Aiken & Associates
578 McNaughton Ave. West
Chatham, Ontario, N7L 4J6

Phone: (519) 351-8624
E-mail: randy.aiken@sympatico.ca

March 8, 2021

Christine E. Long
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Long,

RE: EB-2020-0134 - London Property Management Association Submissions for Enbridge Gas Inc. – 2019 Utility Earnings and Disposition of Deferral & Variance Account Balances Application

1. INTRODUCTION

The following are the submissions of the London Property Management Association ("LPMA") related to the Enbridge Gas Inc. ("EGI") application for the 2019 utility earnings and disposition of the deferral & variance account balances.

A settlement conference was held between EGI and intervenors and the parties to the settlement conference reached a settlement with respect to all of the deferral & variance accounts with the exception of the Tax Variance Deferral Account ("TVDA").

The settlement proposal was filed with the Ontario Energy Board ("OEB" or "Board") on January 5, 2021 and the Board issued its Decision on Settlement Proposal ("Decision on Settlement Proposal") on January 25, 2021. The Board accepted the settlement proposal and determined that a condensed hearing schedule was reasonable to hear the unsettled issue relating to the TVDA. A schedule was set for supplemental evidence, interrogatories, responses to interrogatories and argument on the unsettled issue. EGI filed its argument-in-chief on February 26, 2021.

The TVDA issue arises from a federal government bill, Bill C-97. This bill took effect as the *Budget Implementation Act, 2019 No. 1*, in June 2019 and among other things, implemented capital cost allowance ("CCA") measures that were announced in the

November 21, 2018 federal Fall Economic Statement and certain tax measures announced in the 2019 Federal Budget. Specifically, one measure in Bill C-97 significantly accelerated CCA deductions in the calculation of income taxes and is known as the Accelerated Investment Incentive ("AII").

The AII consists of two parts. The first part is a 50% increase in the available CCA deduction in respect of property acquired after November 20, 2018 that becomes available for use the end of 2023. The second part is a suspension of the half-year rule in the first year in respect of property acquired after November 20, 2018 that becomes available for use before the end of 2027.

The following are the submissions of the LPMA on the unsettled issue related to the TVDA.

2. SUBMISSIONS ON THE TVDA

a) When Should the Account be Cleared?

The OEB letter dated July 25, 2019 ("July 2019 Letter") related to the *Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance* indicated that consistent with the Board's filing requirements for the disposition timing and parameters of deferral and variance accounts, the Board expected utilities to bring forward any amounts tracked in the account that was CCA-related for review and disposition in accordance with the Board's filing requirements for the disposition of deferral and variance accounts and unless ordered otherwise, this would generally coincide with a utility's next cost-based rate application.

LPMA notes that EGI, unlike electricity distributors, files annually for the disposition of any earnings sharing amount and for the disposition of numerous deferral and variance accounts. As such LPMA believes that is reasonable for the Board to approve the disposition of the TVDA, like the disposition of the other deferral and variance accounts that the Board approved in the Decision on Settlement Proposal.

The amount in this account at the end of 2019 is a significant amount, in excess of $30 million. It is the submission of LPMA that it would not be reasonable for the Board to deny the disposition of this account in favour of maintaining it until rebasing takes place for 2024. Given the current economic situation of many residential, small commercial and industrial customers, this money should benefit ratepayers now, and not be denied to them for 3 more years.

b) What Should be Cleared?

EGI's proposal deals with the entire balance in the TVDA from 2018 through 2023. LPMA submits that the Board should not accept the proposal for this time period.

The total amount forecasted by EGI of up to $115 million over the 2018 to 2023 (Exhibit H, para. 23) period is highly speculative and not supported by the evidence. As shown in Exhibit I.LPMA.28, the $115.4 million figure included $23.9 million as an estimate of the 2020 amount, while Exhibit I.EP.13, part (c) indicates that the current estimate for 2020 is $12.9 million. If this reduction of $11 million in 2020 is replicated in 2021 through 2023, the $115 million would be reduced to $71 million.

As of this time, there are no audited figures beyond that provided for the end of 2019 of the balance in the TVDA. Clearly the Board cannot approve the quantum of the TVDA for disposition for the proposed 2018 through 2023 period.

While the Board cannot approve the quantum of any TVDA balances through to 2023, it could approve how the balances in the account should be disposed of for the entire 2018 through 2023 period. However, LPMA submits that the Board should only approve the disposition of the account balance at the end 2019 as part of this application. To pre-determine the disposition of unknown amounts for the period 2020 through 2023 would not be in keeping with the standard practice for the disposition of deferral and variance accounts.

LPMA sees some merit in the EGI proposal to use the TVDA funds as essentially a contribution in aid of construction ("CIAC") as a source of funding for projects (Exhibit H, para. 45). While LPMA may support the use of the TVDA funds for this purpose in the future, it does not support this use for the balance in the account at the end of 2019, which is the subject of this application. As noted below in this submission, LPMA believes that refunding the TVDA 2019 balance to customers is the best public and ratepayer benefit at this time.

c) 100% Allocation to Ratepayers

LPMA is pleased to note that through its proposed use of the balances in the TVDA, in which the entire balance in the account over the 2018-2023 period would be used as a CIAC source of funding for two kinds of capital initiatives (economic development projects and integrated resource planning pilot projects), EGI has implicitly acknowledged that 100% of these funds should go to benefit ratepayers.

EGI states that by using the TVDA balances in this way, which analogous to how CIAC is used as a source of funding, the dollar value of the amounts recorded in the account will be augmented to deliver public and ratepayer benefits of greater value (Exhibit H, para 43). EGI refers to these public and ratepayer benefits in several of the interrogatory responses. For example, in Exhibit I.LPMA.30 part (b), EGI states that *"the TVDA balance could be used as a source of funding for other future projects that would provide public and ratepayer benefits* ***and contribute to post-pandemic economic recovery****"*. (emphasis added)

LPMA agrees that under normal circumstances using the TVDA balances as CIAC like source of funding for future projects could result in ratepayer benefits that would be of greater benefit than the amount in the TVDA. This is illustrated in the response to Exhibit I.LPMA.32 in which the net present value of a $10 million CIAC (or reduction in capital) has a revenue requirement reduction of about $24.5 million over the life of the asset using certain assumptions. The net present value of this reduction in revenue requirement is calculated to be $11.2 million.

However, these are not normal times. LPMA submits that public and ratepayer benefits would be maximized if the 2019 year-end balance in the TVDA of approximately $30 million was refunded as soon as possible to customers. Residential and small commercial and industrial customers and even larger commercial and industrial customers are suffering through the Covid-19 pandemic. Many businesses have been closed for extended periods of time and many people have been unemployed or underemployed.

LPMA submits that an injection of $30 million in the economy in the second half of 2019 would be a much better contribution to the post-pandemic economic recovery than the EGI proposal.

As shown in the response to part (b) of Exhibit I.LPMA.32, the reduction in the revenue requirement over the first two years of using $10 million as a CIAC is about $900,000. Based on the approximate $30 million in the TVDA at the end of 2019, using this as a CIAC would reduce the revenue requirement of a project by about $2.7 million over the first two years of the asset life. In other words, the EGI proposal would return less than $3 million to ratepayers over two years.

Moreover, the EGI proposal would not begin returning any money or provide any benefits to ratepayers until at least the end of 2022 or perhaps not until 2024. As noted in the response to Exhibit I.LPMA.35 part (b), EGI states that:

> *"Enbridge Gas is currently subject to Price Cap IR term until 2023. Economic Development projects are estimated to close into service in Q4 2022 and the cost of the project(s) would start being recovered through the Company's base rates on rebasing in 2024 (i.e. this is when the project's cost would be allocated to the various customer classes)."*

It would appear to LPMA that if the development projects qualified for Incremental Capital Module funding, the TVDA balances could start to benefit ratepayers in late 2022. Otherwise, ratepayers would not benefit from any of the TVDA balances until 2024.

In summary, the EGI proposal would not provide any benefit to ratepayers or contribute to the post-pandemic recovery until late 2022 at the earliest and more likely not until 2024. LPMA's proposal provides the benefit to ratepayers and contributes to the post-pandemic recovery immediately in 2021. Moreover, the LPMA proposal provides an immediate stimulus of $30 million, more than 10 times the amount that would provided to customers under the EGI proposal over the first two years following the assets being placed in service.

d) Intergenerational Issues

LPMA is concerned with the intergenerational inequity of transferring the tax savings that are generated today from the customers of today to the customers of tomorrow.

The EGI proposal would provide benefits to ratepayers over the life of the assets that would be funded through the TVDA balances. Given that many of these assets have a life of 40 or more years, there will be a significant difference in the customers between now and then.

LPMA's proposal would take the tax savings generated today and give them to the customers of today. LPMA submits that this is fairer and more equitable than allocating the benefits to future customers.

e) Rate Class Allocation Issues

The EGI proposal of using the TVDA credits to finance development projects does not appear to provide an equitable distribution of these balances. While the credits in the TVDA have arisen from expenditures on assets in both the Union and EGD rate zones (including both the Union South and North rate zones), the EGI proposal related to the four economic development projects proposed in Exhibit H, paragraph 50 are all located

in the Union South rate zone. In other words, all of the ratepayer benefits and post-pandemic economic recovery contributions would be funneled to one area.

It is the submission of the LPMA that such a funneling of the benefits to one region is not appropriate. In the response to part (b) of Exhibit I.LPMA.35, EGI notes that it is considering rate harmonization proposals that it would file as part of its 2024 rebasing application. However, EGI states that it does not have proposals developed at this point on how it may harmonize customer classes or if the legacy rate zones will continue pas rebasing in 2024. In other words, allocating all of the benefits to one rate zone may continue to be enjoyed in only that rate zone and not shared with other rate zones, even upon rebasing.

Regardless of whether these benefits go only to the Union South rate zone, or only to the EGD rate zone or only to the Union North rate zone, LPMA submits that the benefits, which accrue from all of the rate zones, should be shared among all of the rate zones. To do otherwise is not a reasonable allocation of the benefits to ratepayers.

On the other hand, EGI has indicated that if the Board were to determine that the TVDA balance plus interest was to be allocated 100% to ratepayers, it would split the balance between the EGD and Union rate zones in proportion to the 2018 actual rate base for each rate zone (Exhibit I.EP.13). This split is illustrated in Attachment 1 to the noted interrogatory response. LPMA supports this allocation between the EGD and Union rate zones as being fair and appropriate.

EGI further submits in part (e) of Exhibit I.EP.13, that the balance allocated to each rate zone to the rate classes would be in proportion to the 2018 rate base for the EGD rate zone and the 2013 rate base for the Union rate zone. These are, respectively, the allocation of rate base from the last fully allocation cost study prepared for each rate zone. This split is illustrated in Attachments 2 and 3 of the EP interrogatory for the EGD and Union rate zones. LPMA supports this allocation to the rate classes within the EGD and Union rate zones as rate base is the allocator that is most directly tied to income taxes.

f) Subsidization Issues with Development Projects

LPMA submits that the Board should not approve the EGI proposal to stream the TVDA balances (for both the 2019 balance and future balances in 2021 through 2023) to economic development projects. LPMA submits that there are several reasons for this.

First and foremost, LPMA submits that EGI's proposal is, in effect, nothing but a subsidization of new or existing customers by existing customers.

The EGI proposal would take the tax savings that were generated from the assets used to serve existing customers and use those dollars to reduce the costs to new or existing customers where the expansion of natural gas is not economic.

In the EB-2016-0004 proceeding which was a generic proceeding on community expansion, Union proposed a framework in which its existing customers would contribute through a subsidy to support community expansion projects which did not recover the required revenue even with the temporary expansion surcharge charged to customers and the incremental tax equivalent mechanism for municipal contributions.

Similarly, the Enbridge Gas Distribution proposal included a subsidization of the community expansion projects by existing customers.

In the November 17, 2016 Decision with Reasons, the Board determined that it was not appropriate for existing customers to subsidize these expansions. The Board went on to say that this subsidization would also distort the market to the detriment of existing energy service that complete with gas, such as propane, and new gas distributors who do not have an existing customer base. On page 4 of the Decision with Reasons the Board concluded that *"it would not be appropriate to require existing customers to pay for a portion of any expansion"* and that *"The communities that receive the benefit will be the ones paying the costs."*

LPMA also notes that the Ontario Government implemented the Access to Natural Gas Act, 2018, which provides a mechanism to provide financial support for the expansion of natural gas distribution projects that would otherwise be considered uneconomic under existing policies. The Board's Natural Gas Expansion Program ("NGEP") is designed to identify potential projects that would qualify for this financial support. Bill 32 and Ontario Regulation 24/19 provide the source of funding to be used for the NGEP.

The EGI proposal seeks to expand the source of NGEP funding and that additional source is existing ratepayers. LPMA submits that the Board has already determined in the EB-2016-0004 Decision with Reasons that it was not appropriate for existing customers to subsidize these uneconomic projects. That is what the NGEP is designed to do.

LPMA submits that benefits should follow costs. The benefit of lower income taxes that are the result of the change in the timing of CCA deductions, and which are recorded in

the TVDA, should be returned to the existing customers that are paying for the incomes taxes through their rates.

In addition to the above, LPMA notes that the allocation of the TVDA benefits would fall to one rate zone under the EGI proposal despite the benefits being generated from all rate zones. In other words, the allocation of the benefits to customers would be significantly different from how, and from whom, those benefits were derived. Even if EGI were to flow the funds to several projects across all rate zones, the allocation of the benefits would be done a different basis than if the funds were simply allocated to customers and returned to them, as proposed by LPMA (Exhibit I.LPMA.35).

When asked specifically if ratepayers were to fund the proposed economic development projects and the IRP pilot projects through a rate increase or a rate rider would the cost allocation amongst rate classes for the funding mechanism be different from the disposition methodology of the TVDA balances if the balances were credited to ratepayers, EGI responded (Exhibit I.Staff.32 part (c)):

> *"Yes. The cost allocation amongst the customer classes for the combined HND projects and the IRP pilot projects would be different than the disposition methodology for the TVDA balance. The cost of HND projects and IRP pilot projects would most likely be allocated to the customer classes based on forecast peak demand of each customer class. For the TVDA balance, Enbridge Gas would propose to dispose the balance using the rate base allocator as described at Exhibit I.STAFF.8 and Exhibit I.EP.13."*

The timing of the benefits to ratepayers is also significantly impacted by the EGI proposal to stream the TVDA funds to economic development projects. Unless these projects qualified as ICM projects, ratepayers would not see any benefits associated with using the TVDA funds as CIAC funding until rebasing for 2024 rates. This is because EGI is currently under a price cap mechanism. Even if the projects qualified as an ICM project, the benefits would not flow to ratepayers until the project is placed in service, which would be 2022 at the earliest.

LPMA submits that this delayed and prolonged future period of when ratepayers would realize any benefits associated with the current lower taxes would not *"contribute to post-pandemic economic recovery"* as stated in the response to Exhibit I.LPMA.30 part (b) nearly as effectively and timely as the LPMA proposal to refund the $30 million in the 2019 TVDA to customers immediately.

For all of these reasons, LPMA submits that the Board should deny the EGI proposal to stream the TVDA balance in the 2019 account to economic development projects and should rather stream these funds immediately to ratepayers. The Board should not determine the disposition of future TVDA funds generated in 2020 through 2023 in this proceeding. The disposition of these future amounts should dealt with in future disposition applications.

g) Incremental Capital Module Funding

If the Board determines that the EGI proposal of using the funds in the TVDA as a quasi CIAC for capital projects has merit and is not concerned about the allocation or timing of the benefits to ratepayers, then LPMA submits that instead flowing these funds to economic development projects, the TVDA balance as of the end of 2019, including interest, should be used to reduce the revenue requirement impact from the ICM project or projects that will be approved by the Board in EB-2020-0181 which is currently before the Board.

EGI has put forward two options in which the TVDA funds could be used to reduce the revenue requirement associated with the London Line Replacement and Sarnia Industrial Reinforcement Projects. A description of each of these options is found in the response to Exhibit I.EP.18.

The first option is to fund the revenue requirement with the TVDA funds. As shown in Attachment 1 of Exhibit I.EP.18, the revenue requirement associated with the London Line Replacement project has an average revenue requirement of $6.453 million over the 2021 to 2023 period (the remainder of the IRM term), while the corresponding figure for the Sarnia Industrial Reinforcement project is $1.307 million. In other words, the balance in the TVDA at the end of 2019 of approximately $30 million would be more than enough to reduce the revenue requirement associated with both of these projects over the 2021 to 2023 period ((6.453 +1.307) x 3 = $23.28 million).

The second option is similar to the EGI proposal to use the TVDA funds as a CIAC for the economic development projects. In this option, the TVDA funds would be used to reduce the capital cost of the ICM projects, which in turn reduce the revenue requirement associated with the two ICM projects. The reduction in the revenue requirement over the 2021 through 2023 period is less than that of option one, but would have a net present value of approximately more than $33 million based on the response to Exhibit I.LPMA.32.

If the Board has no concerns about the allocation or timing of the TVDA benefits, then LPMA submits that the Board should approve the second option. This option provides immediate benefits to ratepayers through lower rates beginning 2021, as opposed to waiting for the benefits to flow to ratepayers until at least 2022 as in the EGI proposal to stream the TVDA funds to future projects. This second option provides a net present value that is greater than the quantum of funds used to reduce the capital costs and rate base associated with ICM projects.

h) Integrated Resource Planning ("IRP") Pilots

EGI has proposed to target up to $20 million of the TVDA balance to use towards funding IRP pilot projects (Exhibit H, para. 62).

As part of the EB-2020-0091 IRP proceeding, EGI proposes to develop and implement two IRP pilots projects to continue to inform natural gas IRP in Ontario. While seeing some merit in this proposal, LPMA submits that the Board should not approve this proposal at this time.

As noted elsewhere in this submission, LPMA submits that the Board should only decide on the use and disposition of the balances in the TVDA as of the end of 2019 (including interest). The use and disposition of any balances that accrue in 2020 through 2023 should not be determined as part of this application, but rather as part of the annual application to dispose of earnings sharing and deferral and variance accounts.

In its evidence (Exhibit H, para. 60), EGI states that the IRP projects would target implementation no later than the end of 2022. In other words, any such projects would not be implemented until after the disposition of the 2020 deferral and variance accounts in a proceeding expected to take place in late 2021/early 2022. This would leave sufficient time to determine if the 2020 TVDA balance should be used to fund any approved IRP pilot projects.

Unlike targeted development projects, LPMA notes that the information and data gained from IRP projects will benefit customers in all EGI rate zones regardless of the level of harmonization of customer classes and regardless of whether the legacy rate zones are maintained or eliminated.

As such, the use of future TVDA funds generated in 2020 and beyond for IRP pilot projects may merit review, assuming that the economy has sufficiently recovered from the Covid-19 pandemic. In these circumstances, the investment in IRP pilot projects

relative to the benefits of returning the funds to customers immediately should be reviewed by the Board and interested parties.

i) Enbridge Gas Secondary Proposal

LPMA submits that the Board should reject EGI's alternative disposition proposal (Exhibit H, para. 64) of sharing the CCA related tax savings on a 50/50 basis between ratepayers and shareholders.

Many changes in income taxes relate to changes in tax rates that result in a permanent increase or decrease in the level of income taxes. Such changes would include changes to the federal and/or provincial corporate tax rates. For example, if one these corporate tax rates go up, it results in a permanent increase in the tax liability for as long as the rate change remains in place.

However, the AII does not result in an increase or decrease in the total amount of corporate taxes to be paid. It only shifts the timing of when the taxes become due. The AII increases the amount of CCA eligible to be deduction in the first year and since the CCA is calculated on a declining balance basis, this results in lower CCA deductions available for the second and subsequent years. EGI confirmed that the accelerated CCA, as compared to regulatory CCA, results in a reduction to revenue requirement in the year a qualifying capital expenditure is placed into service and increases the revenue requirement in relation to that capital expenditure in subsequent years (Exhibit I.LPMA.24 part b).

When asked specifically about the impact of the AII in 2018 and 2019, EGI confirmed that there would be less CCA available to claim for 2020 and each subsequent year, as compared to what there otherwise would have been if the CCA had been calculated under the normal method (Exhibit I.LPMA.27). This will continue to occur for the accelerated CCA deductions taken in 2020 through 2023.

At the next scheduled rebasing, which is expected for 2024 rates, EGI states in Exhibit I.LPMA.28 part (b) that:

> *"At rebasing, the Company anticipates that utility income taxes, that will be included within its application and proposed rates, will reflect the cumulative impact of the AII to that point (i.e. opening 2024 undepreciated capital cost (UCC) balances will reflect the impact of accelerated CCA amounts claimed or forecast through 2023), and will also reflect the actual/anticipated AII tax*

rules for 2024 (i.e. that the suspension of the half-year rule will be in place), as well as other actual/anticipated income tax rates and rules for 2024."

This means that the revenue requirement for 2024 and subsequent years will be higher as a result of the AII taken in 2018 through 2023 because the undepreciated capital cost will be less than it would have been had it been calculated under the normal method. This results in increased corporate taxes and a higher revenue requirement.

EGI's secondary proposal has the net effect of giving half of the savings to ratepayers for the period 2018 to 2023 and then making them pay 100% of the increase in corporate taxes for 2024 and beyond. LPMA submits that this is neither just nor reasonable. If ratepayers are to shoulder all of the burden of higher taxes upon rebasing and in subsequent years, then ratepayers should be given 100% of the savings over the 2018 through 2023 pre-rebasing period. Over time, ratepayers would pay the same amount in corporate taxes under the AII as they would have under the normal method. EGI's secondary proposal results in ratepayers paying more in taxes under the AII than they would under the normal method. Give the estimate of $80 to $115 million in tax reductions for the 2018 to 2023 period (Exhibit H, para. 23) and proposing that ratepayers would only receive 50% of this amount, the EGI secondary proposal effectively increases the lifetime taxes paid by ratepayers by $40 to $57.5 million.

When asked in Exhibit I.EP.17 part (b) to explain why ratepayers should not be allocated 100% o the AII CCA changes, since they will have to repay this in the future, EGI did not respond directly to the question and provided no explanation as to why ratepayers should have to repay all the benefits if they do not receive all of the benefits to begin with. LPMA submits that costs should follow the benefits. If ratepayers are expected to pay all of the incremental income taxes upon rebasing and in the following years, they should expect to receive all of the benefits before rebasing.

LPMA further notes that the EGI, like any profitable corporation, is not mandated to take its maximum eligible CCA deduction each year. If EGI continued to take the CCA deduction in 2018 through 2013 that would be generated under the normal method, ratepayers would, in fact, be better off because although they would not receive 50% of the 2018 through 2023 savings as proposed by EGI under its secondary proposal, they would benefit from higher CCA deductions upon rebasing for 2024 that would be reflected in future years as well. Ratepayers would not lose the $40 to $57.5 million that EGI proposes to allocate to its shareholders. Customers would retain the benefits associated with this amount over the future in lower income taxes.

j) Summary of Submissions

LPMA submits that the Board should direct EGI to refund the 2019 year-end balance in the TVDA along with the appropriate amount of interest to ratepayers as quickly as possible in 2021 to provide the most and best economic stimulus to ratepayers that are in need of relief from the financial consequences of the Covid-19 pandemic.

The allocation of the amount to be refunded to ratepayers should be based on the response found in Exhibit I.EP.13 part (e).

The Board should not make any determination on the use of balances in the TVDA for 2020 through 2023 at this time. The Board should direct EGI to bring forward the actual balances in the TVDA as part of the annual disposition applications for earnings sharing and deferral and variance accounts. EGI should also bring forward any proposal for the disposition of the TVDA balance each year.

The Board should not make any determination at this time as the potential funding of IRP pilot projects using TVDA funds.

If the Board is not concerned about the allocation and timing of ratepayers receiving the benefits associated with the balance in the 2019 TVDA account, then LPMA submits that the Board should direct EGI to allocate the balances to reduce the capital cost of any ICM project that is approved in EB-2020-0181. This provides more immediate and tangible cost reductions to ratepayers than the EGI proposal related to economic development projects.

The Board should not approve EGI's secondary option.

3. COSTS

LPMA requests that it be awarded 100% of its reasonably incurred costs. LPMA submits that it has acted responsibly and efficiently in all aspects of the process.

Yours very truly,

Randy Aiken
Aiken & Associates

c.c. EGI Regulatory Proceedings (e-mail only)