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March 15, 2021

**VIA EMAIL and RESS**

Ms. Christine Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Enbridge Gas Inc. (Enbridge Gas)  
Ontario Energy Board (OEB) File: EB-2020-0134  
2019 Utility Earnings and Disposition of Deferral & Variance Account  
Balances Application – Reply Argument**

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In accordance with the Decision and Order on the Settlement Proposal issued on January 25, 2021, enclosed please find the Reply Argument of Enbridge Gas in the above noted proceeding.

Please contact the undersigned if you have any questions.

Yours truly,

Anton Kacicnik  
Manager, Regulatory Applications

c.c.: David Stevens, Aird and Berlis LLP (via email)  
Fred Cass, Aird and Berlis LLP (via email)  
EB-2020-0134 Intervenors (via email)

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an application by Enbridge Gas Inc. for an order or orders clearing certain commodity and non-commodity related deferral or variance accounts.

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**ENBRIDGE GAS INC.**

**UNSETTLED ISSUE - TAX VARIANCE DEFERRAL ACCOUNT**

**REPLY ARGUMENT**

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## A. INTRODUCTION

1. In this proceeding, the Ontario Energy Board (“OEB”) is considering an application by Enbridge Gas Inc. (“Enbridge Gas”) for, among other things, approval of the disposition of amounts recorded in deferral and variance accounts (“DVAs”). A settlement proposal (the “Settlement Proposal”) was filed on January 5, 2021. It set out a settlement in respect of all DVAs, except for the Tax Variance Deferral Account (“TVDA”).
2. The Settlement Proposal indicated that all issues related to the TVDA remain unsettled, including: the calculation of the recorded balance, the disposition of the balance between customers and Enbridge Gas, and the allocation of any disposition to customers. In its Decision on Settlement Proposal (“Decision”) issued on January 25, 2021, the OEB set out a schedule for submissions on this one unsettled item.<sup>1</sup> The schedule provided for Argument in Chief to be filed by February 26, 2021, intervenor and OEB Staff arguments to be filed by March 8, 2021 and Reply Argument to be filed by March 15, 2021.
3. In accordance with the Decision, Enbridge Gas Inc. filed its Argument in Chief on February 26, 2021. Subsequently, Enbridge Gas received the following arguments:

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<sup>1</sup> Decision on Settlement Proposal, January 25, 2021, page 11.

- (i) OEB Staff Submission (“Staff Submission”);
  - (ii) Building Owners and Managers Association, Greater Toronto (“BOMA”) submissions (“BOMA Submission”);
  - (iii) Canadian Manufacturers & Exporters (“CME”) submissions (“CME Submission”);
  - (iv) Consumers Council of Canada (“CCC”) submissions (“CCC Submission”);
  - (v) Energy Probe Research Foundation (“EP”) submissions (“EP Submission”);
  - (vi) Federation of Rental-housing Providers of Ontario (“FRPO”) submissions (“FRPO Submission”);
  - (vii) Industrial Gas Users Association (“IGUA”) submissions (“IGUA Submission”);
  - (viii) London Property Management Association (“LPMA”) submissions (“LPMA Submission”);
  - (ix) Ontario Greenhouse Vegetable Growers (“OGVG”) submissions (“OGVG Submission”);
  - (x) School Energy Coalition (“SEC”) submissions (“SEC Submission”); and
  - (xi) Vulnerable Energy Consumers Coalition (“VECC”) submission (“VECC Submission”).
4. The arguments of parties set out in paragraph 3, above, reveal that there is no dispute regarding the calculation of the recorded balance in the TVDA, nor about the allocation among customer classes of any amount from the TVDA balance that the OEB determines should be disposed of to customers. The only issues raised in the arguments above, with respect to the TVDA, are focused on how the balance in the account should be disposed of between customers and Enbridge Gas.

5. While the disposition of the TVDA balance is the focus of argument in this proceeding, certain of the submissions from parties set out in paragraph 3 also address the 2019 performance scorecard (the “Scorecard”) filed by Enbridge Gas<sup>2</sup>.
6. In the submissions that follow, Enbridge Gas will reply to arguments that have been made by others regarding the disposition of the balance in the TVDA. Then Enbridge Gas will briefly respond to arguments about the Scorecard<sup>3</sup>.

## **B. DISPOSITION OF THE TVDA BALANCE**

7. All of the amounts currently recorded in the TVDA relate to changes to capital cost allowance (“CCA”) introduced in a federal government bill, called Bill C-97, which took effect as the *Budget Implementation Act, 2019, No. 1*.<sup>4</sup> One measure included in Bill C-97 (and in the 2018 federal Fall Economic Statement), is the Accelerated Investment Incentive (“AII”). The AII has significantly accelerated CCA for capital investments made by Enbridge Gas.<sup>5</sup>
8. There is essentially unanimous support in the arguments of intervenors and OEB Staff for the disposition at this time of 100% of the balance of the TVDA to ratepayers. Enbridge Gas submits, though, that the reasons given in argument for

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<sup>2</sup> EB-2020-0134, 2019 Utility Earnings and Disposition of Deferral & Variance Account Balances Application and Evidence, September 3, 2020, Exhibit G, Tab 1, Schedule 1.

<sup>3</sup> The fact that Enbridge Gas chooses not to address an argument should not be interpreted as agreement with it.

<sup>4</sup> S.C. 2019, Chapter 29.

<sup>5</sup> Supplemental Evidence, Exhibit H, page 4, paragraph 12.

100% disposition of the TVDA balance to ratepayers are problematic, to say the least, in numerous areas.

9. In this Reply Argument on the disposition of the TVDA balance, Enbridge Gas will first highlight numerous problem areas in the arguments for the position that has been put forward by intervenors and OEB Staff. Second, Enbridge Gas will respond to arguments about the merits of the proposals made in its Supplemental Evidence.<sup>6</sup>

#### **I. PROBLEMATIC ASPECTS OF OTHER ARGUMENTS**

10. The problem areas in the arguments of parties set out in paragraph 3, above, include incorrect or improper assumptions, inconsistent positions, and ignoring or overlooking points that do not support the outcome proposed in these arguments. Enbridge Gas will highlight some of the more obvious of these problem areas under the following sub-headings.

##### ***(1) Incorrect Assumption that TVDA Amounts are “Ratepayer Funds”***

11. A common theme of the arguments submitted by other parties is that amounts recorded in the TVDA are “ratepayer funds”. In their submissions, CCC states: “These are ratepayer funds that should be disposed of now.”<sup>7</sup> FRPO says that the proposals by Enbridge Gas “are inappropriate for the use of ratepayers’ funds”.<sup>8</sup>

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<sup>6</sup> Supplemental Evidence, Exhibit H, filed February 4, 2021.

<sup>7</sup> CCC Submission, page 3.

<sup>8</sup> FRPO Submission, page 1.

VECC refers to the TVDA balance as “ratepayer money”,<sup>9</sup> and SEC does the same.<sup>10</sup>

12. The parties making this assumption essentially argue backwards by assuming the answer to the very question that is now before the OEB for determination. Enbridge Gas has proposed that the TVDA balance be used to fund projects described in the Supplemental Evidence. Other parties argue that “ratepayer funds” should not be used to fund these projects.
13. However, if the OEB decides that the TVDA balance should be used for funding of projects as proposed by Enbridge Gas, the amounts recorded in the account do not take on the character of “ratepayer funds”. The TVDA balance only takes on the character of “ratepayer funds” if the OEB decides that it should be disposed of 100% to ratepayers.
14. Under the Enbridge Gas price cap Incentive Regulation plan, revenues are decoupled from costs. Unlike rates set on a cost of service basis, ratepayers pay rates determined on the basis of the price cap formula and it cannot be assumed that tax savings during the term of the IR plan are ratepayer funds.
15. Until the OEB decides on the disposition of the TVDA balance, it is not known whether the amounts recorded in the account are “ratepayer funds”, or “shareholder funds”, or a combination of both. The assumption made by other

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<sup>9</sup> VECC Submission, paragraph 14.

<sup>10</sup> SEC Submission, page 3.

parties about the very question before the OEB sets their arguments off on the wrong path from the outset.

16. The effect of an incorrect starting point can be seen in other propositions put forward in argument. Submissions such as those put forward by OGVG refer to determinations made by the OEB with regard to “subsidies paid for by existing customers to fund community projects”.<sup>11</sup> Parties making these submissions are attempting to draw a parallel between the projects Enbridge Gas has proposed for funding from the TVDA balance and a situation where existing customers would pay subsidies to fund projects. The attempt to draw this parallel, however, relies on the assumption that TVDA amounts are “ratepayer funds”, which, again, presumes the answer to the very question now before the OEB.

***(2) Disregard for the EB-2007-0606/0615 Decision***

17. Another common theme in arguments opposing the proposals made by Enbridge Gas is that changes in CCA are different from changes in tax rates. The assertion is that changes in tax rates are “permanent”, while changes in CCA represent only a timing difference.<sup>12</sup>
18. As Enbridge Gas noted in its Argument in Chief, the OEB considered a “variety of tax changes”<sup>13</sup>, including changes in CCA rates (as well as reductions in federal

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<sup>11</sup> OGVG Submission, pages 3-4.

<sup>12</sup> See, for example, SEC Submission, page 2.

<sup>13</sup> Enbridge Gas Argument in Chief, filed February 26, 2021, page 15, paragraph 43.



and provincial income and capital tax rates), in the EB-2007-0606/0615 decision (the “Tax Changes Decision”).<sup>14</sup> The point at issue in that proceeding was whether ratepayers would benefit from the tax changes, and more particularly, whether, as the tax changes worked their way through the economy, they would be reflected in the price cap index through the inflation factor. After considering this issue, the OEB found that 50/50 sharing of the impacts of the tax changes was a reasonable balance.<sup>15</sup>

19. The Tax Changes Decision, which, again, dealt with the implications of CCA changes as well as other tax changes, formed the basis for the OEB’s longstanding practice regarding the treatment of tax change impacts during an IR term. It was referred to in the EB-2007-0673 Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors (the “Supplemental Report”), where, the OEB said:

The EB-2007-0606/615 decision was issued on July 31, 2008, and concluded that a 50/50 sharing of the impact of tax changes, as applied to the tax level reflected in the Board-approved base rates, is reasonable. ... For purposes of the 3rd Generation IR plan, the Board has not identified any reasons to adopt an approach different than that now in place for the gas distributors.<sup>16</sup>

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<sup>14</sup> EB-2007-0606/0615 Decision, July 31, 2008, page 3; Exhibit I.VECC.10.

<sup>15</sup> *Ibid*, page 9.

<sup>16</sup> EB-2007-0673 Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors, September 17, 2008, page 35.

20. Enbridge submits that characterizing tax rate changes as “permanent” and CCA changes as timing differences obfuscates the real question for consideration regarding the impact of CCA changes. The real question is whether the impacts of these changes, temporary or permanent, flow through to affect the inflation factor so as to benefit ratepayers during the term of a price cap IR plan. In the EB-2007-0606/0615 case, the OEB considered this question and, as stated in the Supplemental Report, it concluded that 50/50 sharing of the impact of tax changes was reasonable.
21. Arguments in this case that rely on a distinction between CCA changes and changes in tax rates disregard the Tax Changes Decision, which did not turn on a difference between CCA changes and tax rate changes, but on consideration of a flow-through effect of tax changes on the inflation factor in a price cap plan. VECC argues that the Tax Changes Decision does not show that the OEB turned its mind to the distinction between CCA and tax rate changes.<sup>17</sup> But this is precisely the point: the issue was whether ratepayers would benefit from a flow-through effect to the inflation factor and, on that issue, the appropriate focus of consideration was that tax, and inflation, reductions would occur, not whether the reductions would result from CCA changes or from other tax changes.
22. Indeed, in the Tax Changes Decision, the OEB stated that there seemed to be little dispute of the fact that ultimately the tax reductions would flow through to the

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<sup>17</sup> VECC Submission, paragraph 16.

inflation factor: the question was about the relevant period and whether prior period lags should be considered.<sup>18</sup> In this case, no party has argued, or even suggested, that CCA changes will not flow through to impact the inflation factor in the Enbridge Gas price cap IR plan.

***(3) Equating Settlement Proposals with the Tax Changes Decision***

23. VECC goes even further in its argument regarding the Tax Changes Decision. VECC asserts that the Tax Changes Decision has no more (and no less) “precedential force” than the OEB’s approval of a settlement agreement.<sup>19</sup> In this regard, VECC refers to approval of the settlement proposal in EB-2020-0059 (Waterloo North Hydro).<sup>20</sup> OEB Staff also refer to the approval of settlement proposals by the OEB.<sup>21</sup>
24. Of course, settlement proposals are the result of trade-offs and “give and take” in the context of each individual case, rather than conclusions or determinations on any particular issue. Further, in its decisions approving the settlement proposals relied on by parties in this case, the OEB did not consider, address or comment on any issues relating to treatment of the impacts of CCA changes.
25. By way of contrast, the OEB explicitly addressed these issues in the Tax Changes Decision. And, as for “precedential force”, it can be seen from the Supplemental

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<sup>18</sup> Tax Changes Decision, page 7.

<sup>19</sup> VECC Submission, paragraph 16.

<sup>20</sup> EB-2020-0059 Decision and Rate Order, December 10, 2020.

<sup>21</sup> Staff Submission, pages 6-7.

Report that the Tax Changes Decision formed the basis for the “longstanding practice” referred to in the OEB’s letter of July 25, 2019 (the “July 2019 Letter”).

26. Perhaps VECC’s comment about precedential force is meant only to recognize a general principle that a decision of one OEB panel cannot fetter the discretion of another panel. But there can be no doubt that the Tax Changes Decision provides considerable “precedential” guidance for the OEB and, for that purpose, the OEB’s approval of settlement proposals is in no way to be equated with the Tax Changes Decision.

***(4) Inconsistency on Intergenerational Inequity***

27. A number of parties refer to intergenerational inequity in their submissions,<sup>22</sup> yet most of the parties that propose 100% disposition of the TVDA balance to current ratepayers show no concern for the intergenerational inequity which is inherent in their proposal.
28. EP submits, for example, that the tax savings from accelerated CCA are simply deferring the payment of taxes that will be paid in the future once the All is over. At that point, EP states, ratepayers will pay the full tax related to the assets.<sup>23</sup> In short, the argument is that current ratepayers should receive 100% of the impacts

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<sup>22</sup> LPMA Submission, page 5, OGVG Submission, page 5 and VECC Submission, paragraph 7.

<sup>23</sup> EP Submission, page 3.

of accelerated CCA, because ratepayers in the future will pay higher taxes. The intergenerational implications of this argument are obvious.

29. What is more, current ratepayers will benefit from accelerated CCA during the term of the Enbridge Gas IR plan because the flow-through effect of accelerated CCA on the inflation factor will work in their favour. Thus, the outcome of arguments by intervenors and OEB Staff is that 100% of the TVDA balance would be disposed of in favour of current ratepayers and, during the term of the IR plan, the benefit of the flow-through effect to the inflation factor would also be enjoyed by ratepayers,<sup>24</sup> while future ratepayers would be responsible for any increase in taxes when the AII is over. This seems to be the epitome of intergenerational inequity - not to speak of the inequity of this approach as between current ratepayers and the shareholders of Enbridge Gas.
30. Enbridge Gas submits that its primary proposal is a much more balanced approach to the disposition of amounts recorded in the TVDA. Enbridge Gas proposes that the amounts recorded in the account be disposed of to support projects that will deliver benefits for both current and future ratepayers, for Enbridge Gas and its shareholder, and for the Province of Ontario.
31. Most of the parties that have argued for disposition of 100% of the TVDA balance to ratepayers have been silent on the intergenerational inequity which is inherent

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<sup>24</sup> This was in fact the argument considered by the OEB in the Tax Changes Decision: specifically, the argument in that case was that to pass on tax reductions to ratepayers would mean ratepayers benefit twice: Tax Changes Decision, page 3.

in this argument. LPMA, however, has addressed the issue. LPMA argues that 100% disposition in favour of ratepayers would take the savings generated today and give them to the customers of today and LPMA states that this is fairer and more equitable than allocating the benefits to future customers.<sup>25</sup>

32. As between current and future customers, LPMA comes to the view that no benefits should be allocated to future customers and LPMA thereby gives no weight at all to the argument that future ratepayers will pay higher taxes. But, as between ratepayers and the shareholder of Enbridge Gas, the argument that future ratepayers will pay higher taxes is the central pillar in the proposal for 100% disposition of the TVDA balance to ratepayers.<sup>26</sup> The argument that seemingly is all-important to those who contend for 100% disposition in favour of ratepayers is given no importance when it comes to intergenerational inequity between current and future ratepayers.

***(5) Rejecting Any Consideration of the Purpose of the All***

33. As set out in the Supplemental Evidence, the premise of the All is to encourage businesses to invest in assets that will help drive business growth over the long term. Indeed, the name of this federal government initiative (Accelerated Investment Incentive) makes clear that it is intended to be an incentive.

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<sup>25</sup> LPMA Submission, page 5.

<sup>26</sup> The Staff Submission, for example, refers to this as a “critical” distinction between the mechanics of the All program and the effect of a typical change in income tax rates. See also the CME Submission, page 2.

34. There can be no doubt that utilities are major investors, or potential investors, in assets that help drive business growth. Yet proposals for disposition of 100% of the TVDA balance in favour of ratepayers would mean that Enbridge Gas, presumably in common with all OEB-regulated utilities, would receive none of the incentive that is the basis for the All.
35. Arguments made by most intervenors and OEB Staff simply disregard the purpose of the All. Others go further and argue that the purpose of the All should not even be considered by the OEB. SEC plainly states its view that the purpose of the All is irrelevant.<sup>27</sup> VECC finds it incredible to suggest that the OEB should accommodate the goal of federal policy in its ratemaking and refers to a “conflation of jurisdictions”.<sup>28</sup>
36. Enbridge Gas is certainly not asserting that the purpose of the All is determinative of issues before the OEB in this proceeding. However, Enbridge Gas submits that the OEB cannot give full consideration to the treatment of impacts and implications of federal laws while having no regard to the purposes of those laws.
37. Further, the purpose of the All – encouraging businesses to invest in assets that will help drive business growth – is aligned with policies and goals that underpin the Ontario *Access to Natural Gas Act, 2018*<sup>29</sup> and the OEB’s Natural Gas

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<sup>27</sup> SEC Submission, page 4.

<sup>28</sup> VECC Submission, page 5.

<sup>29</sup> S.O. 2018, c. 15.

Expansion Program (“NGEP”)<sup>30</sup>. Accordingly, Enbridge Gas has made proposals for the use of funds recorded in the TVDA that build on this alignment of federal and provincial purposes and goals to deliver public benefits for Ontario, including benefits for ratepayers and the shareholder. Enbridge Gas submits that, in this context, the purpose of the All cannot be irrelevant to the OEB’s consideration of the proposals made in this case.

***(6) Ignoring the Multiplier Effect of the Proposal by Enbridge Gas***

38. Parties argue that a greater stimulus to the provincial economy will occur if the TVDA balance is disposed of in favour of ratepayers, as compared to use of the account balance to fund the projects referred to in the Supplemental Evidence. For example, SEC asserts, without evidence, that “it is the customers that will be able to deliver the greatest bang for the buck with that extra money”.<sup>31</sup> LPMA submits that an injection of \$30 million into the economy would be a better contribution to post-pandemic recovery than the proposals by Enbridge Gas.<sup>32</sup>
39. In making these submissions, parties have overlooked, or simply chosen to ignore, the evidence regarding the multiplier effect of the Economic Development Projects proposed by Enbridge Gas. As stated in Enbridge Gas’s Supplemental Evidence, the four Economic Development Projects will require significant investment by the customers and businesses who submitted bid forms in response to the NGEP, and

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<sup>30</sup> <https://www.ontario.ca/page/natural-gas-expansion-program>

<sup>31</sup> SEC Submission, page 5.

<sup>32</sup> LPMA Submission, page 4.



by municipalities, in addition to the investment by Enbridge Gas.<sup>33</sup> Further, businesses and customers participating in the process collectively identified that their expansions would lead to the creation of over 14,000 new jobs and \$1.75 billion of direct investment in their facilities and communities.<sup>34</sup>

40. Enbridge Gas proposes to take advantage of this multiplier effect so that the dollar value of the amounts recorded in the TVDA will be augmented by investments to be made by customers, businesses and municipalities that will deliver public and ratepayer benefits of greater value than the TVDA balance.<sup>35</sup> The injection of \$30 million into the economy referred to by LPMA pales in comparison to the multiplier effect of the proposal made by Enbridge Gas. More fundamentally, though, submissions by other parties simply do not address or recognize the companion investment that is an important feature of the evidence regarding the Economic Development Projects proposed by Enbridge Gas.
41. As to LPMA's submission regarding a \$30 million injection into the economy, it is also important to understand that any such "injection" would make its way into the economy in a fragmented and dispersed manner. Enbridge Gas responded to an interrogatory in which it was asked to provide the allocation of the TVDA balance by rate zone and customer class assuming 100% allocation of the balance to

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<sup>33</sup> Supplemental Evidence, Exhibit H, page 14, paragraph 52.

<sup>34</sup> Supplemental Evidence, Exhibit H, page 14, paragraph 54.

<sup>35</sup> See, for example, Supplemental Evidence, Exhibit H, pages 11-12, paragraph 43.

ratepayers.<sup>36</sup> The bill impacts for typical customers can be seen in the attachments to this interrogatory response.<sup>37</sup>

42. Taking the EGD rate zone as an example, over \$15 million of a total credit of \$16.2 million credit would go to Rate 1 and Rate 6 customers,<sup>38</sup> resulting in a credit to a typical residential customer of less than \$5 and a credit to a typical small commercial customer of about \$37.<sup>39</sup> The largest credit for an industrial customer would be just over \$2,200. There is no evidence to suggest that this fragmentation and dispersal of the TVDA balance would result in any meaningful capital investment into the Ontario economy.
43. On the issue of timing of disposition of the TVDA balance, OEB Staff states that, in light of the financial hardship of COVID-19 (among other things), benefits captured in the TVDA should be returned to ratepayers now. While respectful of the sympathy shown by OEB Staff for Ontarians who have suffered through financial hardship due to the COVID-19 pandemic, Enbridge Gas submits that OEB Staff's position should also be understood in the context of the fragmented and dispersed nature of a TVDA disposition in favour of ratepayers. Again, the credit to a typical residential customer in the EGD rate zone would be less than \$5. Especially in view of the multiplier effect discussed above, Enbridge Gas submits

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<sup>36</sup> Response to EP Supplemental Interrogatory 13, Exhibit I.EP.13.

<sup>37</sup> *Ibid*, Attachments 2 and 3.

<sup>38</sup> *Ibid*, Attachment 2, page 1.

<sup>39</sup> *Ibid*, Attachment 2, page 2.

that the Economic Development Projects set out in its evidence would go much further to help Ontario and Ontarians recover from the effects of the pandemic.

***(7) No Regard for the OEB's Public Interest Mandate***

44. In the Supplemental Evidence and in Argument in Chief, Enbridge Gas repeatedly referred to the public benefits of its proposals, such as the post-pandemic economic stimulus discussed above.<sup>40</sup> Yet arguments made by others largely ignore the evidence on public interest benefits, as well as the OEB's public interest mandate.
45. More specifically in relation to the Economic Development Projects proposed by Enbridge Gas, IGUA asserts that "economic development is not a mandate for the OEB".<sup>41</sup> Enbridge Gas submits that it has long been recognized that the OEB's public interest mandate includes consideration of benefits of natural gas expansion for the broader Ontario economy. Such consideration of economic and societal benefits has been included at stage 3 of the OEB's analytical framework for the assessment of proposed system expansion projects since the issuance of E.B.O. 134 report many years ago.<sup>42</sup>

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<sup>40</sup> See, for example, paragraphs 51 and 52 Enbridge Gas's Argument in Chief.

<sup>41</sup> IGUA Submission, page 3.

<sup>42</sup> E.B.O. 134 Report of the Board, June 1, 1987 and Filing Guidelines on the Economic Tests for Transmission Pipeline Applications (EB-2012-0092), February 21, 2013. See also the EB-2018-0013 Decision and Order, September 20, 2018, where, at page 5, the OEB said that "Union appropriately followed the OEB's E.B.O. 134 test for transmission projects".

***(8) No Regard for Ratemaking Plans in Effect in 2018***

46. In the Supplemental Evidence and in Argument in Chief, Enbridge Gas addressed the 2018 impacts of the All (\$4.897 million, not including interest) that occurred prior to the amalgamation of Enbridge Gas Distribution Inc. (“EGD”) and Union Gas Limited (“UGL”). As Enbridge Gas has explained, prior to the amalgamation, a UGL TVDA was in place with the purpose of recording of 50% of the variance in costs resulting from the difference between actual tax rates and the tax rates included in UGL’s rates approved by the OEB. And, under EGD’s IR plan prior to the amalgamation, the impacts of tax changes, all else being equal, were shared 50/50 with ratepayers through the ESM, in years where EGD’s earnings exceeded the earnings sharing threshold.<sup>43</sup>
47. Submissions made by other parties certainly take note of the fact that \$4.987 million of the TVDA balance results from the 2018 impact of accelerated CCA.<sup>44</sup> However, in making the argument that the entire current balance of the TVDA should be disposed of in favour of ratepayers, intervenors and OEB Staff do not address how orders or decisions made by the OEB after the amalgamation of EGD and UGL became effective on January 1, 2019 can reach back to change the treatment of the impacts of tax changes under previous regulatory models that were in place for EGD and UGL until the end of 2018.

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<sup>43</sup> Supplemental Evidence, Exhibit H, pages 8-9, paragraphs 28-29.

<sup>44</sup> See, for example, EP Submission, page 3 and VECC Submission, paragraph 2.

48. The July Letter regarding CCA changes was sent out by the OEB out well after the conclusion of the 2018 rate year for EGD and UGL and well after the amalgamation of EGD and UGL. In the EB-2018-0305 decision, the OEB found it was appropriate for Enbridge Gas to follow the directions in the July 2019 Letter<sup>45</sup> and 2018 impacts of accelerated CCA have been recorded in the TVDA by Enbridge Gas. But the OEB has taken no action since the conclusion of the 2018 rate year with a view to changing retroactively the ratemaking plans that were in effect for EGD and UGL until the end of 2018.
49. The argument by intervenors and OEB Staff that the entire current balance of the TVDA should be disposed of in favour of ratepayers simply assumes, without explanation or justification, that there is no difference between 2018 amounts recorded in the TVDA and post-2018 amounts. These parties offer no rationale or support for a conclusion that the OEB can, or should, come to a determination now regarding the disposition of 2018 tax savings that departs from the ratemaking methodology which was in effect for EGD and UGL until the end of 2018.

***(9) No regard for the Deferred Rebasing Period***

50. Similarly, in the Supplemental Evidence and in Argument in Chief, Enbridge Gas addressed the impacts of the All during the deferred rebasing period. In its EB-2017-0306/-0307 decision (the "MAADs Decision") with respect to the

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<sup>45</sup> Supplemental Evidence, Exhibit H, page 9, paragraph 31; EB-2018-0305 Decision and Order, September 12, 2019, page 10.

amalgamation of EGD and UGL, the OEB approved a price cap IR plan, it allowed a five year deferred rebasing period and it rejected a proposal by EGD and UGL for Z-factor treatment of the impact of tax changes.<sup>46</sup>

51. Rather than accepting the proposed Z-factor treatment for the impact of tax changes, the OEB determined in the MAADs decision that 50% of the impacts of tax changes would be recorded in an expanded version of the UGL TVDA. This determination was consistent with the practice of 50/50 sharing that had been followed by the OEB as a result of its consideration, in EB-2007-0606-0315, of the flow-through effect of tax impacts on the inflation factor in a price cap IR plan. Based on the OEB's determinations regarding the ratemaking model that would be in effect during the five year deferred rebasing period, EGD and UGL proceeded with the amalgamation.
52. Intervenors and OEB Staff now argue that 100% of the impacts of the All should be disposed of to the credit of ratepayers. Enbridge Gas submits that it is neither just nor reasonable to change determinations made by the OEB regarding the treatment of tax savings during the deferred rebasing period - specifically, the OEB's decision to continue and expand the UGL TVDA, after the amalgamation has occurred and before the end of the deferred rebasing period.
53. In their arguments for 100% disposition of the TVDA balance to ratepayers, intervenors and OEB Staff do not address the implications of changing the OEB's

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<sup>46</sup> EB-2017-0306/0307 Decision and Order, September 17, 2018.

determinations regarding the treatment of savings during the deferred rebasing period. These parties offer no rationale or support for a conclusion that the OEB can, or should, come to a determination now regarding the disposition of tax savings that departs from the ratemaking methodology approved by the OEB in the MAADs decision for the deferred rebasing period.

## **II. MERITS OF THE PROPOSALS MADE BY ENBRIDGE GAS**

54. SEC stated that Enbridge Gas is seeking to justify spending “on the basis that the utility has extra ratepayer money hanging around”.<sup>47</sup> Nothing could be further from the truth. SEC’s premise that the TVDA balance is “ratepayer money” has been discussed above. As for the justification provided by Enbridge Gas for the primary proposal set out in the Supplemental Evidence, it is multi-faceted and intended to deliver benefits to ratepayers, to Enbridge Gas and its shareholder and to the Province of Ontario.
55. LPMA has formed the view from the primary proposal set out in the Supplemental Evidence that Enbridge Gas has implicitly acknowledged that 100% of the TVDA funds should go to benefit ratepayers.<sup>48</sup> At no time has Enbridge Gas indicated, either explicitly or implicitly, that 100% of the TVDA balance should go to benefit ratepayers. Rather, Enbridge Gas has proposed a balanced approach that benefits ratepayers, the shareholder and the public. However, LPMA’s comments

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<sup>47</sup> SEC Submission, page 3.

<sup>48</sup> LPMA Submission, page 3.

recognize that the justification for the primary proposal made by Enbridge Gas includes meaningful benefits to ratepayers.

56. Enbridge's primary proposal is that amounts recorded in the TVDA be used as a source of funding for important capital initiatives, namely, Economic Development Projects and Integrated Resource Planning ("IRP") Pilot Projects. Economic Development Projects are proposed to serve growing business needs in areas where access to affordable energy has been limited.<sup>49</sup> And of course providing gas distribution service to meet these business needs drives the multiplier effect discussed in the submissions above. IRP Pilot Projects are projects that would inform natural gas IRP in Ontario and would be targeted at an area anticipated to have a future capacity need relevant to a reinforcement project from the Enbridge Gas Asset Management Plan.<sup>50</sup>
57. As stated in Argument in Chief, the considerations that support approval of the proposal by Enbridge Gas include the intent or purpose of the All, the policies of the Ontario government, the importance of post-pandemic economic stimulus and the multiplier effect of using amounts recorded in the TVDA to deliver benefits that exceed the monetary value of the account balance.<sup>51</sup>
58. This multi-faceted justification for the proposal by Enbridge Gas was explained in greater detail in the Supplemental Evidence. SEC's assertion about the basis

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<sup>49</sup> Supplemental Evidence, Exhibit H, page 12, paragraph 47.

<sup>50</sup> Supplemental Evidence, Exhibit H, page 16, paragraph 61.

<sup>51</sup> Argument in chief, paragraph 29.



upon which Enbridge Gas seeks to justify spending is completely disconnected from the reality of the evidence and the Argument in Chief.

59. Enbridge Gas submitted in Argument in Chief that using 100% of the TVDA balance as a source of funding for Economic Development Projects and IRP Pilot Projects would not only deliver ratepayer benefits but would also optimize the use of the funds in the overall best interests of the Province of Ontario. The arguments made by other parties have not cast any doubt on this submission by Enbridge Gas. As noted above, LPMA recognizes that the primary proposal made by Enbridge Gas includes meaningful benefits for ratepayers. Far from refuting the public interest benefits of the primary proposal, intervenors and OEB Staff largely ignore the proposal's public benefits<sup>52</sup> and, in particular, the multiplier effect of the proposal goes unnoticed in the arguments of these parties.
60. Issues have been raised about differing allocations to rate zones and customer classes depending on the approach taken to the disposition of the TVDA balance.<sup>53</sup> The implication of some arguments is that consideration of these differing allocations is a factor in the OEB's decision with regard to the appropriate disposition of the TVDA balance. Enbridge Gas submits that the appropriate disposition of the TVDA balance should be determined on its merits and then

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<sup>52</sup> As discussed above, some intervenors argue for disposition of the TVDA balance to ratepayers as a better way to achieve economic benefits, but no party has refuted the public interest benefits of the primary proposal.

<sup>53</sup> Staff Submission, page 8, SEC Submission, page 5, VECC Submission, pages 6-7.

appropriate allocations to rate zones and customer classes will flow out of the determination on the merits.

61. LPMA states that the Economic Development Projects are all located in the Union South rate zone.<sup>54</sup> In fact, one of the projects identified in the Supplemental Evidence is in the EGD rate zone<sup>55</sup> and Enbridge Gas has proposed that the TVDA balance could be used for projects other than those set out in the Supplemental Evidence that would provide public and ratepayer benefits and contribute to post-pandemic recovery.<sup>56</sup> In any event, though, Enbridge Gas is now a single company formed from the amalgamation of UGL and EGD and, in identifying projects to optimize use of the TVDA balance, the extent to which the projects are located in particular rate zones should not matter. Further, the primary proposal will deliver benefits for the Province as a whole and is not limited to localized benefits within rate zones.
62. OEB Staff<sup>57</sup> and certain intervenors<sup>58</sup> say that the primary proposal is premature. Enbridge Gas was asked an interrogatory on this point and it explained fully that it is not premature to determine at this time the use of the TVDA balance as a source of funding for the projects discussed in the Supplemental Evidence.<sup>59</sup> The

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<sup>54</sup> LPMA Submission, pages 5-6.

<sup>55</sup> Supplemental Evidence, Exhibit H, page 13, paragraph 50, where the “Grimsby-Lincoln Regional Expansion” is identified.

<sup>56</sup> Supplemental Evidence, Exhibit H, page 11, footnote 11, and Supplementary Interrogatory Exhibit I.LPMA.30, page 1, part b).

<sup>57</sup> Staff Submission, page 8.

<sup>58</sup> EP Submission, page 5 and CCC Submission, page 3.

<sup>59</sup> Response to EP Supplementary Interrogatory Exhibit I.EP.16, part b).

proposed Economic Development Projects have been filed with the OEB in response to the OEB's NGEP, with details, costs and requested funding – as well as public benefits by way of private investment and job creation – that have been assessed and quantified. The outstanding item for these projects to proceed, and for public benefits to materialize, is a sufficient level of funding.<sup>60</sup> Similarly, as explained in the interrogatory response, it is not premature for use of the TVDA balance as a source of funding for IRP Pilot Projects to be addressed at this time.

63. Should the OEB not approve the sharing of All benefits achieved through the primary proposal set out in the Supplemental Evidence, Enbridge Gas submits that the just and reasonable result is for amounts recorded in the TVDA to be disposed of by way of a 50/50 allocation between ratepayers and shareholder. This disposition takes account of the flow-through effect of accelerated CCA on the inflation factor during the term of the Enbridge Gas price cap IR plan. It takes account of the OEB's longstanding practice that is based on the Tax Changes Decision where the OEB recognized the flow-through effect of tax changes on the inflation factor. It is aligned with the ratemaking methodology that was in place for EGD and UGL in 2018. And it is aligned with the OEB's determination in the MAADs decision that, during the five year deferred rebasing period following the amalgamation of EGD and UGL, 50% of the impacts of tax changes would be recorded in an expanded version of the UGL TVDA.

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<sup>60</sup> *Ibid.*

### **C. SCORECARD**

64. OEB Staff has asked Enbridge Gas to address certain matters relating to the Scorecard in its Reply Argument.<sup>61</sup>
65. In making its reply submission Enbridge Gas would like to highlight that it is almost completely in compliance with Scorecard expectations, it takes these expectations seriously and, as described in the submissions that follow below, it makes continuous efforts to improve performance where it is modestly below expectations.
66. Upon consideration of the comments made in the Staff Submission, Enbridge Gas encourages the OEB to do a review of certain Service Quality Requirements Performance Metrics, taking a more balanced approach and recognizing that other channels are an important component in the overall customer experience.
67. As an example, Telephone Answering Performance as a measure has been in place well over 20 years and reflects a time when this was the primary channel for serving customers. Expectations around ease and self-service have evolved and other channels are now more valued and expected by customers. The need to maintain this level of service does have a detrimental effect on a utility's investment in development of other channels. Making a modest change in the level of service

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<sup>61</sup> Staff Submission, pages 8-9.

required in the traditional telephone channel would allow utilities to invest in improved self-service options.

68. The measure Time to Reschedule Missed Appointments (“TRMA”) tracks the percentage of customers contacted to reschedule work within two hours of the end of the original appointment time. The annual standard for TRMA is 100% and Enbridge Gas achieved 97% in 2019.
69. Efforts towards meeting the TRMA target of 100% are ongoing. A cross functional team meets monthly to review performance on this metric, to address issues and to re-enforce training where necessary. Regional management teams meet monthly to drive performance as well. It should be noted that the number of missed reschedules represents only 0.04% (*i.e.*, 82 out of 198,860) of the total appointments for 2019.
70. While Enbridge Gas acknowledges that promptly rescheduling missed appointments is an important part of achieving the SQR (and of customer service), attainment of a perfect 100% is not always possible. As a result, Enbridge Gas recommends the TRMA target be reviewed, and set to a more appropriate target of 90% to 95%. Enbridge Gas will continue to place priority on this standard, striving to reach the current target of 100%.
71. The measure Meter Reading Performance represents the number of meters with no read for four consecutive months or more, divided by the total number of active

meters to be read. The target for the metric is 0.5% and Enbridge Gas achieved a level of 0.7% in 2019.

72. Enbridge Gas continued to face challenges around meter reading in 2020. In the early phase of COVID-19 (March to May), Enbridge Gas considered pausing meter reading activity due to questions from the public and law enforcement around continuation of this work activity. Enbridge Gas directed both of its meter reading partners to ensure that staff not put themselves in a situation where they would come in close contact with the public or a customer. During this phase there were other practical challenges, such as lack of access to restrooms, which would necessitate a return home.
73. In addition to challenges due to COVID-19, Enbridge Gas continues to experience issues with meter access due to denser subdivisions and homeowners increasingly securing their property. There is also an increase in customers opting for online submission of meter reads. Enbridge Gas worked closely with both partners to address these issues, but productivity was negatively impacted. All of this has contributed to making the transition from the previous partner (Olameter) to the new partner (GTEL) challenging.
74. Enbridge Gas continues to work to meet the performance metric through monthly emails and texts to customers asking them to submit a reading, GTEL offering additional incentives and staff to obtain reads, and engaging the Enbridge Gas Quality Assurance team to review consecutive estimates.

75. EP asked Enbridge Gas to respond to questions about the filing of the Scorecard in the “ESMDA” proceeding and about the provision of certain targets.<sup>62</sup> The Scorecard is filed in the ESMDA proceeding to ensure data availability and review. Service Quality Requirements and financial data used to create the Financial Ratios are included with the RRR submission, which is typically filed prior to the ESMDA application. The timing ensures consistency in reporting.
76. The 2020 Scorecard will include the previous year’s results to demonstrate trend, similar to the electricity utilities. Enbridge Gas believes that observing the trend over time provides a meaningful view of performance.

#### **D. CONCLUSION**

77. Enbridge Gas therefore submits that its primary proposal for the disposition of the amounts recorded in the TVDA delivers public, ratepayer and shareholder benefits and optimizes the use of the TVDA balance in the best interests of the Province of Ontario. For all of the reasons set out in Argument in Chief and in this Reply Argument, Enbridge Gas submits that the OEB should order disposition of the TVDA balance so as to give effect to the primary proposal by Enbridge Gas.
78. If the sharing of All benefits in accordance with the primary proposal does not meet with the approval of the OEB, Enbridge Gas submits in the alternative that the

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<sup>62</sup> EP Submission, page 5.

TVDA balance should be disposed of by way of a 50/50 allocation between ratepayers and shareholder.

All of which is respectfully submitted.

March 15, 2021



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Fred D. Cass  
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