



EB-2010-0029

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 accounting order or orders
establishing certain Demand Side Management Deferral
Accounts for the years 2010-2014.

BEFORE: Paul Sommerville
Presiding Member

DECISION AND ORDER

Enbridge Gas Distribution Inc. (“Enbridge”) has filed an application with the Ontario Energy Board, (the “Board”) dated February 4, 2010 under the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”) for an order or orders establishing certain Demand Side Management (“DSM”) Deferral Accounts for the years 2010-2014. The Board assigned File No. EB-2010-0029 to the application.

The purpose of the requested DSM Deferral Accounts is to support a five year pilot program which is intended to expand the use of solar thermal technology from its current applications for water heating to include space heating, and to increase the potential for thermal storage applications in both new buildings and retrofits (“Solar Thermal Pilot Program or STPP”). In January 2010, Enbridge received a conditional commitment from Natural Resources Canada (“NRCan”) for funding support of up to a total of \$3.975M through the Clean Energy Fund (“CEF”). Enbridge advised that the total cost of the project will not exceed \$8.5M. Enbridge requested the application be dealt with expeditiously to comply with certain conditions attached to the funding support.

On February 22, 2010, the Board issued a combined Notice of Application and Written Hearing and Procedural Order No. 1 (“Notice and PO”). The Board directed Enbridge to serve a copy of the Notice and PO on the intervenors of record for Enbridge’s 2010 DSM Plan proceeding (EB-2009-0154), Enbridge’s 2010 Rate Adjustment proceeding (EB-2009-0172) and Natural Resources Canada’s Science and Technology division.

In response to the Notice and PO the following parties filed interrogatories: the Canadian Manufacturers & Exporters (“CME”), the Industrial Gas Users Association (“IGUA”), the Schools Energy Coalition (“SEC”), the Consumers Council of Canada (“CCC”), the Vulnerable Energy Consumers Coalition (“VECC”), the Green Energy Coalition (“GEC”), Pollution Probe and Board Staff.

The interrogatories focused on two general areas of Enbridge’s application: the establishment and details of the requested DSM Deferral Accounts, and the program details and funding of the Solar Thermal Pilot Program for which Enbridge received a conditional commitment from NRCan.

Further clarification was sought regarding how the DSM Deferral Accounts would be established, their disposition and whether a prudence review was appropriate at the time Enbridge came to the Board to have the accounts cleared. In its interrogatory response, Enbridge provided further information concerning the establishment of the DSM Deferral accounts and agreed that a prudence review was appropriate.

Interrogatories concerning the STPP included the justification of the STPP as a DSM program consistent with the Generic DSM Framework; the relationship between this application and the Board’s Decision on a Preliminary Motion in Enbridge’s 2010 rates proceeding (EB-2009-0172); how the STPP related to the transmission, distribution and/or storage of natural gas; details of Enbridge’s application to NRCan and the specifics of the Contribution Agreement; how Enbridge will pursue program partners and investors to offset ratepayer funding; the program’s benefits to ratepayers; program work that Enbridge has completed to date; the cost-effectiveness of the proposed program; and specifics relating to the program budget and which rate classes would be affected by the implementation of the proposed program.

On March 4, 2010, Enbridge provided its responses to all interrogatories. In its responses, Enbridge provided all parties with its application to NRCan, the NRCan press release which announced the successful applicants for CEF grants, and the

materials that were presented to its senior management team when internal approval was sought.

In responding to questions about the progress of the STPP, Enbridge advised that no work had been completed on the STPP, although a program team has been established and some preliminary discussions have taken place internally. Enbridge also advised that it was unable to provide any further details on the prospective partners it hoped to work with on the STPP at this time; however, discussions were ongoing and details of any partnership arrangements would be provided when finalized.

Unlike Enbridge's request to include Green Energy initiatives as part of its regulated operations (EB-2009-0172) (the "GE motion"), Enbridge stated that it has not proposed to include any costs in rate base and that it will not retain any assets as a result of the STPP.

Enbridge further noted throughout its interrogatory responses that it is not seeking any recovery through the Shared Savings Mechanism or Lost Revenue Adjustment Mechanism as a result of this program, and that all of its ratepayers will benefit from this program as the research, data, findings, conclusions and recommendations will be made public and available to all parties.

On March 10, 2010 all intervenors and Board Staff, except for Pollution Probe, filed their final submissions on Enbridge's application. Pollution Probe subsequently filed its comments on March 11, 2010, which the Board accepted.

With the exception of Pollution Probe, GEC and Board Staff, parties did not generally support the approval of Enbridge's request for the establishment of the DSM Deferral accounts. Amongst the three parties supporting approval, GEC and Board Staff offered comments which qualified their support. GEC and Board Staff noted that the uncertainty of the third party contributions suggested that a deferral account approach was appropriate and that the Board should require Enbridge to commit to aggressively seek further third party funding. Both parties submitted that the Board should require Enbridge to provide updates on the project budget and progress as part of each regular DSM filing.

IGUA, SEC, CCC, CME and VECC (the "opposing parties") all submitted that the request for the deferral accounts should be rejected. The opposing parties expressed a

similar view, which was that the process by which Enbridge was seeking approval was not appropriate. The opposing parties characterized the proposal as a dramatic and fundamental shift in the negotiated DSM framework established in EB-2006-0021 which should be heard, reviewed and argued in front of the Board through a full proceeding.

The opposing parties also argued that the proposal by Enbridge was very similar to the GE motion. In its Decision on a Preliminary Motion the Board found the Green Energy initiatives were activities that did not fall within the regulated activities of Enbridge, that is, the transmission, distribution or storage of natural gas, and as such could not be included in the rate base of Enbridge.

Separately, each of the opposing parties also noted that Enbridge, in its application to NRCAN, stated that it, and its parent company Enbridge Inc., had sufficient cash reserves, credit facilities and the ability to raise equity to fund the STPP. The opposing parties submitted that it would be inappropriate to allow the ratepayer, and not Enbridge and its shareholders, to be burdened with all the risk involved in the five-year program.

Several parties commented upon the lack of precision and detail in Enbridge's application. They stated that a lack of detailed information concerning the accounting treatment of the deferral accounts, program details, cost effectiveness, and the source of partnerships and additional funding, made it very difficult for the Board to fully assess the nature of the STPP. The opposing parties argue that approval should not be granted.

SEC noted that the direct value of the STPP was not apparent and that if the Board was inclined to grant approval, it do so on a one-year basis and review the program results after the first year.

On March 15, 2010, Enbridge filed its reply submission with the Board. In its reply, Enbridge noted that as it had secured a large financial commitment from NRCAN for the STPP, and if approved by the Board, the project would be undertaken at a substantially discounted cost to ratepayers.

In response to the submissions surrounding the level of detail provided in its application, Enbridge advised it had provided all the information available at the present time. Enbridge advised that this reflected the fact that the STPP was at an early stage, and

that the evaluation and selection phase must be completed before more detailed information can be provided.

Regarding the lack of secure program partners cited by many intervenors as a major concern, Enbridge stated that it was both premature and not appropriate to release the names of prospective partners as some may not wish to have their name publicly revealed for competitive reasons. Enbridge did not want to jeopardize these partners' potential involvement through an untimely release of their names. Enbridge advised that once negotiations were complete, it would provide intervenors with a list of partners as permitted.

Enbridge submitted that as the STPP was intended to result in a reduction in the use of natural gas, the program should be considered a DSM program.

Enbridge advised that it intended to include program results in its annual DSM report and agreed to make this a condition of approval.

Enbridge submitted that this incremental approval is justified given the existence of this one-time significant funding opportunity from NRCan. Enbridge also submitted that it is not seeking to fundamentally change the nature of its DSM activities nor its role as a natural gas distributor.

Enbridge noted in its reply submission that unlike the GE motion this application relates to a pilot research project, the costs of which will not be included in rate base.

In response to SEC's suggestion of a one-year approval, Enbridge submitted that if the Board found the program worth pursuing, it was worth pursuing through to completion. Enbridge also noted that NRCan required a full five year commitment from Enbridge.

Board Findings

The Board denies Enbridge's request for the establishment of various DSM Deferral Accounts for the years 2010-2014. The Board has identified a number of concerns with the application that are outlined below.

First, the Board is concerned with Enbridge's characterization of the STPP as a DSM program. It is the Board's view that an application of this nature, which changes the

approved and negotiated DSM Framework, should be brought forward without truncated timelines attached to it, with a complete record available to all interested parties, and be the subject of a hearing that is not constrained by external deadlines. The process which will culminate in the development of a new multi-year DSM Framework is underway, and it is the Board's view that this would be the most appropriate time to consider the issues raised by this application. The DSM Framework represents a carefully balanced approach to conservation activities, and leveraging this project into the mix at this stage is inappropriate.

The Board is also not convinced that the proposed program is truly a pilot program. The technologies involved do not appear to be untried or untested, but rather have been applied, albeit in somewhat different applications. Enbridge has identified various technologies it wishes to explore to determine the benefits and drawbacks of each. These technologies, however, cannot be ultimately turned into a standard DSM program offering. As the Board noted in its Decision on Enbridge's 2010 Low Income DSM Plan, the Board is of the view that a properly structured pilot program should provide an opportunity to gain experience in business processes, installation procedures, logistics, deployment, integration issues, customer communications, and customer impact. Enbridge has not provided the program details that will permit the Board, or other interested parties, to determine how these criteria will be met. It is also not clear how the success of this program translates into a standard DSM offering. If the success of a pilot program does not translate into a true DSM program, the Board views the program as a research and development program which explicitly does not fall within the agreed upon and approved criteria established for ratepayer funding through the DSM Framework. It also does not conform to the current CDM Guidelines, which define qualifying pilot programs in a manner that is inconsistent with the Company's proposal.

Even if the Board was persuaded that the program was appropriately funded through rates or properly characterized as a DSM program, the Board would still have a number of concerns with Enbridge's application.

The Board is of the view that Enbridge has not provided an appropriate level of program and funding detail in both its application and interrogatory responses. The Board understands that the STPP is in the initial stages of program development, however, for the Board to make a decision on an application of this nature, more preliminary work must be done prior to seeking the Board's approval. There are uncertainties surrounding the level of program partnership, the specific technologies that will be

tested, their cost effectiveness and the sites where the work will be undertaken. All of these variables need to be more robustly presented in order for both the Board and interested parties to test the evidence before committing support. While the approval of a Deferral Account by its very nature acknowledges some degree of uncertainty, the Board requires sufficient detail respecting the activities giving rise to the account so as to justify its creation. The Board will not establish deferral accounts where there is no reasonable prospect of disposal, or where the evidence supporting the account fails to address fundamental elements of the activities giving rise to entries to the account.

The proposal seems to represent a somewhat conditional commitment of the applicant to solar thermal research. This project first emerged in connection with Enbridge's mid term IRM rate adjustment proceeding. In Enbridge's letter to the Board filed on November 13, 2009, responding to the Board's Procedural Order No. 2 in EB-2009-0172, Enbridge states on page 4 that "given the negative impact that the use of [solar thermal] technology would have on Enbridge's system load, the Company is not prepared to pursue the [solar thermal] opportunity unless [Enbridge] is able to include any investment as part of its regulated operations."

In this proceeding, on page 6 of its reply submission Enbridge stated that it is not looking to recover the reductions in its revenues that will result from the STPP, however, in response to Board Staff interrogatory 2(c) Enbridge stated it would not commit to the program if the shareholder was exposed to the risks associated with the program.

Further, the Board is concerned with the apparent inconsistency in the information Enbridge has advanced throughout this process regarding the sources of funding. In Enbridge's application to NRCan, at page 19 it states that "Enbridge Gas Distribution and Enbridge Inc. have sufficient cash reserves, credit facilities and the ability to raise equity to fund this project." These statements appear to be inconsistent with the application currently in front of the Board for review.

The role of the parent corporation in funding the program has not been highlighted or explained in any degree in the evidence in this proceeding.

Finally, the Board is concerned with Enbridge's position that it must be the ratepayer that underwrites the unfunded portion of the program.

There is no necessary linkage between the Company and the pilot program. This kind of activity could just as easily be undertaken by an enterprise completely unconnected to the distribution, storage and transmission of gas. Over the last number of years different market participants have become engaged in various CDM and Demand Side Management activities. There is no demonstration in this case that Enbridge's undertaking as the local distribution company was essential to the success of the project.

No other non-utility company is able to operate under the funding structure proposed by Enbridge in this application. Requiring the ratepayers to fund the difference in program costs from that of the NRCan CEF grant gives an unfair competitive advantage to Enbridge as compared to other similarly sized and equally capable entities, which are required to incur some level of risk to their shareholders for a project of this nature.

As stated on page 5 of the Board's Decision on a Preliminary Motion (EB-2009-0172):

“Enbridge does not have a monopoly franchise for the production of renewable energy. Its franchise is related to the distribution of natural gas. To the extent that the Green Energy Initiatives involve activities for the production of renewable energy, they occur within a competitive market. Other participants would be materially disadvantaged were that to occur. The same line of reasoning applies to the Green Energy Initiatives that do not directly involve the generation of electricity, but which take place within a broad competitive market involving the provision of a variety of new and refined products designed to facilitate the creation of an innovative conservation culture in Ontario. Permitting a well financed public utility to include its costs of participation in this market into its rate base, thereby transferring risk to the ratepayer, is unfair to other market participants.”

The core business of a natural gas utility, and that for which the Board is able to make orders approving or fixing just and reasonable rates, as found in the Act at Section 36(2), are those activities in relation to the “the transmission, distribution and storage of gas.”

The interest of the ratepayer is the safe and secure supply of natural gas to its home or business by way of fair and reasonable rates. Despite Enbridge's assurances that there

are discussions with potential partners who may bear some or all of the unfunded costs, for the purpose of deciding this application the Board must assume that the ratepayer will be asked to pay the entire unfunded costs of \$4.5M. As a ratepayer, the contractual relationship with the utility is one where payment is provided for the transmission, distribution and storage of natural gas. Underwriting the risks associated with programs of this nature falls outside of the customers' reasonable expectations.

For these reasons, the Board rejects Enbridge's application for the establishment of DSM Deferral Accounts to track spending in relation to the proposed Solar Thermal Pilot Program.

COST AWARDS

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 denied approval of its request for the establishment of DSM Deferral Accounts for the years 2010-2014 to track spending in relation to its proposed Solar Thermal Pilot Program.

DATED at Toronto March 31, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary