA") filed its submissions on March 26, 2008. Enbridge filed its Reply Argument on April 8, 2008.

In this decision, the Board will address three issues:

1. Whether Enbridge should be allowed to stop the auction process
2. Whether Enbridge should be allowed to enter into transactions with Enbridge Gas Services, without restrictions
3. Whether the Board's process related to a Storage and Transportation Access Rule should affect the outcome of this proceeding

Issue 1: Electronic Auction Procedure

Enbridge seeks to be released from the requirement to conduct an auction process for TS transactions. Enbridge reported that only 7 transactions were conducted through the auction in 2006; none were conducted in 2007.

Enbridge surveyed market participants and none objected to the proposal to suspend the auction. Three market participants expressed their support for the proposed suspension of the auction process.

Enbridge proposed to replace the auction with methods more typical in the marketplace, namely direct solicitations through telephone or electronic communications or face-to-face discussions. Enbridge will continue to accept unsolicited bids, as it does under the current methodology.

Board Findings

The Board finds that Enbridge's proposal is appropriate and will be approved.

The Board notes that no intervenor objected to Enbridge's proposal. However, Board staff questioned whether the proposal would pass a cost/benefit test. The Board concludes that on balance the proposal will be of net benefit. The purpose of TS

transactions is to optimize the use of Enbridge's assets to the benefit of its ratepayers. The evidence is clear that the auction has not been successful in optimizing the use of Enbridge's assets; it has hardly been used and accounted for only 1% of TS revenues in 2006 and none of the revenues in 2007. The market participants were surveyed and either support or do not object to Enbridge's proposal. Participants noted the rigidity of the auction system in an otherwise fluid market and supported the return to more standard transactions that provide volume, timing and market flexibility. The Board concludes that the current approach does not provide significant net benefits – and that therefore a change in approach is warranted. The Board also notes Enbridge's expectation that the proposed change will lead to increased TS revenue (all else being equal) and that there are no anticipated costs from the change.

Board staff also questioned whether the proposed approach provided sufficient checks and balances to ensure the awarding of services in a fair and transparent manner. The Board finds that the current reporting requirements, all of which remain in force, are sufficient for purposes of ensuring TS transactions are conducted appropriately.

Issue 2: Transactions with Enbridge Gas Services (“EGS”)

Enbridge seeks to be released from the current limitations on its transactions with EGS. Restrictions currently in place prohibit EGD from entering into unsolicited contracts with EGS valued at more than \$50,000 (or more than three days in duration).

Enbridge noted that EGS is now completely separate (the TS activities have been repatriated; there has been complete separation of the information systems) and noted that lifting the restrictions would allow the full participation by another counterparty. Enbridge will continue to report on any affiliate transactions monthly.

Board Findings

The Board finds that Enbridge's proposal is appropriate and will be approved. IGUA, in its submission, emphasized the importance of ongoing disclosure to ensure a fair and transparent process – particularly with respect to transactions with EGS. Respondents to Enbridge's annual TS report made similar comments. IGUA did not object to the change as long as there is timely and complete disclosure. The Board notes that Enbridge will continue to be bound by the reporting requirements of the settlement agreement (monthly reporting of TS transactions with affiliates) and by the requirements

(including reporting) of the Affiliate Relationships Code and Reporting and Record Keeping Requirements. The Board concludes that these requirements are sufficient.

Issue 3: STAR Process

The Board held a generic hearing in 2005 and 2006 to determine whether it should refrain, in whole or in part, from regulating the rates charged for natural gas storage in Ontario. This proceeding was known as the Natural Gas Electricity Interface Review EB-2005-0551 (“NGEIR”). As part of the Board’s decision in NGEIR, the Board concluded that it was necessary to ensure consumer protection within the competitive storage market and ensure non-discriminatory access to transportation services for storage operators and customers. The Board stated it would initiate a process to develop rules of conduct and reporting related to storage and transportation and noted that there was merit to the development of a Storage and Transportation Access Rule (“STAR”). The Board assigned file number EB-2008-0052 to the STAR process.

The Board issued a Letter of Invitation to Participate with respect to the STAR process on March 5, 2008, and indicated intent to address the following:

- operating requirements to ensure that Union Gas and Enbridge cannot discriminate in favour of their own storage operations or those of their affiliates and cannot discriminate to the detriment of third-party storage providers;
- reporting requirements for all storage providers, although the requirements may vary as between utility and non-utility storage providers, and which may include: terms and conditions, system operating data, and customer information; and
- a complaint mechanism for customers (or other market participants).

Board staff questioned whether a decision in this proceeding might be premature given the Board’s STAR process is underway, noting that STAR may result in rules for short term transactions which differ from the approach proposed by Enbridge. IGUA submitted that any order in this proceeding should be subject to further amendment after a decision has been reached in the STAR proceeding. Enbridge replied that it did not expect the issues in STAR will relate to the TS activities and that even if there was an impact from STAR, it should not be a reason to delay a decision on this application.

Enbridge replied that the new TS methodology could be subject to further change through the STAR proceeding.

Board Findings

The Board finds that it is appropriate to decide Enbridge's Application now. STAR was initiated as part of the NGEIR decision and arises from concerns related to behaviour in the competitive storage market and the relationship between storage operators and transportation operators. It will be some time before that process is complete. The Board concludes that IGUA's proposed approach is appropriate: if TS issues are addressed through STAR, then Enbridge's TS methodology can be revised in due course if necessary.

Conclusion

Enbridge's proposed changes will be adopted. All of the remaining provisions of the settlement agreement, including the guiding principles, reporting, protection for interruptible customers, etc., remain in place. IGUA submitted that Enbridge should provide proposed wording changes to the settlement agreement. Enbridge responded that it would not be appropriate to change the wording of the TS Methodology because it was the subject of the settlement agreement; rather it proposed that the Board issue an order which provides certain exemptions to the TS Methodology as follows:

- Enbridge will no longer be required to use the electronic auction procedure set out in the TS Methodology when it makes TS assets available to the marketplace. Enbridge is authorized instead use such methods as are typical in the marketplace and that it deems appropriate to solicit bids and enter into TS transactions with authorized counterparties.
- The limitations from the TS Methodology upon the size of TS transactions that Enbridge may enter into with EGS will no longer apply. Enbridge will continue to report on all TS transactions with EGS (or any other affiliate) on a monthly basis to all parties on the TS Distribution List. The report will set out the number of transactions, transaction type, duration, volume and total value of the transactions.

The Board will adopt this approach.

THE BOARD THEREFORE ORDERS THAT:

1. As of April 28, 2008, Enbridge is no longer required to use the electronic auction procedure set out in the TS Methodology when it makes TS assets available to the marketplace and can instead use such methods as are typical in the marketplace and that it deems appropriate to solicit bids and enter into TS transactions with authorized counterparties.
2. As of April 28, 2008, the limitations from the TS Methodology upon the size of TS transactions that Enbridge may enter into with EGS shall no longer apply.
3. With the exception of the electronic auction process, and the limitations previously in place on transactions between Enbridge and EGS, all other aspects of the TS Methodology including all of Enbridge's reporting requirements for TS activity and affiliate transactions, will continue in full force and effect.
4. A decision regarding cost awards will be issued at a later date. IGUA shall submit its cost claim by May 12, 2008. A copy of the cost claim must be filed with the Board and one copy is to be served on Enbridge. Cost claims must be prepared in accordance with the Board's Practice Direction on Cost Awards.
5. Enbridge will have until May 26, 2008 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on IGUA.
6. IGUA will have until June 2, 2008 to make a reply submission as to why their cost claim should be allowed. One copy of the submission must be filed with the Board and one copy is to be served on Enbridge.
7. Enbridge shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.
8. All filings to the Board must quote file number EB-2007-0932 and be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming

conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the BoardSec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ISSUED at Toronto April 28, 2008

ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary