

UTILITY DIVERSIFICATION

Stretching the Regulated Business



Presentation to IGUA Spring Seminar

May 6, 2010

Ian A. Mondrow, Counsel

EGD 2011 – 2014 DSM Deferral Account Application – February 2010

[EGD Evidence]

EGD and all stakeholders, including the Board itself, need to be ready and willing to stretch the boundaries of the regulatory framework if we are to collectively achieve the goals in conservation and emission reduction as set out by the Ontario government.

These [new green energy] technologies will challenge government, utilities and utility customers to change their views on the traditional role of utilities and how energy is provided to all Ontarians.

Policy Developments

Green Energy Act, 2009

Amendment of the gas distributor undertakings.

Ontario's climate change (GHG reduction) policy

Review of gas DSM – GHG reduction as a utility objective?

Enbridge 2010 Rates Application – “Green Energy Initiatives” [OEB Decision]

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.

Another reason for excluding such costs in rate base is that it significantly increases the risk to the ratepayer. The ring fencing of utility assets from non-utility assets, which began in 1985 for Enbridge and in 1986 for Union, was based on a concern that the diversification activities by the gas utilities would expose utilities' customers to undue risk.

Enbridge 2011 – 2014 STPP Deferral Account Application [OEB Decision]

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 NRCCAN CEF [Clean Energy Fund] 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.

Toronto Hydro Streetlight Repatriation Application [OEB Decision]

The interests of consumers are protected and economic efficiency is promoted where there is an appropriate separation of distribution and non-distribution assets and businesses. The Board cannot consider the expansion of the distribution system beyond that prescribed by legislation in the promotion of economic efficiency. This would be contrary to the underlying basis of the legislation which is to regulate distribution and to separate distribution from other activities. Similarly, the distributor's role with respect to conservation and demand management is appropriately limited to the provision of services in those areas, and not the ownership of load and load-related assets. Likewise, it is not necessary for the distributor to own load or load-related assets in order to develop a smart grid.

Enbridge 2010 Rates Application – “Green Energy Initiatives” [OEB Decision]

The ring fencing of utility assets from non-utility assets, which began in 1985 for Enbridge and in 1986 for Union, was based on a concern that the diversification activities by the gas utilities would expose utilities’ customers to undue risk.