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Ontario Energy Board
2300 Yonge Street, 27floor
Toronto, ON M4P 1E4

Attention: Christine Long, Registrar and OEB Secretary

Dear Ms. Long:

Re: **EB-2021-0002**
Enbridge Multiyear DSM Plan 2022-2027 ("Application")

We are counsel to Enbridge Gas Inc. ("Enbridge Gas" or the "Company") in respect of the above-noted Application. We are responding to the letters directed to the OEB by Mr. Kent Elson on behalf of Environmental Defence ("ED") and the Green Energy Coalition ("GEC") dated May 27, 2021 and a letter dated May 28, 2021 from counsel to the School Energy Coalition ("SEC"). We respond to each letter separately below.

Response to ED/GEC Letter

Mr. Elson gave notice of his clients intent to ask Mr. Chris Neme to prepare high-level evidence regarding Enbridge Gas's proposed DSM investment levels (i.e. DSM Budgets) with a focus on five considerations. While Enbridge Gas acknowledges that every party has a right to file evidence and to make submissions, such evidence should be limited to issues which are relevant and live to a particular proceeding.

Consistent with the position regularly taken by ED and GEC in the past, there can be a little question that the sole purpose of Mr. Neme's evidence will be to support a submission that the DSM budget proposed by the Company in the Application for each of the years 2022 through 2027 should be materially higher than that proposed.

As noted by the Company in the Application, the development of the multi-year DSM plan and budgets was guided by the direction given by the OEB in its letter of December 1, 2020 (the "OEB DSM Letter"). The OEB made certain determinations and findings in the OEB DSM Letter. Importantly, it directed the Company as follows at page 3:

Over the course of the 2015-2020 term, annual OEB-approved natural gas conservation budgets have doubled from the previous levels approved for the 2012-2014 term, up to approximately $140 million per year by the end of the current term. With COVID-19 creating many financial hardships, energy conservation has a role in helping to reduce energy costs and assist customers in managing their energy bills. <u>The OEB anticipates modest budget increases to be proposed by Enbridge Gas in the near-term</u> in order to increase natural gas savings, and expects Enbridge Gas to seek to improve the cost effectiveness of programs. However, the appropriate level of ratepayer funding expended for DSM programs must weigh the cost-effective natural gas savings to be achieved against both short-term and long-term customer bill impacts. (emphasis added)

The Company acted on this directive and spent considerable time and effort generating a 6 year plan and the Application in which the 6 year plan has been proposed to the OEB. While it is acknowledged that there can be some debate about what constitutes a “modest budget increase”, Enbridge submits that any evidence produced by Mr. Neme must be limited to what constitutes a modest budget increase. Advocating a material increase would be contrary to the OEB’s directive and is therefore out of scope.

It is important to understand that, as noted in the Application, any material increase in budget over that proposed by the Company will likely require it to withdraw the application and re-file as the proposed program offerings cannot simply be increased in a linear fashion. As well, it would take time to design program offerings that would, hopefully, justify a material increase in budget, with additional time necessary to procure and train the necessary outside services and/or staff required for implementation. Certainly this cannot be done in time for 2022.

Of the five considerations identified by Mr. Elson in his letter, it is our respectful submission that most are either out of scope or unnecessary. Questions about Energy bill impacts and Non-participant rate impacts can be answered at the proposed Presentation Day. Such impacts are mathematical and do not require expert evidence. The investment levels in leading jurisdictions may be of interest but the OEB has already made a determination that Enbridge Gas should only be proposing modest budget increases. Such evidence is therefore irrelevant. Similarly, a submission about Government targets and the DSM Potential Study are out of scope for the purposes of setting budget as the OEB has already made a determination in this regard and directed the Company to propose modest budget increases. Both the Governments targets and policies and the DSM Potential Study were known by the OEB as both were specifically referred to in the OEB DSM Letter at page 2.

Enbridge Gas submits that what ED and GEC are proposing is to file evidence in support of, in effect, a motion to review a determination already made by the OEB. They have not called it this but that is what is being requested. The process and tests applicable to motions for review under the Rules should have been followed.

As well, it should be noted that the OEB DSM Letter was issued on December 1, 2020, more than six months ago. If ED and GEC have serious concerns about the OEB’s directive, it should have been expressed shortly following the issuance of the OEB DSM Letter. Instead, they have allowed the Company to prepare an Application based upon the directive it was given and waited until now to ask the OEB to review and revise this directive. For this reason alone, Enbridge Gas submits that the OEB should deny any attempt by ED and GEC (and any other supporting intervenor) to try and turn the question of what constitutes a reasonable modest increase in budgets into a review about the reasonableness of proposing materially higher budgets than that proposed.

Given the above, Enbridge Gas requests that if the OEB is inclined to receive evidence at this time from Mr. Neme for the purposes of the preliminary issue regarding annual budgets and the proposed methodology to increase same annually, that it appropriately instruct Mr. Neme to limit his evidence to issues of relevance as guided by the above submissions. With this, it is the Company’s expectation that his evidence would not require a month to complete.

ED & GEC have also asked for, in effect, the approval of the OEB for the fees that Mr. Neme will charge for his evidence in advance of seeing it and being able to assess its usefulness. Enbridge Gas submits that it is inappropriate for parties to seek pre approval for costs they may incur. The issue of whether ED/GEC should be compensated for third party costs incurred should be subject to the usual review and tests for reasonableness at the conclusion of the proceeding.

Finally, Enbridge Gas requests the right to respond to any evidence filed by Mr. Neme. It therefore requests that adequate time be allotted in any Procedural Order for Enbridge to respond.

Response to SEC Letter

While Enbridge Gas understands the motivation behind the letter forwarded by ED and GEC which, consistent with the position these intervenors have taken over many years, is to advocate for a materially higher amount of DSM spending, the Company does not understand the motivation behind the letter from SEC. It is both unfair, misstates the relief and process proposed by Enbridge Gas and disregards the factual history of previous DSM frameworks, all of which the Company notes, counsel for SEC has been intimately involved with over the years. We respond to SEC's letter under the following subheading.

<u>*The 2022 Program year*</u>

In the OEB DSM Letter, the OEB stated the following at page 5:

The OEB expects that Enbridge Gas's new multi-year DSM plan will be for a minimum term of 3 years up to a maximum of 6 years, including 2022. Enbridge Gas may consider it necessary to maintain some elements from its 2021 DSM plan as part of it's proposed 2022 DSM plan to potentially act as a transition to the next multi-year DSM plan. Enbridge Gas should specify in it's DSM plan application by when approval of it's 2022 DSM plan would be required in order to ensure program continuity. Alternatively, Enbridge Gas may file a separate application for 2022.

It should be recalled that the approved DSM plan for 2021 was a rollover of the approved plan for 2020. There was no increase in the DSM budget. The approved budget for 2021 is $132.1M.[1]

Enbridge Gas could have proposed a further rollover of its approved 2021 DSM plan into 2022. Instead, for the reasons stated in the Application, Enbridge Gas believed it was appropriate to modestly increase the budget for 2022 and to propose changes and additions to various program offerings as a means of more appropriately transitioning into the new multiyear plan. Enbridge Gas has proposed a budget of $136M for 2022 which is based upon an increase of approximately 3% over 2021[2]. For the balance of the term of the plan, Enbridge Gas has proposed to escalate

[1] EB-2019-0271 This amount does not include any DSMVA funding nor the shareholder incentive
[2] Application Ex. D T1 S1 P7. This amount also does not include any DSMVA funding nor the shareholder incentive

the entire 2022 base year budget of $136M by CPI and, to support modest annual increases for the expansion of DSM programs, an additional 3%[3].

Enbridge Gas has requested approval for it's 2022 DSM plan by the end of August so that it will have the ability to market and communicate with potential DSM participants the program offerings proposed for 2022. If a decision on the 2022 DSM plan is left until later in the year, then there should be no question that the results in 2022 will be prejudiced as the Company will not have been in a position to market and assure potential program participants that program funding will be available in 2022. Stated simply, a successful program offering cannot be undertaken without appropriate lead time.

As noted in the Application, the Company anticipates that the OEB may require changes to its program offerings including in 2022. This could include prioritizing some over others and perhaps the exclusion completely of certain program offerings. Decisions in respect of program offerings will be made based upon the entirety of the Application and the hearing process. Enbridge Gas has simply indicated that it wants certainty that for those programs that are operated in 2022 prior to any final decision being made that such spending will be recoverable in rates and that the Company has a reasonable amount of time following the OEB's final decision to adjust its program offerings in accordance with the final decision.

The Company submits that it's request in respect of 2022 is completely consistent with the direction it was given in the OEB DSM Letter. The Company notes that all parties will have an opportunity to fully address any issues they have in respect of the proposed program offerings, metrics, shareholder incentive and other matters during the course of the proceeding. The company has not asked for a blank cheque.

The Budget Envelope

SEC makes no mention of the OEB's treatment of budgets in past frameworks. This is important in that what the Company is requesting in the Application at this time is wholly consistent with what has occurred over more than 15 years. Enbridge Gas is seeking no relief inconsistent with the past treatment of budget envelopes by the OEB and it submits that its application is also consistent with the direction given by the OEB in the OEB DSM Letter.

In the EB-2006-0021 Generic Proceeding, the OEB specifically approved DSM budget envelopes for DSM spending for future years in respect of each of the two legacy utilities.

In EB-2008-0346, the OEB delayed the development of a new framework pending the release by the government of the *Green Energy Act*, 2009. As a result, the OEB rolled forward the formulaic increase from EB-2006-0021 to the DSM budget envelope for the two legacy utilities for 2010 and 2011. In the same proceeding, the OEB also determined that the 2011 approved budget should remain in effect for the 2012 to 2014 DSM plan years subject to a formulaic increase based upon the gross domestic product implicit price index. The DSM budget envelope for the two legacy utilities for 2012, 2013 and 2014 were then set based upon this formulaic methodology. [4]

[3] Ditto, P8.
[4] EB-2011-0295/EB 2012-0394 and EB-2011-0327

The OEB then approved a new DSM framework in EB-2014-0134. This framework directed the legacy utilities to use a formulaic increase for the budget for the 2015 program year and it set a ceiling for DSM budgets in subsequent years. Importantly, this meant that the legacy utilities and all parties knew in advance of a multi-year DSM plan being filed what the permitted ceiling for an annual DSM budget was. Based upon this, the two utilities prepared and filed multi-year plans.

What the above clearly demonstrates is that for the better part of 15 years, the Company has relied upon a budgetary escalation methodology and/or a budget ceiling which was set by the OEB based upon its perception of what is an acceptable bill impact to residential ratepayers. In the OEB DSM Letter, the Company was then directed to propose a modest budget increase relative to current spending. The Company has complied and proposed a modest budget increase for 2022 and a formulaic methodology to increase budgets in subsequent years. All of this is completely consistent with what has occurred in the past and the OEB's directive.

Enbridge Gas submits that it is a simple matter of common sense that the Company cannot propose a suite of program offerings where the issue of the budget envelope remains an open question throughout the entirety of the process. Some interveners may advocate an annual budget of more than $500 million while others will advocate that the annual budget should be greatly reduced. It is not reasonable to believe that any entity can put forward a credible suite of program offerings when it has virtually no idea about the acceptable level of spending. It is also not reasonable to expect the Company to have to respond to perhaps many hundreds of interrogatories about a myriad of budgetary levels and the program details associated with such. A determination about the budget envelope is a necessary first step and that is what the Company has requested in this Application.

Enbridge Gas also notes that the letter from ED/GEC acknowledges the early determination of the budget envelope as being a reasonable request. This is coming from interested parties that, like SEC have been clearly involved in previous proceedings where this practice was employed and are therefore aware of the historical precedent.

Procedural Fairness

SEC implies that there is something procedurally unfair proposed by the Company. Nothing could be further from the truth. It is simply asking for confirmation from the OEB that the Company has complied with its directive and proposed a modest budgetary increase. All parties can argue that the budget increase proposed is either too much or too little in terms of meeting what they view as being modest and consistent with the OEB's directive. All parties can specifically ask the Company for the associated bill impacts of increasing the annual budget in one direction or another. All parties will similarly have an opportunity to propose a different methodology for increasing budgets in the years subsequent to 2022. What the Company understood by the OEB's directive in its OEB DSM Letter is that the OEB was not looking for a reopening of the debate about DSM budget spending which appears to be what ED, GEC and SEC are all suggesting should occur.

Again, to be clear, the Company is simply looking for the OEB's acknowledgement that a budget in or around the amount proposed by the Company generates acceptable bill impacts. It remains open to intervenors to then question and challenge the Company's suite of program offerings and to challenge the Company's proposal in respect of proposed metrics, the shareholder incentive and scorecards. The actual spending in each year would then be adjusted by the OEB's determination in respect of these issues but the Company and all intervenors would know from the outset that the ceiling or budget envelope in each year is a certain amount.

What the OEB and all parties should not want is a proceeding where the issue of a budget envelope being somewhere between zero and more than $500 million per year remains an open question throughout the entire process.

Procedural timing

SEC notes that a final decision on the entirety of the DSM Plan should be possible by November or December of this year. Enbridge Gas notes, that if this is the case, then the interim decision for 2022 DSM activities would have little effect as the Company could try and implement all of the OEB's final decision and order in or around the start of 2022. The Company agrees with SEC that a fulsome process can be reasonable expedited but chose to not presuppose such procedural elements within the Application.

Conclusion

Enbridge Gas asks the OEB to confirm that it directed the Company to propose a modest budget increase and to, subject to receiving submissions from intervenors in respect of whether the proposed increases should be modestly higher or lower, to render a early decision confirming what the OEB considers to be a reasonable budget envelope or ceiling and the escalation methodology that should be used during the term of the plan. This request is completely consistent with what the OEB did in respect of the framework under which DSM is currently operating.

Yours truly,

AIRD & BERLIS LLP

Dennis O'Leary

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