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July 4, 2019

**Delivered by Email, RESS & Courier**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2701  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Inc. - 2019 Rates Application  
EB-2018-0305  
Final Arguments of the Association of Power Producers of Ontario (“APPrO”)**

Pursuant to Procedural Order No. 4, please find attached APPrO’s final arguments in this proceeding. Paper copies of this letter and the accompanying submission will be delivered to you by courier.

Should you have any questions or require further information in this regard, please do not hesitate to contact me.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Per:

*Original signed by Flora Ho*

Flora Ho

Encl.

cc: David Butters, APPrO  
All Parties to EB-2018-0305

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc. and Union Gas Limited (amalgamated as Enbridge Gas Inc. on January 1, 2019), pursuant to section 36(1) of the *Ontario Energy Board Act, 1998* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2019.

**FINAL ARGUMENT OF THE  
ASSOCIATION OF POWER PRODUCERS OF ONTARIO (“APPrO”)**

**Filed: July 4, 2019**

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**INTRODUCTION:**

1. The Association of Power Producers of Ontario ("**APPrO**") makes these written submissions on the Application filed by Union Gas Limited ("**Union**") and Enbridge Gas Distribution Inc. ("**EGD**", and together with Union the "**Predecessor Utilities**") with the Ontario Energy Board (the "**Board**" or "**OEB**") on December 14, 2018 pursuant to section 36 of the *Ontario Energy Board Act, 1998* (the "**OEB Act**") for an Order approving or fixing interim rates for the distribution, transmission and storage of natural gas effective January 1, 2019 (the "**Application**").
2. The Board assigned file number EB-2018-0305 to the Application.
3. Prior to the Application, the Predecessor Utilities had filed an application dated November 2, 2017 with the OEB under section 43(1) of the OEB Act for approval to effect the amalgamation of EGD and Union into a single company. On November 23, 2017, the Predecessor Utilities filed another application with the OEB under Section 36 of the OEB Act for approval of a rate setting mechanism for the proposed amalgamated company, effective January 1, 2019<sup>1</sup> ("**MAADs Application**"). The OEB issued a decision on August 30, 2018, which was amended on September 17, 2018<sup>2</sup> ("**MAADs Decision**").
4. On December 3, 2018, the OEB declared the current rates of Enbridge Gas to be interim effective January 1, 2019 until the OEB issues a final rate order in this matter.
5. On January 1, 2019, the Predecessor Utilities amalgamated to form Enbridge Gas Inc. (the "**Applicant**" or "**Enbridge Gas**").
6. A settlement conference for the Application was held on May 13 and 14, 2019. There were several unsettled issues from the settlement conference and the OEB has determined that the unsettled issues will be addressed through a written hearing. The OEB is satisfied that there is sufficient information on the record for parties to proceed with written submissions.

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<sup>1</sup> EB-2017-0306 / EB-2017-0307

<sup>2</sup> EB-2017-0306 / EB-2017-0307 – Decision and Order Amended on September 17, 2018.

7. These submissions are prefaced by a general statement of APPrO's position on the Application followed by a more detailed set of submissions.

**EXECUTIVE SUMMARY:**

8. As more fully detailed in the submissions below, APPrO is of the view that the proposals made by the Applicant on Issues 7 a), 10 and 12 a) of the unsettled issues are not agreeable. Specifically, APPrO is concerned about:
- a. the Applicant's proposals' inconsistencies with the MAADs Decision;
  - b. the Applicant's proposals' inconsistencies with the OEB's Decisions on the Predecessor Utilities' Leave-to-Construct applications<sup>3</sup>; and
  - c. the Applicant's proposals' inconsistencies with the OEB's Incremental Capital Module ("ICM") Policy<sup>4</sup>.
9. APPrO's views on the manner which the unsettled issues should be addressed are set out below.

**UNSETTLED ISSUES OF CONCERN:**

***Issue 1 - Has Enbridge Gas responded appropriately to all relevant OEB directions from previous proceedings?***

10. First, APPrO submits that the Applicant has not responded appropriately to the directions from the MAADs Decision.
11. In the MAADs Decision, the OEB had balanced the interests of the Predecessor Utilities and the intervenors.
12. For example, the Predecessor Utilities proposed a deferred rebasing period of ten years whereas a number of intervenors requested immediate rebasing. The OEB approved a

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<sup>3</sup> EB-2017-0180 (Sudbury Replacement Project); EB-2018-0108 (Don River Replacement Project); EB-2018-0013 (Kingsville Reinforcement Project)

<sup>4</sup> Ontario Energy Board, EB-2014-0219, Report of the Board, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module.

deferred rebasing period of five years.<sup>5</sup>

13. As another example, the Predecessor Utilities proposed for the earning sharing mechanism (“**ESM**”) to start in year six of the ten-year deferred rebasing period. If in any calendar year from 2024 to 2028, the actual utility ROE is greater than 300 basis points above the allowed ROE, the excess earnings above 300 basis points would be shared 50/50 between the ratepayers and the shareholders. Most intervenors opposed the Predecessor Utilities’ proposal and some suggested an asymmetric ESM that begins in the first year of the deferred rebasing term with a deadband of 20 basis points. The OEB approved an asymmetrical earnings sharing mechanism with 150 base points for the new earnings sharing mechanism as a mid-way between the existing thresholds between EGD and Union.<sup>6</sup>
14. While balancing the interests of the Predecessor Utilities and the intervenors, the OEB granted approval for ICM in the MAADs Decision.
15. However, the Applicant is now attempting to disrupt the balance and deviate from the MAADs Decision by proposing to make rate base adjustments associated with the capital pass-through project amounts, as further detailed below.

***Issue 7 – Are any rate design proposals appropriate in the context of previous OEB decisions, including:***

***a. One-time adjustment for Capital Pass-Through Projects***

16. In the MAADs Application, the Predecessor Utilities had already raised the issue regarding their position on capital-pass through projects. In that proceeding, the Predecessor Utilities requested Board approval to qualify for incremental capital investments through ICM. They proposed to calculate separate materiality thresholds using rate base and depreciation expense last approved by the Board, which was 2013 rates for Union and 2018 rates for

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<sup>5</sup> EB-2017-0306 / EB-2017-0307 - Amended Decision and Order at Pages 20-22.

<sup>6</sup> EB-2017-0306 / EB-2017-0307 - Amended Decision and Order at Page 28.

EGD.<sup>7</sup>

17. Intervenors argued that using 2013 rates for Union to calculate the ICM materiality threshold would generate a very low threshold and very high recovery<sup>8</sup>. Therefore, it was argued that the extra capital funding in any deferred rebasing period should use the capital pass-through mechanism currently in use by Union.<sup>9</sup> Some intervenors argued that the Predecessor Utilities should use Union's 2018 depreciation expense in calculation of the ICM threshold.<sup>10</sup> Several intervenors proposed that the ICM be denied and that the capital pass-through mechanism, which is used in Union's current Price Cap plan should be used during the deferred rebasing period.<sup>11</sup>
  
18. The Predecessor Utilities submitted that the Predecessor Utilities would continue the capital pass-through deferral accounts for Union capital projects between 2014-2018 IRM term and the end of the deferred rebasing term. Therefore, they argued that the depreciation associated with the capital pass-through projects should not be included in the calculation of the ICM threshold. In their Reply Argument the Predecessor Utilities stated:

“170. Essentially the capital pass through projects are treated on a cost of service basis and are outside of the Price Cap mechanism. The depreciation expense embedded within the revenue requirement for a capital pass through project represents the recovery of the (original) cost of that specific project over its useful life. Given that, in respect of capital pass through projects, rates are set to match/recover exactly the revenue requirement associated with those projects (no more and no less), depreciation expense for these projects is not available to support investments in other projects.

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<sup>7</sup> EB-2017-0307 Exhibit B Tab 1 Page 5

<sup>8</sup> EB-2017-0306 / EB-2017-0307 – Building Owners and Managers Association (“BOMA”) Argument filed on June 14, 2018 at page 11, School Energy Coalition Argument dated June 15, 2018 at page 31.

<sup>9</sup> EB-2017-0306 / EB-2017-0307 – School Energy Coalition Argument dated June 15, 2018 at page 31.

<sup>10</sup> EB-2017-0306 / EB-2017-0307 - CCC Submission, page 13; LPMA Submission, page 29; OGVG Submission, page 24; SEC Submission, pages 51-52.

<sup>11</sup> EB-2017-0306 / EB-2017-0307 - Amended Decision and Order at Page 31.

171. As indicated by Mr. Reinisch in response to Mr. Shepherd:

MR. REINISCH: Again, I don't want to speculate, but I disagree with the premise of the assertion that you're making. The challenge is that -- again, a couple of things. First of all, the capital pass-through, as rate base decreases, as our average net book value decreases through the current rebasing period and the future rebasing period, we do not have that depreciation expense available to us to reinvest in maintenance capital activities, so those dollars are not in rates. We are not recovering.

The purpose of the ICM materiality threshold is to calculate how much the utility can spend within their existing rates. The capital pass-through mechanisms are handled outside of that and they are effectively treated as cost-of-service projects, so there is no mechanism to reinvest that depreciation expense and for the utilities to recover that investment.”<sup>12</sup>

19. However, the OEB did not agree with the Predecessor Utilities’ argument. The OEB agreed with the intervenors and determined in the MAADs Decision that the pass-through amounts shall be added to the 2013 Board-approved rate base and depreciation in determining the eligible incremental capital amount for Union’s service territory.<sup>13</sup>
20. Now in the current proceedings, Enbridge Gas proposes to include a one-time adjustment for the capital pass-through revenue requirement in 2019 rates to address the disconnect between the annual capital investment supported by rates and the ICM threshold value calculation. In IRR Exhibit I.Staff.8, Enbridge Gas explains that it requires a one-time adjustment to rates to include the revenue requirement of the capital pass-through projects so that they can align the ICM threshold value with the capital investment that can be supported by rates.<sup>14</sup>
21. This is in essence the same issue raised by the Predecessor Utilities in the MAADs

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<sup>12</sup> EB-2017-0306 / EB-2017-0307 EGD and Union’s Reply Argument filed June 29, 2018 at Pages 57 and 58.

<sup>13</sup> EB-2017-0306 / EB-2017-0307 - Amended Decision and Order at Page 33.

<sup>14</sup> EB-2018-0305 Exhibit I.STAFF.8 Page 2

Application, which the OEB had already made a decision on, as stated in Paragraph 17 above.

22. It was confirmed by Enbridge Gas' witness, Ms. Mikhaila at the Technical Conference on May 1, 2019 that the issue in IRR Exhibit I.Staff.8 and the MAADs Decision are the same:

“MR. VELLONE: [...] So this is where the two utilities in their joint submissions were responding to some intervenor arguments that Union's 2018 depreciation expense be used as part of the ICM threshold. You don't agree. And then you go into paragraph 170. And I am reading that there, that last full sentence in paragraph 170:

“Given that in respect of capital pass-through projects rates are set to match/recover exactly the revenue requirement associated with those projects, no more, no less, depreciation expense for those projects is not available to support investments in other projects.”

Is that essentially the same problem that you are trying to address in Staff 8? [...]

MS. MIKHAILA: I haven't read through this in some time, but I would say that is the same item.”<sup>15</sup>

23. Enbridge Gas also added that they had pointed out in the MAADs reply argument that a disconnect would arise between the level of base capital investment calculated by the ICM materiality threshold and the level of base capital investment that is supported by the rates.<sup>16</sup> This confirms that they had raised this issue in the MAADs Application previously. However, they did not succeed in their argument. Hence, in the current proceeding, Enbridge Gas proposes to “fix the capital pass-through revenue requirement in rates and discontinue the use of the capital pass-through deferral accounts, except for the purposes

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<sup>15</sup> Technical Conference Transcript dated May 1, 2019 at page 125 lines 1 to 13.

<sup>16</sup> Response to Undertaking JT1.17 filed May 8, 2019 page 1.

of capturing utility tax timing variances”.<sup>17</sup>

24. Their proposal is inconsistent with the MAADs Decision.
25. If the Predecessor Utilities had disagreed with the MAADs Decision on the above issue, their remedy was to bring a motion to review or to appeal the decision. However, they chose not to. They should not be reopening the issue in this proceeding.
26. In addition to being inconsistent with the MAADs Decision, there are significant consequences to the one-time adjustment of capital pass-through to rate base as proposed by Enbridge Gas.
27. In their Response to Interrogatories (“**IRR**”) Exhibit I.SEC.6 Attachment 1, Enbridge Gas provided a calculation of its 2019-2023 capital pass-through revenue requirement which will be recovered from customers. As shown in the calculations, Enbridge Gas will collect \$33.8 million more from customers by using their proposed one-time adjustment approach as compared to continuing to treat the projects as Y-factor adjustments. The amount of \$33.8 million did not include the amount of \$117,238,000 which is the total revenue for each of the capital-pass-through projects. Enbridge Gas subsequently confirmed that this amount would be built into rates and once it is in the base rates it will escalate with the PCI factor.<sup>18</sup> Through the recalculation in response to undertaking JT1.2, Enbridge Gas will in fact collect \$46.5 million more from customers by using their proposed one-time adjustment method.<sup>19</sup>
28. APPrO submits that this is an unreasonable increase that adds to the burden of ratepayers.

***Issue 10 – Are the costs of the ICM projects appropriate, to the extent that they differ from the costs considered by the OEB in granting leave to construct?***

29. There is a significant variance between the cost approved in the Leave-to-Construct and

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<sup>17</sup> EB-2018-0305 Exhibit B1 Tab 1 Schedule 1 Page 19

<sup>18</sup> Technical Conference Transcript dated May 1, 2019 at page 12 lines 13, 14 and lines 21 to 24.

<sup>19</sup> Response to Undertaking JT1.2 Attachment 1 filed May 8, 2019.

the current updated cost estimate for the Don River Replacement Project (“**Don River Project**”), the Kingsville Reinforcement Project (“**Kingsville Project**”) and the Sudbury Replacement Project (“**Sudbury Project**”).

30. For the Don River Project, the overall project costs increased by \$9,757,342.<sup>20</sup> For the Sudbury Project, the overall project costs has increased by \$21,200,000.<sup>21</sup> For the Kingsville Project, the overall project costs increased by \$15,700,000.<sup>22</sup> As stated in IRR Exhibit I.EP.16, Enbridge Gas’ explanation for the variance in costs is that they are including indirect overhead costs in their updated estimate, which was not accounted for in their original estimated costs in their Leave-to-Construct applications. In fact, as seen in the charts in IRR Exhibit I.EP.16, the original Leave-to-Construct application did not include any overheads at all for the Sudbury Project and the Kingsville Project. Enbridge Gas further argues that by following the requirements in E.B.O 188 and E.B.O 134, the Predecessor Utilities only included incremental costs in their Leave-to-Construct applications.<sup>23</sup>
31. Contrary to their own argument, Enbridge Gas states that indirect overheads were included in the costs filed in the Leave-to-Construct application for the Stratford Reinforcement Project (“**Stratford Project**”). The Stratford Project was the only project that had \$0 cost variance between the OEB approved costs and the updated cost estimate.
32. APPrO submits that Enbridge Gas failed to provide an adequate explanation of why overheads were not included in the projects’ costs in the Leave-to-Construct applications. The OEB had approved the project costs based on the costs as presented to them by the Predecessor Utilities. It is unreasonable for the Predecessor Utilities to omit such a significant part of the costs in their Leave-to-Construct applications. Enbridge Gas’ explanation of indirect overhead costs is inadequate as it does not address why those were included for the Stratford Project and not the rest of the other projects. Enbridge Gas has

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<sup>20</sup> IRR Exhibit I.EP.16 at page 2.

<sup>21</sup> IRR Exhibit I.EP.16 at page 3.

<sup>22</sup> IRR Exhibit I.EP.16 at page 4.

<sup>23</sup> Technical Conference Transcript dated May 1, 2019 at page 52 lines 23 to 26.

now spent over \$46 million more on costs for three of the projects. This amount was not approved by the Board and is inconsistent with the Leave-to-Construct decisions. As such, APPrO does not agree with Enbridge Gas that they should be allowed to recover these cost variances.

***Issue 12 – Are the Sudbury Replacement Project in the Union North rate zone and the Kingsville Transmission Reinforcement and Stratford Reinforcement projects in the South rate zone eligible for ICM funding?***

***a. If yes, are the ICM rate riders for the Sudbury, Kingsville and Stratford projects calculated appropriately?***

33. Provided that the Board's ICM Policy thresholds are met, APPrO makes no objection to the Kingsville and Stratford projects' ICM funding.
34. However, APPrO submits that the Sudbury Project should not be eligible for ICM funding.
35. The Sudbury Project went into service in 2018 but it did not qualify for capital pass-through treatment in 2018 because the revenue requirement was below threshold.<sup>24</sup> Enbridge Gas proposes to treat the Sudbury Project as a 2019 ICM Project. According to their ICM Proposal, \$9.762 million would be included in the 2019 ICM unit rate and be collected from ratepayers. In the next 5 years, Enbridge Gas will be collecting over \$9 million each year for the Sudbury Project.<sup>25</sup>
36. APPrO submits that Enbridge Gas' proposal is in effect adjusting the OEB's standard ICM policy. As stated in the OEB's ICM Policy, the intent of the ICM is to allow a distributor to apply for and receive funding for significant capital projects that would be **undertaken in years between cost of service applications**.<sup>26</sup> The Sudbury Project was completed and went in service in 2018. It should not be considered as part of the 2019 ICM as the ICM

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<sup>24</sup> IRR Exhibit I.APPrO.2 a) and c) page 1 and 2.

<sup>25</sup> Exhibit B1 Tab 2 Schedule 1 Appendix E Page 2 of 4

<sup>26</sup> Ontario Energy Board, EB-2014-0219, Report of the Board, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, at page 4.

should capture projects that would be undertaken from 2019 onwards in this IRM.

37. The Sudbury Project should have been included in a previous cost of service application. Enbridge Gas could not include the Sudbury Project in the 2018 pass-through projects because it did not meet the revenue requirement threshold. They then argue that it should be included in 2019 ICM. This is ultimately adjusting the ICM Policy in Enbridge Gas' favour at the expense of ratepayers.
38. If the OEB allows for a project that went into service in 2018 to be included in a utility's 2019 ICM, it will be difficult for the OEB to subsequently prevent utilities from bringing in projects which fall within previous IRMs into the current IRM. The current OEB Policy clearly identifies the timing for ICM applications and it does not allow for retroactive inclusions of projects.
39. APPrO submits that the OEB should not allow Enbridge Gas to adjust the ICM Policy in their favour to include the Sudbury Project.

**COSTS:**

40. APPrO has participated in this proceeding in a responsible and efficient manner, including coordinating interrogatories and cross-examination with other intervenors to minimize duplication and maximize efficiency of the process. APPrO requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4<sup>TH</sup> DAY OF JULY, 2019

**BORDEN LADNER GERVAIS LLP**

**Per:**

*Original signed by John A. D. Vellone*

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John A.D. Vellone