



RP-2003-0203

EB-2004-0468

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

AND IN THE MATTER OF an Application under section 36 of the Act by Enbridge Gas Distribution Inc. for confirmation of the methodology proposed to be used in calculating the earnings sharing mechanism set out in the Fiscal 2004 RP-2003-0048 Decision and Order;

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing October 1, 2004.

BEFORE:

Bob Betts
Presiding Member

Paul Sommerville
Member

Pamela Nowina
Member

George Dominy
Member

DECISION WITH REASONS

Enbridge Gas Distribution Inc. ("EGDI") filed a letter with the Ontario Energy Board (the "Board"), dated September 30, 2004, requesting confirmation of the methodology to be used to calculate the earnings sharing mechanism set out in the Board's decisions and orders in the 2004 Test Year RP-2003-0048 proceeding.

The Board assigned file number RP-2003-0203/EB-2004-0468 to the Application. On October 20, 2004, the Board issued a Notice of Written Hearing and Procedural Order No. 1 which ordered that:

- Any parties who object to the approach to proceed by way of written hearing shall provide their objections in writing by Wednesday, October 27, 2004;
- Parties who wish to make submissions shall do so in writing by no later than Friday, October 29, 2004;
- EGDI may reply to the intervenor submissions in writing by no later than Friday, November 5, 2004.

The Board received submissions from the Industrial Gas Users Association ("IGUA"), the Vulnerable Energy Consumers Coalition ("VECC"), the School Energy Coalition ("SEC") and the Consumers Counsel of Canada ("CCC") and a reply submission from EGDI.

VECC commented on the written procedure established by the Notice of Written Hearing and Procedural Order No. 1. The Board notes that in requesting a further discovery process VECC did not object to a written hearing. The Board is satisfied that the evidence on record and the written submissions that have been filed are sufficient for the Board to render a decision on the matters before it. The Board is not persuaded that any additional evidence obtained through further submissions or an oral hearing would likely be of significant probative value.

EGDI has asked the Board for direction specifically related to two earnings sharing mechanism components that have an impact on utility 2004 earnings determinations.

1. The Allowed Return on Equity ("ROE") percentage
2. The treatment of the charge against earnings of the known non-recoverable portion of the utility deferred tax regulatory receivable

1. Allowed Return on Equity ("ROE") Percentage

The Board-approved 2004 Test Year rates were set through the application of an indexing mechanism rather than through a full cost of service review. To address concerns for potential over-earnings, the Board imposed a revenue sharing mechanism.

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There is a difference of opinion between EGDI and some other parties as to what the appropriate ROE should be, and this was articulated in correspondence from EGDI, SEC, IGUA and CCC, dated January 22, 2004, February 5, 2004, February 5, 2004 and February 10, 2004 respectively. The respective positions were confirmed in the submissions filed in this proceeding.

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EGDI's understanding is that the appropriate ROE to use is 9.69% since it was the ROE used in the 2003 rate calculations, and that the 2004 rates were to be indexed relative to those approved 2003 rates. Furthermore, the 9.69% ROE is the last Board-approved ROE for consideration in 2004 rate calculations.

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SEC, IGUA, CCC and VECC hold that the appropriate ROE to use to determine expected EGDI earnings in 2004 is 9.41%, since this would be the ROE for 2004 if it had been calculated using the Board's *Draft Guidelines on a Formula-Based Return on Common Equity*.

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The impact of the two views on any 2004 savings to be shared with ratepayers is about \$2.5 million, as calculated in the updated Illustration of Alternative Treatments table, reflecting 6 months actual and 6 months forecast, submitted by EGDI on October 19, 2004 and which had been previously filed as an exhibit in the 2005 Test Year proceeding.

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In the Board's view, a key consideration in confirming the appropriate ROE percentage is that it be consistent with what the Board intended in its 2004 Test Year decision.

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In the 2004 Test Year oral decision dated September 4, 2003, the Board accepted the partial settlement that provided that rates for 2004 were to be set by applying an indexing mechanism to 2003 Test Year rates rather than through a full cost of service review. To alleviate the concerns that the Board had expressed about potential over-earnings in 2004, the Board had also accepted the Consumer Association of Canada's suggestion that an earnings sharing mechanism be added to the 2004 rate year as a way of providing ratepayer protection.

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There were two subsequent decisions that potentially could have had an impact on the earnings sharing mechanism particulars:

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• The Board's RP-2003-0048 Decision and Order, dated October 10, 2003, which varied its oral decision;
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• The Board's RP-2002-0158/EB-2002-0484 Decision, dated January 16, 2004, in the *Matter of Applications by Union Gas Limited and EGDI for a Review of The Board's Guidelines for Establishing Their Respective Return On Equity*.

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In these decisions the Board did not order or direct or elaborate on the topic of the 2004 Test Year Allowed ROE.

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In considering this matter, the Board notes that there were no provisions in any of the three decisions which allowed for the selective adjustment of the cost of service components of the 2003 rates for subsequent indexing to establish 2004 rates. The indexing mechanism was to be applied to the then existing rates for 2003; the cost of service components generating the 2003 rates were unaffected by the mechanism. For the 2003 Test Year, the Board-approved ROE underpinning the 2003 rates was 9.69%. There is no indication that the Board intended to include any changes to this ROE quantum as part of the earnings sharing calculation.

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Based upon the intent of the 2004 decision and the Board's view that the use of the 9.69% ROE does not lead to an unjust or unreasonable rate outcome for 2004 rates, the Board finds that an ROE of 9.69% shall be used in calculating the level of earnings for EGDI in 2004 for the purposes of determining earnings sharing with ratepayers.

35 **2. Treatment of the Non-Recoverable Receivable Charge**

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EGDI has asked the Board to confirm the treatment of the non-recoverable receivable in the 2004 earnings sharing determinations. EGDI noted in its letter that in the 2005 Test Year proceeding, intervenors had asked EGDI to re-file its illustration of 2004 utility earnings results to include the alternative treatment of excluding the \$26 million non-recoverable receivable as a charge to income and utility normalized earnings in fiscal 2004.

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EGDI described the non-recoverable receivable of \$26 million as the difference between the amount of \$50 million initially booked by EGDI in a Notional Utility Account and \$23.9 million which reflects the Board's decision to allow the recovery in rates of the amount in deferred taxes that became payable in the October 1, 1999 to May 7, 2002 period. EGDI indicated that accounting standards and guidelines require the charging of the non-recoverable receivable in 2004 thereby impacting the level of earnings that may be available for sharing with ratepayers.

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The submissions filed by SEC, CCC, IGUA and VECC took issue with the treatment that recognizes the \$26 million non-recoverable receivable as a charge to utility fiscal 2004 earnings. The submissions placed particular emphasis on the need, in the earnings sharing calculation, to differentiate between earnings for regulatory purposes and those for financial accounting and reporting purposes.

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The Board must determine whether the \$26 million non-recoverable receivable may be fairly and reasonably used to reduce the earnings in 2004 in calculating the share of earnings attributable to ratepayers in that year.

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EGDI's decision to write-off the \$26 million as a non-recoverable receivable based upon the Board's prior decisions is a clear indication that it was not recoverable from rates, either now or in the past.

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The coincidental accounting treatment of this write-off in 2004 should not now reduce the ratepayers' share of earnings in the year of the write-off. Earnings determinations should be unfettered by differing accounting treatments and related reporting inclusions and exclusions.

For these reasons, the Board finds that the \$26 million non-recoverable receivable should not be included as a charge in the 2004 earnings sharing calculation.

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The Board wishes to make clear that the findings in this Decision do not include a final determination of the ratepayers' share of any 2004 over earnings, which the Board hopes will be settled in an expeditious and cost effective process.

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The Board is hopeful that any earnings sharing adjustments could be incorporated in the anticipated rate orders to take effect January 1, 2005.

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Parties claiming costs for this proceeding shall submit their claims at the same time as the claims are to be submitted for the anticipated January 1, 2005 rate order and QRAM proceedings, if applicable.

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DATED at Toronto, November 24, 2004

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ONTARIO ENERGY BOARD

Original Signed by Bob Betts

On behalf of the Panel
Bob Betts
Presiding Member