

RP-2000-0040

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 The
Consumers' Gas Company Ltd., carrying on business as
Enbridge Consumers Gas, for an order or orders approving or
fixing rates for the sale, distribution, transmission and storage
of gas for its 2001 fiscal year.

BEFORE: Sheila K. Halladay
Presiding Member

Floyd G. Laughren
Chair and Member

A. Catherina Spoel
Member

REASONS FOR DECISION

August 17, 2001

REASONS FOR DECISION

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REASONS FOR DECISION

1. INTRODUCTION

1.1 THE PROCEEDING

1.1.1 The Consumers' Gas Company Ltd., carrying on business as Enbridge Consumers Gas (the "Applicant", "ECG" or the "Company"), filed an application dated July 25, 2000 (the "Application") with the Ontario Energy Board (the "Board") under section 36 of the *Ontario Energy Board Act, 1998* (the "Act") for an order or orders approving or fixing just and reasonable rates for the sale, distribution, transmission, and storage of gas for the Company's 2001 fiscal year, commencing October 1, 2000 (the "Test Year"). The Board assigned file number RP-2000-0040 to the Application.

1.1.2 On August 25, 2000, the Board issued a Notice of Application which was published in newspapers across ECG's service territory during the month of September, 2000.

1.1.3 The Application included a request for an interim rate order, to be processed on an expedited basis, to adjust then current rates to reflect a forecasted increase in the commodity cost of gas of approximately 37%. ECG requested that the new rates be in place for October 1, 2000. A one-day technical and settlement conference was held on August 30, 2000 to deal with the issue. On September 28, 2000 the Board

issued Interim Order EB-2000-0234, approving the new gas commodity rates effective October 1, 2000.

1.1.4 On November 1, 2000, the Board issued Procedural Order No. 1, which set out dates for Board staff interrogatories and the Company's responses.

1.1.5 On November 15, 2000, for the second time in the Test Year, ECG applied to the Board for a gas cost rate adjustment, this time to be effective January 1, 2001. Based on a new forecast of gas prices, the Company requested a further 18% increase in the commodity cost of gas over October 1, 2000 levels. A one-day technical and settlement conference was held on November 28, 2000 to deal with the issue. On December 28, 2000, the Board issued Interim Rate Order EB-2000-0317 which gave effect to the rate adjustment on January 1, 2001.

1.1.6 In Procedural Order No. 2, issued on December 13, 2000, the Board circulated the Preliminary Issues List and scheduled an Issues Conference for December 18, 2000 and an Issues Day for December 19, 2000. A Proposed Issues List was drafted by the parties who participated in the Issues Conference and was submitted to the Board on the same day. On Issues Day, the Board heard submissions on the Proposed Issues List.

1.1.7 On December 27, 2000, the Board issued Procedural Order No. 3 which fixed the Issues List and required the Company to file a comprehensive budget update by January 31, 2001. As well, Procedural Order No. 3 set out a schedule for interrogatories and the filing of intervenor evidence, and provided for interrogatories on the intervenors' evidence.

- 1.1.8 On February 9, 2001, for the third time in the Test Year, ECG applied to the Board for a gas cost rate adjustment to be effective March 1, 2001. ECG requested an overall increase in the cost of the gas commodity of 48% over January 1, 2001 levels. ECG proposed that this change be implemented by a rate increase of 32% and the balance by Rate Rider “G”. The Board dealt with this application by way of a written proceeding. On February 27, 2001, the Board issued Interim Rate Order EB-2001-0033 giving effect to the rate adjustment.
- 1.1.9 On March 1, 2001, the Industrial Gas Users Association (“IGUA”) brought a motion (the “IGUA Motion”) for a Board order requiring the Company to provide answers to certain IGUA interrogatories, mostly relating to the rate-making implications of the Company’s affiliate outsourcing plan. On March 2, 2001, the Board issued a Notice of Oral Hearing of Motion which set a date of March 7, 2001 for the hearing of the motion. On March 5, 2001, Direct Energy Marketing Limited (“DEML”) brought a motion (the “DEML Motion”) requesting that the Board order the Company to provide responses to certain DEML interrogatories. On March 7, 2001, the Board heard both motions. At the hearing, the Company agreed to provide answers to all of the DEML interrogatories. With respect to the IGUA interrogatories, the Company and IGUA agreed to a plan to provide answers to some, but not all, of the outstanding IGUA interrogatories. In written correspondence between March 12, 2001 and April 2, 2001, IGUA and ECG sought the Board’s direction on the extent of the information required to be filed in answering the IGUA interrogatories. On April 9, 2001, the Board issued its Decision and Order on the motions and excused the Company from providing further written responses to the IGUA interrogatories.

- 1.1.10 On March 20, 2001, the Board issued Procedural Order No. 4, setting a date of April 18, 2001 for a Settlement Conference.
- 1.1.11 On April 17, 2001 the Company filed Impact Statement No. 1, which provided an update to the 2001 Test Year revenue deficiency to account for the impact stemming from the interim rate increases and to reflect the removal of the provision for deferred taxes in the amount of \$8.5 million. The statement indicated a restated revenue deficiency of \$41.5 million for the 2001 Test Year.
- 1.1.12 On April 24, 2001, the Board issued a letter confirming that in light of the Company's pending application to the Divisional Court for judicial review of the Board's E.B.O.179-14/15 Decision, the Panel in this proceeding had decided to remove Issue 10.1 (deferred taxes relating to the removal of the water heater rental program) from the Issues List and expected the Company to exclude the \$8.5 million provision for deferred taxes from the revenue deficiency calculation.

1.2 THE SETTLEMENT PROPOSAL

- 1.2.1 Seventeen parties participated in the Settlement Conference which was held over the period April 18, 2001 to May 8, 2001. A Settlement Proposal, supported by all of the parties and settling all of the issues on the Issues List, was filed with the Board on May 11, 2001. The Settlement Proposal was revised to reflect minor corrections and wording clarifications, and was filed with the Board on June 12, 2001. The Settlement Proposals, as revised, is attached as Appendix A to these Reasons.

1.2.2 On May 9, 2001 the Company filed evidence indicating that the financial impact of the Settlement Proposal would result in a reduction of the revenue deficiency from \$41.5 million to \$23.9 million for the 2001 Test Year. The Financial Statements reflecting the financial impact of the Settlement Proposal are attached as Appendix B to these Reasons.

1.2.3 On May 17, 2001, the Board issued Procedural Order No. 5 setting May 30, 2001 as the date for the oral hearing.

1.2.4 On May 25, 2001, the Company filed evidence indicating that the components of the \$23.9 million revenue deficiency were: a gas supply commodity deficiency (\$15.6 million); a gas supply load balancing deficiency (\$20.8 million); and a distribution excess (\$12.5 million).

1.3 THE HEARING

1.3.1 On May 30, 2001, the Board held an oral hearing. The Settlement Proposal was presented to the Board on an issue-by-issue basis and intervenors were given the opportunity to comment.

1.3.2 Board staff and the following representatives of the parties appeared at the oral hearing:

Board Counsel and Staff	Pat Moran Colin Schuch Hima Desai
Enbridge Consumers Gas	Jerry H. Farrell Marika Hare
Industrial Gas Users Association ("IGUA")	Peter Thompson
Toronto Catholic District School Board and Ontario Association of School Business Officials (the "Schools")	Thomas Brett
Green Energy Coalition ("GEC")	David Poch
Vulnerable Energy Consumers Coalition ("VECC")	Michael Janigan Joyce Poon
Heating, Ventilation and Air Conditioning Contractors Coalition Inc. ("HVAC")	Ian Mondrow
Pollution Probe Foundation ("Pollution Probe")	Murray Klippenstein
Ontario Energy Savings Corp.	Jim Hamilton
Consumers' Association of Canada ("CAC")	Julie Girvan
Hydro One Networks Inc. ("Hydro One")	Glen MacDonald
TransCanada PipeLines Limited ("TCPL")	Tibor Haynal

Ontario Association of
Physical Plant Administrators
("OAPPA")

Valerie Young

Coalition for Efficient
Energy Distribution ("CEED")

Elisabeth DeMarco

Union Gas Limited
("Union")

Lynda Anderson

1.3.3 The following Company employees appeared as witnesses:

Frank Brennan	Director, Gas Supply Services
Thomas Ladanyi	Manager, Regulatory Proceedings
Steven Noble	Manager, Finance Regulatory
Donald Small	Manager, Gas Costs and Budgets
Pascale Duguay	Manager, Rate Research and Design

1.3.4 Copies of all orders of the Board, all evidence and exhibits filed in the proceeding and verbatim transcripts of the two gas cost technical conferences, Issues Day, the hearing of the motions and the main hearing are available for review at the Board's offices.

2. BOARD DECISION AND COMMENTS

2.1 BOARD DECISION

2.1.1 On May 30, 2001 the Board issued an oral decision finding that, based on the evidence, the cost consequences for rate-making purposes of the Settlement Proposal formed an acceptable basis for fixing just and reasonable rates.

2.1.2 The Board also determined that final rates would be implemented by the following mechanism. The 2001 year-to-date adjustment for the \$12.5 million distribution excess (approximately a seven dollar credit per residential customer) would be implemented during the first billing cycle in August 2001, to accommodate programming changes to the billing system and to allow actual billed volumes for the period October 1, 2000 to June 30, 2001 to be used in the calculation of the adjustment. The gas supply commodity deficiency of \$15.6 million and gas supply load balancing deficiency of \$20.8 million would be discharged through postings to the 2001 Purchased Gas Variance Account (“2001 PGVA”). To ensure that there would be no misstatement of the fiscal 2002 revenue deficiency (or excess), the Board directed that the calculations must take into account the treatment of the gas supply commodity deficiency and gas supply load balancing deficiency for the 2001 fiscal year.

2.1.3 On June 28, 2001, the Board issued the Final Rate Order for the Company's 2001 Test Year to be implemented in the Company's first billing cycle commencing in July 2001.

2.2 BOARD COMMENTS

2.2.1 Although the Board has accepted the cost consequences of the Settlement Proposal for rate-making purposes, the Board feels that it might be helpful to the parties to make the following comments. Except as set out below, the Board is satisfied and has no comments with respect to the Settlement Proposal.

Settlement Proposal - General

2.2.2 First, the Board would like to reiterate the comments that were made at the oral hearing and compliment the parties in coming to a complete settlement of all of the issues. The Board realizes that this could not have been accomplished without the goodwill exhibited by all of the parties.

2.2.3 The Board also appreciates that time and effort was spent on preparing the Settlement Proposal. The new approach taken in preparing a comprehensive settlement document, along with the explanations given at the oral hearing, assisted the Board in better understanding the issues and the parties' rationale for proposing the settlement of those issues.

2.2.4 The Board is concerned, however, that on some issues parties have used the settlement document as a means of continuing debate over decisions that have already been made by the Board or on matters that have been settled by the parties. For example, the Settlement Proposal contains the parties' opposing positions on the

issue of deferred taxes, even though the Board had removed this issue from the Issues List.

2.2.5 In addition, even though ECG agreed with 9.54% as the allowed rate of return on common equity for the Test Year, the Settlement Proposal contained the statement that “ECG is nevertheless concerned, along with most other gas utilities in Canada, that rates of return on common equity are too low to sustain a viable natural gas industry”.

2.2.6 The Board expects that in the future the parties will not engage in unnecessary rhetoric and will limit the Settlement Proposal specifically to matters that will assist the Board in understanding the proposed settlement of the issues on the Issues List.

Timing of the Application

2.2.7 The Board is also concerned with the timing of ECG’s application. The Board notes that the Company was still filing sections of evidence in November 2000, well after the date that the Company requested for the implementation of new rates. While the Board attempts to process applications as quickly as possible, because of the complicated nature of major rates applications and quasi-judicial nature of the Board’s mandate, the Board can only expedite the process to a certain extent. The Board expects that in the future the Company will file its application, along with supporting evidence, sufficiently in advance of the requested implementation date in order to provide time for the Board to understand the issues and conduct due diligence, and for the intervenors to respond.

2.2.8 In addition, the Board is concerned about the retroactivity of rates. While the parties agreed in the Settlement Proposal that rates would be retroactive, and the Board has sanctioned that position by accepting the Settlement Proposal, the Board cautions the parties that, because retroactive rates do not give accurate price signals in the market and may result in inter-generational subsidization, the Board does not generally endorse retroactive rate-making. In the future, the Board expects the Company to provide cogent evidence and rationale as to the reasons why rates should be retroactive.

Forecasting Model

2.2.9 The Board is encouraged that ECG has responded to intervenors' concerns about the accuracy of the Company's forecasting in general, and ECG's new forecasting model in particular, by agreeing to provide the parties with the results that the new econometric models for forecasting average use for residential and general service customers would generate using actual data (to the extent available) for the Test Year, including adequate statistical support to allow parties to compare the results to the prior year's forecast. While the Board recognizes that models are designed for predictive purposes rather than as a tool to explain results, the Board and the intervenors will be assisted by this information.

ECG's Agreements for Transportation Services

- 2.2.10 The Board agrees with the parties that it is expedient, for the purposes of this proceeding, to focus on the cost consequences of ECG's new transportation arrangement, and that an examination of the issue would be facilitated by quantifying, during the Test Year, the cost differences between ECG's new transportation arrangements (to ship gas sourced in western Canada on the Alliance pipelines to Chicago and, from there, on the Vector pipelines to Dawn and onward to Parkway via the transmission system of Union Gas Limited) compared to the Company's traditional path (on TCPL's Canadian Mainline from Empress to, for comparative purposes, ECG's delivery points in TCPL's Central Delivery Area, including Parkway).
- 2.2.11 The Board was originally concerned about the concept of establishing a "notional" deferral account; however, the Board is satisfied with the explanation given by Company witnesses at the oral hearing that this is actually a tracking account. It is "notional" because the Company is including in the account not only the actual transportation costs incurred by the Company for the new transportation path on the Alliance and Vector pipelines, but also a notional amount for costs that have been avoided along the traditional TCPL path for the same volumes. The Company also explained that these amounts are included in a deferral account because there could be rate-making consequences that are retrospective.
- 2.2.12 The Board recognizes that its consideration of ECG's agreements for transportation service on the Alliance, the Link and the Vector pipelines involves not only the cost consequences of these arrangements, but also whether, and if so how, these agreements should be assigned to end-use customers or their marketers, when ECG's rates and services are further unbundled, as discussed below.

Pricing and Components of System Gas

- 2.2.13 The Board recognizes that a great deal of time and effort has gone into the settlement of this issue. The Board endorses the principles set out in the Settlement Proposal that formed the basis for the new methodology for adjusting the utility price and clearing the PGVA. These principles are: more reflective of market prices on an ongoing basis; enhanced price transparency; regular quarterly review process; customer awareness, customer acceptance, and less confusion in the marketplace; mitigation of large adjustments of customer bills; fairness and equity among all customer groups; implementation in a cost effective manner; and reduced regulatory burden relative to ECG's trigger methodology and the related rate adjustment mechanism.
- 2.2.14 The Board agrees with the point raised in the oral hearing that calculation of the "21-day strip" for determining the "utility price" should be based on sources that are open and transparent and easily subject to testing. The Board also commends the Company for improvements in customer communication with respect to pricing information.
- 2.2.15 The Board expects the Company to consult with Board staff in connection with the implementation of this new process, including customer communication.

ECG's Risk Management Program

- 2.2.16 The Board commends the parties for forming a working group to examine the principles that underpin ECG's Risk Management Program for gas supply. Although not expressly stated in the Settlement Proposal, the Board notes that the parties have agreed that Board staff will also participate in the working group.

2.2.17 The Board is concerned that the authorization of a deferral account in connection with the consultation process should not be interpreted as a blank cheque for the parties. The Board notes that ECG has agreed that the Company is at risk if, in a subsequent rates hearing, the Board denies recovery of some of the costs related to the consultation on the grounds that they were not prudently incurred.

Methodology and Non-O&M Cost Consequences of Affiliate Outsourcing and Asset Usage Fees

2.2.18 The Board agrees that the non-utility rate base elimination approach to utility-owned assets used by ECG's affiliates when providing services to ECG and other affiliates during the Test Year is appropriate.

2.2.19 In the Settlement Proposal ECG noted that it was not prepared to commit to this approach beyond the Test Year because ECG is in the midst of a "transition" process of reviewing the future use of utility-owned assets. At the oral hearing the Company advised the Board that the "transition" would be complete when ECG comes forward with its comprehensive PBR proposal for Fiscal 2003.

2.2.20 The Board notes that the disposition of the amount in the deferral account with respect to the costs of retaining an "independent" consultant to assess and report on the basis for allocation of rate base asset values to affiliates and the accuracy of the allocation for Fiscal 2002 will be subject to review and order of the Board.

2.2.21 The Board also notes that ECG has undertaken to continue to keep its records in accordance with the *Uniform System of Accounts* and section 2.8 of the *Affiliate Relationships Code for Gas Utilities*.

Demand Side Management

2.2.22 The Board shares the concern expressed by customer-oriented parties about the overall rate at which the Demand Side Management (“DSM”) costs are increasing relative to gas savings, the consequential impact on rates, and the extent to which ECG needs incentives to further control costs in this area. The parties’ agreement to determine the budget and the pivot point in advance of the test year is a good first step.

2.2.23 The Board notes that in the Settlement Proposal HVAC reserved the right to obtain additional information on, and to request the Board to subsequently adjust, the DSM budget for the Test Year if, prior to issuing the final rate order in this proceeding, the Board found in another proceeding that ECG had used funds from the DSM Plan for the Test Year on activities that violated the *Affiliate Relationships Code for Gas Utilities*. At the hearing HVAC advised the Board that the purpose of the caveats was to reserve HVAC’s right with respect to the relief it was seeking in other proceedings, but it was not HVAC’s intention to hold up issuing the final rate order in this proceeding.

Deferral Accounts

2.2.24 The Board notes that initially the parties had sought the establishment of deferral and variance accounts for Fiscal 2002; however, this request was withdrawn at the hearing. In general, the Board is concerned with the proliferation of deferral and variance accounts. Deferral accounts should represent the exception rather than the rule in the current prospective test year rate-making regime, since they tend to distort the true cost of the services and represent intergenerational cross-subsidies. The

Board expects the parties to consider the role of deferral and variance accounts for rate-making purposes, particularly in the context of PBR.

Further Unbundling of Rates and Services

2.2.25 The Board agrees that an examination of further unbundling of ECG's rates and services would be premature in this proceeding. The Board notes that ECG has undertaken to solicit "meaningful" input from interested parties, including CAC and VECC, in the course of developing its plans for further unbundling of rates and services. The Board also expects the Company to continue discussions with Board staff in connection with the scope and timing of any unbundling proposals.

3. COST AWARDS

3.1 SUBMISSIONS

3.1.1 The Board received submissions and requests for costs from the following parties: IGUA, Schools, GEC, VECC, HVAC, Pollution Probe, CAC, CEED, and the Alliance of Manufacturers and Exporters Canada (the “Alliance”).

3.1.2 The Board received submissions from ECG with respect to these cost claims and reply submissions from CEED and VECC.

3.2 COST AWARDS

3.2.1 The Board has carefully reviewed the submissions, including the supporting documentation, filed with the Board.

3.2.2 The Board awards IGUA, Schools, GEC, VECC, HVAC, Pollution Probe, CAC, CEED, and the Alliance 100% of the reasonably incurred costs in connection with their participation in this proceeding, subject to assessment by the Board’s Cost Assessment Officer.

- 3.2.3 The Board directs the Cost Assessment Officer to review the costs claimed and to make adjustments as necessary to ensure that they are consistent with the Board's Cost Assessment Guidelines.
- 3.2.4 The Board orders that the eligible costs of intervenors, as assessed by the Board's Cost Assessment Officer, shall be paid by Enbridge Consumers Gas.
- 3.2.5 The Board's costs of and incidental to the proceeding shall be paid by Enbridge Consumers Gas upon receipt of the Board's invoice.

DATED at Toronto, August 17, 2001

Sheila K. Halladay
Presiding Member

Floyd G. Laughren
Chair and Member

A Catherina Spoel
Member