

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Integrated Resource Planning Proposal by Enbridge Gas Inc.

SUBMISSIONS OF CANADIAN MANUFACTURERS & EXPORTERS (“CME”)

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1.0 INTRODUCTION AND PROCEDURAL HISTORY

1. These submissions are made on behalf of Canadian Manufacturers & Exporters (“**CME**”).
2. CME’s members, which include over 400 Ontario based companies, operate energy intensive businesses. Given that many members heavily rely on natural gas as inputs into their business, EGI’s system planning, and the reliability, safety and cost effectiveness of the natural gas distribution system is of paramount concern to CME’s members.
3. On January 31, 2020, EGI submitted an application for leave to construct 10.2 kilometers of NPS 48 pipeline as part of the Dawn Parkway project, as well as for approval of its integrated resource planning (“**IRP**”) proposal as part of EB-2019-0195.
4. According to EGI’s application, it brought forward an IRP proposal in response to the Board’s direction in “recent decisions in applications for leave to construct” and in the OEB’s Report of the Board on the DSM Mid-Term Review.¹
5. For instance, in its decision and order for EB-2018-0097, the Board found that EGI’s process for determining non-facility investment alternatives was not appropriate, and directed that EGI should “provide sufficient and timely evidence of how DSM has been considered as an alternative at the preliminary stage of project development.”²
6. In procedural Order #1, dated January 30, 2020, the Board determined that EGI’s IRP proposal raised issues of broad applicability, which were better dealt outside of a leave-to-construct application.³
7. On April 28, 2020, the Board published a notice of hearing with respect to EGI’s IRP proposal, separating it from the leave to construct application under EB-2020-0091.⁴

¹ EB-2020-0091, Exhibit A, Tab 13, p. 2.

² EB-2018-00097, Decision and Order, January 3, 2019, pp. 6-7.

³ EB-2019-0159, Procedural Order #1, January 30, 2020, p. 2.

⁴ EB-2020-0091, Procedural Order #1, April 28, 2020, p. 1.

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8. On July 15, 2020, the Board determined that EB-2020-0091 would be an examination of IRP more broadly, and was intended to determine a “general framework for IRP for Enbridge Gas.”⁵
 9. As part of the process, the Board provided for additional evidence from a number of parties including:
 - (a) EGI, whose additional evidence included an IRP process plan that described how and when system capacity constraints are identified, and how facility and non-facility alternatives could address those constraints and a report by ICF Canada on targeted DSM potential;⁶
 - (b) A report by Guidehouse Canada Ltd. commissioned by Board Staff regarding a jurisdictional review of natural gas IRP in New York State;⁷
 - (c) A report by Chris Neme and Energy Futures Group with regarding IRP lessons learned, IRP framework issues in the Ontario context, and Mr. Neme’s own experience in natural gas demand-side management.⁸
 10. EGI also filed responding evidence on December 11, 2020.⁹
 11. In Procedural Order #7, the Board provided for written interrogatories, a transcribed technical conference, a transcribed presentation day, and an oral hearing as follows:¹⁰
 - (a) Interrogatories – January 12, 2021;
 - (b) Responses to Interrogatories – February 2, 2021;
 - (c) Technical Conference – February 10-12, 2021;
 - (d) Presentation Day – February 19, 2021; and
 - (e) Oral Hearing – March 1-4, 2021.

⁵ EB-2020-0091, Procedural Order #2, July 15, 2020, p. 5.

⁶ EB-2020-0091, Exhibit B, p. 1. See also EB-2020-0091, Exhibit B, Appendix A.

⁷ EB-2020-0091, Natural Gas Integrated Resource Planning in New York State and Ontario.

⁸ EB-2020-0091, Best Practices for Gas IRP and Consideration of “Non-Pipe” Alternatives to Traditional Infrastructure Investment, Chris Neme, Energy Futures Group, November 23, 2020.

⁹ EB-2020-0091, Exhibit C, December 11, 2020.

¹⁰ EB-2020-0091, Procedural Order #7, p. 2.

12. Procedural Order #9 provided the timeline for written submissions. Specifically, intervenor submissions were required by March 31, 2021. The Board provided that it would be helpful if intervenors were to “follow the format” of EGI’s argument-in-chief.¹¹
13. EGI’s argument-in-chief is structured around the specific approvals sought from the OEB as part of the IRP framework, rather than the issues list. Accordingly, CME has structured its submissions to follow EGI’s format, rather than the format set out in the issues list.

2.0 CME’s SUBMISSIONS

14. CME submits that the first step in creating an IRP framework is to determine what the goal of the framework should be. From that point, the framework can be designed to meet that goal.
15. In CME’s view, the purpose of IRP planning is to meet the customer demand for energy services in the most cost effective way possible. The introduction of Integrated Resource Planning Alternatives (“IRPAs”) increase optionality for meeting customer demand, and to the extent that they are pursued, will reduce the overall cost of infrastructure development.
16. This is similar to EGI’s stated goal for IRP, which according to its evidence is to consider facility and non-facility alternatives in tandem to address system constraints in an optimized and economic fashion.¹² CME agrees with this over-arching goal, however, it differs from EGI in how to structure the framework to best achieve that goal.

2.1 Guiding Principles

17. In their argument-in-chief, EGI requests that the Board consider and approve guiding principles identified by EGI, and which underpin EGI’s application as follows:
 - (a) Reliability and Safety;
 - (b) Cost Effectiveness;

¹¹ EB-2020-0091, Procedural Order #9, March 5, 2021 p. 1.

¹² EB-2020-0091, Exhibit B, p. 18.

- (c) Public Policy; and
- (d) Optimized Scoping.¹³

18. CME will provide its submission on each guiding policy in turn.

2.1.1 Reliability and Safety

19. EGI states that in considering IRPAs, safe delivery of firm contracted peak period natural gas volumes to customers must remain of paramount importance.¹⁴
20. CME agrees with EGI in this respect. Natural gas is a central input to Ontarians, both with respect to space heating for personal and business uses, but it is also a central input to many of CME's members' businesses.
21. Given that IRPAs are designed to be used to address system constraints in lieu of facility alternatives, it is imperative that whatever IRPAs are considered by EGI going forward are sufficiently safe and reliable such that Ontarians, whether residential, commercial or industrial are able to rely on the natural gas distribution system when it is needed.
22. This guiding principle also dovetails with the Board's own objectives when it comes to the natural gas distribution system of Ontario. Specifically, section 2 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B (the "*OEB Act*") provides that one of the Board's objectives is protect customers' interests with respect to the "prices and reliability and quality of gas service."¹⁵ Accordingly, CME submits that the continued safety and reliability of the natural gas distribution system is an appropriate guiding principle for the IRP framework.

¹³ EB-2020-0091, Argument-in-Chief, p. 6.

¹⁴ EB-2020-0091, Argument-in-Chief, p. 6.

¹⁵ *OEB Act*, s. 2.

2.1.2 Cost Effectiveness

23. EGI's second guiding principle is cost effectiveness. EGI stated that an IRPA must be cost effective (competitive) compared to the facility and non-facility alternatives that it is being measured against in order for it to be chosen as the preferred alternative.
24. CME agrees that cost-effectiveness is an important guiding principle, and submits that it should be second only to safety and reliability in terms of importance to the IRP framework.
25. As outlined previously in these submissions, the ultimate purpose of the IRP framework is to provide EGI with guidance on when and how to substitute IRPAs, in place of facility construction. It is, in short, a system planning exercise. While the range of potential investments for EGI to choose from will be broadened, the ultimate goal is to provide reliable natural gas service to Ontarians in the most efficient and economical way possible.
26. Consequently, when the Board provides a framework for EGI to guide it in determining when IRPAs are appropriate, that framework must ensure that ratepayers are not disadvantaged, from a cost perspective, compared to the traditional facility builds.
27. Cost effectiveness is also aligned with the Board's objectives from the *OEB Act*, specifically section 2(2) which discuss protecting customer's interests with respect to the price of gas service.¹⁶

2.1.3 Public Policy

28. According to EGI, the public policy principle is there to ensure that IRP will be considered in a manner that is supportive of, and aligned with public policy.¹⁷
29. EGI agreed that emissions reductions goals and instruments, such as the federal carbon charge may be relevant to the evaluation of facility and non-facility alternatives.¹⁸ EGI

¹⁶ *OEB Act*, s. 2.

¹⁷ EB-2020-0091, Argument-in-Chief, p. 6.

¹⁸ EB-2020-0091, Argument-in-Chief at para 26.

however also noted that these are not the only public policy goals with which the IRP framework must be aligned.

30. CME agrees with EGI in this respect. The Board should be guided by the objectives set for it in the *OEB Act*. While this includes energy conservation and energy efficiency,¹⁹ it also includes policy goals such as protecting the customer's interests with respect to price and reliability.

2.1.4 Optimized Scoping

31. EGI describes this guiding principle as “recognizing” that an IRPA review for each forecast infrastructure project would be inefficient. As a result, EGI submits that it should be allowed to apply a binary screening measure to reduce the number of infrastructure projects that undergo the IRP assessment.²⁰
32. CME largely agrees with EGI on the value of this guiding principle. Applying an IRPA review to all projects, where IRPAs are clearly unsuitable or will not be cost effective would be inefficient, and costly. However, CME submits that the EGI screening process must not become too mechanistic. As outlined further in these submissions, EGI has recognized, over the course of the proceeding, that there may be cases where an IRPA review is screened out for various reasons but could still be useful.²¹
33. Accordingly, IRPA reviews, while not appropriate for every investment, should be considered carefully by EGI on a case by case basis, to ensure that IRPA reviews are applied to every investment where they could reasonably result in a more cost-effective solution for ratepayers. Moreover, CME submits that the Board should be able to oversee EGI's IRP decisions such that it is not too late to change course if the Board's view differs from that of EGI on the appropriate means to address a system constraint.

¹⁹ *OEB Act*, s. 2(5).

²⁰ EB-2020-0091, Argument-in-Chief, p. 6.

²¹ Such as because of safety concerns, timing, or pipeline replacement projects.

2.2 Types of IRPAs Available

34. EGI has requested approval to use a wide variety of demand-side alternatives, along with “appropriate” supply side alternatives to meet needs/constraints on the system.²²
35. At a high level, CME agrees with EGI that a wide variety of IRPAs should be available and considered. This helps further the goal of cost effectiveness, as the more options that are available to meet a constraint or need, the more likely a cost effective solution will be found.
36. However, CME disagrees with EGI with respect to some of the details about which alternatives should be considered or discounted as IRPAs. EGI has proposed a number of IRPAs, including non-gas alternatives such as geothermal heat pump systems and air source heat pumps, which do not involve natural gas in their normal operation.²³
37. These activities go beyond EGI’s normal role as a gas distributor. During cross-examination, EGI’s witness outlined several scenarios that could occur as a result of EGI becoming involved in non-gas solutions. Specifically, EGI’s witness discussed the company’s position that it could be a spectrum of outcomes as follows:
- (a) On one end of the spectrum, EGI could provide an incentive to adopt the non-gas solution, and recover that incentive amount through rates.²⁴
 - (b) On the other end of the spectrum, EGI proposes to provide the non-gas solution itself where the existing competitive market is unable to:

“We expect to put the net procurement costs of the IRPA into rate base. So if the geothermal assets cost 50 million dollars but the rates for those geothermal services, which would not be regulated, recovered, you know, 20 million of them, and the best solution for our ratepayers is that we own and operate those and also charge the revenues, then, yes, those dollars would go in...”

... If there is not a competitive market and the company needs to either own or operate or facilitate or participate in that market in any

²² EB-2020-0091, Argument-in-Chief, p. 13.

²³ EGI does however note that natural gas can be used as back-up functionality where available. See EB-2020-0091, Exhibit B, p. 23.

²⁴ EB-2020-0091, Transcript, Vol. 3, pp. 39-41.

sense, then it would be whatever it takes to get the IRPA to be adopted.²⁵

38. CME submits that EGI's ownership of unregulated assets,²⁶ or its "ownership" or operation of a market for non-gas IRPAs is inappropriate in the context of earning a regulated return.
39. First, it provides an asymmetrical position with respect to ratepayers. According to its evidence, the Board would not be regulating the rates of the non-gas solutions,²⁷ but the net difference between the cost of providing the solution plus the incentives required (if any) on the one hand, and the unregulated rates collected by EGI on the other would be collected from ratepayers through regulated mechanisms.²⁸ This would ensure that EGI would never take any risk from the IRPA investment, as the entire cost of the IRPA investment, if necessary could be collected from ratepayers.
40. In contrast, EGI's evidence is silent as to what could occur if EGI could charge more through unregulated rates than the cost of the IRPA investment. This possibility, while remote at this point, could become more realistic as non-gas technologies progress and become more commercially viable. In that instance, if EGI was charging more in unregulated rates than the cost of the IRPA investment, no additional amounts would be funded through regulated mechanisms, but EGI would be able to make an unregulated profit.
41. Accordingly, this approach would allow EGI to be backstopped against loss by regulated ratepayers, while retaining all of the upside if and when these technologies become more commercially viable.
42. Second, EGI's proposed approach also creates a concerning asymmetry in the competitive marketplace for these new technologies. Under EGI's proposal, EGI would

²⁵ EB-2020-0091, Transcript, Vol. 3, pp. 39-41.

²⁶ According to EGI's evidence, EGI would charge unregulated rates on these assets, but the cost of the assets, to the extent that they aren't paid for through the unregulated rates would be charged through the regulated business as part of the IRP framework. EB-2020-0091, Transcript, Vol. 3, pp. 39-41.

²⁷ EB-2020-0091, Transcript, Vol. 3, p. 39, lines 15-22.

²⁸ EB-2020-0091, Transcript, Vol. 3, p. 39, lines 15-22.

step in and either own the market, or operate the market for these new technologies if the existing competitive market could not deliver the IRPA. EGI's occupation and operation of these markets, using regulated returns as a backstop, could potentially stifle competition and development in these markets from non-regulated, non-monopoly companies.

43. Consequently, CME submits that EGI's potential IRPAs, while they should be broad, should not include owning and operating markets for non-gas IRPAs.

2.3 Assessment Process for IRPAs

44. EGI's assessment process proposal consists of four steps as follows:

- (a) Identification of constraints;
- (b) Binary screening criteria;
- (c) Two-stage evaluation process; and
- (d) Periodic review.²⁹

2.3.1 Identification of Constraints

45. The first step of EGI's proposed assessment process is the identification of constraints. Specifically, EGI proposes to complete long-term demand forecasting to identify needs and asset condition assessments in order to determine where it believes constraints will develop on the distribution system.³⁰
46. Once identified, the constraint will be included in EGI's asset management plan, and EGI will develop a baseline facility solution to meet the constraint, against which the IRPAs will be measured.³¹
47. CME does not oppose EGI's proposal in this respect.

²⁹ EB-2020-0091, Exhibit B, pp. 14-17.

³⁰ EB-2020-0091, Exhibit B, p. 14.

³¹ EB-2020-0091, Exhibit B, p. 14.

2.3.2 Binary Screening Criteria

48. EGI proposes to screen the system needs identified in step #1 to determine whether more IRP evaluation is appropriate. The six binary screening criteria are:
- (a) Emergent safety issues;
 - (b) Timing;
 - (c) Customer specific builds;
 - (d) Community expansion and economic development; and
 - (e) Pipeline replacement and relocation projects.
49. CME generally supports EGI's proposal to screen constraints or needs to determine if further IRP consideration is warranted, subject to the following concerns.
50. With respect to customer specific builds, CME agrees that customers who indicate their clear determination for a facility option should receive a facility option. However, CME suggests that EGI ensure that the customer is fully aware of any other potential alternatives for the system need to be met, in order to ensure that their determination for a facility option is fully informed.
51. Additionally, while EGI has already acknowledged this for many of the binary screening processes, IRPA evaluation should, where possible, be conducted on a case by case basis. As set out in EGI's evidence, even for safety, timing, and pipeline replacement and relocation projects, there are instances where IRPAs could be used effectively.
52. Accordingly, CME submits that the Board's framework should indicate that the screening process should be carefully applied on a case by case basis, and not mechanistically to inappropriately prevent IRPA consideration without considering the unique circumstances of each investment.

2.3.3 Two-Stage Evaluation Process

53. EGI proposes to engage in a two-stage evaluation process for its IRP plan. The first stage is to determine whether potential IRPAs could meet the system constraint which has been identified. If the answer is yes, EGI will prepare IRP plans and compare those to the baseline facility investment using a DCF+ test to determine the best alternative to pursue.
54. Various parties have suggested a variety of different tests in order to best address and assess whether IRPAs are cost effective. EGI itself acknowledges that there is a significant amount of work still to go to determine what inputs should be included into its own proposed DCF+ test.³²
55. CME submits that the test selected should be one that reflects the goal and purpose of IRP planning – to meet system constraints in the most economic and cost effective way possible. In addition to a comparison of the costs of each investment, the test propose should also consider avoided costs on the part of the utility. These would include, for instance, the potential to avoid additional costs such as stranded assets. The DCF+ test, including its focus on ratepayer impacts, can achieve this goal. However, CME agrees that the DCF+ test will require more work to determine the appropriate inputs.
56. Currently, EGI's position is that ratepayers should pay for any assets that are stranded as a result of possible transitions in energy sources moving forward.³³ While CME disagrees with the premise that ratepayers should be required to pay for the cost of stranded assets, as a bare minimum, EGI should be selecting and evaluating IRPAs with a test that accounts for risk reduction to utilities and ratepayers with respect to stranded assets.
57. Accordingly, CME supports Guidehouse's recommendation that parties create a comprehensive Benefit Cost Analysis Handbook for Gas IRP, to ensure that all IRP

³² EB-2020-0091, Argument-in-Chief at para 91.

³³ EB-2020-0091, Transcript, Vol. 2, p 37.

options are evaluated fairly and consistently, and include all of the necessary inputs, such as the risk of stranded assets.

2.3.4 Periodic Review

58. EGI proposes to review IRP determinations periodically to account for new information and changes in circumstances. CME supports this component of EGI's proposal, subject to proper Board oversight and a procedurally fair process whereby intervenors could ask interrogatories and provide submissions regarding EGI's choices to engage in, or rule out IRPAs which is discussed further in section 2.4.

2.4 **Stakeholder Outreach**

59. EGI proposes to have the following outlets for stakeholder engagement into its IRP investments and planning:
- (a) Gather stakeholder engagement data and insight. According to EGI's evidence, EGI will look for insights from stakeholders by "working within existing stakeholder engagement channels."³⁴ These existing channels include DSM engagement, indigenous and municipal engagement, customer surveys, and other existing stakeholder channels.
 - (b) Stakeholder days. EGI proposes to hold IRP related stakeholder days in regional areas.³⁵ According to EGI's evidence, these days will aimed at hosting discussions on the system needs/constraints outlined in EGI's asset management plan and the potential for IRP to address those constraints.
 - (c) Targeted Engagement. EGI proposes to consult with stakeholders who are particularly affected by specific IRPAs and facility alternatives.³⁶

³⁴ EB-2020-0091, Exhibit B, pp. 40-41.

³⁵ EB-2020-0091, Transcript, Vol. 2, pp. 96-97.

³⁶ EB-2020-0091, Exhibit B, pp. 41-42.

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60. CME submits that the stakeholding process proposed by EGI does not contain sufficient safeguards for ratepayer interests. CME submits that the IRP framework should include a process whereby interrogatories can be asked and must be answered by EGI, and a Board review of the outcome of IRP decisions can be made in advance of when those solutions would need to be implemented in order to be effective.
61. EGI has attempted to justify its position that there is no chance for stakeholder reviews with an opportunity to meaningfully impact EGI's decisions regarding IRP investments in two ways:
- (a) By stating that EGI will ensure that IRPAs are reviewed when they are appropriate, as it will be at risk of non-recovery if they apply for a facility alternative and it is determined that an IRPA should have been selected;³⁷ and
 - (b) By arguing that EGI is not asking for Board approval for the steps "leading up to the Company's ultimate request for approval of either an IRP Plan or a LTC Application," therefore the Board should not review this process.³⁸
62. While CME agrees that EGI would be at risk, as part of a subsequent leave to construct application, of the Board barring recovery for the investment if EGI ignored a more cost effective IRPA, this is not a reason not to hold the review prospectively, while there is still time to change course.
63. In CME's experience, it is very difficult for intervenors, and the Board to understand all of the relevant factors that went into a decision made by the utility several years in the past. As a result, when the Board hears a leave to construct application, it may be very difficult to reconstruct the state of affairs 3-5 years earlier, when EGI was making its initial

³⁷ EB-2020-0091, Transcript, Vol. 2, p. 134, lines 18-22.

³⁸ EB-2020-0091, Argument-in-Chief at para 41.

decisions regarding reviewing and pursuing IRPAs. As a result, intervenors and the Board could have a difficult time holding EGI accountable if IRPAs are overlooked.

64. In contrast, having a contemporaneous review, if necessary of the IRP decision made by the company would be much more effective. Memories would be fresh and evidence more easily accessible. Most important, EGI would not simply be at risk, the better solution could still be chosen.
65. CME also submits that this framework is directly concerned with how EGI will evaluate, and how the Board will review the IRP planning and execution of the company. The timing of stakeholder review, Board processes and adjudication of the issues is central to creating a working and lasting framework.
66. Accordingly, the Board should take the opportunity now, when the process is just being formed, to determine when and how EGI's decisions regarding IRPA investments should be reviewed, and should find that an earlier review, when there is still time to change course, is preferable.

2.5 IRPA Cost Recovery and Risk Sharing

67. CME submits that EGI should share the risk of IRPA investments, and that EGI's current proposal inappropriately shifts the entirety of the risk onto ratepayers.
68. In its proposal, EGI stated that investments in IRPAs are inherently riskier than investments in facilities alternatives. For instance, a demand-side management IRPA could not reduce demand as much as had been forecast.
69. EGI stated in response to an interrogatory that it is entirely appropriate for ratepayers to be burdened with the full risk of investing in IRPAs. EGI justified this position by stating that ratepayers should bear the risk unless EGI acted imprudently:

“Yes, similar to investments in facility alternatives Enbridge Gas proposes that, with the exception of instances where Enbridge Gas is found to have acted imprudently or has failed in its efforts to implement an IRPA in accordance with any future IRPA application

and subsequent OEB approval for the same, ratepayers should bear the cost and associated risk for investments in IRPAs that were approved by the OEB.³⁹

70. In EGI's argument-in-chief, EGI also posits a second reason for why ratepayers should bear the entire risk of IRPA investments – namely that IRP is being pursued by EGI for the “benefit of ratepayers.”⁴⁰
71. CME disagrees with EGI, and submits that EGI should also be at risk with respect to IRPAs that fail to deliver the expected benefits.

2.5.1 EGI's Investment in IRPAs are for its Own Benefit

72. Contrary to EGI's argument, IRPA investments are not being explored or implemented solely for the benefit of ratepayers, they are being implemented for EGI's benefit as well.
73. In any market, goods and services are purchased and sold at a price that makes the transaction beneficial for both parties. While there is a layer of regulation in the gas distribution market in Ontario, the concept is generally the same. Ratepayers gain the benefit of natural gas, whether that be space heating, industrial input or other use, and EGI is allowed to earn a profit. It is in EGI's interest to see that Ontarians continue to purchase from EGI.
74. Traditional natural gas distribution however, is in danger of becoming less competitive in the marketplace. The Government of Canada, through the Federal Carbon Charge, has increased the cost of natural gas distribution by \$40/tCO₂e.⁴¹ The Federal Carbon Charge was recently found to be constitutional and valid by the Supreme Court of Canada.⁴² While further increases beyond \$50/tCO₂e have not yet been made law, the Government of

³⁹ EB-2020-0091, Exhibit I, EP.6.

⁴⁰ EB-2020-0091, Argument-in-Chief at para 49.

⁴¹ Enbridge Gas – Federal Carbon Charge found online at: “<https://www.enbridgegas.com/Natural-Gas-and-the-Environment/Enbridge-A-Green-Future/Federal-Carbon-Pricing-Program>” accessed March 30, 2021.

⁴² Reference Re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11.

Canada has indicated that it plans to increase the Federal Carbon Charge to \$170/tCO₂e.⁴³

75. As a result, an energy transition is underway, a fact with which EGI's witnesses agreed.⁴⁴ Going forward, it is likely that Ontario will diversify its energy consumption from new sources that become cost-effective, and potentially away from traditional natural gas use.
76. IRPAs allow EGI to diversify its business in order to adapt to the energy transition. This will improve EGI's position, and allow it to continue to earn a profit from new energy sources, whatever those may be, in the future. Accordingly, IRPA investment is not simply an altruistic goal EGI is engaging in for ratepayers' benefit, it has a real and identifiable strategic benefit to EGI as well.
77. Given the fact that EGI business serves to gain by investing in IRPAs, CME submits that it is appropriate that EGI takes on some of the risks of IRPA investments as well.

2.5.2 EGI is Free to Design and Implement IRPAs Without Significant Input from Ratepayers

78. As part of its proposal, EGI has put forward a stakeholdering and engagement plan, which would provide ratepayers and other stakeholders limited ability to provide input and comments to EGI with respect to its IRP planning and investments. CME's concerns regarding EGI's stakeholdering proposal is further discussed in section 2.4. However, EGI is very clear that it does not support giving stakeholders a "vote" when it comes to system planning decisions.⁴⁵ According to EGI's evidence, this is because EGI is contractually responsible for providing natural gas sufficient firm contractual demands on the peak day.⁴⁶

⁴³ Pricing Carbon Pollution, Government of Canada, accessed online at: "https://www.canada.ca/content/dam/eccc/documents/pdf/climate-change/climate-plan/annex_pricing_carbon_pollution.pdf", accessed March 31, 2021

⁴⁴ EB-2020-0091, Transcript, Vol. 3, p. 100.

⁴⁵ EB-2020-0091, Argument-in-Chief at para 111.

⁴⁶ EB-2020-0091, Exhibit B, p. 37.

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79. CME agrees with EGI that the utility should make the final decisions on how to run its distribution system, subject to the Board's oversight, and a procedurally fair regulatory process that allows for intervenors to provide their input. However, as a result of EGI's requirement to have the final say with respect to system planning, that means that EGI is the only party that will conceive of, design, implement, and adapt any IRPA investment.
80. Additionally, EGI is proposing that it should be given the power to adjust IRPA investments by up to 25% of the total cost without a further application to the Board.⁴⁷
81. Given that EGI will have operational control of the IRPA program design and execution, CME submits that it is fair and appropriate for EGI to bear some of the risk. For instance, program design and execution decisions could significantly impact the effectiveness of an IRPA investment.
82. Moreover, during the technical conference, EGI acknowledged that their proposal currently has no mechanism to determine if there were opportunities for further efficiencies in the IRPA investment which could have addressed the system constraint for less money than had been requested by EGI.⁴⁸
83. As a result, EGI's IRPA operational decisions will have a significant impact on how effective, and therefore how costly the IRPA investment is to ratepayers, without significant oversight in certain areas, and without incurring any risk on the part of the utility. CME submits that if EGI were to be more at risk for the success of the IRPA investment, it would better align shareholder and utility interest, leading to better outcomes for both parties.

⁴⁷ EB-2020-0091, Exhibit I, GEC.30, pp. 1-2.

⁴⁸ EB-2020-0091, Technical Conference Transcript, Vol. 2., p. 155, lines 8-27.

2.5.3 EGI Proposal is Not “Like Treatment for Like Results”

84. Through its framework proposal, EGI states that it should receive “like treatment for like results” with respect to IRPA investments. EGI’s proposal would allow it to ratebase the IRPA investment and earn a return on it, in much the same way that EGI is allowed to add to ratebase the cost of a facility construction project:

“Enbridge Gas proposes that the costs associated with an IRPA be included in its revenue requirement. The nature of the benefits associated with investments in IRPAs is like the facility expansion/reinforcement projects that they serve to defer, avoid or reduce in that they resolve forecast system constraints/needs. Accordingly, Enbridge Gas maintains that its proposal to treat the costs...in the same manner as the costs for facility expansion/reinforcement projects (capitalized to rate base) that IRP will defer, avoid or reduce, is reasonable and appropriate.”⁴⁹

85. CME agrees in principle that like results should be treated the same way, however, in practice this is not what EGI is proposing. As a result of EGI’s proposal to shift 100% of the risk of IRPA investments onto ratepayers, ratepayers will no longer receive like treatment for like results. Ratepayers will be asked, in essence, to bear the costs of IRPAs regardless of the outcome. EGI will receive like treatment for:
- (a) Like results, if the IRPAs are fully successful;
 - (b) Reduced or partial results, if the IRPAs are somewhat effective; or
 - (c) No results, if the IRPAs fail without providing the anticipated benefit.
86. CME submits that the Board should hold EGI to its own standard. To the extent that it allows EGI to recover costs associated with IRPA investments, it should be if, and to the extent that the IRPA produced like results.

2.5.4 EGI’s Proposal Creates Structural Incentives for IRPAs to Fail

87. EGI has proposed to treat IRPAs in the same fashion as facilities investments, by allowing the cost of the investment to be added to rate base, and return earned upon that amount.⁵⁰

⁴⁹ EB-2020-0090, Exhibit B, p. 32.

⁵⁰ EB-2020-0091, Exhibit B, p. 32.

As part of its efforts to shift the entirety of the risk on to ratepayers, EGI has proposed that if a facility investment is required even after investing in an IRPA, that the facility investment and the IRPA would both be added to rate base, and a return earned on both investments.

88. CME submits that this creates an incentive structure that incentivizes the failure of IRPA investments, as the failure of an IRPA would allow EGI to add the maximum amount to rate base, and increase returns.
89. CME wishes to make it clear that it is not accusing EGI, nor any of its employees of any wrongdoing. However, since EB-2020-0091 is designed to review the framework surrounding how IRPAs are treated by EGI going forward, it is imperative that the structure of the framework, and the structural incentives built in to the framework, align ratepayer and utility interests, and incentivize system planning that is cost-effective and reliable.
90. CME submits that EGI should take on some of the risk of IRPA investments, rather than shifting the entire risk to ratepayers. This would avoid incentivizing multiple additions to rate base for addressing the same system constraint. While there are many ways achieve that outcome, CME submits that EGI's investments should be reviewed on the 'used and useful' standard articulated further in section 2.5.5.

2.5.5 The Board Should Allow Recovery of IRPA Investment Costs to the Extent
that they are Used and Useful

91. EGI's proposal contends that EGI should be allowed to recover the costs of an IRPA so long as it has not acted imprudently, or failed to execute the IRPA in the manner set forward in its application for approval to the Board.⁵¹

⁵¹ EB-2020-0091, Exhibit B, pp. 36-37.

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92. This proposal, in essence advocates for the Board to be bound to the ‘prudent investment’ standard, which is one way, but not the only way to measure when a utility should be able to recover the costs of an investment.
93. In *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, Ontario Power Generation argued that the Board was required to apply the prudent investment test, as a matter of law, to determine whether a utility could recover the costs of its investments.⁵² The Supreme Court of Canada found that the Board was not limited simply to the prudent investment test.⁵³
94. CME acknowledges that EGI’s proposal in this proceeding is simply a proposal, and not an argument that the Board is required, as a matter of law, to apply a certain test. However, the end result of its proposal is similar. EGI’s proposal would narrow the scope of the Board’s review of EGI’s investments to only consider whether EGI has been prudent or imprudent in its investment decisions.
95. CME submits that the Board should retain its full flexibility in evaluating EGI’s investments. This will ensure that the Board is able to “make decisions that are in the public interest and to determine an appropriate balance between the interests of the regulated utility and consumers.”⁵⁴
96. For instance, one analytical framework the Board could employ, which would ensure that EGI’s IRPA investments are properly serving ratepayers is the ‘used and useful’ test. This test is not new for the Board, and has been used in recent Board determinations to ensure that ratepayers only pay for investments from which they are deriving a benefit.⁵⁵

⁵² *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at para 3.

⁵³ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at para 103.

⁵⁴ EB-2016-0160, Decision and Order, Revised November 1, 2017, p. 79. Stated in relation to a decision to begin to disallow recovery for costs of the Niagara Reinforcement Project, as it was not a useful asset for ratepayers.

⁵⁵ For instance, see the Board’s decision in EB-2016-0160, Revised November 1, 2017.

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97. To the extent that IRPA investments are not providing benefits to ratepayers, or are providing benefits that are substantially less than forecast, CME submits that the Board could assess EGI's potential recovery of those investments on the 'used and useful' test basis, to protect ratepayers from having to pay for unproductive or useless assets.

2.6 Advanced Metering Infrastructure

98. EGI requests that the Board provide an "acknowledgement" that advanced metering infrastructure ("AMI") is "an enabler of IRP and IRPAs such as DR (demand response)." The purpose of this acknowledgement is to provide EGI with the confidence to consider and "potentially" request approval for targeting certain areas with AMI deployment.⁵⁶
99. This is in contrast to a broad deployment of AMI, which EGI states would likely be brought forward as part of its 2024 rebasing application.
100. CME does not believe that such an acknowledgement is necessary at this time.
101. Even if EGI is not asking for an 'approval' as such, it is inappropriate to provide an advanced acknowledgement condoning or supporting the use of AMI prior to reviewing EGI's actual proposal for AMI investment. Such an advanced determination could have one of the following two effects:
- (a) It could in no way influence future Board panels' determination with respect to whether EGI should proceed with AMI infrastructure investment; or
 - (b) It could influence future Board panels' determination with respect to granting AMI investment.
102. To the extent that the Board's acknowledgement in this proceeding has no impact on future determinations, it is unclear to CME what benefit, if any, EGI, ratepayers, or the Board would derive from such an acknowledgment. CME believes that this would be the outcome of such an acknowledgment.

⁵⁶ EB-2020-0091, Argument-in-Chief, p. 48-49.

103. In contrast, to the extent that EGI believes that future Board panels would be more likely to accede to EGI's request for approval for AMI investment, and recovery of those costs from ratepayers as a result of its previous acknowledgement, CME submits that such an acknowledgement should not be granted.
104. To the extent that EGI wishes to provide a proposal, with the costs and benefits of the AMI infrastructure it wishes to invest in and recover from ratepayers, it is open for EGI to do so. This will allow the Board to weigh the evidence on that specific proposal, and determine whether it is appropriate to invest in AMI at that time. An advanced acknowledgement, without the benefit of the costs and benefits that are actually associated with EGI's proposed investment, is not helpful nor necessary at this juncture.

3.0 COSTS

105. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of March, 2021.



Scott Pollock

Counsel for CME