



**EB-2013-0046**

**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. for an order or orders approving the clearance or disposition of amounts recorded in certain deferral or variance accounts.

**BEFORE:** Paula Conboy  
Presiding Member

Ken Quesnelle  
Member

## **DECISION AND ORDER**

### **2012 Earnings Sharing and Deferral and Variance Account Clearances**

**February 6, 2014**

#### **Background**

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application dated May 24, 2013 with the Ontario Energy Board (the “Board”) under section 36 of the *Ontario Energy Board Act, S.O. 1998, c.15, Schedule B* for an order approving the disposition of balances in certain deferral or variance accounts. The Board assigned file number EB-2013-0046 to the application and issued its Notice of Application and Procedural Order No.1 on June 13, 2013 which included an Issues List, a process for parties to intervene, a written interrogatory process, dates for a Settlement Conference and the filing of a Settlement Proposal. A record of all procedural matters and all correspondence in this proceeding is available on the Board’s web site.

The Settlement Conference was held on July 24, 2013 and Enbridge filed a proposed Settlement Agreement on August 2, 2013. On August 20, 2013, the Board issued a Decision and Order on the Settlement Agreement accepting the agreement and setting dates for an oral hearing of the unsettled issues.

The Settlement Agreement reflected that parties were able to reach settlement on all issues with the exception of the following:

- Issue 1(v) - 2012 Gas Distribution Access Rule Costs D/A (2012 GDARCDA)
- Issue 1(x) - 2012 Earnings Sharing Mechanism D/A (2012 ESMDA)
- Issue 2 - Is the amount proposed to be cleared in the 2012 Transactional Services deferral account appropriate?

Enbridge filed a letter on September 6, 2013 stating that it no longer wished to contest two of the three unsettled issues. Specifically, Enbridge stated that it would not seek to include late payment penalty (“LPP”) revenue reductions within the 2012 GDARCDA. Enbridge also indicated that it would not seek to include revenues received from third-parties for their extraction of by-products from Enbridge's gas within its revenues for earnings sharing purposes. As such, the letter removed any contest of Enbridge pertaining to Issues 1(v) and 1(x). Enbridge proceeded to reflect the financial consequences associated with not contesting the two issues in a revised schedule of deferral account balances in a subsequent letter to the Board dated September 16, 2013. The amounts and their impacts on the deferral account balances were implemented as indicated in the Settlement Agreement. No party objected to the prospect of the Board accepting Enbridge's proposal to withdraw its contest of the two issues.

As a result of the issues withdrawn by Enbridge, the only issue left to be heard at the oral hearing was: *Issue 2 - Is the amount proposed to be cleared in the 2012 Transactional Services deferral account appropriate?* The Settlement Agreement defined the issue as being whether revenues associated specifically with the 2012 capacity release exchange transactions should be treated as Transactional Service revenues and recorded in Enbridge's Transactional Services Deferral Account

("TSDA"), or whether the revenues should be treated as gas cost reductions and recorded in the Purchased Gas Variance Account ("PGVA").

Enbridge proposed that the net 2012 revenues related to capacity release exchange transactions be recorded in the TSDA.

The net 2012 revenues related to capacity release exchange transactions total \$18.63 million. If the Board determines that these revenues are considered to be TS revenues, then no change is required to Enbridge's deferral and variance account balances. If the Board determines that these revenues should be included in the PGVA, then Enbridge will reduce the ratepayer credit in the Transactional Services Deferral Account (TSDA) by \$13.97 million (equal to 75% of the at-issue amount) and record a credit of \$18.63 million within the transportation component of the PGVA.

The oral hearing was held on September 20, 2013 and intervenor submissions were filed on October 18, 2013.

### **What are Transactional Services and What are the Main Types of Transportation TS Transactions?**

The concept of Transactional Services ("TS") was first introduced by Enbridge in the mid 1990's as an adjunct to the utility's gas supply process. The premise of TS was that if circumstances arose where the assets acquired to meet customer demand were not fully required, then those assets could be made available to generate revenue that would otherwise not be generated. The assets referred to include natural gas transportation and natural gas storage. TS activity is also referred to as "optimization" in the sense that the gas supply portfolio is "optimized" to realize the full value potential of the asset. The goal of TS activities is to generate revenue by "optimizing" temporarily surplus transportation and storage assets that are not fully utilized.

There are two (2) main types of transportation TS transactions that have traditionally fallen within the TS business area at Enbridge relating to its gas transportation assets: (1) Base Exchange transactions and (2) Capacity Release exchange transactions. These were also the two main types of transportation TS activities undertaken by Enbridge in 2012.

Base Exchange transactions serve to accommodate requests from counterparties wishing to have gas delivered to a particular receipt point, but have no transportation capacity to get the gas to that point. If Enbridge has temporarily surplus capacity to that receipt point, then it can undertake a “base exchange” to accommodate the request. A typical example of a Base Exchange transaction would entail Enbridge purchasing gas at Empress, Alberta and delivering the gas to a counterparty at Iroquois, Ontario. At the same time, the counterparty would deliver an equal volume of gas to Enbridge at Dawn, Ontario for injection into gas storage facilities located in that region. The result is that both parties receive the desired volume of gas where they want it. Enbridge, as the shipper, continues to pay TransCanada Pipelines (“TCPL”) for the provision of firm service transportation (“FT”). In recognition of the fact that the gas is more valuable to the counterparty at Iroquois than at Dawn, Enbridge receives a payment from the counterparty, which is treated as TS revenue.

Capacity Release exchange transactions are distinct from Base Exchange transactions insofar as they allow the counterparties to take advantage of credits associated with unused FT transportation capacity, referred to as “FT-RAM credits”. The counterparty can only access these credits if it is a shipper on TCPL. This means that Enbridge must assign its FT transportation capacity to the counterparty in order for the FT-RAM credits to be “unlocked”.

A typical example of a Capacity Release exchange transaction would have Enbridge provide a counterparty with gas at Empress, Alberta and assign its FT transportation capacity to the Eastern Delivery Area (“EDA”) in eastern Ontario to the counterparty for the same volume of gas. Then, the counterparty would transport the gas from Empress to Emerson, Manitoba using a less expensive transportation service, TCPL Interruptible service (“IT”), and would leave the FT capacity empty so that the counterparty can obtain the FT-RAM credits. The counterparty sells the gas at Emerson, Manitoba and provides Enbridge with an equal volume of gas at Dawn, for injection into storage.

The end result is that Enbridge gets the gas where it ultimately wants it. The counterparty benefits because the value of the gas at Emerson plus the value of the FT-RAM credits exceeds the cost of gas purchased at Dawn plus the cost of IT transportation acquired from TCPL. The counterparty pays TCPL for the cost of the FT capacity that was assigned, and bills that cost to Enbridge while at the same time credits Enbridge with a payment of an additional amount (in recognition of the value that

the counterparty obtains from the transaction). That additional amount is treated as TS revenue.

Submissions and Final Argument were filed by Board Staff and seven intervenors, as follows: Building Owners and Managers Association (“BOMA”), Canadian Manufacturers & Exporters (“CME”), Consumers Council of Canada (“CCC”), Energy Probe Research Foundation (“Energy Probe”), Federation of Rental-housing Providers of Ontario (“FRPO”), School Energy Coalition (“SEC”) and Vulnerable Energy Consumers Coalition (“VECC”).

In defining the nature of a Transactional Services (“TS”) transaction, Enbridge submitted that three (3) elements must be present for a transaction to qualify as a TS transaction. These were characterized as follows:

1. Unplanned: The transaction opportunity must be unplanned in the sense that it is not and cannot be forecast or known at the time that the Company prepares its gas supply plan for the coming year, which is during the spring of the preceding year.
2. Third Party Service Request: The transaction opportunity must involve a third party.
3. Temporarily Surplus Capacity: The transaction opportunity must relate to transportation or storage capacity that is temporarily surplus to meeting customer demand during the period when the transaction takes place.

Enbridge submitted that the three elements provide a clear and principled explanation of what constitutes a TS transaction. Enbridge emphasized that it is important that there is predictability in TS and that having established principles would be of assistance in delineating TS transactions. Otherwise, Enbridge submitted, as new market opportunities arise in coming years, there will be ongoing debates about the proper characterization of TS.

## **Board Findings**

The Board finds that the revenues generated through capacity releases are appropriately treated as transactional services revenues in the context of the current IRM agreement (EB-2007-0615) and should be recorded in the TSDA to be shared with

ratepayers. These transactions occur only in the summer months when there are temporarily surplus assets available. The excess capacity available to support the capacity release transactions is therefore properly considered temporarily surplus to the needs of Enbridge's customers. The Board agrees with Board staff's submission that there is no evidence to suggest that Enbridge's optimization activities are central to its gas supply plan (and its planning process): The transaction is properly considered unplanned.

BOMA, CCC, CME, Energy Probe, FRPO and VECC were collectively of the view that the capacity release revenues should be classified as gas cost reductions and therefore recorded in the PGVA, and not in the TSDA. The parties maintained that the Board has already considered these types of transactions on its EB-2012-0055 Decision, and determined that the nature of the transactions do not qualify for incentive treatment. They submitted that nothing has changed this year; that the Capacity Release transactions are precisely the same as they were in 2011, and the Board should therefore not change its view of how to treat the transactions. The parties' perspective was that the capacity releases are undertaken as a part Enbridge's regular gas supply management function and hence do not merit special incentive treatment. The parties argued that Enbridge has led no evidence this year to demonstrate any facts other than those which were established or could have been established in the 2011 Deferral Account Clearance proceeding (EB-2012-0055). They said that the FT-RAM related capacity release/exchange transactions carried out in 2012 amount to nothing other than the same utility gas transportation switching transactions that were carried out in 2011.

CME went further and emphasized that the issue at hand has been argued and decided by the Board in three (3) previous rate cases namely; Union's 2013 COS Rate Rebasing proceeding (EB-2011-0210), Union's 2011 Deferral Accounts Clearance proceeding (EB-2012-0087) and Enbridge's 2011 Deferral Accounts Clearance proceeding (EB-2012-0055). CME pointed out that in each of those proceedings the Board determined that the amounts were to be classified as upstream gas transportation cost reductions and not as TS revenues.

The Board was clear in its decision on Enbridge's 2011 ESM proceeding (EB-2012-0055) that its determinations were based on the evidence particular to that application. The Board stated at the oral hearing of the current application that it would render a

decision in this proceeding on the basis of the evidence currently before it. While the Board accepts intervenor arguments that nothing has changed this year; that the Capacity Release transactions are precisely the same as they were in 2011, the Board accepts Enbridge's submission that it did not provide sufficient context and explanation for capacity release exchange transactions in the 2011 ESM proceeding. It is clear to the Board, based on the detailed evidence, and explanation provided in this hearing, that the gas purchased on the day of Enbridge's 2012 capacity release exchange transactions is not required by its customers on that day. While the FT capacity is always used to the full extent required for daily demand in the EDA (which is the reason the capacity was acquired), the value of the capacity that is not needed for that purpose at some times of the year can be optimized. This optimization, in the form of capacity release exchange or base exchange transactions, allows Enbridge to get required gas to storage, while obtaining additional value from the capacity that is not needed to serve its customers on the day(s) in question. The transportation used to complete the transactions is temporarily surplus.

Parties differed as to whether transportation capacity is appropriately deemed temporarily surplus if it is not required to meet the needs of the customer in the franchise on the day(s) in question. Energy Probe submitted that even though the capacity may be surplus to meet the customer demand on any given day, this does not mean that the asset is surplus. It argued that in the absence of a third party requesting this service, Enbridge would continue to use the underlying assets to transport gas to its customers and to storage for use when required. Energy Probe argued that the asset is still required, and used for storage or load balancing, even when surplus capacity is available on any given day. CCC filed similar arguments.

The Board finds that the transportation capacity is temporarily surplus if it is not required to meet the needs of the customer in the franchise on the day(s) in question. The FT capacity that was released was acquired by Enbridge to meet the winter demand for customers in the EDA. Some of that capacity was not needed to meet demand in the summer. The surplus FT capacity would ordinarily be used to divert gas to storage, because the FT demand charges are a sunk cost and the gas supply plan considers that the best planned alternative use for that capacity is to fill storage. The Board accepts that the gas that is injected into storage will be used to meet later demand of Enbridge customers. However, it is surplus to the needs of the customers on the day(s)

in question and this is the necessary characteristic that provides the opportunity for Enbridge to generate the additional revenue.

The Board has based its determination on whether Enbridge has treated the upstream transportation optimization revenues appropriately in 2012 in the context of Enbridge's existing IRM framework and in consideration of the "unplanned" and "temporarily surplus" characteristics that were identified and applied in the 2011 ESM proceeding.

Apart from the distinctions regarding the Capacity Release transactions the Board considers Enbridge's justification and proposal for the clearance of the Transactional Services account to be consistent with prior years and acceptable to the Board.

Enbridge submitted three criteria that it argues constitute a valid TS transaction, and stated that it is important that there is predictability in TS and that having established principles would be of assistance in delineating TS transactions. The Board agrees with Enbridge's contention that there is value in having established principles to guide future consideration. As noted above the Board's decision in the current application is made in the context of the existing IRM framework.

Some intervenors argued for different or new tests to be applied to determine whether a transaction is properly considered to be TS. VECC argued Enbridge's criteria should not be determinative. This application deals with the clearance of accounts for the last year of the IRM term. The Board is therefore of the view that the establishment of any new guiding principles should be done on a prospective basis in a forum intended for that purpose.

### **Clearance of 2012 Deferral and Variance Account Balances**

Enbridge provided a schedule at the September 20, 2013 oral hearing showing the forecasted balances for clearance as at January 1, 2014. The net 2012 revenues related to capacity release exchange transactions total \$18.63 million. As the Board has determined that these revenues are TS revenues, no change is required to Enbridge's deferral and variance account balances.



**Cost Awards**

The Board will allow for eligible parties to file claims for awards of costs according to the timetable set out below.

**THE BOARD ORDERS THAT:**

1. The 2012 deferral and variance account balances attached as Appendix "A" and labeled "Forecast for Clearance as at January 1, 2014" are hereby approved and shall be cleared to customers as a one-time adjustment in conjunction with Enbridge's next available QRAM application. Interest on the principal balances shall be updated to reflect the timing of the clearance.
2. Intervenors shall file with the Board and forward to Enbridge, their respective cost claims within 14 days from the date of this Decision and Order.
3. Enbridge shall file with the Board and forward to the intervenors any objections to the claimed costs within 21 days from the date of this Decision and Order.
4. 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 this Decision and Order.
5. Enbridge shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

**DATED** at Toronto February 6, 2014

**ONTARIO ENERGY BOARD**

Original Signed By

Kirsten Walli  
Board Secretary

**APPENDIX "A"**

**Enbridge Gas Distribution Inc.**

**EB-2013-0046**

**Deferral and Variance Account Balances for Clearance**

ENBRIDGE GAS DISTRIBUTION INC.  
 DEFERRAL & VARIANCE ACCOUNT  
ACTUAL & FORECAST BALANCES

| Line No.                              | Account Description                           | Account Acronym | Col. 1                   | Col. 2             | Col. 3                                    | Col. 4               |
|---------------------------------------|---|-----------------|--------------------------|--------------------|---|----------------------|
|                                       |   |                 | Actual at March 31, 2013 |                    | Forecast for clearance at January 1, 2014 |                      |
|                                       |   |                 | Principal (\$000's)      | Interest (\$000's) | Principal (\$000's)                       | Interest (\$000's)   |
| <u>Non Commodity Related Accounts</u> |   |                 |                          |                    |   |                      |
| 1.                                    | Demand Side Management V/A                    | 2011 DSMVA      | 535.8                    | (46.8)             | 535.8                                     | (40.5) <sup>1</sup>  |
| 2.                                    | Lost Revenue Adjustment Mechanism             | 2011 LRAM       | -                        | -                  | (55.3)                                    | (0.5) <sup>1</sup>   |
| 3.                                    | Shared Savings Mechanism V/A                  | 2011 SSMVA      | -                        | -                  | 6,769.5                                   | 41.5 <sup>1</sup>    |
| 4.                                    | Deferred Rebate Account                       | 2012 DRA        | (940.8)                  | (5.8)              | (940.8)                                   | (16.6)               |
| 5.                                    | Gas Distribution Access Rule Costs D/A        | 2011 GDARCD A   | 89.9                     | 1.7                | -   | - <sup>2</sup>       |
| 6.                                    | Gas Distribution Access Rule Costs D/A        | 2012 GDARCD A   | 1,616.4                  | 12.6               | 181.8                                     | - <sup>2</sup>       |
| 7.                                    | Ontario Hearing Costs V/A                     | 2012 OHCVA      | (1,259.7)                | (5.7)              | (1,259.7)                                 | (19.2) <sup>3</sup>  |
| 8.                                    | Unbundled Rate Implementation Cost D/A        | 2012 URICDA     | 155.0                    | 1.5                | 155.0                                     | 3.3                  |
| 9.                                    | Average Use True-Up V/A                       | 2012 AUTUVA     | 4,361.3                  | 16.0               | 4,361.3                                   | 63.7 <sup>4</sup>    |
| 10.                                   | Tax Rate and Rule Change V/A                  | 2012 TRRCVA     | 300.0                    | 1.4                | 300.0                                     | 5.0 <sup>5</sup>     |
| 11.                                   | Earnings Sharing Mechanism D/A                | 2012 ESMDA      | (10,350.0)               | (38.0)             | (7,392.0)                                 | (141.5) <sup>6</sup> |
| 12.                                   | Electric Program Earnings Sharing D/A         | 2012 EPESDA     | (281.7)                  | (1.0)              | (281.7)                                   | (3.7)                |
| 13.                                   | Ex-Franchise Third Party Billing Services D/A | 2012 EFTPBSDA   | (143.0)                  | (0.5)              | (143.0)                                   | (2.3)                |
| 14.                                   | Transition Impact of Accounting Change D/A    | 2013 TIACDA     | 88,716.0                 | -                  | 4,435.8                                   | - <sup>7</sup>       |
| 15.                                   | Total non commodity related accounts          |                 | <u>82,799.2</u>          | <u>(64.6)</u>      | <u>6,666.7</u>                            | <u>(110.8)</u>       |
| <u>Commodity Related Accounts</u>     |   |                 |                          |                    |   |                      |
| 16.                                   | Transactional Services D/A                    | 2012 TSDA       | (26,077.3)               | (208.0)            | (26,077.3)                                | (495.1)              |
| 17.                                   | Unaccounted for Gas V/A                       | 2012 UAFVA      | 2,067.9                  | 7.6                | 2,067.9                                   | 30.1                 |
| 18.                                   | Storage and Transportation D/A                | 2012 S&TDA      | (699.8)                  | (7.4)              | (699.8)                                   | (15.5)               |
| 19.                                   | Total commodity related accounts              |                 | <u>(24,709.2)</u>        | <u>(207.8)</u>     | <u>(24,709.2)</u>                         | <u>(480.5)</u>       |
| 20.                                   | Total Deferral and Variance Accounts          |                 | <u>58,090.0</u>          | <u>(272.4)</u>     | <u>(18,042.5)</u>                         | <u>(591.3)</u>       |

Notes:

- The final 2011 DSMVA, SSMVA, and LRAM balances to be cleared will be those approved in the EB-2013-0075 proceeding, anticipated to be filed in Q2 2013.
- The forecast clearance amount, associated with the 2011 and 2012 GDARCD A balances, is the result of a revenue requirement calculation found in evidence at Ex.C-1-2, updated to reflect EGD's letter dated September 6, 2013 with respect to the Settlement agreement.
- The OHCVA calculation is found in evidence at Ex.C-1-5.
- The AUTUVA explanation is found in evidence at Ex.C-1-3.
- The TRRCVA explanation is found in evidence at Ex.C-1-4.
- The ESMDA explanation is found in evidence at Ex.B-1-1 and B-1-2, and is updated to reflect EGD's letter dated September 6, 2013 with respect to the Settlement Agreement.
- The TIACDA clearance is in accordance with the EB-2011-0354 Final Rate Order.