ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an order or orders approving rates for the period commencing January 1, 2019.

FINAL ARGUMENT
OF THE
SCHOOL ENERGY COALITION

July 4, 2019

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TABLE OF CONTENTS

1 GENERAL COMMENTS

1.1 *Introduction*

1.1.1 On December 14, 2018 the Applicant Enbridge Gas Inc. ("Enbridge" or the "Applicant") filed an Application for 2019 rates.

1.1.2 The Application proposes a formula-based increase in rates, certain adjustments to those rates, previously approved Y factors, and an incremental capital module for four capital projects.

1.1.3 The case included extensive interrogatories from the parties. There was also a two-day technical conference and a two-day ADR. Many of the issues were resolved in that ADR, but the biggest issues were all unresolved. The parties jointly proposed an oral hearing on only some of those issues, but the Board determined, in Procedural Order #4, that all issues would be dealt with through a written rather than oral hearing.

1.1.4 While there is no doubt that the Board is free, in the interests of regulatory efficiency, to choose a written hearing over an oral hearing, SEC submits that the negative impacts of this procedural decision cut against both the Applicant and the other parties. The Applicant would normally have an opportunity to supplement its evidence in favour of the Application in an oral hearing, having seen the weaknesses in its case through discovery and settlement negotiations. In this case, it is stuck with the record it has. Conversely, the intervenors and OEB Staff would normally have an opportunity to challenge the current record through cross-examination. In this case, some of the Applicant's evidence will remain unchallenged. Although a Technical Conference can sometimes help with this in smaller cases, it is not the same as the right to cross-examine in an oral hearing.

1.1.5 The Applicant's Argument-in-Chief was filed on June 17, 2019. This is the Final Argument of the School Energy Coalition.

1.1.6 The Board will be aware that many of the customer groups who intervened in this proceeding have worked together extensively throughout the proceeding to avoid duplication, including sharing ideas, positions, and drafts. We have been assisted in preparing this Final Argument by that co-operation amongst parties. However, we did not in this proceeding have the benefit of seeing the final argument of OEB Staff, so we are unable to comment on OEB Staff positions on the issues.

1.1.7 SEC has not organized this Final Argument in accordance with the Issues List. Instead, given the limited number of unsettled issues, we have grouped our submissions logically.

1.2 *Summary of Submissions*

1.2.1 The detailed submissions of the School Energy Coalition in this Final Argument can be summarized a follows.

1.2.2 ***Common ICM Issues.*** The Applicant is seeking three material changes to the normal rules with respect to ICM:

(a) ***Calculation of Threshold.*** The ICM rules provide that the escalator for ICM threshold purposes is the current year PCI factor. The Applicant proposes, for the Union Gas threshold only, to use the average PCI for the company since their last rebasing. The result is to decrease the ICM threshold of Union Gas by $23.3 million in the first year (and more in subsequent years), and thus qualify that much more capital as "incremental". This proposal should be rejected by the Board.

(b) ***Business As Usual.*** The Applicant proposes that, because all of its normal projects are large dollar items, they should all be considered "discrete" projects, even if they are essentially the same as many other projects they do each year. This is contrary to the Alectra decision, and should not be accepted by the Board.

(c) ***What is Incremental?*** In calculating the amounts of capital to be treated as incremental, the Applicant proposes to include amounts that would otherwise be OM&A, but have been re-allocated to capital. They also propose to exclude offsets for amounts that would otherwise be included in their normal annual capital spending, as if they were not avoided by ICM projects. These proposals should be rejected by the Board. ICM capital should be truly incremental, or it should not merit a rate increase.

1.2.3 ***Sudbury Project.*** The Sudbury Project came in-service in 2018. It does not qualify under the Union Gas capital pass-through mechanism, so the Applicant seeks to have it treated as a 2019 ICM project, which it is not. The fact that the Sudbury Project slips through the cracks of two different rate mechanisms is just one of the many benefits and costs that arise naturally as a result of the Applicant's decision to seek the Board's approval for a deferred rebasing. The Board should reject the Applicant's attempt to cherry-pick the natural consequences of their decision to defer rebasing.

1.2.4 ***Remaining Projects.*** Of the three remaining projects, two are normal reinforcements that are similar to those done every year, i.e. Stratford and Kingsville. Don River is an unusual replacement because of the bridge issues. In all three cases, amounts were included that are not actually incremental spending. The Board should refuse to approve Stratford and Kingsville, and should approve Don River, but at a lesser

amount.

1.2.5 Extraordinary Increase in Rates.. The Board said, in EB-2017-0306/7:

> "*The rate base and depreciation associated with projects that were found eligible for capital pass-through treatment during the IRM term, shall be added to the 2013 OEB-approved rate base and depreciation in determining the eligible incremental capital amount for Union Gas' service territory."*

The Applicant reads that as authorizing a rate increase, over the period 2019-2023, of $46.5 million. SEC does not agree with this interpretation, and submits that the Board should reject this rate increase.

1.2.6 Additional Unsettled Issues. There are two other unsettled issues:

(a) Connection Policy and Charges. The Applicant has increased its annual net revenue by $8 million per year since 2015 by changing its connection policy and charges without Board approval. The Board should order reversal of the policy until the Applicant brings it to the Board for approval, and order a refund to customers of the extra charges since the policy was changed.

(b) Open Bill Variance Account. The Open Bill Program is the subject of a separate proceeding (EB-2018-0319), and this Board panel should not allow changes to the variance account related to the Open Bill Program. It should be dealt with in that separate proceeding.

2 COMMON ICM ISSUES (Issues 10-12)

2.1 *Introduction*

2.1.1 The Applicant seeks approval for extra funding under the Board's ICM policy, but then proposes that the normal rules with respect to ICM qualification and calculation be altered to increase the additional funding provided.

2.2 *Calculation of Union Gas Threshold*

2.2.1 The normal rule for the calculation of the ICM threshold is that most recent rate base and depreciation are escalated by the current year PCI (which this year is 1.07%) for the purposes of the ICM formula. There is no dispute that is the normal rule, as expressly admitted by the Applicant's witness[1].

2.2.2 The Applicant seeks the Board's approval to reduce the ICM threshold for the Union Gas service territory by $23.3 million[2], and thus cause an additional $23.3 million of capital projects in the Union territory to be eligible for ICM treatment in 2019 based on the materiality criterion[3]. This adjustment would be accomplished, if approved by the Board, through the use of a PCI of 0.72% instead of the 1.07% required by the policy. The 0.72% is the average annual increase in Union Gas base rates from 2013 to 2019 under the former IRM structure for Union Gas.

2.2.3 The Applicant's proposal is seen in a number of places, but is most simply explained in the following exchange at the Technical Conference[4]:

> *"MR. SHEPHERD: Now, isn't the rule that you take the current escalator and apply it to the period since last rebasing? Because the current escalator is not .72, right, it's 1.07.*
> *MS. FERGUSON: That's correct. The current-year escalator is 1.07. In Union Gas's case, because they have been under a price cap for five to six years, it was more appropriate to use an average of what their rate increases would have been during that period to reflect how much funding they would have been able to support capital investments.*
> *MR. SHEPHERD: Why didn't you do the same thing for Enbridge, then?*
> *MS. FERGUSON: In Enbridge's case, the price cap starts in 2019. So we took the current year.*
> *MR. SHEPHERD: No, but you had a period of time where you were under*

[1] Tr.1:17.
[2] LPMA 11.
[3] And more in subsequent years, a total of about $130 million of additional qualified capital over the deferred rebasing period.
[4] Tr.1:17-18.

> *IRM. You were under a custom IRM, right?*
> *MS. FERGUSON: Yes, a custom IRM. But it's still different than a price cap. It's not -- revenues weren't based on the formula.*
> *MR. SHEPHERD: So does the Board have a rule that says you use the current year -- in the ICM rules, my understanding is they say you use the current year escalator from the last rebasing until now. Isn't that right?*
> *MR. KACICNIK: The ICM policy states you should use the price cap index for the current year. When it comes to implementation of the ICM policy for the deferred rebasing period, we proposed the modification to that rule.*
> *MR. SHEPHERD: Enbridge has proposed a modification. This is not something the Board has done?*
> *MR. KACICNIK: Correct. Yes, this is modification to ICM policy we are proposing."[emphasis added]*

2.2.4 Later, asked to calculate the average increase in rates for Enbridge since their last rebasing, the Applicant refused[5], despite a lengthy exchange that indicated the reasons why the information was relevant[6], but ended up with steadfast refusals from the Applicant and its counsel.

2.2.5 SEC calculates the average annual increase in rates for Enbridge Gas Distribution since their last rebasing as 3.02%, which would be the figure equivalent to the 0.72% proposed by the Applicant for the territory of the former Union Gas.

2.2.6 SEC submits that the selective adjustment of the rules proposed by the Applicant should not be approved by the Board. It really amounts to the Applicant saying that the Board's ICM policy, which simplifies the calculation of the ICM threshold[7], should not be applied to the Applicant in the same way as it is applied to Toronto Hydro, Hydro One, Alectra, and other electricity distributors. This is directly contrary to the Board's decision in EB-2017-0306/7, where the Board said[8]:

> *"The eligible incremental capital amount will be determined using the OEB's ICM formula and each gas utility's rate base and depreciation, i.e. calculated individually for both Union Gas and Enbridge Gas. This is consistent with the policy for electricity distributors."[emphasis added]*

2.2.7 While SEC has submitted elsewhere in this Final Argument that the three ICM projects in the Union Gas territory should not be approved by the Board, we believe it is important that the Board make clear that the ICM policy that the Applicant wants to use is the same policy that applies to others, and not some new policy customized to

[5] Tr.1:22.
[6] Tr.1:25-29.
[7] Tr.1:30.
[8] EB-2017-0306/7, Decision with Reasons, p. 33.

maximize the additional funding for Enbridge Gas Inc.

2.2.8 SEC therefore submits that the Union Gas ICM threshold should be calculated using a PCI of 1.07%.

2.3 ***Business as Usual Projects***

2.3.1 All of the projects proposed for ICM treatment in this Application are of the same type as projects the Applicant does annually, including projects not included in the ICM proposals but which will in fact be pursued by the Applicant in 2019. These projects are "business as usual"[9].

2.3.2 The Applicant does not dispute that characterization, as seen in the following exchange[10]:

> *"MR. GARNER: Okay, thank you. One of the things that -- I am not as familiar with the gas USPs as I am with the electric DSPs. And in those cases what is demonstrated is sort of a sense of what's the ongoing capital programs of the utility and what's exceptional to what those programs are. Now, I don't get the same sense out of your USP. So if I looked at your USP, take any one of the ICMs you are doing right now -- Stratford, let's say; it doesn't really matter. In a sense what I am not quite clear of when I read it is, each year you do these types of projects, right, each year you do a certain number of reinforcements or you do a certain number of replacements, et cetera. That's just normal work for you, isn't it, in the sense of a utility like yours has to constantly renew its plant in different places?*
> *MS. FERGUSON: So to your point, reinforcement type projects, those are done as a part of our normal everyday asset maintenance work, for lack of a better term. Those are usually on a much smaller scale and have less of an impact to customers. The ones that we would bring forward for ICM are the ones that would have a much larger impact to our customers, as well as a much larger funding requirement that could not be recovered within the base."[emphasis added]*

2.3.3 In the Argument-in-Chief, the Applicant conflates the "business as usual" issue with whether the projects are discrete and material[11]. SEC accepts that the four proposed projects meet the Board's $10 million "significant influence" test.

2.3.4 However, the Board has also made clear that there is an additional requirement. ICM

[9] With the possible exception of the Don River project, discussed later in this Final Argument.
[10] Tr.1:166-167.
[11] AIC, p. 16.

funding is not available for "typical annual capital programs". Recently the Board refused to allow funding for a substantial Alectra project for exactly this reason, saying[12]:

> *"ICM funding is not available for typical annual capital programs. The OEB finds that the Rometown Area Overhead Rebuild project should be part of a typical annual capital program and therefore is not approved for ICM funding."*

2.3.5 SEC notes that the Board, in that Alectra decision, was clear that this criterion is separate from the "significant influence" test, saying[13]:

> *"The OEB's ICM policy does not make ICM funding available for typical annual capital programs. It is also not available for projects that do not have a significant influence on the operations of the distributor."*

2.3.6 SEC submits that projects that are of the same type as projects that the utility carries out each year, and year after year, should not be included in a request for incremental capital funding[14]. They should be prioritized and paced to be carried out within the normal annual capital budget of the utility.

2.4 ***What Capital is Incremental?***

2.4.1 The Applicant has included in the amounts claimed as incremental capital costs for the ICM projects amounts that are clearly not incremental, and in SEC's submission are not compliant with the Board's policies on ICM.

2.4.2 ***Capitalized OM&A.*** There was much discussion of the differences in project budgets in the leave-to-construct applications and the ICM claims in the current Application. Aside from some cost overruns, the primary difference was that the ICM claims include amounts that would otherwise be OM&A, but have been capitalized as part of the costs of the projects currently before the Board. The total of these capitalized indirect overheads is $41.1 million[15].

2.4.3 SEC submits that these costs are not incremental, and should not be included in the amounts for which incremental capital funding is available. Incremental capital funding should only be available for spending that is truly incremental.

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[12] EB-2018-0016, Decision with Reasons January 31, 2019, p. 9.
[13] Ibid. p. 4.
[14] Unless there is some unique element about them that makes them materially different from the projects carried out in their annual capital programs.
[15] JT1.7.

2.4.4 When the Applicant calculates the fully allocated costs of a capital project, it quite reasonably includes an appropriate allocation of general and administrative OM&A costs that are the "fair share" of those costs to be borne by that project. In the case of the former Union Gas territory, capital costs have 14.8% added to reflect overhead costs. In the case of the former EGD territory, capital costs have 36.4% added to reflect overhead costs[16].

2.4.5 The Applicant admits that these costs are not in fact incremental. Indeed, Enbridge witnesses describe the difference between the costs discussed in a leave-to-construct and those discussed in a rate application as being the difference between incremental and fully allocated (i.e. not just incremental) costs. The following exchange is one of several that makes that clear[17]:

> *"MR. SHEPHERD: ...So in a leave-to-construct application, why would you not include overheads? The Board wants to know what the cost of the project is going to be. Right? Isn't overhead one of your costs?*
> *MS. FERGUSON: Our leave-to-construct applications follow the requirements in EBO 188 and EBO 134, which talks to incremental costs only. In this proceeding we are talking about ICM policy. The company's position is because we are dealing with discrete projects, the fully burdened costs should be what is recovered through ICM.*
> *MR. SHEPHERD: So is these amounts, these 37 million [subsequently increased to $41.1 million in JT1.7], they're not incremental costs?*
> *MS. FERGUSON: The costs for each of these projects reflect the full costs that would be closed into rate base, which includes your indirect as well as your direct.*
> *MR. SHEPHERD: But it's true, is it not, that if you didn't do these projects you would still incur that 37 million of overhead costs?*
> *MS. FERGUSON: Potentially. Those costs would be redirected to support other -- other activities in the company.*
> *...*
> *MR. KACICNIK: We would like to address this question from the difference between economic feasibility when we are asking for LTCs or extending the system to new customers versus rate-making implications of the ICM projects. So when you are doing system expansion to new customers or you are filing an LTC those are governed by EBO 188 and 134. The way you do economic analysis in that you include incremental costs, including incremental overheads.*
> *When it comes to rate making, we don't design rates on present value of project revenues and costs, discounted cash flows. We design rates based*

[16] JT1.7. It is clear from the calculations provided that these percentages are applied to the total project cost as otherwise determined, and so operate as a gross-up.
[17] Tr.1:52-55.

> *on fully burdened, fully allocated costs. So when you are closing an ICM project into rate base, you have to reflect all costs, which is fully burdened costs.*
>
> *It would not be consistent if you close a project, an ICM project X into rate base using all costs, and then calculate ICM rate riders using incremental costs."[emphasis added]*[18]

2.4.6 SEC submits that the Applicant should not be allowed to treat costs that are clearly not incremental as incremental for the purposes of recovering extra funding in rates under the ICM policy[19].

2.4.7 ***Avoided Future Capital Costs***. The same problem arises with respect to projects that avoid future capital costs, and yet are treated as incremental spending. By way of simple example, if the utility is expecting to spend $5 million per year for the next four years to deal with a particular issue, but instead decides to spend $20 million this year to remove the issue entirely, that $20 million is not incremental spending. It is nothing more than a different pattern of spending the same money.

2.4.8 This issue arises in the context of the Sudbury project. The details of how it impacts the costs being claimed are discussed in Section 3.3 of this Final Argument.

2.4.9 ***O&M and Property Taxes.*** The Applicant proposes that incremental property taxes and O&M arising as a result of an ICM project should be included in the revenue requirement for those projects[20]. The Filing Guidelines for distributors seeking ICM funding do not include property taxes or O&M. The Guidelines say the following should be included in costs[21]:

> *"Calculation of the revenue requirement (i.e. the cost of capital, depreciation, and PILs) associated with each proposed incremental capital project."*

2.4.10 SEC has not seen any reference that would allow inclusion of incremental O&M and property taxes. If those were to be included, then for every ICM project there should also be an investigation of O&M reductions that may arise because of the project. This may be a good thing, but it is not the Board's current policy as we understand it.

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[18] See also Tr.1:59, where the witnesses make clear that if these overheads were not allocated to the ICM projects, they would be absorbed into the non-ICM projects, which are funded under the normal PCI formula.
[19] In this respect, the analogy to amounts to be closed to rate base is misplaced. Amounts are closed to rate base in a cost of service application, when all amounts are allocated to various components of revenue requirement. By definition, nothing is incremental, because all costs are being considered at once. There is no "extra" rate funding being provided.
[20] Staff 19; Tr.1:96.
[21] OEB Filing Guidelines for Distribution Applications, July 2018, p. 25. We note that this says i.e, not e.g.

2.4.11 SEC therefore submits that the Board should reaffirm that only the revenue requirement components of capital are included in ICM funding[22].

2.4.12 ***Level of Transition Year IT Spending.*** It was noted in Staff 67, and discussed in the Technical Conference[23], that the IT capital spending of the Applicant in 2019 is unusually high given the transition nature of the year in question. If some portion of 2019 IT capital were determined to be too high, the amount of eligible ICM spending would be reduced by a like amount. Given that the Enbridge eligible amount is only $13 million, ICM eligibility would be reduced to zero if only 20% of the 2019 IT spending of $68 million were determined to be unnecessary or overstated.

2.4.13 While SEC agrees that this is a concern, we will leave it to other parties to discuss this in more detail.

2.5 ***SEC Recommendation***

2.5.1 SEC submits that:

(a) The Board should calculate the Union Gas ICM threshold using the 1.07% PCI for the current year, resulting in an increase in the 2019 threshold of $23.3 million.

(b) The Sudbury, Kingsville and Stratford projects should be treated as part of normal annual capital programs, and not be approved for ICM funding.

(c) The $41.1 million of allocated overhead costs in the ICM projects are not incremental, and should not be included in the project costs otherwise eligible for ICM funding.

(d) Incremental O&M and property taxes should not be included in the ICM annual revenue requirement.

[22] SEC notes that the Applicant has indicated there is no incremental O&M associated with the four projects proposed in this Application [Tr.1:119-20]. It may therefore be possible for the Board to defer the question of whether O&M impacts should be included in the ICM discussion until it is actually a live issue in a proceeding. However, on balance SEC believes it is better to make this clear now, when the matter has been raised in the context of the proposed deferral and variance accounts.
[23] Tr.2:66.

3 SUDBURY (Issue 12)

3.1 ***Background***

3.1.1 The Sudbury project is a $95.3 million replacement of parts of a line in the Sudbury region, and was brought into service in 2018. The Applicant seeks to have it treated as an ICM project in 2019, starting with the second year of its operation. The impact of this, if approved, is incremental rate recovery from customers of $47.5 million over the period 2019-2023[24].

3.1.2 For the reasons noted below, SEC submits that this should not be approved as an ICM project, both because it does not qualify in fact, and because the capital costs are not incremental to the Applicant's normal capital spending.

3.2 ***Qualification in 2019***

3.2.1 The Argument in Chief says the following[25]:

> *"In Enbridge Gas's submission, each of the four ICM projects meets the OEB's requirements, is eligible for funding at the level of costs proposed and should be approved."*

3.2.2 This statement is not actually true with respect to the Sudbury project, as the AIC admits later on[26]:

> *"In relation to the Sudbury Replacement project, due to its October 2018 in-service date, it falls between qualifying for incremental rate treatment under Union's 2014-2018 capital pass-through mechanism and qualifying for incremental rate treatment under the ICM."[emphasis added]*

3.2.3 This admission is not surprising, given that the Applicant's witness had admitted the same more bluntly during the Technical Conference[27]:

> *"MR. SHEPHERD: ...The Sudbury replacement project didn't qualify for pass-through treatment in 2018. Right?*
> *MS. FERGUSON: That is correct. The revenue requirement was below the threshold that you needed.*
> *MR. SHEPHERD: And the reason was because it wasn't put in service until*

[24] Ex. B/1/2,App. E, p. 2.
[25] AIC, p. 11.
[26] AIC, p. 17.
[27] Tr. 1:38.

> *late in the year and there were tax deductions, front-end tax deductions, as well, right?*
> *MR. SMALL: Yes, that would certainly be a contributor. I mean, the rate base impact and the return on it would be fairly small at the end of the year too, but that would certainly be a contributor.*
> *MR. SHEPHERD: All right. But now you are saying that you want to treat it as a 2019 ICM project that, if I understand correctly -- tell me whether this is right -- you're not proposing to treat it as going in service this year. Right? You're proposing to treat it as going in service last year but starting from this year be in ICM. Is that right?*
> *MR. SMALL: That's correct. Like, the revenue-requirement calculation is based on it having been in service."*

3.2.4 What the Applicant is proposing is that a project that was completed in the prior year, and did not qualify for capital pass-through treatment in that year, be funded after the fact by the Board through the ICM mechanism. However, since it is not going into service in 2019, the Applicant is not proposing that it be treated as such.

3.2.5 When that is all stripped to its bare essentials, one thing is clear: The project qualifies in neither 2018 (as capital pass-through) nor 2019 (ICM), solely due to the decision of the Applicant in EB-2017-0306/7 to seek deferred rebasing (with Price Cap IRM including ICM) for the period 2019 to 2023. The Applicant seeks to have that impact of its deferred rebasing decision made an exception.

3.2.6 SEC submits that the previous rate period was over as of December 31, 2018, and the Sudbury project was part of rate base at that time. Many parties in the EB-2017-0306/7 case wanted adjustments to the going-in rates when moving from the last rate mechanism to the deferred rebasing period. For example, it was known a) that the merging utilities had substantial over-earnings, and b) that their actual rate bases were materially different from those built into rates.

3.2.7 Except for continuation of certain obvious adjustments, to which everyone agreed, the Board rejected all other going-in adjustments, saying[28]:

> *"[A] requirement to rebase certain elements upon an amalgamation would be contrary to the purpose of a deferred rebasing period."*

3.2.8 SEC submits that, in the same manner as the Applicant should not be allowed to cherry pick adjustments through the proposal to move capital pass-through projects to rate base, as discussed in Section 5 below, the Applicant should not be allowed to cherry pick adjustments to treat an amount that is already in opening rate base as if it were incremental in 2019. It is not, and it should not be treated as if it were in order to

[28] EB-20-17-0306/7, Decision with Reasons, p. 40.

give the Applicant an extra $47.5 million.

3.2.9 If the Board wanted to make that adjustment, then it should adjust all aspects of rate base and revenue requirement as of December 31, 2018. Since we know from EB-2017-0306/7 that EGD and Union were substantially over-earning in 2018, making all of the adjustments, rather than just cherry-picking, would necessarily result in a rate reduction, not a rate increase.

3.3 ***Amount Claimed***

3.3.1 The other problem with the Sudbury project is that it was implemented for the express purpose of dealing with integrity issues on the subject line[29]. In the three years prior to completion of the project in 2018, Union Gas spent $17.1 million[30] of capital costs related to integrity issues. The expectation was that $8-10 million would be spent on integrity-related repairs and maintenance, almost all capital in nature, in each of the next several years[31].

3.3.2 SEC submits that, if the Applicant was expecting to spend $40-50 million over the deferred rebasing period on integrity-related repairs and maintenance, those capital savings represent approximately half of the costs of the project. Accelerating routine spending into one larger project does not change the nature of the work. It is still the same work, just done altogether instead of piece by piece.

3.3.3 In this respect, SEC notes that the Sudbury project is actually three separate projects, approved by the Board in 2015 and 2016 during the previous Union Gas IRM period. None of them would have qualified for capital pass-through treatment under the rules in place at the time.

3.3.4 The commentary on this specific point by the Board in the leave to construct decision is instructive. The Board says[32]:

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[29] JT1.27, Attach 1, p. 5.
[30] JT1.27, p. 2.
[31] BOMA 68, Attach. 1, p. 9 (the leave to construct decision, EB-2017-0180). There was some ambiguity about whether the $8-10 million was annual or total over a period of several years. Most of the references in this proceeding do not make it clear. That was clarified, unprompted, by the Applicant's witness in the Technical Conference, as follows (Tr.1:182):

> *"MR. VELLONE: So you've done the reinforcement, but you're still expecting to have to spend 8 to 10 million over the next few years on capital related replacements of this pipe that you have just put in? MR. HILDEBRAND: No. With the full replacement of this pipeline, there will be no need to continue to spend 8 to 10 million dollars per year. That 8 to 10 million dollars will be avoided."[emphasis added]*

This is consistent with the $9.3 million in integrity capital spent on this line in 2017 alone (JT1.27, p. 2).
[32] EB-2017-0180, Decision with Reasons, p. 5, 8.

> *"Union Gas stated in its application that the Proposed Pipeline was the continuation of three previous pipeline replacement projects in the Sudbury Area (Sudbury Replacement Projects) previously approved by the OEB [EB-2015-0042, EB-2016-0122, and EB-2016-0222]….*
>
> *With respect to the coordination of multiple projects into a single application, this is the preferred approach whenever possible so the OEB can consider the overall plan for supply to an area when assessing each project. The OEB understands that all of the details required for a leave to construct application might not be available to file a comprehensive application for multiple projects in an area at the same time. There is an expectation, however, that utilities file information to provide context to each application. Robust planning and asset management is a key element of the OEB's Renewed Regulatory Framework. System integrity was an issue in the recent Sudbury Replacement Projects. Union Gas' Integrity Management Program should be developing at least a five year plan for facility replacements to be included in a comprehensive asset management plan."[emphasis added]*

3.3.5 SEC therefore submits that the Sudbury project was not in any case incremental, as it represented a continuation of ongoing integrity repairs and maintenance to that specific line, and simply accelerated additional capital spending expected in future years.

3.4 ***SEC Recommendation***

3.4.1 SEC therefore submits that the Board should not approve ICM funding for the Sudbury project.

4 REMAINING PROJECTS

4.1 *Introduction*

4.1.1 The three other projects – Don River, Kingsville, and Stratford – total $185.3 million, of which $28.8 million is allocated OM&A overheads[33]. The total impact of the projects in 2019 is a small credit to customers, but over 2019-2023 is $52.4 million recovery from customers[34].

4.1.2 SEC believes that the Don River project can be approved by the Board, but in a lesser amount (to reflect $9.4 million of allocated overheads). Since the lesser amount is still greater than the Enbridge available incremental capital, there would be no net impact on recoveries to/from customers.

4.1.3 With respect to the Kingsville and Stratford projects, SEC believes they should not be approved by the Board or, if approved, the amounts approved should be lower by $19.4 million.

4.2 *Don River (Issue 11)*

4.2.1 The Don River project is the replacement of 250 metres of pipe that crosses the Don River as part of an 89-year-old bridge. The new pipe, NPS 30, will be placed in a "microtunnel" under the river. Leave to construct the project was approved by the Board in EB-2018-0108.

4.2.2 While in some respects this project is part of the Applicant's normal annual capital program, it is unique because it deals with an external risk factor that is different from the three other projects. SEC therefore submits that it qualifies for ICM treatment, despite its relatively small size.

4.2.3 However, SEC submits that the 36.4% increase in budget for ICM purposes, representing overhead costs that are not incremental to current spending, is not justified for incremental funding. As discussed in Section 2.4 of this Final Argument, those additional costs added for this Application should not be included in the ICM funding amount. The amount that actually is incremental, $25.9 million, should be the amount approved by the Board.

4.2.4 As the amount over the threshold in the Enbridge area is $13.1 million[35], the effect of

[33] JT1.7.
[34] SEC 13.
[35] Ex. B1/2/1, Table 8. This assumes that the Board does not adjust for the high level of IT spending. See Section 2.4.12 above.

disallowing the allocated overhead for ICM purposes is zero, but SEC believes that it is an important principle that the Board should affirm in this case, i.e. incremental capital funding requests must be limited to expenditures that are actually incremental.

4.3 *Kingsville (Issue 12)*

4.3.1 The Kingsville Reinforcement is 19 km. of NPS16 pipe being built this year to increase the capacity in the Kingsville/Leamington area. Leave to construct the project was given by the Board in EB-2018-0013. The total ICM claim of $121.4 million includes $15.7 million of non-incremental allocated overheads[36].

4.3.2 SEC submits that this project, although relatively large, is a routine reinforcement to respond to increasing load. As discussed in Section 2.3 above, projects such as this are, in our submission, excluded from ICM treatment because they are part of normal annual capital programs.

4.3.3 In the alternative, SEC submits that the amount to be approved for ICM treatment should exclude the allocated overheads, and so should be $105.7 million.

4.4 *Stratford (Issue 12)*

4.4.1 The Stratford Reinforcement is 10.8 km. of NPS 12 pipe being built this year to increase capacity to Forest, Hensall and Goderich. Leave to construct the project was given by the Board in EB-2018-0306. The total ICM claim of $28.5 million includes $3.7 million of non-incremental allocated overheads[37].

4.4.2 SEC submits that, for the same reasons outlined in Section 2.3 above, this project should not be approved for ICM funding.

4.4.3 In the alternative, SEC submits that the amount to be approved for ICM treatment should exclude the allocated overheads, and so should be $24.9 million.

4.5 *SEC Recommendation*

4.5.1 SEC therefore submits that the Board should approve ICM funding for the Don River project in the lesser amount of $25.9 million, and should deny ICM funding for the Kingsville and Stratford projects.

[36] JT1.7.
[37] JT1.7.

5 EXTRAORDINARY INCREASE IN RATES (Issue 7)

5.1 *The Issue*

5.1.1 The Applicant seeks an extra rate increase of $46.5 million over the period 2019-2023[38], saying it is "in response to the MAADs decision"[39]. The rate increase would arise because the former Union Gas capital pass-through amounts would be included in base rates, and therefore be escalated annually from 2019 to 2023, but the tax costs associated with those same capital amounts would be segregated and recovered from customers separately.

5.1.2 SEC submits that this is an egregious request to reverse part of the EB-2017-0306/7 Decision, and in the process to cherry pick a base rate adjustment[40] that the Board has already considered and denied.

5.2 *What Did the Board Decide?*

5.2.1 ***Adjusting the ICM Threshold Calculation.*** In EB-2017-0306/7, the Board said the following with respect to the ICM threshold[41]:

> *"The OEB agrees with intervenors who noted that, through Union Gas' capital pass-through mechanism, significant capital additions have been funded through rates during the past IRM term. The rate base and depreciation associated with projects that were found eligible for capital pass-through treatment during the IRM term, shall be added to the 2013 OEB-approved rate base and depreciation in determining the eligible incremental capital amount for Union Gas' service territory."[emphasis added]*

5.2.2 Thus, the Board made clear that it was including the Union Gas capital pass-through projects in the calculation of the ICM threshold. It did not order a rate increase.

5.2.3 The issue of whether the Union Gas capital pass-through projects should be included in the ICM threshold was hotly debated in the EB-2017-0306/7 case. In its Reply Argument, the Applicant made essentially the same argument it is making in this case, i.e. that depreciation in capital pass-through projects does not support

[38] JT1.2.
[39] Tr.1:8.
[40] Actually, only the rate increase part of the adjustment, not even the full impact.
[41] EB-2017-0306/7, Decision with Reasons, p. 33.

additional capital spending[42]:

> *"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.*
>
> *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.""[emphasis added]*

5.2.4 The Board was therefore acutely aware that, if the Board ordered use of the ICM mechanism with the Union Gas capital pass-through projects included in the threshold, Enbridge believed that was an error. The Board did it anyway.

5.2.5 When the Decision was released, the Applicant could have filed a Motion for Review, or even an appeal to Divisional Court. It did neither.

5.2.6 If the Applicant believed the Decision was wrong, in that it ordered an ICM threshold that was not actually supported by rates, the Applicant should have filed a motion or an appeal. By not doing so, it accepted the Board's decision. It should not be able to come back to the Board in this subsequent case, to "correct the error" in the MAADs decision.

[42] EB-2017-0306/7, Applicants' Reply Argument, para. 170 and 171.

5.2.7 ***Base Rate Adjustments***. Of course, the reason why the Applicants didn't file a motion or appeal in the MAADs case is likely that they knew full well it would be a non-starter. They would have had to argue either:

(a) The Board's inclusion of the Union Gas capital pass-through amounts in the ICM threshold was in error, for the reasons already argued in their Reply Argument, and rejected by the Board;

(b) The Board should have continued the capital pass-through mechanism for new projects, as many parties argued, instead of switching to the ICM mechanism, as Enbridge proposed; or

(c) The Board should have made an adjustment to base rates to ensure that the Applicants would have sufficient rate funding for the ICM threshold, i.e. exactly the argument the Applicant is making in this proceeding.

5.2.8 Clearly (a) and (b) above would not work. You can't re-argue your case on review, and you certainly can't push for a resolution that you yourself argued against. That leaves a base rate adjustment, as now proposed.

5.2.9 The problem was that the Board had already dealt with base rate adjustments in its Decision.

5.2.10 The Board said the following with respect to base rate adjustments at the time of amalgamation[43]:

> *"The OEB will not make additional base rate adjustments as proposed by some intervenors. Absent rebasing, it is not clear what the drivers of the over-earnings are and whether they will be sustainable during the deferred rebasing period. Furthermore, a requirement to rebase certain elements upon an amalgamation would be contrary to the purpose of a deferred rebasing period."[emphasis added]*

5.2.11 In short: "Once we determine to allow a deferred rebasing, rebasing is actually deferred. We don't make adjustments to some things and not to others."[44]

5.2.12 Intervenors, including SEC, submitted that base rates going into the deferred rebasing period should be reduced by the amounts of annual overearnings expected in 2018. If accepted, this would have reduced rates by at least $35 million per

[43] Ibid, p. 39-40.
[44] The Board did in fact allow four base rate adjustments (Decision, p. 38). What is striking is that all four related to rate adjustments that had previously been time-limited, so "expired" at the end of 2018, and all four were supported by all parties.

year[45].

5.2.13 The Board rejected those proposals, as quoted above.

5.2.14 What the Applicant is seeking to do in this case is get a base rate adjustment after the fact, while ignoring the elephant in the room, i.e. that if you are going to adjust one thing, you should adjust all the rest. Since EGD and Union Gas were over-earning by substantial amounts, the net result would inevitably be a rate decrease.

5.2.15 What the Applicant is seeking here is the increase part of the base rate adjustment, but not the (more than) balancing decreases that would have arisen if all were taken into account.

5.2.16 SEC submits that a base rate adjustment should not be allowed after the fact. The Applicant had their chance to appeal or review the MAADs decision, and they did not do so. This rate proceeding should not be an opportunity for them to undo the MAADs decision.

5.3 ***Impact of the Enbridge Proposal***

5.3.1 SEC notes that the impact of the Enbridge proposal, which they originally implied was a credit of $10.4 million[46], and then they said was a rate increase of $33.8 million[47], is actually a rate increase of $46.5 million over five years[48].

5.3.2 Capital pass-through projects have five cost components: incremental OM&A/property taxes, depreciation, return on rate base, income tax impacts, and incremental revenues. Incremental OM&A increases annually at roughly the rate of inflation. Depreciation stays the same each year over the life of a project. Return on rate base declines each year as the net book value of the assets declines. Income tax goes up each year, as the capital cost allowance goes down, eventually moving below the accounting depreciation, and thus creating a tax timing difference. It starts as a credit, and eventually becomes a cost. Incremental revenues, which are a credit, go up based on a forecast, at an average of 20% per year[49].

5.3.3 The Applicant is proposing to, instead, escalate the depreciation, which is otherwise flat, and to escalate the return on rate base, which would otherwise decline. They would also reduce the escalation of the incremental revenue credit from 20% to

[45] This was the lowest of the proposed adjustments. SEC argued, for example, that the over-earnings base rate adjustment should be $65 million.
[46] B1/1/1, p. 26.
[47] SEC 6. They admitted this was wrong: Tr.1:14.
[48] JT1.2.
[49] See JT1.2, Attach 1, for the details of these cost trends.

1.07%. These constitute the first part of their adjustment. Then, with respect to the income tax component, they want to continue to flow this through as is, since it is an increasing net cost over time. This is the second part of their adjustment.

5.3.4 ***Addition to Base Rates.*** The first part is adding the 2019 revenue requirement to 2019 rates, as if the capital pass-through projects had been added to rate base at the end of 2018. Although the Applicant characterizes that as a one-time reduction in base rates of $10.4 million[50], what is in fact proposed is that the 2019 revenue requirement for the capital pass-through projects, $117.2 million, be built into base rates.

5.3.5 By building that amount into base rates, the effect is that the amount recovered from customers is $117.2 million in 2019, $117.2 million plus PCI escalator in 2020, and so on.

5.3.6 For example, in 2023 the amount recovered from customers under the capital pass-through methodology would be $125.2 million. Instead, the Applicant wants to recover in 2023 $144.0 million. They achieve this through three main components. First, although actual 2023 depreciation on those projects will be $42.9 million, they propose to over-collect $44.6 million in that year. Second, although actual return on rate base (debt and equity) will be $77.4 million in 2023, they propose to over-collect $90.2 million in that year. Third, although forecast incremental revenues will be $7.9 million in 2023, they propose to credit only $4.5 million[51].

5.3.7 The $18.2 million increase in rates in 2023 is just the largest of four years of increases, 2020-2023. The cumulative total is $46.5 million.

5.3.8 ***Tax Timing Differences.*** The second part of the additional rate increase relates to taxes. This is not an alleged flaw in the MAADs Decision, as with the escalation of the capital pass-through revenue requirement discussed above, but is rather an alleged flaw in the ICM mechanism itself. This is described by the Applicant as follows[52]:

> *"The proposed one-time adjustment by itself does not support the level of capital investment assumed by the ICM threshold value because of the impact the utility tax timing differences have on the revenue requirement of the projects. Normal decreases in annual revenue requirement as a result of the annual decline in rate base are more than offset by increases to annual revenue requirement resulting from decreases in the utility tax timing*

[50] B1/1/1, p. 26.
[51] All of these figures are spelled out in detail in JT1.2, Attach 1. There are in addition smaller differences ($0.3 million) in Property Taxes and O&M.
[52] Staff 8, p. 3

> *benefits in each year of the deferred rebasing period. The ICM threshold value calculation does not consider the impact changes in utility tax timing differences has on funding incremental capital projects."[emphasis added]*

5.3.9 The value of the tax timing differences alone is $21.7 million over five years[53].

5.3.10 The Applicant admits that this would also apply if the ICM mechanism had been used for the capital pass-through projects, or if the Applicant had actually rebased at the end of 2018.

5.3.11 What Enbridge is trying to do is have their cake and eat it too. They want the benefit of being able to escalate costs (depreciation and return on rate base, net of incremental revenues) that are not actually increasing each year, and they want to recover in addition to that the increases in tax consequences that naturally arise through the tax system[54].

5.4 *Consequences of Deferred Rebasing*

5.4.1 SEC notes that the supposed "unfairness" of the capital pass-through mechanism arises because the Applicant insisted that it wanted a deferred rebasing, and it did not want to make any adjustments to its rates going into that deferred rebasing period.

5.4.2 There were lots of potential adjustments that Enbridge could have taken at the end of 2018, essentially to align its rates going into its deferred rebasing period with its actual costs. Many of them were discussed in a table SEC labelled "Gives and Gets", which it included in its Final Argument[55]. The base rate adjustments were not allowed by the Board.

5.4.3 What we do know is that Enbridge and Union were over-earning, by some amount between $35 million and $65 million annually, and those amounts were increasing. If the Board had done comprehensive base rate adjustments, which some parties sought and which Enbridge opposed, the result would likely have been a reduction in opening rates, not an increase. The over-earnings would have captured all or most of the other adjustments that might have been considered.

5.4.4 Instead of agreeing to update revenue requirement and rate base, at least in a rough way, Enbridge argued strongly against it, and won. They argued that under the

[53] Staff 8, Attach 2.
[54] We note that these increases do not arise because they are escalating depreciation and return. These increases arise based on declining depreciation and return, just as a function of how the tax system taxes capital expenditures over time.
[55] EB-2017-0306/7, SEC Final Argument, p. 34.

MAADs policy they were allowed to simply move to Price Cap IR, without any rebasing.

5.4.5 SEC submits that moving directly to Price Cap IR without adjustment has costs and benefits. It was incumbent on Enbridge to balance those costs and benefits when they sought the deferred rebasing advantage. Having made their choice, and having enjoyed very substantial benefits from having none of the proposed adjustments to going in rates (e.g. at least $175 million cumulative benefits from not adjusting for over-earnings), it is not appropriate for Enbridge to pick out this one component, and seek an extra rate increase.

5.4.6 Rebase or not rebase. There is no option that is only the good parts of rebasing. That should not be how it works.

5.5 ***SEC Recommendation***

5.5.1 SEC therefore recommends that the Board continue the capital pass-through projects under the current approved recovery mechanism, and maintain the related deferral account as it is currently approved. This will recover from customers in rates the exact revenue requirement associated with the capital pass-through projects, and so will be fair to both the Applicant and the customers.

6 ADDITIONAL UNSETTLED ISSUES

6.1 *Introduction*

6.1.1 Two other, smaller issues remain unsettled: Issue 13, and Issue 5 as it relates to the Open Bill Account.

6.2 *Customer Connection Policy (Issue 13)*

6.2.1 This issue is relatively straightforward. In 2015, the Applicant changed its customer connection policy so that more customers would have to pay contributions in aid of construction. This change was neither directed nor approved by the Board. It was done during the IRM period, so any impact on revenues accrued to the benefit of the shareholders of the Applicant.

6.2.2 The impact of the change in policy for the three years 2016-2018 was an average of $8 million a year[56]. Thus, Enbridge has already brought in $24 million of incremental revenues that have not been based on Board-approved charges or policies. The Applicant simply forced customers to pay the utility more than they would have paid under the previous, Board-approved customer connection policy.

6.2.3 Enbridge argues that they should be allowed to do this. SEC disagrees. Enbridge should not be allowed to change what it charges customers for any service that arises out of their monopoly franchise without first getting the Board's approval. That way, the Board can not only look at whether the new charge or policy is reasonable, but can also look at how it affects the overall net revenue requirement of the Applicant.

6.2.4 SEC therefore submits that the Board should direct as follows:

(a) Enbridge must identify the customers it charged more under the new policy than the old since the policy was changed, and refund the difference to those customers.

(b) Enbridge must revert to calculating contributions in aid of construction based on the old policy, and continue to do so until such time as they make an application to the Board for approval of a new policy.

6.3 *Open Bill Variance Account (Issue 5)*

6.3.1 The Applicant seeks the change the wording of the Open Bill Variance Account.

[56] JT1.11.

6.3.2 SEC does not have a direct interest in the Open Bill Program, and would normally not comment on an issue such as this[57].

6.3.3 However, SEC has a different concern. The Open Bill Program is being considered in detail in a parallel Board proceeding, EB-2018-0319. If changes to the Open Bill Variance Account are appropriate, they can be proposed by Enbridge or others in that proceeding, and considered with full context.

6.3.4 SEC believes it is not good regulatory practice for the Board to make changes to a Board-approved program – even ones that are said to be innocuous[58] – when that program is under active consideration by another Board panel. Indeed, the fact that Enbridge claims the change has no impact is a good reason for this Board panel to leave this to the more complete review in EB-2018-0319.

6.3.5 SEC therefore submits that the Board should reject the Applicant's proposal to amend this account.

[57] Even though another client of the same law firm as SEC's is vitally interested in the Open Bill Program.
[58] AIC p. 5 and Tr.1:167.

7 OTHER MATTERS

7.1 ***Costs***

7.1.1 The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

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Jay Shepherd
Counsel for the School Energy Coalition