Rep: OEB
Doc: 12KP7
Rev: 0

ONTARIO ENERGY BOARD

Volume: ISSUES DAY

19 DECEMBER 2002

BEFORE:

R. BETTS

PRESIDING MEMBER

G. DOMINY

MEMBER

1
RP-2002-0133 ISSUES DAY

2
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 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, 2002.

3
RP-2002-0133 ISSUES DAY

4
19 DECEMBER 2002

5
HEARING HELD AT TORONTO, ONTARIO

594
MR. DINGWALL: Before getting into he three issues, I want to get a little into the background about the Coalition, about its history, very briefly, and about where we are today that we haven't been for the last couple of years and why we're here with these issues today.

595
The HVAC Coalition has been intervening in Ontario Energy Board proceedings for approximately 10 years. Both their previous counsel are on either side of me, now in other roles, of course.

596
The Coalition's focus has been as a competitive industry trying to keep a handle, keep an eye, monitor and come to a common ground with Enbridge where we've, in the past, had both our feet in the same industry, our fingers knocking on the same doors, various types of corporate interrelations. At this point in time, uniquely over the past 10 years, Enbridge does not have an affiliate in the business. Enbridge has sold its affiliate to a third party; the third party, however, uniquely, has inherited the billing relationship with the customer. From what I understand from interrogatory responses, I understand that that relationship is going to continue until December 31st, 2005. That relationship involves not only the billing of existing hot water heater contracts, service contracts, et cetera, but also the marketing to new customers of those very same products and additional products through the utility bill. It also involves collection of amounts from customers through the utility bill for those products and services.

597
At this point in time, they're not an affiliate of Enbridge, there is some question -- frankly I submit there's no question -- of whether, if the HVAC has a concern about an abuse of that relationship, there's no question of whether or not they can come to this forum under a complaint through the affiliate code because the purchaser of those assets, of that company, is not an affiliate. It's an arm's length company owned by third parties. In the past, when the Coalition has had issues with the interaction between the utility bill and the affiliate and the whole billing relationship, there has been recourse through the affiliate code to come forward and to seek redress of what have been perceived as transgressions.

598
Now, in looking at where we are today, this is a rates case. This is the first opportunity in a number of circumstances to address the base O&M costs for the foreseeable number of years coming up. In that context we've tried to frame these issues in a fashion that puts them in not only relevance but also takes into account the shifting sands of new legislation and regulation. And when I woke up yesterday things were quite different by the time I went to bed. I found that gas distribution access rule had been proclaimed. There was a new requirement for "the gas distributors shall provide gas distribution services in a non-discriminatory manner, with distribution services meaning services related to the delivery of gas to a consumer, including related safety functions such as emergency leak response, line location, inspection, provision of safety information."

599

That relates, to a certain extent, to 16.1. And this issue has been kind of a placeholder over the last couple of years. It comes up every once in a while as the rules change and as the sands shift and as O&M base rates cases come up again and as the interaction between the parties changes, through different affiliations, different contractual relationships, different shifts in the market structure. It becomes necessary again to have a look at where things are, possibly cover things off through interrogatories, see how the utility is contracting with subcontractors who are HVAC dealers, essentially, with the same professional qualifications, the same type of service people, how they are contracting with them, in a fashion that meets the requirement of objectivity and monopoly. And it's conceivable that this issue may fall off the table once we've completed the interrogatory process, as that was the focus of this issue.

600
The second two issues relate to what we have in the market with a competitor who is unregulated having what appears to be exclusive access to the utility bill for the ongoing billing and ongoing marketing of customers. And within that we've tried to frame 16.2 in a fashion which acknowledges the types of tests that come up in an O&M review period. We'd originally proposed that 16.2 and 16.3 be subsumed under the issues of affiliate outsourcing with respect to the CWLP relationship, and in asking the question of clarification on issues day, there was disagreement with the company on whether or not they would agree that these concerns be subsumed within that issue. I'd suggest that we look to have the relevance of that confirmed through this disputed issue which has been presented under other items.

601
So with respect to this particular issue, 16.2, the intention is to review "The implications to ratepayers and the competitive HVAC marketplace of HVAC and other ancillary services charges continuing being billed and collected through the utility gas distribution bill."

602
There is some probative requirement that this be reviewed in order to determine whether there is a benefit or a burden to the ratepayers, which is a legitimate test of the relationship, we would submit, under the outsourcing criteria as discussed in 00132, the decision that came out yesterday. And the need to also determine whether there is an impact in the way that the structure is set up through the relationship.

603
The CWLP contract was approved solely on an O&M cost base in the last proceeding. It was suggested within the decision framework that it was necessary to look at the prudential aspects of it: Whether this aspect was prudently entered into, what the terms and conditions are. And to that extent, we've asked a number of interrogatories, some of which have borne fruit in the near term. One interrogatory has determined that when a customer does not pay their whole bill, or it's a combined bill which has HVAC services and utility services on it, that the cost allocation is not first to the utility services which is the law in

many jurisdictions. The cost allocation is more of a combination, and the formula wasn't specified within the interrogatory response.

604
That raises the question of whether or not there is a competitive subsidy through the billing and through the collection structure in the CWLP contract. We'd like to explore that further. We believe that could be to the detriment of the ratepayers. We believe that could be to the detriment of the competitive marketplace.

605

In addition, we've asked a number of interrogatories on what the collection procedures are. If both charges are on the same bill, and Enbridge is the only company that's -- pardon me, Enbridge Gas Distribution, just so we're clear -- is the only company that's making an effort to do the collection, what are the parameters of the collection? Is there, through the rendering of those efforts, an additional competitive subsidy?

606
These are all questions which need to be answered and which need to be answered in order to give an indication of whether this relationship has been prudently entered into, whether it's appropriate, and what impacts, if any, there are on the competitive marketplace.

607
The third question raised as an issue here is what are "the implications and appropriateness of having only one party have exclusive access to the gas distribution bill for the billing and collection of HVAC services."

608
It's the intention of the Coalition to call evidence showing a refusal on the part of one of the Enbridge companies, and it's not clear from the correspondence which one it is yet, to allow another party onto the bills to provide a similar type of service. It's also the intention of the Coalition to call evidence that there is a significant economic value to having that service on an exclusive basis, if even at all.

609
One of the other questions that comes about is how is that value reflected to the rate base. In another interrogatory response, I believe to Board staff, one requesting the fee structure, the only benefit that appears quantified is a reduction in the bill printing cost in the event that there are two companies on the bill; the printing cost is cut in half. It doesn't discuss what other cost savings there might be, what other cost savings there could be in the future to ratepayers in the event that other parties were permitted access to the bill.

610
So the question comes about as part of this prudential review, is it appropriate for there to be exclusive access to one party for the bill.

611

Now, those are the, I guess, substantive portions of what these issues are supposed to cover, and I've talked about the absence of jurisdiction outside of this room due to the lack of affiliation to the purchaser of the service company. In addition to that, it's submitted respectfully that this Board does have a mandate to oversee the competitive marketplace. Within the Board findings on the HVAC complaint at paragraph 4.7.1, it is stated that the code has two principle objectives. First, to ensure that in the long term the actions of a regulated monopoly do not frustrate the operation of a competitive market, and, secondly, to ensure utility ratepayers are not harmed.

612
That's the way in which we framed the issues in order to try to encompass that goal. Moving further to the next paragraph: "The Board believes that these two objectives are intertwined. The Board recognizes that in this case -- particular case ECG's customers who were transferred ESI are also ratepayers. Therefore, in the long run it is in the interests of utility ratepayers that competitive markets operate openly and freely without undue influence from monopoly utilities."

613

Now, in moving on a bit, there were some discussions yesterday with respect to the Enbridge 2002 case, which is RP-2001-0032, under chapter 5.11.75, remedies and jurisdiction. In the Board's view, in order to fulfil the statutory objective of facilitating competition in the sale to gas users -- from the sale of gas to users, the Board must take into account all stages in the distribution chain. Merely because neither section 2 nor subsection 36.1," and they're referring to the OEB Act, "specifically refer to energy services, competitive services, competitive businesses, competitive markets, competitive energy activities, or competitive wholesale services does not mean that the Board should not be aware of these activities and take them into account when overseeing the regulated activities of ECG."

614
With to respect the jurisdiction of the Board as well, within the HVAC complaint decision, after making the determination that the bill was not a "utility service" as utility services was defined in the Affiliate Relationship Code, in pondering what remedies ought to be put in place in respect of this individual -- the transgressions that occurred that brought about the complaint, at chapter 4.7.24, it was stated that "the Board will not require ECG to bill separately from ESI at this time," implying that it was the Board's perception of its own power at the time the decision was written that it could have, or it could order a separation of the billing for non-competitive functions versus regulated functions.

615
Additionally, the Board has gone further in the gas distribution access rule-making to order that the utilities must accommodate vendor-consolidated billing where a retailer will be billing the distribution charges.

616

So I make those points to point out or to suggest that, dispute Mr. Cass's statement earlier in the day that a utility -- or the billing is not a utility service, per se, the Board does have a perception and that it has the power to make orders that bind the utility with respect to issues relating to how customers are billed.

617
Now, with respect to -- with respect to yesterday's decision in the Enbridge Gas Distribution case, there was also some discussion about what concerns must come about over pricing of outsourced transactions. At paragraph 5.11.43, it was stated that the utility must establish not merely that the affiliate outsourcing arrangements are cost neutral to the utility. These arrangements must in fact be of benefit to the utility. In other words, it would make no business sense for a utility to enter into outsourcing arrangements with an affiliate or third party unless the costs incurred for the same quality of service would be less than those incurred directly by the utility performing the service. This is particularly true when, as discussed above, the outsourcing arrangements raise a number of concerns that do not directly relate to the cost of the product or service, such as loss of expertise and loss of independence." Independence was raised as an additional critique of the whole outsourcing process which occurred in the past proceeding. Paragraph 5.11.23: "The Board also shares the concerns expressed by many intervenors concerning the potential for lack of independent action on behalf of ECG. As discussed in greater detail below, the Board reminds the management of ECG that it has an obligation to act independently from its shareholders with a view to acting in the best interests of the utility and its ratepayers."

618
Additionally, and why we think we're in this hearing and not in some other proceeding, there was no prudential review done on the previous proceeding of the outsourced arrangements. At paragraph 5.11.2, the Board also notes that the proceeding did not involve the potential review of ECG's affiliate outsourcing arrangements. Indeed, such a review was not possible since the outsourcing fees are included in ECG's TPBR plan and ECG refused to disclose the fees in this proceeding."

619

Finally, at paragraph 5.11.20, within that same decision, it's stated that the Board is not satisfied that merely maintaining the service quality indicators of the TPBR plan is sufficient to demonstrate improved quality service sufficient to justify ECG's affiliate outsourcing arrangements."

620
So with respect to all these points, it's submitted that not only are these issues appropriate and necessary for this hearing, but this is the best place for them to be. These issues involve a comprehensive review of an affiliate outsourcing arrangement which has never taken place before because of the structure of the last hearing. These issues involve the competitive marketplace which is clearly in the purview of the Board. These issues involve the impact of these outsourcing arrangements to ratepayers. It's respectfully submitted that that is why they should be in this hearing.

Additionally, with the absence of applicability of the affiliate code through that whole structure, there is no other forum in which to raise a complaint in the event of a transgression. Thank you.