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June 14, 2018

VIA RESS, EMAIL and COURIER

Ms Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms Walli:

**Re: Enbridge Gas Distribution Inc. (“Enbridge”)
Cap and Trade Application (“Application”)
Ontario Energy Board (“Board”) File Number EB-2017-0224
Reply Argument**

In accordance with the schedule set out in Procedural Order No. 4, attached is Enbridge’s Reply Argument in this proceeding.

Please note that the Reply Argument is based upon the record in the 2018 Cap and Trade Compliance Plan proceeding, and the submissions of other parties filed at close of business on May 31, 2018. The Reply Argument does not address the implications of the provincial election, the outcome of which was not known until after the evidence and submissions from other parties had been completed.

This submission was filed through the Board’s Regulatory Electronic Submission System and will be available on the Enbridge website at www.enbridgegas.com/ratescase.

Please contact the undersigned if you have any questions.

Yours truly,

(Original Signed)

Lorraine Chiasson
Regulatory Coordinator

cc: Mr. D. O’Leary, Aird & Berlis LLP
All Interested Parties EB-2017-0224 (via email)

EB-2017-0224

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sched. B, as amended.

IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders approving and/or accepting its 2018 Cap and Trade Compliance Plan and approving or fixing rates and/or changes to recover the costs incurred undertaking its Cap and Trade Compliance Plan.

ENBRIDGE GAS DISTRIBUTION INC.

REPLY ARGUMENT

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INTRODUCTION

1. This is the Reply Argument ("**Reply**") of Enbridge Gas Distribution Inc. ("**Enbridge**" or the "**Company**") in response to the arguments filed by the parties to this proceeding:

Association of Power Producers of Ontario (APPrO)

Building Owners and Managers Association (Greater Toronto) (BOMA)

Canadian Manufacturers and Exporters (CME)

Consumers Council of Canada (CCC)

Energy Probe (EP)

Environmental Defence (ED)

Federation of Rental Housing Providers of Ontario (FRPO)

Green Energy Coalition (GEC)

Industrial Gas Use Association (IGUA)

London Property Management Association (LPMA)

Low Income Energy Network (LIEN)

Ontario Energy Board Staff (Board Staff)

Ontario Sustainable Energy Association (OSEA)

School Energy Coalition (SEC)

Vulnerable Energy Consumers Coalition (VECC)

2. Enbridge has not attempted in this Reply to identify and attribute to each of the numerous stakeholders the specific comments that each made in their argument. This was simply not practical. The Company's response is organized by the Issues List approved by the Board. Under each issue, the Company responds in some instances generally to submissions made and in other instances specifically to the submission made by a

specific party. To minimize the length of this reply, Enbridge only replies to issues raised by stakeholders and tries to avoid repeating its Argument-in-Chief. It does adopt and rely upon its Argument-in-Chief as part of this Reply.

3. Enbridge believes it is important to express its concern at the outset about the tone and text of the argument of some parties. The suggestion that Enbridge has been willfully blind and, in effect, has done something deliberately contrary to the interest of its ratepayers is not only meritless, it is an unfortunate and disappointing approach which the Company believes does not belong in proceedings of this nature. As well, Enbridge does not believe that the inclusion of cartoons in a party's argument is either appropriate or respectful to the Board and other stakeholders. Any suggestion of deliberate misconduct runs completely contrary to Enbridge's track record of operating as a responsible and well run natural gas distributor with an enviable safety record and level of efficiency. Enbridge has for many years been acknowledged as an industry leader in many respects including in respect of its Demand Side Management ("**DSM**") programs having successfully delivered billions of dollars of savings to ratepayers over the decades.

4. The fact is that Enbridge always has its customers' best interests in mind first and foremost. Enbridge is aware that Cap and Trade represents a significant cost to its customers and it has therefore been appropriately conservative in terms of calculating administrative costs[1] and it is cognisant that adding additional costs to its Cap and Trade plan will place an additional burden on its customers in terms of their bill. Enbridge

[1] As noted by Enbridge in its evidence, it has erred on the side of caution by only including in its administrative cost estimates, those costs which are completely incremental to work contemplated and included in its existing operations, which are recovered under its Custom IR Plan. Please see Exhibit D, Tab 1, Schedule 1, paras. 2, 4 and 14-15 and Tr. V. 4, Page 21.

submits that the Board should not lightly accept unsubstantiated allegations of impropriety from stakeholders particularly in respect of proceedings where a utility has been mandated by law to undertake the actions contemplated and where the evidence shows that the utility has followed a framework[2] and the tools developed by the Board for such purposes. As can be seen from the wide disparity of positions taken in respect of certain issues in this proceeding, parties can and will have different views on matters which are submitted in good faith. To in effect suggest that the Utilities did not act in good faith in the development of their Compliance Plans is wholly unacceptable.

5. Another concern which Enbridge wishes to express at the outset is the fact that this Cap and Trade Compliance Plan proceeding was as a practical matter transformed into a DSM proceeding with several parties in actuality repeating and attempting to obtain the relief they sought and failed to receive in each of the DSM Framework development proceeding, (EB-2014-0134) (the "**DSM Framework"**), the DSM 2015-2020 Multi-Year Plan proceeding (EB-2015-0029/49) and the 2017 Compliance Plan proceeding (EB-2016-0296/0300). Certain non-ratepayer groups (in particular GEC and ED) have been advocating for years for a significant increase in DSM spending and have not been successful in convincing the Board that spending at the levels they support is in the public interest. These groups viewed Cap and Trade as a further chance to lobby once again for their ultimate objective, namely that the Utilities undertake their interpretation of what is all cost effective DSM.[3]

[2] Report of the Board: Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities dated September 26, 2016 (EB-2015-0363) ("**Framework**").
[3] ED Argument, Page 23. This is also effectively what is being sought by GEC.

6. The written arguments of GEC and ED only address their ultimate goal, which is for the Board to require the Utilities to spend millions of ratepayers' dollars more on additional DSM type programming. Neither addressed at any point in their written argument the benefits of the proposed low carbon initiative fund ("**LCIF**") and the customer abatement programs that will follow from this work. Neither of these stakeholders addressed the bill impacts of their proposals other than to suggest that the $2.00 per month residential customer cap under the DSM Framework[4] does not apply under the Cap and Trade Framework.[5]

7. On May 9, 2018, ED submitted a letter to the Board asking that the Board direct the Utilities to file plans for incremental conservation measures as part of the OEB's DSM Mid-Term Review or that the Board in this 2018 Compliance Plan issue a preliminary ruling on issues associated with incremental abatement. The Board responded by a letter dated May 30th stating that it will be discussing elements of ED's letter as part of the upcoming stakeholder meeting in the DSM Mid-Term Review. Enbridge optimistically interprets this letter to indicate that the Board agrees with Enbridge that the appropriate place for the discussions about incremental customer funded energy efficiency programing (effectively expanded DSM programs) is within the DSM Framework. Enbridge requests that the Board provide certainty in this regard, lest the Utilities and all parties will be faced with, yet again, the prospect of the same arguments for more ratepayer funded DSM being made as part of the 2019/2020 Cap and Trade Compliance Plan proceeding by these same parties.

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[4] DSM Framework, Page 17.
[5] ED Argument, Page 15.

8. The Cap and Trade regime in Ontario is designed to be a market-based compliance program with the price signals generated by the acquisition of compliance instruments intended to be the catalyst for behaviour change and to encourage emission reductions. As noted by EP in its argument, the whole point of Cap and Trade is to incent consumers through additional price signals to lower their usage and reduce costs or find ways to use energy more efficiently. EP points to a statement from the Government of Ontario in support of this observation:

> A cap and trade program is a cost-effective way to reduce greenhouse gas pollution. It limits the amount of emissions that can come from the economy (the cap), and then allows those covered by the cap to trade among themselves (the trade) in a flexible and cost-effective way, thereby creating a price on carbon.
>
> Cap and trade allows the market — not government — to set the carbon price. The cap also ensures greenhouse gas reductions will occur: this is what makes it different and more certain than other carbon pricing mechanisms.[6]

9. The Cap and Trade legislation does not include specific entity GHG abatement targets, nor does it include a carbon intensity mandate. While a company (including a Utility) may opt to engage in energy efficiency or abatement activity to reduce its usage (or the usage of its customers), that company would not receive penalties under the Cap and Trade regulation should it not do so. Said another way, the Cap and Trade legislation does not contemplate sanctions against Utilities based on the level and success of their GHG emissions reducing programs for any of its customers. However, there would be sanctions should a Utility not procure the required financial instruments necessary to meet its Cap and Trade obligation. Enbridge's Compliance Plan ensures that it will meet its Cap and Trade obligation.

[6] EP Argument, Page 6.

10. Enbridge believes that these factual observations provide important context for its submissions below, particularly in respect of the reasons why it is inappropriate and unwarranted to impose any financial penalty on the Company for not proposing additional abatement initiatives beyond those proposed in its 2018 Compliance Plan.

11. This Reply now responds to the submissions of parties by the order of the Issues set out in Procedural Order No. 2.

ISSUE 1: COST CONSEQUENCES: ADMINISTRATIVE COSTS

(A) Discussion

12. Under this issue, Enbridge replies to the submissions made by parties to the evidence and reasons given for the administrative costs that Enbridge forecasts it will incur in 2018. This Reply first deals with several general and specific matters. The Reply will then turn to the LCIF and Enbridge's need for staffing resources specifically.

13. It is first appropriate to remind parties that the Greenhouse Gas Emissions Impact Deferral Account ("**GGEIDA**") will only record the actual costs incurred in 2018. Administrative cost budgets were developed for the purposes of this Cap and Trade Compliance Plan filing in November 2017. To the extent that a vacancy has not yet been filled and staff hired, the estimate of $1.5M for staffing resources in 2018 will not in actuality likely be incurred. Enbridge submits however that the estimate from November 2017 remains valid in that its evidence supports the need for the FTEs requested. Some parties seem to believe that the administrative cost estimates are similar to Operations and Maintenance ("**O&M**") cost estimates included in a Cost of Service Application. EP for example states that in light of the fact that Enbridge has a vacancy and has not hired

the two proposed LCIF FTEs, it "should not be allowed to collect more than a half million dollars in costs for employees that, at this point, it clearly won't hire before the end of the year".[7] EP also states that it is "premature to give them [the Utilities] a $2M cheque [for LCIF]".[8] VECC similarly seems to be operating under the same belief that administrative cost estimates should be reduced to reflect current staffing realities, something that might be appropriate in a Cost of Service proceeding where approved forecasts are included in rates and are not subject to later adjustment.

14. This proceeding however is not a Cost of Service Application. Actual staffing costs will be recorded in the GGEIDA and will be subject to review in a subsequent clearance application. The estimates are included in rates and, as occurred in 2017, where the actual costs incurred are less than the forecast, the Company will only record the actual amounts in the GGEIDA. Reducing the estimates will have no impact on the actual costs incurred.

15. Many parties submitted that Enbridge and Union should be working collaboratively, given that they are now affiliates and that they are no longer prohibited under regulations to the *Climate Change Act*[9] from working jointly. Enbridge acknowledges these submissions and confirms that it has been and will continue to work collaboratively with Union in future with the goal of reducing overall administrative costs. Enbridge and Union will provide further particulars of the steps taken in this regard at the clearance proceeding that deals with the 2018 GGEIDA scheduled to take place after the August 1, 2019 annual reporting.

[7] EP Argument, Page 9.
[8] EP Argument, Page 3.
[9] *Climate Change Mitigation and Low Carbon Economy Act, 2016*, S.O. 2016, c. 7.

16. This being said, it should be recognized that the 2018 Compliance Plan was prepared and filed at a time when Enbridge and Union were legally prohibited from working together and filing one comprehensive plan. Enbridge is accordingly looking for approval of its plan as filed for 2018. The evidence is clear that where the Utilities can collaborate, namely in respect of the development of an abatement construct, the RNG procurement RFP, the Emissions Trading Agreement and the LCIF, the Utilities did work together[10]. This will continue but it remains necessary to receive the Board's approval for the cost consequences of the separate plans. No party suggested that the Utilities should have withdrawn their separate Compliance Plans and filed a joint plan. The reasons for this are of course self-evident. Integrating two independent departments operating out of different communities and using IT systems, which do not have common billing and GHG monitoring functions for example, does not occur overnight. This may be an objective but integration must be well thought out and planned and even then, execution takes time.

17. As well, as noted by SEC[11] many of the estimated administrative costs of the Utilities, even with a complete amalgamation of the Cap and Trade departments, will not result in a material decrease in certain forecast costs. SEC acknowledges that the incremental bad debt expense, OEB costs, billing system updates and customer education costs would not be expected to materially change.

18. Enbridge is cognizant of the expectation of most parties that there will be, in time, savings in terms of staffing resources and consultants. While Enbridge is committed to

[10] Exhibit C, Tab 5, Schedule 1, Page 3; Tr. V.3, Pages 17, 79, 82-84 and 113; Tr. V. 4, Pages 4 and 20.
[11] SEC Argument, Page 4.

this occurring over time, it must be recognized that its 2018 plan calls for its compliance procurement activities to be undertaken as a standalone entity. That is the evidence that is before the Board and for which approvals are sought.

19. It should also be recalled that since all of the actual costs incurred are recorded in the GGEIDA, any synergies that may be generated in 2018 do not accrue to the benefit of the shareholder. Any savings which are the result of further collaboration in 2018 will benefit ratepayers directly as only actual costs are recorded in the GGEIDA

20. Enbridge submits that it is therefore premature to set benchmarks or limitations on staffing resources and consultant costs in 2018. It is the Company's intention that any plan for further collaboration and integration with Union should be dealt with in the 2019-2020 Compliance Plan proceeding and with the benefit of the Board's decision in the MAADs applications (EB-2017-0306/0307).

21. Board Staff argue that 2018 consulting fees for the Utilities should be limited to 2017 actuals.[12] This would limit Enbridge's ability to secure advice and market intelligence in the expanded and more complicated Western Climate Initiative ("**WCI**") market to $160,000.[13] Board Staff offer no justification or evidence to support this figure. Enbridge submits that it is unreasonable to restrict the Utilities in their ability to receive market intelligence, advice and opinions in respect of procurement options available including the use of offset credits by setting arbitrary limits on consulting fees. Furthermore, Enbridge submits that its consulting costs will be greater in 2018 due to the development of a two-year compliance plan. There is no evidence whatsoever that

[12] Board Staff Argument, Pages 4, 6 and 9.
[13] The actual 2017 amount for consulting totaled $156,772: Exhibit I.1.EGDI.Staff.12.

Enbridge has been extravagant in its use of outside consultants and given the fact that both Utilities prepared independent Compliance Plans for 2018, they have individually sought out and continue to receive advice from separate consultants. Board Staff make no attempt to explain how for example Enbridge's consultants could as a practical matter mid-way through the year be of assistance to Union which has developed its own unique procurement strategy (which remains strictly confidential from the perspective of Enbridge) based upon the advice of its separate consultants. Enbridge submits that the question of the separate retention of consultants by the two Utilities is a further matter for the 2019-2020 Compliance Plan proceeding.

22. Enbridge notes that no party filed evidence or referenced any benchmark which would question the reasonableness of the quantum of Enbridge's administrative cost forecast. In fact, the evidence is quite the opposite. As part of the development of the Framework, Board Staff undertook a review of the range of administrative costs incurred in other jurisdictions. Board Staff determined that the administrative costs incurred by California utilities in 2015 were approximately $4M (ranging across utilities from 0.1% to 2.7% of total Compliance Costs)[14]. Assuming a $400M total Compliance Plan cost, this translates into a range of $4M to $10.8M for administrative costs. By comparison, Enbridge's administrative costs excluding LCIF funding of $2M totals only $3.65M, less than what Board Staff determined was the bottom end of the range of administrative costs incurred by utilities in California. By this benchmark, Enbridge's administrative costs are very reasonable.

[14] Staff Discussion paper on Cap and Trade Regulatory Framework, May 25, 2016 (EB-2015-0363).

*(B) The Low Carbon Initiative Fund ("**LCIF**")*

23. The majority of stakeholders including some ratepayer groups and Board Staff support the LCIF as proposed by Enbridge wholly or in part. While several have suggested that certain rules be applied in respect of the use of LCIF funding (which is addressed more specifically below), it is appropriate to note that there appears to be strong general support for the research and development of abatement initiatives.

24. The quantum of LCIF Funding which various ratepayers supported varied from the full $2M requested[15] to lesser amounts which were often proposed with no real explanation as to why the amount should be reduced even in light of Enbridge's evidence that it could still make use of just under $2M for promising abatement initiatives.[16] VECC suggests $1.6M is appropriate, Board Staff $750,000 and APPrO $500,000.[17]

25. Several parties, CCC,[18] EP[19] and SEC[20] do not necessarily oppose LCIF, they instead argue that it is premature primarily because Enbridge did not include in evidence formal business cases supporting each of the potential initiatives. Board Staff generally support the LCIF and the Abatement Construct but propose fewer staffing resources and limitations on the projects eligible for LCIF funding. It appears that Board Staff's position about the level of LCIF funding is based upon its submission that the Utilities

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[15] BOMA, CME and OSEA support spending up to $2M.
[16] The response to Undertaking J4.1 sets out the budgets for 2018 LCIF Initiatives which total $1.949 million.
[17] VECC Argument, Page 2; Board Staff Argument, Page 5; and APPrO Argument, Page 11.
[18] CCC Argument, Page 8.
[19] EP Argument, Page 3.
[20] SEC Argument, Page 3.

did not provide the level of detailed analysis to give the Board confidence that the funding will be used effectively.[21]

26. These submissions fail to recognize that LCIF resources are needed to undertake necessary investigations and to retain appropriate expertise to consider the initiatives for the purposes of ultimately developing a program for public offering. With the limited staffing resources available to date, Enbridge has simply not had the ability to develop formal business cases nor to provide a highly detailed breakdown of all steps that are required in each case to consider the initiative more fully. It is for this reason that only high level estimates have been prepared.[22] Business cases and plans for the roll out of programs can only be developed once the necessary research is completed and/or the pilot and demonstration project are finished and evaluated. Enbridge submits that the level of detail provided about the initiatives it proposes to fund is appropriate and sufficient given the early state of consideration of such initiatives. The resulting data and information that is generated including any business cases that are developed by LCIF activities will be available for review in future Compliance Plan and/or Clearance proceedings.

27. Leaving aside questions raised about compressed natural gas for transport trucks (the expanded NGV Program),[23] there was little concern expressed about the appropriateness of the LCIF initiatives identified by Enbridge in evidence. While APPrO suggested that there might be some redundancy,[24] both the Enbridge and Union witnesses confirmed in

[21] Board Staff Argument, Page 28.
[22] Technical Conference, Day 2 Transcripts, Pages 74/5 and 140.
[23] Exhibit I.1.EGDI. Staff.23.
[24] APPrO Argument, Page 10.

oral evidence that the various initiatives are not redundant and any apparent similarities are required to account for the different characteristics of the two distribution systems.[25] Indeed, the witnesses indicated that they are both cognisant of the work that the other is contemplating and will not duplicate such efforts.[26]

28. SEC submits that if the LCIF is to be approved, it should be subject to certain rules which are set out at pages 5 through 7 of its argument. SEC lists six criteria which it proposes. The evidence however already confirms that four of these criteria have been and are being addressed. First, the estimates presented to date as noted by Ms. Sigurdson in evidence at the technical conference[27] are high level estimates and will be refined further before costs are incurred. Once the necessary research has been completed, business cases for those initiatives that are promising from a GHG emissions reduction perspective can be prepared where appropriate to justify moving forward. This satisfies the sufficient planning criteria.

29. A second criterion is that the LCIF be a fund of last resort. Enbridge is alert to and is always communicating with the Governments of Ontario and Canada in respect of funding for all initiatives. It should be recalled that it is the Utilities that identified the substantial role that GreenON, the IESO and the Government under Climate Change Action Plan ("**CCAP**") are playing in the marketplace and thus the need for caution. There is no evidence that the LCIF initiatives identified are being undertaken by these entities. As well, Enbridge does not view the DSM Collaboration and Innovation Fund ("**CIF**") as being an eligible source for LCIF initiatives as SEC seems to imply. It is

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[25] Tr. V. 3, Pages 72/3, 77-80.
[26] Tr. V. 3, Page 79.
[27] Technical Conference, Day 2 Transcripts, Pages 74/75 and 140; Tr. V. 4, Page 7.

clear from the list of initiatives proposed[28] that the initiatives are primarily carbon emission reducing initiatives and are therefore outside the scope of the CIF.

30. A third criterion is that data should be made public. During the hearing, Enbridge confirmed that the research data it generates will be made public where possible. The fourth criterion is no duplication. As noted above, Enbridge and Union will ensure that there is no duplication.

31. This leaves SEC's criteria about (1) LCIF monies being used for competitive non-regulated activities and (2) SEC views on "non-customer" GHG emission reduction initiatives as the outstanding criteria. This latter point is dealt with below in the discussion dealing with the proposed expanded NGV Fleet initiative. In respect of any concerns about the use of funds for activities in a competitive market or that will be undertaken by a non-regulated affiliate, Enbridge notes that this criteria appears to be the exact opposite of that proposed by Board Staff which support a criteria that includes that the LCIF initiative have commercial viability in 2 – 10 years[29]. This being said, Enbridge submits that this concern is extremely premature. There are several reasons which support reaching this conclusion.

32. First, each of the initiatives noted and the spending proposed in respect of same are at the very early stages of development. In many instances, only pilot or demonstration projects are proposed. There is unlikely to be any intellectual property or earnings generated from these projects. The projects are being proposed because there currently is no developed competitive market which could be assessed.

[28] Undertaking Response J4.1.
[29] Board Staff Argument, Page 30.

33. Second, it is self-evident from the quantum of funding sought in respect of several of the initiatives identified that such monies are insufficient to allow any entity to get up and running on a commercial basis. The proposed initiatives for 2018 do not contemplate undertaking any of the activities on a substantial commercial basis. They are pilot or demonstration projects. A decision to undertake larger scale activities will be made later and will likely require additional funding and possibly approval for same from the Board.

34. Enbridge submits that adding SEC's proposed limitation will only add unnecessary uncertainty to its use of LCIF funding as no threshold is proposed by SEC as to what constitutes a sufficient level of existing competitive activities to exist for products in the market place to warrant prohibition of the use of LCIF monies. Does the mere rumour of a commercial venture trigger the prohibition or must the market be saturated.

35. On a related note, Board Staff imply at page 31 of its argument that Enbridge's affiliates might benefit from LCIF funding activities. As was made clear by Mr. McGill[30] orally during the proceeding, Enbridge has and will continue to fully comply with the Affiliate Relationship Code. This is not an issue.

36. Board Staff also list several criteria which they submit should be added to the Abatement Construct[31]. Enbridge notes that several of the criteria such as cost-effectiveness and GHG emissions reductions are already included in the proposed LCIF screening criteria. Enbridge has difficulty understanding what the commercial viability and truly innovative criteria proposed by Board Staff mean and how they would be applied. Does the former mean that Enbridge should only consider those initiatives that will turn a profit and if so,

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[30] Tr. V. 3, Page 89.

[31] Board Staff Argument, Page 30.

what is the minimum return? In respect of the "truly innovative" criteria, how does one measure the degree of innovativeness of a particular program? If a program is not sufficiently unique but still reduces GHG emissions, should the Utilities forego such opportunities? In short, while Enbridge acknowledges that there is a long list of criteria that might be relevant to consider, Enbridge does not believe that the above criteria should be established as prerequisites that must be met as part of the screening of possible LCIF initiatives.

37. Enbridge therefore submits that it is neither necessary nor appropriate for the Board to impose the additional criteria or pre-conditions for initiatives to be eligible for LCIF funding as asserted by SEC and Board Staff in argument. Relevant criteria which the Company will consider are already contemplated in the Abatement Construct and need to be applied on a case by case basis.

38. Finally, SEC suggests that it might be appropriate to combine the two LCIFs into a single fund[32]. While this might be appropriate if and when there is a full merger of the Utilities, given that the Utilities operate distinct and different distribution systems and will be undertaking initiatives that do not overlap, Enbridge submits that this suggestion makes no practical sense at this time.

(C) Staffing Resources

39. CME, BOMA, OSEA and IGUA support Enbridge's request for additional staffing resources including the two FTEs to undertake LCIF initiatives.[33] Others support

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[32] SEC Argument, Page 7.

[33] CME Argument, page 1, BOMA Argument, page 4, OSEA Argument, Pages 1,2,and 9 and IGUA Argument, Page 3 revised.

additional staffing resources but in some reduced amount primarily as a means to encourage collaboration between the Utilities or as a reflection of the fact that Enbridge has not filled one vacancy and has not hired the two LCIF FTEs.[34] While certain stakeholders may be correct that Enbridge will not incur the full $1.5M in staffing costs in 2018, if the Board sets what appears to Enbridge to be an arbitrary ceiling in 2018, it could effectively prevent the Company from hiring the required staffing resources to prepare and undertake its 2019-2020 Compliance Plan and proceed diligently with its LCIF initiatives.

40. Board Staff[35] take the position that Enbridge's administrative costs should be limited to 2017 FTEs of 4.4 plus one for the purposes of administering LCIF initiatives. In evidence, Enbridge has indicated a need for six FTEs in 2018 for the purposes of administering and operating its Compliance Plan within the WCI market and a further two FTEs to oversee LCIF initiatives.

41. Enbridge was clear in its evidence that its 2017 actuals did not fully account for the required complement of FTEs as it was in the process of ramping up.[36] Enbridge's evidence is that its forecast for 2018 staffing is required to address the increased complexity of the Cap and Trade market, not only given the linkage with California and Quebec but also given the increasing availability and potential future use of offset credits from a wide range of offset initiatives.[37] Board Staff argue that Enbridge should not add any additional resources to manage its Cap and Trade obligations of about $400 million

[34] VECC Argument, Page 20; EP Argument, Page 9; APPrO Argument, page 11; and SEC Argument, Page 4.
[35] Board Staff Argument, Page 8.
[36] Exhibit D, Tab 1, Schedule 1, Page 4.
[37] Ibid. pages 4 – 10; Exhibit K3.1; Tr. V. 3, Pages 3 – 9.

despite the clear increase in the complexity of the marketplace, anticipated complementary policies (i.e. Clean Fuel Standard and Methane Regulations) and the availability of an increased range of compliance options, notable with the addition of a full Offset Strategy filed within the 2018 Compliance Plan.

42. Enbridge submits that this position is contrary to the best interest of ratepayers and sound business principles. Faced with such a large financial obligation, quite the opposite should be the case. All parties should be supportive of the Utilities having sufficient resources in place to manage and meet their legal obligations at the lowest possible cost.

43. Board Staff's argument that the Board should only approve one additional FTE for the purposes of LCIF initiatives is wholly inconsistent with Board Staff's argument that the Utilities should be doing more in terms of customer abatement. On one hand, Board Staff argue for more customer abatement and that the Company should be penalized for not proposing more customer abatement program spending, then on the other hand they argue that the Utilities should be denied the tools to pursue such initiatives. It is important to make it clear that with only one LCIF FTE and a fraction of the proposed LCIF budget, the development of abatement initiatives and the pursuit of same will be severely restricted.

44. As explained earlier, Enbridge has and will continue to collaborate with Union but both Utilities are seeking approval for separate 2018 Compliance Plans. Enbridge requires the staffing resources requested to undertake the activities contemplated in its 2018 Compliance Plan. An across the board 25% reduction in the administration budgets as

proposed by SEC[38] would mean a reduction of $913,000.[39] By comparison, this is almost half of the aggregate of the total of Enbridge's estimates for salaries and consultants which in 2018 is $1.9 million. Given SEC's admission, as noted earlier, that any administrative cost reductions can only really be considered in the areas of salaries and consultant costs, a 25% reduction would leave an available budget of only $987,000 for salaries and consultants. This is only slightly more than 2017 actuals which were incurred in a year in which the Company did not have a full complement of staff in place for the entire year. Such a reduction would clearly leave zero staffing resources for LCIF initiatives and nothing to consider and procure the expanding range and options of compliance instruments that are becoming available. SEC's suggestion of an across the board reduction of 25% is not based on any evidence, it is just a figure from some unknown source.

NGV Program

45. SEC and APPrO raise issue about Enbridge proceeding with a demonstration project with small truck fleets with a focus on developing a market for NGV for large transport trucks.[40] APPrO references the press release by Union Energy Solutions about its proposal to construct three compressed natural gas refueling stations along Highway 401. APPrO also refers to a commercial NGV station in Mount Forest, Ontario which is located nowhere near any of the main commercial trucking routes. Enbridge submits that this limited foray into the large truck NGV market is hardly evidence of the commercial sector rapidly moving into this potential market.

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[38] SEC Argument, Page 4.
[39] Salaries = $1.5 plus consulting costs of $400K = $1.9 M less 25% of Administrative Budget of $3.65M = $987,000.
[40] SEC Argument, Page 5 and 6, APPrO Argument, Pages 7-10.

46. APPrO appears to miss the objective of what Enbridge is attempting to accomplish. Enbridge's pilot or demonstration project is intended to determine what are the barriers to greater participation by truck fleets and the minimum level of support that they require. This information can then be used in future to support the development of the large truck NGV marketplace.

47. SEC takes the position that initiatives of this nature should not be pursued because it would not relate directly to the reduction of GHG emissions by existing ratepayers. As Enbridge understands this submission, Enbridge should be prohibited from assisting the Government of Ontario in meeting its goal of reducing GHG emissions because switching large trucks from diesel to natural gas does not result in GHG emissions reductions by existing ratepayers. Of course, truck owner/operators that switch to CNG become ratepayers. Enbridge does not believe that it is appropriate to ring fence existing ratepayers and not consider future prospective customers. Enbridge submits that its programs should be available to existing and future ratepayers.

48. Board Staff argue that the LCIF should not be used for natural gas vehicle programs. Board Staff make this submission despite acknowledging that natural gas vehicles may result in lower provincial GHG emissions.[41] This is of course the objective of the province's Cap and Trade Program.

49. Enbridge also notes that SEC and Board Staff's position is contrary to one of the Statutory Objectives which requires the Board to promote energy conservation and

[41] Board Staff Argument, Page 29.

energy efficiency in accordance with the policies of the Government of Ontario.[42] The prohibition that Board Staff and SEC propose would not be in accordance with the policies of the Government.

50. In summary, Enbridge submits that it would be inconsistent with both the Cap and Trade Framework and the policies of the Government of Ontario to put the above restrictions on LCIF initiatives as proposed by Board Staff, SEC and APPrO.

ISSUE 1.8 – LONG RETURN INVESTMENTS / ISSUE 1.9 – NEW BUSINESS ACTIVITIES / ISSUE 1.10 – CUSTOMER ABATEMENT

(A) Overview

51. Enbridge begins this portion of its Reply by a review of the positions taken by various Stakeholders. Enbridge believes that it is significant that several ratepayer groups support the position taken by Enbridge in this proceeding, namely that no additional ratepayer funded energy efficiency programs should be undertaken within the Cap and Trade Framework. This view is consistent with the Company's cautious approach given potential impacts on ratepayer's bills. IGUA states that it does not believe that the Utilities should pursue incremental DSM as part of the Cap and Trade Framework. IGUA specifically states that it:

> "[A]grees with the Utilities' analyses and arguments that additional investments in DSM are not supported based on the results of the MACC and that it would not be prudent to adopt incremental DSM programming in the name of carbon compliance at this time."[43]

52. CCC states in argument that:

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[42] *Ontario Energy Board Act*, 1998 ("***OEB Act***").
[43] IGUA Argument, Page 3.

> "[T]he Council's view is that for 2018, there is not an opportunity for the Utilities to pursue DSM beyond the levels that they are currently doing."[44]

53. CME notes that it represents 1400 Ontario based member companies and that the cost consequences from the Cap and Trade Compliance Plans are of significant interest to its members. CME then goes on to identify several concerns it has, but, Enbridge's conclusions and decisions in respect of incremental energy efficiency programs is not identified as a concern.[45]

54. While SEC accepts that there may remain incremental cost effective abatement that can be undertaken by the expansion of the Utilities DSM programs,[46] it notes that the relationship between the Utilities GHG obligations and their DSM programs raises a number of complex issues. SEC added that right now, those issues exist in a vacuum because the Board does not have before it any evidence as to what can be achieved by Enbridge and Union through incremental action to reduce customer gas use (and thus, GHG)[47]. SEC then goes on to indicate that such matters should be dealt with within the context of the DSM Mid-Term Review. FRPO relies on SEC submissions.[48]

55. BOMA is of the view that while additional conservation potential exists, it described the MACC as a "deficient guide".[49] OSEA, while indicating support for the Utilities undertaking additional energy efficiency measures, supports the Utilities' 2018

[44] CCC Argument, Page 8.
[45] CME Argument, Pages 1-4.
[46] SEC Argument, Page 7.
[47] SEC Argument, Page 8.
[48] Ibid.
[49] BOMA Argument, Pages 9 and 10.

Compliance Plans,[50] but submits that further direction from the Board given the "inherent conflict between the two frameworks" is required.[51]

56. Enbridge notes that none of the above parties indicated that the Utilities did not use the MACC as directed in the Framework as suggested by Board Staff.[52]

57. In summary, it is fair to say that the majority of ratepayer groups are either opposed to additional spending on ratepayer funded energy efficiency programing within the Cap and Trade Framework or they are of the view that how much and within which framework any additional spending should be undertaken are questions that need to be addressed by the Board.

58. In this light, the position taken by Board Staff, ED and VECC that the Utilities should be penalized for not presuming additional energy efficiency spending in the Cap and Trade plan cannot be justified. Stated differently, where the Utilities have in good faith proposed a measured approach to abatement activities that is consistent with the Framework and the MACC, and where ratepayer groups (except for VECC) do not support having to pay more for additional energy efficiency in the context of Cap and Trade, no penalty would be appropriate. Instead, the Utilities' plans should be endorsed and approved.

59. This Reply now turns specifically to the evidence about how the Company used the MACC and the results it generated which informed the 2018 Compliance Plan that is

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[50] OSEA Argument, Page 1.
[51] OSEA Argument, Pages 13 and 16.
[52] Board Staff Argument, Page 18.

currently before the Board. Before dealing with the specifics of the issues raised, several overall submissions are appropriate.

60. First, the notion advanced in the submissions from many parties[53] that Enbridge is not doing any incremental abatement in 2018 is wrong. In addition to the substantial DSM programs that Enbridge continues to undertake and offer, the Company is undertaking a number of additional activities in 2018. These include the activities being identified and pursued through the Abatement Construct, the Green Investment Fund (GIF) activities, initiatives to enable RNG production and adoption and the planned Geothermal Energy Services program.[54]

61. Second, Enbridge notes that none of Board Staff, GEC and ED used the MACC to develop amounts that they say Enbridge should have proposed to spend on incremental energy efficiency programs. Board Staff's $5 million figure has no relationship to the MACC. GEC and ED also did not propose any amount which was generated by the MACC. It is quite possible therefore that the MACC functioned precisely as intended by the Board and appropriately determined that all cost effective potential was already being captured by the Company's existing DSM programs.

62. Third, the question about the application of free ridership values to the MAAC is a red herring as the evidence is that regardless of whether the results are net or gross, the MACC still shows that the Company is already achieving all cost effective energy efficiency potential.

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[53] See for example Board Staff Argument, Page 14; LIEN Argument, Page 2; and VECC Argument, Page 9.
[54] Enbridge's 2018 abatement activities are discussed at Exhibit C, Tab 5.

63. Finally, as contemplated by the Framework, Enbridge did look at other inputs and factors beyond the MACC and these included additional analysis, bill impacts on ratepayers and the effect on the energy efficiency marketplace with the very material participation of GreenON, the IESO and the Government of Ontario under its CCAP.

*(B) The Marginal Abatement Cost Curve ("**MACC**")*

64. The MACC was developed under the direction of Board Staff and with the paid involvement of Mr. Neme[55] who appeared as a witness at the oral hearing on behalf of GEC/ED. Notwithstanding his direct involvement on the MACC Technical Advisory Group ("**TAG**") and the existence of several rounds of submissions that parties made in respect of the MACC before it was issued by the Board, Mr. Neme indicated in evidence that he did not appreciate the Conservation Potential Study ("**CPS**") adoption rate used in the MACC and had he been made aware of this choice, he would have objected[56]. It should also be noted that Mr. Neme failed to submit any written comments to the TAG on the subject of the MACC and its underlying assumptions.[57] It is remarkable that GEC says that the Utilities were wilfully blind, yet the expert they put forward in the hearing was unaware of how the MACC worked until earlier this year. Enbridge filed, in evidence, copies of its written comments and questions related to the draft MACC following the first TAG meeting in February 21, 2017 and its submission on the draft MACC dated June 29, 2017. It also filed in evidence written comments following the second TAG meeting (of which Mr. Neme was a member) on June 6, 2017[58]. A number

[55] Tr. V. 4, Page 83.
[56] GEC Argument, Page 11.
[57] Exhibit GEC/ED.EGDI.2.
[58] EX.I.1. EGDI.ED.30 and attachments.

of the comments and submissions made are relevant to this proceeding and confirm Enbridge's evidence.

65. One important feature of the MACC which Board Staff have not recognized for the purposes of their argument is that the MACC provides costs that are "average" rather than "marginal". The MACC specifically notes that "natural gas DSM activity is fairly mature in Ontario and there is typically a non-linear relationship between spending and savings in DSM. Customer abatement technologies, measures and programs tend to become increasingly expensive as it becomes necessary to seek less cost effective opportunities in harder to reach markets".[59] Enbridge in evidence confirmed that with the exception of two "very nominal" areas "not worth pursuing", its DSM programs already operate in all of the categories identified in the MACC[60]. This means that, to be of any value in the determination of the costs and benefits of expanding an existing program, it is necessary to determine the marginal cost to achieve additional energy efficiency not the average costs of the entire program. This is the point which Board Staff have failed to realize.

66. This is clear from Board Staff's assumption in its argument that Enbridge and Union could deliver incremental abatement in the commercial and industrial ("**C/I**") sector at an average program cost of $\$20/tCO_2e$.[61] It appears that Board Staff simply took the aggregate total of C/I DSM program budgets for 2018, 2019 and 2020 of the two Utilities, divided this aggregate by the forecast savings in GHG emissions and arrived at an average cost of $\$17.50/tCO_2e$, which was apparently then bumped-up to $\$20/tCO_2e$.

[59] Exhibit KT1.2, Page 18.
[60] Tr. V. 3, Page 117; Please also see Undertaking J4.2.
[61] Board Staff Argument, Page 21.

This aggregated average cost over 3 years is wholly unreliable and, importantly, was never put to the Utilities either in writing or orally during the proceeding for their comment as to its reasonableness. This $20 average cost per tonne for C/I programs is not on the public record and therefore cannot support Board Staff's submissions.

67. Even if it were on the record and tested, this hypothetical average cost is not helpful in that an average cost to generate results over three years of C/I DSM activities in no way relates to the marginal cost to obtain additional results from existing individual programs in 2018. In this regard, the MACC itself states:

> For measures where existing DSM and/or other abatement programs are already in place, the average costs presented in the MACC do not represent what the next incremental unit of savings will cost. This limits the applicability of these cost estimates for the Utilities when assessing an expansion of existing or new DSM programs[62].

68. The result is that Board Staff have used an untested average cost which in addition to not being in evidence is of no benefit to determine what the actual cost to undertake incremental C/I energy efficiency measures will be. Enbridge has additional concerns that Board Staff have used this hypothetical average price to support the imposition of a penalty. There is no evidentiary basis or factual support for this position. More will be said about this later in this Reply.

69. In addition, Enbridge actually did the calculation that Board Staff is suggesting but used data from the CPS to calculate the incremental cost instead of an arbitrary number as

[62] Exhibit KT.1.2 Page 18.

Board Staff have done. This analysis showed a value of $60 per tonne, which was much greater than the cost of carbon.[63]

70. This analysis on the CPS also clearly contradicts the arguments from GEC and ED that Enbridge relied solely on the MACC.[64] While Enbridge did rely on the MACC as its principal tool, Enbridge undertook additional analysis using the CPS which confirmed that there was no cost effective incremental energy efficiency.

71. A further important point that appears to be lost on certain parties is the fact that the MACC was modelled using costs and adoption curves developed in the 2016 CPS which reflect business–as–usual incentive levels. Mr. Neme may want to object now, but this is the MACC which was approved by the Board.

72. During cross-examination, the March 14, 2018 email of Ms. Bennett of Board Staff was put to Mr. Neme.[65] In this email, Ms. Bennett stated that: "the MACC used only "BAU" [i.e. business as usual] incentive levels so that cost-effectiveness values for each measure reflected "realistic" incentive levels"…. When Mr. Neme was asked if the use of realistic incentive levels under the MACC is the reason that he disliked the MACC, he avoided responding to the question and simply indicated that utilities across North America use all kinds of incentive levels.[66] What is clear is that the MACC used business-as-usual incentive levels in Ontario and Mr. Neme clearly views these as inadequate. It is for this reason that in his report, he had to discard the MACC and look to the CPS and the semi-constrained and unconstrained scenarios to support the Utilities spending more on energy

[63] Exhibit I.1.EGDI.STAFF.24.
[64] GEC Argument, Page 3 and 5 and ED Argument, Page 10.
[65] Exhibit GEC/ED.EGDI.2.
[66] Transcript Volume 4, Pages 89-90.

efficiency programs.[67] The MACC did not generate the results GEC/ED wanted so Mr. Neme went looking elsewhere. It is noteworthy that even after adding free riders and LFEs back into the comparison table of the MACC to Enbridge's DSM Plans savings[68] and finding that Enbridge's DSM Plan still generated 123% of the MACC potential Mr. Neme stated: "Of course, that might still raise questions…" Mr. Neme therefore recognized the MACCs results did not support the position taken by GEC and ED and he was consequently forced to turn to the CPS and to argue, in effect, that it was the study that should have outweighed all else including the results of the Board approved MACC.

73. Based upon the position taken by certain ratepayer groups, it appears that they believe that the MACC operated as intended namely, to look conservatively at whether within the context of the Cap and Trade Framework, additional energy efficiency measures should be undertaken over and above those already being operated by the Utilities. If Enbridge had taken the extremely narrow view of the MACC as suggested by Board Staff, that the MACC was only intended to be used to prioritize areas of energy efficiency and that the Company should ignore the costs and abatement volumes generated by the MACC and to not compare these to existing DSM programs, the utility would have been rightly criticized by stakeholders.

74. As well, a further important consideration noted in the MACC is that future abatement programs and activities funded by the CCAP may also affect the achievable abatement potential enticed abatement activities available to the Utilities.[69] This reality was

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[67] Exhibit L Page 15.
[68] Ibid,, Table 1.
[69] Exhibit KT1.2, Page 18.

appreciated by the Utilities and helped guide their decision making but it was not acknowledged in the arguments from Board Staff, GEC and ED.

75. In the end, even with Mr. Neme's adjustment for free riders (which as is demonstrated below is incorrect), GEC/ED's expert witness confirmed, as noted above, that the MACC calculates that Enbridge is already achieving through its DSM programs 123% of all cost-effective potential identified by the MACC.

(C) Free Ridership

76. Both Utilities adjusted the MACC results to reflect free ridership. They did so for several reasons, with one of the most important being that if the purpose of undertaking the exercise is to determine what GHG emissions savings are attributable to the Utilities by reason of their expansion of existing or new energy efficiency programs, one should exclude those benefits including GHG emissions reductions which will occur in any event. Ratepayer money is not needed if the activities which will reduce GHG emissions will occur in any event. No party disputes this objective.

77. The question which arose during the hearing is whether or not free riders are already included in the 2016 CPS. GEC/ED argue that all free riders are already netted out in the 2016 CPS. This is simply wrong for a number of reasons. First, GEC/ED and BOMA have made no attempt to explain how the 2016 CPS study could net out free ridership figures which were generated by the recent Net-to-Gross study which was only completed at the end of 2017. Obviously such free ridership figures were not included and this means that the significant increase in free ridership for C/I programs

contemplated under the recent Net-to-Gross study could not have been netted out in the CPS.

78. Second, the CPS report itself does not state that it has netted out all free riders. The CPS study states specifically at footnote 34 on page 7 that:

> Measured TRC-Plus results do not include program costs such as program administrative (non-incentive costs) and adjustments for free ridership, spillover effects and persistence, etc.[70] **(emphasis added)**

79. The above reference was specifically identified by Mr. Johnston during the oral proceeding.[71] It is the only reference to free ridership in the report. Had free ridership values been used in the report beyond adjustments to meet then current energy efficiency minimum standards, then a scholarly work such as this report would have contained a table setting out the free ridership values that were applied and to which sector and programs. As noted by Mr. Johnson in evidence, adjusting for conservation which is the result of installing appliances or measures which meet current energy efficiency requirements and/or minimum market standards, is different from the full free ridership values that the DSM EM&V process attempts to capture.[72]

80. Third, in its submissions on the MACC, Enbridge identified on a number of occasions that the CPS did not capture free ridership values. In its June 29, 2017 submission on the MACC,[73] Enbridge stated that:

> The report fails to discuss that the underlying CPS recognizes what is known as natural conservation built into the Utilities forecasts from code changes and the like, but does not capture any recognition of free ridership values. This is exceeding difficult to include given free ridership values

[70] Exhibit KT 1.5, Page 7.
[71] Tr. V. 3, Page 12.
[72] Tr. V. 3, Pages 9 – 14.
[73] Exhibit I.1.EGDI.ED.30, attachment to Page 1, item 4.

vary often from program to program or sector to sector, however, it is an important point that has been raised already in the process and should be captured clearly in the document. When savings opportunities are discounted by 50% for example, the utility must engage and the customer must fund double the gross savings to see recognition of the 50% net value.

81. The submission then went on to recommend that the MACC clearly state that the values in the CPS are gross and do not include Net-to-Gross (i.e. free ridership values)[74]. Enbridge notes that its written comments on the MACC following the second advisory group meeting of June 6th similarly noted the above.[75]

82. What the above of course means is that the percentage by which Enbridge's DSM programs exceed the energy efficiency potential identified by the MACC is significantly greater than 123% figure calculated by Mr. Neme. What's more, this means that Board Staff's unsupported and erroneous calculations for the purposes of generating a penalty are further undermined by the fact that perhaps 50% of the benefits Board Staff suggest could have been achieved would be classified as free riders and therefore not a benefit flowing from the expenditure of ratepayer funding on additional energy efficiency programs. Using Board Staff's own calculations, if a 50% free ridership rate was applied to its calculations, a $5,000,000 ratepayer funded expenditure in 2018 would generate $700,000 in savings for program participants all other matters being equal. Of course, all non-participating ratepayers would contribute to these costs and Enbridge would remain required to secure the necessary compliance instruments for the actual gas used. Stated differently, all ratepayers would be required to contribute towards the $5,000,000 in

[74] Exhibit I.1.EGDI.ED.30, attachment to Page 2.
[75] Exhibit I.1.EGDI.ED.30, attachment 3.

additional energy efficiency spending for the purposes of saving a small number of ratepayer $700,000 in gas and carbon costs in 2018.

(D) Bill Impacts and Frameworks

83. Several ratepayer groups expressed concern about the impacts on bills, LIEN in particular.[76] The fact that several other ratepayer groups do not support additional incremental DSM spending indicates that they similarly have concern about bill impacts.

84. Enbridge is cognizant of the aggregate impact of its DSM activities and Cap and Trade costs on its customers which as noted by Ms. Oliver-Glasford total between $7.00 and $8.00 per month.[77] This concern emanates from a number of sources including: (1) the fact that Enbridge recognizes the materiality of the bill impacts on its customers; (2) the concern that the Board has expressed about bill impacts in the DSM Framework (which required the Utilities not only to limit bill impacts for residential customers to about $2.00/month but to also undertake a sensitivity analysis using different budget levels) and; (3) the uncertainty in the market place with the hundreds of millions of dollars of government money being made available which could make it wasteful to direct incremental ratepayer money towards programs which are either rendered redundant or overshadowed by CCAP, GreenON or the IESO.

85. Enbridge also notes that the Cap and Trade Framework does not specifically identify an amount by which Utilities should see as an appropriate bill impact. Enbridge understood that the MACC was intended to help it identify what is the appropriate additional amount that should be considered to be spent on incremental energy efficiency measures. Using

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[76] LIEN Argument, Pages 5-7

[77] Tr. V. 3, Pages 178/9.

the MACC in conjunction with the additional analysis based on the CPS, Enbridge determined that it was inappropriate to propose additional spending. It is also of the view that given the existence of the DSM Framework and its large successfully functioning DSM department, the consideration of incremental energy efficiency programs should be undertaken within the context of the DSM Framework. But this view does not change the fact that Enbridge's analysis determined that it was inappropriate to propose additional spending within Cap and Trade.

86. As noted by several ratepayers, there is conflict and/or confusion as between the two Frameworks. Enbridge notes that the Board has indicated that issues of this nature will be raised as part of the stakeholder conference in the mid-term review. This proceeding is not the appropriate forum for such matters.

87. ED and Board Staff confuse the DSM Framework and Cap and Trade Framework in their evidence, making references to cost-effective conservation that was identified under the DSM framework and implying this is true in the Cap and Trade Framework.[78] Enbridge submits that there must have been some purpose to the development of the MACC. If the Board had intended the Utilities to use the methodologies available under the DSM Framework to determine if more cost effective potential exists and require the Utilities to pursue the same, the Board could have simply so directed the Utilities, forgone the expense of developing the MACC and revised upward the monthly bill impact ceiling set out in the DSM Framework. This is in effect what Board Staff, GEC and ED are proposing.

[78] ED Argument, Pages 8 and 9 and Board Staff Argument, Pages 15 and 21.

88. GEC and ED repeatedly refer to the use of the Utility Cost Test (UCT) as being prescribed by the Cap and Trade Framework.[79] When asked specifically in an interrogatory for a reference in the Cap and Trade Framework that indicates this, GEC/ED could not cite one and instead responded saying that the interpretation of the Framework is a matter for submission.[80] Nowhere in the Cap and Trade Framework is the UCT mentioned. As Enbridge pointed out during the oral hearing, the UCT test, used on its own, is not a symmetrical test.[81] One option is to add the cost that participants pay which would result in the TRC test, which the Board explicitly stated in the Framework that it is premature to use.[82] Alternatively, the cost of gas could be removed, resulting in a comparison of the cost of carbon with the program cost. This aligns with the Cap and Trade Framework which contemplates a comparison of the cost of carbon and the cost of abatement activities.[83] Enbridge notes that the Framework specifically states that the implementation of a Cap and Trade program "will require processes for ensuring that any procurement and trading decisions related to carbon emissions units are governed appropriately, similar to activity related to gas supply acquisitions".[84]

(E) Conclusion

89. Mr. Neme failed to identify one jurisdiction that has a Cap and Trade mechanism in place which requires energy efficiency measures to be considered both under a DSM Framework and under a Cap and Trade regime.[85] This fact perhaps underlies the reason

[79] ED Argument, Page 4, 5 and 12 and GEC Argument, Pages 3, 10, 20, 21 and 22.
[80] Exhibit GEC/ED.Union.2.
[81] Transcript Vol 3, Pages141-144.
[82] Report of the Board: Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities dated September 26, 2016 (EB-2015-0363), Page 22.
[83] Ibid., Page 23.
[84] Ibid.
[85] GEC/ED.FRPO.1

that GEC and ED are not opposed to incremental energy efficiency programs being considered in the context of the DSM Framework.[86] They simply want more, they care not where or how more is justified.

90. Enbridge submits that it is appropriate for the Board to indicate that the 2019/2020 Cap and Trade Compliance Plan proceeding should not be another forum for GEC and ED to continue their perennial quest for more DSM. To be clear, GEC and ED do not simply seek to have DSM budgets expanded to achieve an increase of savings of 50% to 100%[87], which is the high level estimate which Mr. Neme suggests in his report that the Utilities could achieve in the short term. What they look for is an Order from the Board directing the Utilities to undertake all cost effective conservation regardless of the framework. ED in argument specifically stated that:

> Environmental Defence believes the Utilities should be incentivized to put forward all cost effective conservation, including carbon-cost cut-drive conservation.[88]

91. If this statement generates a sense of déjà vu, there is good reason. In its argument filed in the DSM 2015-2020 Multi-Year DSM plan proceeding (ED-2015-0029/49), ED noted the following in an argument:

> During cross-examination, Mr. Neme discussed five distinct areas of evidence that conclusively established that Enbridge and Union are far from achieving all cost effective DSM. In light of this evidence, Mr. Neme stated that he was "absolutely certain, 100% certain" that Enbridge and Union will not attain all of their achievable cost effective conservation based on their current plans. An increase in the Utilities targets and budgets from 2017 onward is mandated by the Minister's directive, is in the customer's best interest and would benefit all of Ontario.[89]

[86] ED and GEC letters to the Board, dated May 9 and 14, 2018, respectively.
[87] Exhibit L, Page 27.
[88] ED Argument, Page 16.
[89] Submissions of Environmental Defence, ED 2015-0029/49, Paragraph 77, Pages 28/29.

92. Not to be outdone, GEC similarly in the same proceeding advocated for the Board to direct the Utilities to undertake and achieve all cost effective DSM and in this regard, it also made the following comment that is relevant to the issue of bill impacts:

> GEC does not view the rate impact of the scale we advocate for 2017 and 2018 as undue given the resulting net savings and off-setting rate reductions DSM drives. However, if rate impact remains a concern to the Board, an amortization approach can address it and allow better adherence to the Minister's all cost effective DSM directive.

93. If one were to look at what these parties advocated in the 2017 Compliance Plan proceeding, the proceeding which led to the development of the DSM Framework and numerous previous DSM proceedings, you would see the same arguments for more DSM spending being repeated. Enbridge submits that while parties are entitled to advocate reasonable positions, they should be reflective of past Board decisions and in particular, the Board's 2015-2020 DSM Multi-Year Plan Decision of January 2016 which rejected GEC and ED's calls for much greater spending on DSM. Enbridge requests that the Board provide clarity in its decision in this proceeding that issues about incremental energy efficiency programming should be limited to the DSM Framework and not be repeated in future Cap and Trade Compliance Plan proceedings.

ISSUE 1.10.1: RNG

94. While the Board indicated in Procedural Order No. 2 dated February 7, 2018, that the RNG procurement and funding model does not require approval,[90] several parties made submissions in respect of RNG.

[90] Procedural Order No. 2, February 7, 2018, Page 4.

95. FRPO[91] and CCC[92] both submit that the Board should require the Utilities to seek approval for RNG Supply contracts. While Board Staff made reference to this during the technical conference, it took no position in argument.

96. Enbridge submits that given the anticipated volumes that will be the subject of RNG supply contracts, the quantities involved are immaterial from the perspective of each of the Utility's system gas throughput. When one considers further that RNG may be the subject of a number of contracts the aggregate of which is immaterial, Enbridge submits that a requirement for Board approval of such contracts would be inefficient and would add additional unnecessary costs. Enbridge notes that it regularly procures system supply through spot purchases that do not require Board approval. Enbridge submits that it makes no sense for such mandatory micromanagement of RNG supply contracts to occur.

97. LPMA[93] believes that the RNG procurement model will result in an inequitable allocation of risk. Enbridge is of the view that LPMA (and several other stakeholders) mischaracterize as risk what might occur on a relative basis using the RNG procurement model. In short, using a ten year forecast fixed price for natural gas in the model may mean that at times, the fixed price is either lower or higher than the then current market price for natural gas. While forecasts are always simply best estimates of what may occur in future, under the procurement model, by using a ten year fixed price forecast for both natural gas and carbon, ratepayers have the certainty of knowing what the cost of RNG will be in future. There is, therefore, from the perspective of the cost of RNG supply, no risk to ratepayers of any price change.

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[91] FRPO Argument, Page 5.
[92] CCC Argument, Page 8.
[93] LPMA Argument, Pages 13-15.

98. LPMA wants what it characterizes as a risk shared amongst all utility customers including those on direct purchase. Enbridge disputes the characterization of risk, but notes that its approach does allocate costs associated with RNG appropriately. The gas costs for RNG supply (equal to the forecast of conventional gas costs) will be added to Enbridge's system supply costs which is recorded in the PGVA and cleared to system gas customers. Any additional costs for RNG (and there may be no such costs, particularly where government funding is available) will be recorded in the GHG-Customer and GHG-Facilities Variance Accounts. These costs will be allocated to all ratepayers.

ISSUE 3: CUSTOMER OUTREACH

99. Very few stakeholders comment on Enbridge's customer outreach proposals. Board Staff submitted that the customer outreach proposals are appropriate.[94] While Enbridge's administrative cost budget for 2018 contains no amount for customer outreach costs, this is simply a reflection of the fact that its customer outreach activities are included in its customer care activities and that there are no incremental costs beyond those already being occurred and captioned in rates.[95]

100. Enbridge acknowledges LIEN's request[96] that the utilities align their programs directly with the social services agencies and that customer information releases provide updates on abatement initiatives. Enbridge states that to the extent reasonable, it will consider LIEN's requests going forward.

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[94] Board Staff Argument, Page 33.
[95] Exhibit E, Tab 1, Schedule 1.
[96] LIEN Argument, Page 5.

ISSUE 4.1: DEFERRAL AND VARIANCE ACCOUNTS

101. Board Staff submit that an order establishing the 2018 GHG-Customer VA and the 2018 GHG-Facility VA is not necessary. Enbridge has no issue with the Board determining that an accounting order in each year is not required. The fact however is that 2017 and 2018 were single year Compliance Plans and it was believed that the Board's decision for each of these years would only be approving the deferral and variance accounts for the year in question. If Enbridge is not required to seek approval for the 2019 and 2020 deferral and variance accounts that will be required for these years, it would appreciate the Board's confirmation of same in its decision in this proceeding.

ISSUE 4.2: DEFERRAL AND VARIANCE ACCOUNT BALANCES

102. The only deferral and variance account for which approval is sought in this proceeding for clearance at the next appropriate QRAM is the 2016 GGEIDA which has a balance of $840,000.[97] No party took exception to this amount and no party has expressed opposition to its clearance as proposed by the Company.

103. EP submitted that the Board should establish a deferral account to capture the difference between gas costs under the fixed price forecast used for the RNG procurement model and actual market prices for natural gas. Enbridge is opposed to this suggestion as it will simply add an administrative burden and is of no value. EP did not indicate in its submission how such information would be used and how it would be of benefit. If, for example, market prices for natural gas are higher than the fixed price used in the procurement model, what is to be done with such information and why would a deferral

[97] Exhibit D, Tab 1, Schedule 2 and Exhibit F, Tab 1, Schedule 1, Page 2.

account be established when there are no actual costs incurred by ratepayers in respect of the differential calculated.

ISSUE 4.3: DISPOSITION METHODOLOGY

104. Several parties made comments about how amounts recorded in the Cap and Trade deferral and variance accounts should be disposed of in future. In the Board's decision in respect of the 2017 Cap and Trade Compliance Plans filed by the Utilities,[98] the Board found that the disposition amounts and methods for the clearance of such amounts "will be determined in the 2019 Compliance Plan proceeding where the accounts will be examined in the context of the Cap and Trade program". The Board went on to state that "this disposition decision is deferred to allow the OEB to have more time and information to consider the issues".

105. Enbridge acknowledges APPrO's concerns about a one-time clearance of amounts recorded in such accounts.[99] Enbridge reiterates its view that the manner in which amounts should be cleared through the rates should in part reflect the materiality of the amounts that are proposed to be allocated to various rate classes. It is at that time that BOMA's request that such accounts be cleared over a number of months[100] and LIEN's suggestion that amounts be cleared over the warmer months[101] can be entertained.

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[98] Decision and Order, September 21, 2017, EB-2016-0296/0300-0330, at Page 37.
[99] APPrO Argument, Page 17.
[100] BOMA Argument, Page 17.
[101] LIEN Argument, Page 8.

106. IGUA has submitted that administrative costs should be allocated in a fashion similar to the customer related variance account (GHG-Customer VA) rather than as provided for in the Framework.[102] The Framework provides at page 30:

> "The OEB has determined that administrative costs relating to the implementation and ongoing operation of the Cap and Trade program will be allocated and recovered from all customers in the same manner as existing administrative costs".

107. While the exact quantum of 2018 administrative costs is not known at this time, the forecast for 2018 excluding the LCIF for Enbridge is only $3.54 M. Enbridge notes that the Board determined under the Framework that if did not expect administrative costs to be sufficiently material to justify changing the allocation methodology. To come to this conclusion, the Board relied upon the above noted discussion paper of Board Staff and its determination that administrative costs in California in 2015 were coming in at about $4 million.[103] It therefore appears that the Board's expectation that administrative costs would not prove to be material has come true.

108. Aside from noting the basis upon which the Board made its decision, and further noting that Enbridge is seeking recovery of 2016 administrative costs of $0.840M, excluding interest, Enbridge takes no position in respect of IGUA's request.

ISSUE 5: COST RECOVERY

109. Enbridge notes that Board Staff support the use of ICE to set the proxy price for carbon in2018. As submitted by Board Staff, Enbridge will consider continuing to use either a carbon proxy price such as ICE or the weighted average cost of compliance in future Compliance Plan submissions.

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[102] IGUA Argument (revised), Page 3.
[103] Staff Discussion paper on Cap and Trade Regulatory Framework, May 25, 2016 (EB-2015-0363).

ISSUE 6: IMPLEMENTATION

110. Enbridge agrees with the implementation process proposed by Board Staff.[104]

RELIEF SOUGHT

111. There appears to be some continued confusion about the nature of the determination that the Board should be making in this case.[105] In that context, Enbridge believes that it is appropriate to revisit the nature of the determination that the Board made in respect of Enbridge's 2017 Compliance Plan and the determination that is sought in this application. In short, Enbridge seeks a determination that its 2018 Compliance Plan and the forecast costs are reasonable. Once that determination is made, then it is only where Enbridge substantially diverges from its Compliance Plan that there will be any need for a detailed after-the-fact review of the actual costs incurred.

112. In the 2017 Compliance Plan proceeding, the Board found that the Compliance Plans filed by Enbridge and Union were reasonable. The Board specifically found that:

> In the strictly confidential Decisions, the OEB panel made findings on these issues and concluded that each gas utility's Compliance Plan was based on reasonable option analysis and optimized decision-making and risk management processes and analysis.[106]

113. Based upon the evidence from both the public and strictly confidential portions of the 2017 Compliance Plan proceeding, the OEB stated that:

> The OEB approves the Gas Utilities' Customer-Related Obligation, and Facility Related Obligation cost consequences as submitted … The OEB finds that the administrative costs proposed

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[104] Board Staff Argument, Page 39.
[105] Board Staff Argument, Page 5, where there is some suggestion that there will be a detailed review of Enbridge's Cap and Trade compliance costs after the year is completed.
[106] Decision and Order September 21, 2017, EB-2016-0296/0300, Page 6.

by each of the Gas Utilities are consistent with the expectations established in the Cap and Trade Framework.[107]

114. Enbridge acknowledges that it will be expected to seek approval in a future proceeding to clear the balances in its 2018 Customer and Facility-related GHG variance accounts, as well as the 2018 GGEIDA. However, Enbridge submits that if the Board in this case finds that the cost consequences of the 2018 Compliance Plan are reasonable, then there must be a presumption that so long as Enbridge has followed its 2018 Compliance Plan then the balances in the accounts are appropriate and should be cleared. If not, the Board's determination in the Compliance Plan proceeding is without meaning and all of the time and costs incurred in this proceeding have been wasted.

115. In terms of the submissions made by other parties about the appropriate relief to be granted in this proceeding, Enbridge is most troubled by the submissions made by Board Staff, ED and VECC for the imposition of a penalty against each of Enbridge and Union.[108] The thrust of these submissions is that the Utilities should have included more abatement activity in their 2018 Compliance Plans and that they should be financially sanctioned for failing to do so. Stated differently, these parties argue that the Utilities should be denied recovery of prudently incurred costs as a punishment for not proposing additional ratepayer funded abatement programs in their 2018 Compliance Plan. These three parties are arguing that the Utilities should be penalized for not proposing more ratepayer spending and higher bills. Besides the fact that ratepayer groups do not support

[107] Decision and Order September 21, 2017, EB-2016-0296/0300, Page 3.
[108] Board staff are seeking a reduction in recovery of costs actually incurred of $700,000: Board Staff Argument, Pages 4 and 26. ED does not state figures, but requests that the Board "disallow" a portion of the utilities Cap and Trade compliance costs: .ED Argument, Page 18 VECC argues for the imposition of "a 5% penalty" on each Utilities' requested Cap and Trade costs to be recovered in rates: VECC Argument, Page 9. VECC does not state what compliance costs this 5% should be calculated upon. Is it the administrative costs, customer or facility compliance costs or the total forecast cost of the Compliance Plan, which at $400,000,000 would equate to a penalty of $20,000,000?

higher bills, the denial of recovery of prudently incurred costs is contrary to the regulatory compact and the basic principles of ratemaking. It would certainly not be just and reasonable. It is also at odds with the legal obligation the Company has with respect to the Cap and Trade regulation.

116. There can be no confusion about what it is that these parties are proposing. It cannot be characterized as being anything other than the imposition of a penalty by prospectively denying the future recovery of costs that the Utilities will have incurred to satisfy a statutorily mandated obligation. VECC makes it all very clear by actually calling its proposal a "penalty"[109]. Board staff refers to this as a "disallowance", but its argument reveals that the "disallowance" is not in relation to any specific inappropriately incurred cost. ED says that a "disallowance" is warranted because some costs are not reasonable, but does not point to any specific improper costs.

117. It is noteworthy that only 3 of the 15 participants who filed argument (only one of which represents a specific ratepayer group) advocate imposing a penalty and none of these three raised the prospect of a penalty being appropriate in the written and oral questions put to the Utilities in this proceeding. Notwithstanding, Enbridge is compelled to respond. As described in the following paragraphs, a penalty is neither appropriate nor available in this case.

118. Most importantly, Enbridge submits that it has not in any way failed to comply with the Cap and Trade regulation and the Board's Framework. One of the Guiding Principles enunciated in the Framework is Rate Predictability, which is defined as meaning:

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[109] VECC Argument, Page 1.

"customers have just and reasonable, and predictable rates resulting from the impact of the Utilities' cap and trade activities"[110].

119. There are two statutory objectives which the Board must be guided by under the *OEB Act*. The first is "to protect the interests of consumers with respect to prices and the reliability and quality of gas service". The second is "to promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances".[111]

120. Enbridge notes that there is not only a lack of agreement as between stakeholders, there is strong ratepayer opposition to the Utilities being required to undertake incremental abatement or energy efficiency (DSM) programs within their Cap and Trade Compliance Plans. Enbridge's submissions set out above under Issues 1.8 through 1.10 explain the reasonable, measured and appropriate decision-making process followed by Enbridge in terms of abatement activities. Among other things, the submissions explain Enbridge's concerns about bill impacts on ratepayers and the lack of ratepayer support for incremental DSM measures being undertaken under the Framework. Indeed, as noted by Enbridge in evidence[112], it is precisely because of the inevitable bill impacts particularly on non-program participants that Enbridge has proceeded cautiously in terms of proposing additional spending beyond that proposed and confirmed in evidence.

121. Effectively, Board Staff, ED and VECC are asking the Board to penalize the Utilities for not spending more money on incremental DSM at a time when there is neither clear

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[110] Framework, Page 7.
[111] *OEB Act,* section 2.
[112] Tr. V.3, Pages 178/9.

direction provided by the Board in this regard nor strong support for same by consumer groups. There is also nothing mandating incremental DSM in the Cap and Trade program regulation. Penalizing the Utilities would clearly be inconsistent with the Framework's Guiding Principles and the statutory objectives which guide the Board.

122. In any event, there is no evidence to support the amounts of penalty proposed. The evidence referenced by the parties which they submit supports the imposition of the penalty is based on high-level untested calculations that were not even put to the Utilities during the written and oral hearing.

123. Enbridge believes that it is important to look precisely at what it was asked and its response. Board Counsel asked: "If that extra $5 million was available through the DSM program, would you be -- or -- let's stick with that. Would you be able to find some cost-effective measures or programs"? Enbridge's DSM witness on its panel, Mr. Johnson, responded saying: "So again, if we are saying within the DSM framework we raise the cap for spend? Yes, I think within the DSM framework, again within a TRC world, we would see that there are places that we could spend, particularly within the C&I; I would agree with that".[113]

124. Board Staff did not put to Enbridge its calculations for the incremental costs and forecast benefits which would allegedly flow through to those ratepayers that participated in the incremental DSM programs that this $5 million would have funded. Instead, Board Staff undertook high level calculations in Argument including an untested and incorrect assumption about incremental costs and are using this as the basis for the Board to

[113] Tr. V. 4, Pages 44/5.

impose a penalty of $700,000. As noted earlier, Board Staff's high level calculations are not grounded in evidence and are inconsistent with the plain language of the MACC.

125. In the case of ED, while no amount was given as the appropriate amount for a penalty, as ED relies upon the evidence of Mr. Neme, it is important to note that even Mr. Neme states that his evidence is "high level", not supported by "a detailed, bottoms-up analysis of additional efficiency potential" and contains "ballpark estimates".[114] Such guesstimates are not evidence and should not be the basis of a decision.

126. As for VECC, it is not clear how it arrived at a 5% penalty, nor the amounts that this penalty should be calculated upon. This was certainly not discussed at the hearing.

127. In summary, there is no credible evidentiary basis to entertain any figure which is or may be proposed.

128. In any event, Enbridge submits that the Board lacks the jurisdiction to impose a penalty on the Utilities in these circumstances.

129. First, the powers of the Board to impose a penalty are set out in Part VII.1 of the *OEB Act*. Leaving aside whether what Board Staff, ED and VECC allege has occurred is a breach of an "enforceable provision" as defined under Section 112.1 of the *OEB Act* (which is a prerequisite for a finding of non-compliance), none of the notice, evidentiary and hearing requirements of Part VII.1 have been complied with. The Board therefore lacks the jurisdiction under the *OEB Act* to even consider imposing a penalty as its process has not been followed.

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[114] Exhibit L, Pages 9, 24 and 27.

130. Second, even if the Board has jurisdiction under the *OEB Act,* which Enbridge submits that it does not, the Rules of Procedural Fairness and the *Statutory Powers Procedures Act* clearly provide that a penalty cannot be imposed under these circumstances. It is trite law that a party is entitled to know of the allegations being put to it and to have a chance to fully respond. Board Staff at no time during the hearing even intimated of such a position. VECC's suggestion of a penalty only emerged in argument.

131. In conclusion, Enbridge respectfully seeks a determination by the Board that its 2018 Compliance Plan and the cost consequences of it are reasonable and that the Plan is consistent with the Framework.

All of which is respectfully submitted June 14, 2018.

Original Signed

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Dennis M. O'Leary
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