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August 3, 2020

VIA RESS

Ms. Christine E. Long
Registrar & Board Secretary
ONTARIO ENERGY BOARD
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Ms. Long:

Re: EB-2020-0156: Industrial Gas Users Association (IGUA) Motion for Review and Variance of part of the *Decision and Order* dated May 14, 2020.

IGUA's Reply Submissions.

Filed herewith are IGUA's Reply Submissions in respect of its Motion for Review.

These submissions were due on July 31st, which was this past Friday. While they are thus late, we are filing them prior to the next business day, and since these are the final submissions in this matter no party will be inconvenienced and the Board's process should not be materially impacted. We do nonetheless apologize to the Board for the late filing.

Yours truly,



Ian A. Mondrow

- c. Dr. S. Rahbar (IGUA)
M. Kitchen (EGI)
D. Stevens (Aird & Berlis LLP)
K. Viraney (OEB Staff)
Intervenors of Record

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ONTARIO ENERGY BOARD

Industrial Gas Users Association (IGUA)

**Motion to Review and Vary Decision and Order
dated May 14, 2020 (EB-2019-0194)**

IGUA REPLY SUBMISSIONS

Introduction

1. Review of the submissions in response to IGUA's motion for review reinforce the conclusion that there is no real dispute regarding the current inequity in the allocation of Panhandle System costs, or with EGI's proposal as filed in the EB-2019-0194 Application for 2020 Rates proceeding (2020 Rates Proceeding) for addressing that inequity.
2. As EGI noted in its Submissions on IGUA's Motion;¹

Parties in the 2020 Rates proceeding did not raise substantial concerns with the cost allocation methodology proposals advanced by Enbridge Gas, including the proposal related to the Panhandle Project costs. However, parties were divided on the timing and approach for implementation.

3. The 2020 Rates Proceeding Hearing Panel (Hearing Panel) expressly accepted that *"the existing cost allocation over time has resulted in changes to the costs and benefits to certain parties since the OEB approved Union Gas 2013 cost allocation study"*.²
4. The evidence before the Hearing Panel was, in fact, more definitive. As noted by EGI in its Argument in Chief in the 2020 Rates Proceeding (and reiterated by reference by EGI

¹ EGI Submissions on Motion, paragraph 13.

² EB-2019-0194 Decision and Order, May 14, 2020, page 17, 2nd full paragraph.

in its Submissions on Motion), with full reference to the evidence in the 2020 Rates Proceeding;³

Union's 2013 Board-approved cost allocation study classified the demand-related costs for the combined Panhandle System and St. Clair System as Ojibway/St. Clair Demand. [Reference in original: Exhibit B, Tab 1, Schedule 1, Appendix C, paras. 21-22] Prior to the addition of the Panhandle Reinforcement Project, combining the Panhandle System and St. Clair System was reasonable because the systems had similar costs per unit of demand. With the inclusion of significant costs to the Panhandle System only as a result of the Panhandle Reinforcement Project, the use of the Ojibway/St. Clair demand allocation methodology no longer reflects the costs to serve customers on each of the respective systems. [Reference in original: Exhibit B, Tab 1, Schedule 1, Appendix C, para. 23]

5. In its June 30, 2020 Submissions in support of this motion, IGUA details its concerns with the manner in which the Hearing Panel addressed in its *Decision and Order* the issue of equitable allocation of Panhandle System costs (Cost Allocation Determination) that has been live before this Board since 2016. As stated in IGUA's Submissions on Motion, in summary⁴;

These reasons dealt neither with the previous expressly stated expectations of the Board that the matter would be imminently "addressed" and why that was no longer appropriate, nor with the acknowledged inequities of the current allocation of Panhandle System costs and the evidence that these functionally discrete costs could, and should, be more equitably allocated without disruption of the current basis of allocation of EGI costs to rate classes. Nor did those reasons address the position argued by IGUA that those parties arguing against addressing the matter now were simply rearguing positions previously argued and rejected by the Board in the Merger Decision.

6. IGUA maintains that the shortcomings of the Hearing Panel's reasoning summarized in the foregoing passage and detailed in IGUA's Submissions on Motion render the Cost Allocation Determination legally deficient, and thus merit a review of that determination by the panel of the Board considering this motion (Review Panel).
7. IGUA further maintains that a review of the issue with disciplined consideration of the evidence in the 2020 Rates Proceeding and in light of previous determinations on the issue by this Board, all as articulated in the arguments of IGUA and other parties in the 2020 Rates Proceeding will lead the Board to conclude that the misallocation of Panhandle

³ EGI Submissions on Motion, Appendix A, paragraph 38.

⁴ IGUA Submissions on Motion, paragraph 4.

System costs has resulted in an undue and inequitable cross-subsidy. That undue and inequitable cross-subsidy has been flowing from customers not served by the Panhandle System to those served by that system and who drove the \$264 million reinforcement of that system that went into (then) Union Gas rates in 2018.

8. Concerns regarding this misallocation of costs prompted the Board panel that approved the merger of Enbridge Gas Distribution and Union Gas, and the rate plan under which EGI currently operates, to direct as an element of that rate plan that EGI file a proposal to address the issue in 2020 rates (Cost Allocation Directive).
9. IGUA is asking this Review Panel to consider the matter duly informed, but not wholly constrained, by the incentive regulation mechanism (IRM) objective of “*rate stability and predictability*”, and direct EGI to file a rate design proposal for implementation in 2021 rates which addresses this inequity.
10. Board Staff in its Submission on IGUA’s motion concludes that IGUA has met the threshold under Rule 43 for review of the Cost Allocation Determination. No other so concedes.
11. In these reply submissions we address the threshold question under Rule 43 and the merits of the motion in tandem. IGUA’s substantive response to the arguments raised by those parties opposing IGUA’s motion on the merits also underscores that the Hearing Panel did not address any of these substantive arguments, one way or the other, in its Cost Allocation Determination. It is this lack of substantive reasoning which renders the Cost Allocation Determination legally deficient, as demonstrated in IGUA’s June 30th submissions in support of its motion.
12. These reply submissions should be considered in conjunction with IGUA’s June 30th Submissions on Motion, which in turn refer to and incorporate IGUA’s Argument in the 2020 Rates Proceeding, all of which IGUA relies on as filed.

Consistency with Previous Board Decisions

13. Those parties supporting continuation, pending rebasing, of the current inequitable allocation of Panhandle System costs cite in support of their positions previous Board decisions to defer re-allocation pending rebasing, so as to maintain the “*rate stability and*

predictability” which IRM plans, like that under which EGI is currently operating, seek to achieve.

14. For example, OGVG states in its submission⁵;

... the issue raised by IGUA is really limited to the appropriate time for updating the allocation of costs between customers, which is itself not, in OGVG’s view, a particularly complicated issue; the OEB has consistently decided that the appropriate time to update the allocation of costs between customers is not in an IRM application, but rather in the context of a full rebasing application.

15. Kind of, but not quite.

16. As catalogued in IGUA’s Submissions, each of the previous decisions from and after approval of the Panhandle System Expansion Project that addressed Panhandle System cost allocation concerns in particular indicated precisely what length of deferral of Panhandle System cost reallocation the Board considered reasonable, and precisely when the Board expected the issue to be addressed:

- (a) In the EB-2016-0186 decision on (then) Union Gas’ Panhandle Reinforcement Leave to Construct, the Board indicated that deferral for 14 months was acceptable, until 2019, the end of Union’s then current IRM term.⁶
- (b) In the EB-2017-0087 (Union Gas 2018 rates) Procedural Order No. 3 regarding IGUA’s proposed evidence of the cost allocation inequity, the Board reiterated that deferral was appropriate during the balance of Union’s then current IRM term, and pending the outcome of the Union/Enbridge merger application then ongoing, until the setting of 2019 rates.⁷
- (c) Later in the EB-2017-0087 proceeding, in its *Decision and Rate Order*, the Board determined, for the 3rd time, that (our emphasis);

*The issue of the allocation of these [Panhandle System] cost on a going-forward basis to Union rate classes will be dealt with in Union’s 2019 rates proceeding.*⁸

- (d) In the EB-2017-0306/0307 (Merger Case) *Decision and Order* (Merger Decision) the Board, in conjunction with its determination of EGI’s current rate plan;
- (i) noted its **“concern”** about cost allocation issues in respect of, *inter alia* the Panhandle and St. Clair Systems.

⁵ OGVG submission, page 5, 3rd full paragraph.

⁶ IGUA Submissions on Motion, paragraph 12(i).

⁷ IGUA Submissions on Motion, paragraph 12(k).

⁸ IGUA Submissions on Motion, paragraph 12(l).

- (ii) directed EGI to file a cost allocation study **“for consideration in the proceeding for 2020 rates”**, and that **“proposes an update to the cost allocation to take into account”**, *inter alia*, the Panhandle and St. Clair Systems; and
 - (iii) accepting that the cost allocation proposal directed will not be perfect, nonetheless indicated that it was **“intended to address the cost allocation implications of”**, *inter alia* the Panhandle and St. Clair Systems.
17. Parties opposing IGUA’s motion have submitted that the Merger Decision does not require that the misallocation of Panhandle System costs be dealt with in the 2020 Rates Proceeding.⁹ That is true. The Merger Decision hearing panel could not as a matter of law bind the hearing panel on EGI’s 2020 Rates Proceeding.
 18. There can be no reasonable debate, however, that in all 4 of the decisions which addressed allocation of significantly (17 times) increased Panhandle System costs, the Board anticipated that the matter would be imminently (first for 2019 and then, when it became apparent that there would be no 2019 rebasing, for 2020) addressed. That is, prior to the Merger Decision the Board determined (3 times) that deferral of rectification of the issue was acceptable until 2019. When the matter was not addressed for 2019, the Board directed that it be addressed for 2020.
 19. Consistency in Board decisions on this particular issue requires that the issue now be addressed, and not further deferred, unless there is some reasoned basis on which to further defer addressing the issue.
 20. The 2020 Rates Hearing Panel could have concluded that the Merger Case hearing panel was simply wrong, but they did not say that, and they certainly provided no analysis on which that conclusion can be drawn.
 21. The 2020 Rates Hearing Panel could have concluded that new information regarding the impacts of re-allocation of Panhandle System costs indicates that the determination of the Merger Case hearing panel merits revisiting. Board Staff, SEC and VECC have so submitted, suggesting that the Merger Decision hearing panel did not have the substantive information before it that the 2020 Rates Hearing Panel had in respect of the impacts of

⁹ OEB Staff Submissions, page 7, last paragraph; CME Submissions, paragraph 71.

reallocation Panhandle System costs.¹⁰ That is not in fact the case, however. The Merger Case hearing panel had substantially similar information regarding these impacts as did the 2020 Rates Proceeding Hearing Panel.¹¹ In any event, the 2020 Rates Proceeding Hearing Panel did not say this either.

22. The 2020 Rates Proceeding Hearing Panel's reasons reflect no consideration of the Board's previous decisions to the indisputable effect that the Panhandle System cost allocation concerns raised by parties, including IGUA, should be addressed in 2019, and then (when rebasing was deferred) in 2020.

EGI's IRM Framework

23. SEC and OGVG both submit that the IRM framework under which EGI's rates are to be determined precludes cost allocation changes.
24. SEC suggests that the decoupling of costs from rates that is the basis of incentive regulation was ordered by the Merger Case hearing panel to continue until 2024.¹² OGVG states¹³ that;

The problem that IGUA faces in this instance is that the IRM framework under which EGI is operating and which the OEB is applying when setting rates for EGI until 2023 as a result of the MAADs application decision specifically and intentionally ignores the changes in costs that IGUA's requested relief depends on.

25. What both SEC and OGVG fail to acknowledge is that the rate setting mechanism for EGI, as determined in the Merger Decision, expressly includes revisiting for 2020 rates the appropriate allocation of costs of the Panhandle System. The Merger Case hearing panel was concerned with the current allocation of these costs, and directed deferral for another 5 years of rebasing of rates for EGI expressly on the basis that, though imperfect, EGI

¹⁰ SEC Submissions, page 4, last full paragraph; Board Staff submissions, page 8, top; VECC Submissions, paragraph 9.

¹¹ For example; **EB-2016-0186**, ExA/T8 pages 5-12; EB-2017-0087, ExB.IGUA.1, Ex.B.IGUA.2, Attachment 1, Ex. B.IGUA.4; ExJ1.2; **EB-2017-0306/0307** IGUA Argument, paragraphs 47-52 and evidence cited therein; **EB-2019-0194** (2020 Rates Case) IGUA Argument and evidence cited therein.

¹² SEC Submission, page 1, last paragraph.

¹³ OGVG Submission, page 4, 2nd full paragraph.

would file a proposal to update cost allocation to take into account, *inter alia*, the allocation of Panhandle System Costs, and that this proposal would be considered for 2020.

26. IRM period “decoupling” of costs from rates is not limitless, either in time (as indicated by the Board’s clear expectations in previous decisions that the misallocation of Panhandle System costs would be imminently addressed) or scope (as evidenced by the pass through of Panhandle System Reinforcement costs to rates in the first place).
27. IRM plans include rebasing as an essential element to ensure that rates remain “just and reasonable”. As SEC has pointed out in its submission¹⁴, at the time that rebasing and a new cost allocation was due it was instead delayed for a further 5 years and divergences of rates from costs were continued. EGI recognized this point in its Reply in the 2020 Rates Proceeding, which states;

*... Enbridge acknowledges that parties such as APPrO and IGUA expected that cost allocation methodology changes for the Panhandle Reinforcement Project would have been implemented in 2019 but for the amalgamation of EGD and Union and the MAADs Decision to defer rebasing until January 1, 2024. However, those significant events did take place, and they changed the ratesetting context for Enbridge Gas and its customers. ...*¹⁵

28. As noted above, however, the “ratesetting context” as changed by the Board in the Merger Decision expressly included direction for a proposal to address, *inter alia*, concerns about the allocation of Panhandle System costs.
29. IGUA is not seeking a departure from the rate making framework for EGI put in place in the 2020 merger and rate plan decision. Quite the opposite, it is seeking that rates for EGI during the deferred rebasing period be implemented in accord with the rate making framework directed by that decision, including the provision in that framework for addressing the inequitable allocation of Panhandle System costs now. It is not IGUA that is “cherry picking”¹⁶. It is those arguing for implementation of an IRM Plan in all material respects except the one that would remove a cross-subsidy benefiting their constituents.

¹⁴ SEC Submission, page 1, 3rd paragraph.

¹⁵ EB-2019-0194 Reply Argument of Enbridge Gas, paragraph 67.

¹⁶ CME Submission, paragraph 73.

30. OGVG¹⁷ and VECC¹⁸ have suggested that IGUA's submissions in support of its motion mischaracterize the Merger Decision on this point, reading into it more than intended. The suggestion is that the Merger Decision hearing panel did not intend for rates to be adjusted in accord with a revised cost allocation for the specific projects that it was concerned about. We disagree.
31. IGUA does not argue that the 2020 Rates Hearing Panel had no discretion to reject cost allocation changes brought forward by EGI in response to the cost allocation directive in the Merger Decision. IGUA does argue, however, that in doing so the Hearing Panel *"bears the justificatory burden of explaining the departure in its reasons... thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers"*.¹⁹
32. The courts have been very clear; if an administrative tribunal is going to revisit and reverse a previous decision, it must do so in a disciplined way and demonstrate and explain its determination. It must bring to bear *"the discipline of reasons"*²⁰.
33. Consistency in Board decisions on this particular issue requires that the issue now be addressed, and not further deferred, unless there is some reasoned basis on which to further defer addressing the issue.

Changes During IRM

34. OGVG²¹ and VECC²² seem to argue that evidence of unjustness and unreasonableness in the current allocation of Panhandle System costs is (according to VECC), or can be (according to OGVG), irrelevant once an IRM rate plan is directed. Even had the Board not, in determining EGI's 2019-2023 rate plan, expressly carved out for consideration reallocation of the costs of certain projects, including the Panhandle System Reinforcement, the position that evidenced rate making inequities are "irrelevant" during an IRM period is contrary to the continuing legal obligation of this Board to ensure that

¹⁷ OGVG Submissions, page 6, last two paragraphs;

¹⁸ VECC Submissions, paragraph 8.

¹⁹ Vavilov, paragraph 131, as cited in IGUA Submissions on Motion, paragraph 34.

²⁰ Vavilov, paragraph 80, as cited in IGUA Submissions on Motion, paragraph 28.

²¹ OGVG Submissions, page 7, first full paragraph and end of 2nd full paragraph.

²² VECC Submissions, paragraph 14.

rates are, and remain, just and reasonable. Acceptance of such a position by the Board would be tantamount to an abdication of its jurisdiction, which would be contrary to law.

35. It may be that the Board determines, despite the evidence, that departure from rate equity is warranted for some period of time (as the Board determined in 2017 and 2018 in respect of Panhandle System costs pending rebasing in 2019), or outweighed by other considerations (as parties in response to IGUA's motion assert the Hearing Panel determined, though no basis for such determination is apparent in the reasons provided), but the evidence itself cannot be said to be "irrelevant". In any event, no such determination is reflected in the impugned reasons, which are silent on the evidence.
36. OEB Staff refers in its Submission to two previous decisions of the Board addressing proposals by Horizon utilities to update cost allocation based on updated load profiles for one class of customers, but not others.²³ Those determinations provide little guidance in respect of the issue of Panhandle System costs for which EGI has provided (in the current case as in the 2017 and 2018 cases) better information on allocation of these costs to all rate classes.
37. Staff then goes on to cite reasoning from the Hearing Panel from Union's 2018 rate decision to the effect that any cost allocation changes should be done based on a "*comprehensive, system-wide full cost allocation study*".²⁴ This is the same argument made by many parties in the Merger Case, and rejected by the Merger Case hearing panel in directing the 2020 Rates Proceeding cost allocation study even while expressly recognizing, in response to that same argument, that the proposal will not be perfect.

Revenue to Cost Ratios

38. OGVG and Board Staff both include in their submissions reference to the revenue to cost ratios for various rates classes resulting from adoption of EGI's proposed cost allocation methodology. OGVG reviewed this issue in its argument in the 2020 Rates Proceeding. For OEB Staff, this is a new argument not previously made.

²³ OEB Staff Submission, page 6, bottom paragraph to page 7, top paragraph.

²⁴ OEB Staff Submission, page 7, 2nd full paragraph.

39. In its argument in the 2020 Rates Proceeding OGVG noted that the evidence indicates that even with costs of the Panhandle System more accurately allocated in accord with EGI's proposal in the case, the revenue to cost ratio (based on current revenues) for the T2 rate class "*falls within .15 of 'unity'*".²⁵ What the evidence shows²⁶ is that under a more appropriate allocation of Panhandle System costs, T2 rates over-recover by 14.8% (just under ".15 of 'unity'"), moving from an over-recovery of 3.5% prior to reallocation of Panhandle System costs; i.e. moving significantly away from unity.
40. OGVG's argument in the 2020 Rates Proceeding refers to the Board's *EB-2010-0219 Report of the Board: Review of Electricity Distribution Cost Allocation Policy* in support of the notion that revenue to cost ratios in the range now apparent for T2 customers remains acceptable. OEB Staff's new argument in response to IGUA's motion is to the same effect.
41. What the referenced policy in fact requires is that "*distributors should endeavour to move their revenue-to-cost ratios closer to one if this is supported by improved allocations*".²⁷ Pursuant to the Merger Decision cost allocation directive we now have improved allocations for Panhandle System costs; i.e. the improved allocations contemplated by the referenced Board policy.²⁸ Accordingly, the Board's policy does not support a revenue to cost ratio for T2 customers that has now moved significantly away from unity. Further, such revenue to cost ratio movement in this instance is not the result of cost efficiencies during an IRM when costs are changing but customer's rates are not increasing (the situation referenced by OGVG in its submissions). Rather they are in large measure the result of passing through, to the wrong customers, the revenue requirement impact of \$264.5 million in Panhandle System expansion costs. Again, the Hearing Panel's reasons reflect no such deliberations.

²⁵ OGVG 2020 Rate Proceeding Argument, page 6, 2nd last paragraph.

²⁶ EB-2019-0194, Exhibit B, Tab 1, Appendix C, Working Papers Schedule 4, page 1, line 14.

²⁷ *EB-2010-0219 Report of the Board: Review of Electricity Distribution Cost Allocation Policy*, page iii, bottom and page 36, first full paragraph.

²⁸ See also *EB-2010-0219 Report of the Board: Review of Electricity Distribution Cost Allocation Policy*, page 8, second full paragraph.

Further Cost Allocation Changes In 2024

42. SEC continues to voice opposition to addressing Panhandle System cost misallocations now on the basis of a further change in rates being likely when EGI rebases for 2024.²⁹ This is one piece of information which the Hearing Panel in its decision did reference. The Hearing Panel stated (our emphasis):

The OEB acknowledges that the current cost allocations are outdated; however, attempting to make selected changes at this time will be disruptive to the predictability of rates and result in more changes in 2024.

43. While there will in all likelihood be cost allocation changes in 2024, there is absolutely no evidence on the record that addressing the Panhandle System cost misallocation now will result in further changes in 2024, or that further changes in 2024 will in any fashion undermine or work opposite to rectifications made now to Panhandle System cost misallocations. To the extent the 2020 Rates Hearing Panel based its determination on this assumption, it did so without any supporting evidence, without any explanation, and as a “bald” conclusion.
44. Further, no mention was made in the Hearing Panel’s decision of the argument advanced by IGUA³⁰ that with further changes in rates in 2024 would come further tools to manage such changes and mitigate customer impacts.
45. In any event, even if there are further significant changes in rates, that in itself is not justification for not proceeding with changes that would rectify a current inequity in rates, and, indeed, no such justification was suggested in the Hearing Panel’s decision.
46. On the other hand, there was considerable evidence before the Hearing Panel, as comprehensively cited in IGUA’s Argument in the proceeding, that Panhandle System costs are functionally discrete, were not contemplated in the current Board Approved cost allocation methodology, and can be addressed without disruption to that methodology, as (then) Union Gas had proposed to do. The Hearing Panel does not address this position or the supporting evidence at all in its determination.

²⁹ SEC Submissions, page 5, last full paragraph.

³⁰ EB-2019-0194 (2020 Rates Application) IGUA Argument, paragraph 58; IGUA Motion Submissions, paragraph 58.

Sufficiency of Reasons

47. Board Staff³¹ and CME³² submit that the 2020 Rates Hearing Panel was live to these issues, as evidenced by recitation in its reasons for decision of IGUA's positions. Reasons that simply summarize arguments made and then state a peremptory conclusion will rarely assist in understanding the rationale underlying a decision, and are no substitute for analysis.³³ “[A] reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts...”³⁴. The Hearing Panel’s decision on allocation of Panhandle System costs presents no analysis, no assistance in understanding the rationale for departure from 4 previous decisions regarding the appropriate time to address the issue, no consideration of any facts, and is, with all due respect, not reasonable.
48. SEC submits that a reviewing panel should not set aside a finding of fact by the original panel.³⁵ There are no findings of fact presented by the original panel.
49. SEC further submits that most decisions the Board makes require the balancing of various competing considerations and interests. In a similar vein, CME submits that the reasons indicate that the Hearing Panel “weighed” the evidence, and that once the Hearing Panel “reviewed the impacts of EGI’s cost allocation study, it determined that the cost of implementing the study outweighed the benefits.”³⁶ There is no such balancing of competing considerations and interests, or weighing or reviewing of evidence or costs vs. benefits, reflected in the Hearing Panel’s decision.
50. A number of parties seek to construct a “coherent and rational chain of analysis” that supports the Hearing Panel’s decision. Problem is, the Hearing Panel itself presents no such analysis. Board Staff³⁷, CME³⁸ and OGVG³⁹ are interested parties, and are free to present argument. It is not for them, however, to render decisions. That is the responsibility

³¹ Staff Submissions, page 6, first full paragraph;

³² CME Submissions, paragraphs 31, 49, 59 and 63.

³³ Vavilov, paragraph 102, as cited in IGUA Submissions on Motion, paragraph 32.

³⁴ Vavilov, paragraph 85, as cited in IGUA Submissions on Motion, paragraph 30.

³⁵ SEC Submission, page 3, 2nd last paragraph.

³⁶ CME Submission, paragraphs 55-56, 63 and 72.

³⁷ Board Staff Submissions, page 8, first full paragraph;

³⁸ CME Submissions, paragraphs 47-50 and 71-72.

³⁹ OGVG Submissions, pages 7-8.

of the Hearing Panel, and in this instance, with all due respect, that responsibility was insufficiently discharged.

51. In the face of the substantially similar evidence regarding cost allocation that was no longer reasonable as was before the previous Board panels in 2017, 2018 and 2019⁴⁰, and the same arguments⁴¹ against re-allocation of Panhandle System costs in deference to “*rate stability*”, “*rate predictability*” and avoiding “*cherry picking*”, the 2020 Rates Proceeding Hearing Panel took no apparent notice of the 4 previous decisions of the Board cited by IGUA in its argument in the case, and instead, in perfunctory reasons, simply cited the foregoing principles and deferred rectification for another 3 years.
52. SEC submits that IGUA’s characterization of the Hearing Panel’s decision on cost allocation as “*one page of perfunctory reasons*” is unfair. With respect, and unfortunately, we must disagree.
53. SEC concludes its submissions by noting that what the law as comprehensively articulated in Vavilov requires “*is that administrative decision-makers ‘meaningfully grapple with key issues or central arguments raised by the parties’*”.⁴² We agree with this.
54. SEC goes on, however, to assert that the 2020 Rates Hearing Panel did that, noting that it “*recognized IGUA’s central contention*” but, “*when considering other factors*” it disagreed, and proceeded to “*exercise[] its discretion based on the evidence before it*”. OEB Staff similarly refer to a “*balancing exercise*” undertaken by the Hearing Panel.⁴³ Saying this does not, however, make it so.
55. In fact, there is no indication in the decision review of which is sought that other factors were considered, or of the evidence based upon which SEC asserts that the 2020 Rates Hearing Panel exercised its discretion. As already noted, reasons that simply summarize arguments made and then state a peremptory conclusion will rarely assist in understanding the rationale underlying a decision, and are no substitute for analysis.⁴⁴

⁴⁰ For example; **EB-2016-0186**, ExA/T8 pages 5-12; EB-2017-0087, ExB.IGUA.1, Ex.B.IGUA.2, Attachment 1, Ex. B.IGUA.4; ExJ1.2; **EB-2017-0306/0307** IGUA Argument, paragraphs 47-52 and evidence cited therein; **EB-2019-0194** (2020 Rates Case) IGUA Argument and evidence cited therein.

⁴¹ VECC Submission, page 2, bottom to page 3, top.

⁴² SEC Submissions, page 6, bottom.

⁴³ OEB Staff Submissions, page 8, last full paragraph.

⁴⁴ Vavilov, paragraph 102, as cited in IGUA Submissions on Motion, paragraph 32.

56. SEC asserts that⁴⁵ *“the Decision may not be as long as IGUA appears to have wanted, but it did engage with the important elements of the issue”*. With respect, stating principles is not engaging with the issues or the evidence. The Hearing Panel stated its principle – *“rate stability and predictability”* – and it recited the positions of the parties, but it did not engage with the issues, the evidence, the positions, or the expectations of the 4 OEB panels which came before it and all of which expected that the issue would, by now, be resolved.

Appropriate Relief

57. SEC has suggested that if the panel considering this motion (Review Panel) agrees with IGUA, it should remit the matter to the original Hearing Panel for determination.
58. EGI in its Submissions on Motion has indicated that the Review Panel should make a determination of how Panhandle System costs are to be addressed⁴⁶, and that as indicated in the 2020 Rates Proceeding EGI requires 3 months after a Board decision to prepare and file a rate design proposal for adjustment of 2021 rates to reflect changes in the cost allocation methodology for the Panhandle Project⁴⁷.
59. Returning this matter for reconsideration by the Hearing Panel would be inefficient, given that this Review Panel will have considered all of the evidence and positions on the matter. The concerns of EGI’s T2 customers have been deferred 4 times already. IGUA thus requests that should this Review Panel grant IGUA’s motion, that it also determine the matter of allocation of Panhandle System costs for 2021 and beyond and direct EGI to address such determination as part of its 2021 rates application, which has already commenced⁴⁸, so that it can be addressed in a timely fashion.
60. OEB Staff in its submissions refer to total bill impacts of Panhandle cost misallocations being in the range of 1% for T2 customers. Staff suggest that this justifies continued cross-subsidies of several million dollars in 2019, and continuing annually thereafter, from customers whose rates will be higher for no concomitant service benefit to those in fact

⁴⁵ SEC Submissions, page 7, top.

⁴⁶ EGI Submission on Motion, paragraph 16.

⁴⁷ EGI Submission on Motion, paragraph 17.

⁴⁸ The Board has issued its Notice in EB-2020-0095.

relying on the Panhandle System.⁴⁹ IGUA disagrees. These dollar amounts do not represent, for any customer, only a “*modest benefit*”.

61. To the extent that the Board is concerned about rate impacts on customers benefitting from the Panhandle System and to whom these costs are properly allocated, there are solutions. The Board has the ability to direct EGI to provide a rate mitigation proposal in conjunction with its updated rate design, and if appropriate to implement a transition to a more equitable allocation of costs in stages. Requiring T2 and other customers to simply continue to cross-subsidize gas service to Panhandle System reliant customers is the one solution that is not appropriate.

Conclusion

62. IGUA has been patient and respectful of the Board’s process for almost 4 years now, through 4 proceedings and 5 decisions which consistently accepted deferral of rectification of a clear and acknowledged inequity in the allocation of Panhandle System costs for a short period of time pending imminent rebasing or, as determined in the Merger Decision, to be addressed now as part of establishing EGI’s current IRM rate plan. The cross-subsidy of millions of dollars annually which first appeared in 2018 rates has continued throughout this period.
63. There is no reasonable dispute that an inequity exists, and the Board has recognized this.
64. The same arguments about continued deferral in deference to rate stability and predictability as advanced by the same parties in the 2020 Rates Proceeding and in response to this motion were advanced before the Merger Decision hearing panel, on substantially the same evidence, and rejected.
65. EGI’s current rate plan includes a mechanism put in place specifically to allow for rectification now of this acknowledged inequity.

⁴⁹ OEB Staff Submission, page 12.

66. There is no new evidence that supports further deferral of rectification of this acknowledged inequity.
67. There was nothing substantively new in the evidence before the Hearing Panel on this issue, and nothing new was referenced in the Hearing Panel's decision which would justify departure from the direction provided by the previous OEB hearing panel seized of the issue in the Merger Case. The Merger Case hearing panel directed that the matter be addressed for 2020 rates.
68. The 2020 Rates Application Hearing Panel did not, with respect, properly address the issue. IGUA reiterates its request that the matter now be properly addressed.
69. IGUA requests that the Review Panel vacate the Panhandle System Cost Allocation Determination and direct EGI to file a rate design proposal for adjustment of rates either in accord with EGI's proposed 2020 Rates Proceeding methodology, or in accord with the methodology initially proposed by (then) Union Gas for allocation of the incremental costs of the Panhandle System reinforcement (while retaining the underlying allocation of historical Panhandle/St. Clair system costs), but in either case for implementation in 2021.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



GOWLING WLG (CANADA) LLP, per:
Ian A. Mondrow
Counsel to IGUA

August 3, 2020

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