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March 4, 2022

Delivered by Email & RESS

Ms. Marconi, Acting Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: Association of Power Producers of Ontario
Ontario Energy Board File No.: EB-2021-0148
Submissions

We are counsel to the Intervenors in the above-noted proceeding (the "Proceeding"). Please find enclosed the Submissions of the Association of Power Producers of Ontario.

If you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

J Vellone

John Vellone
cc: David Butters, Association of Power Producers of Ontario
Parties to EB-2021-0148

EB-2021-0148

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 Application by Enbridge Gas Inc., pursuant to section 36(1) of the *Ontario Energy Board Act, 1998* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2022.

SUBMISSIONS OF THE

ASSOCIATION OF POWER PRODUCERS OF ONTARIO ("APPrO")

MARCH 4, 2022

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1. On August 30, 2018, in the MAADs Decision (EB-2017-0306 / EB-2017-0307), the Ontario Energy Board (the "**OEB**") approved a rate setting mechanism (Price Cap IR) for Enbridge Gas Inc. ("**EGI**" or the "**Applicant**"), which set out a multi-year incentive rate-setting mechanism ("**IRM**") for a five-year term from 2019 to 2023.

2. On June 30, 2021, EGI filed an application with the Board under section 36(1) of the *Ontario Energy Board Act, 1998*, as amended, for an Order approving or fixing just and reasonable rates for the distribution, transmission and storage of natural gas effective January 1, 2022 (EB-2021-0147) (the "**Phase 1 Application**"), being the fourth annual rate adjustment application under the IRM. In the Phase 1 Application EGI advised that it will file evidence to request ICM funding in Phase 2 of its 2022 Rate Application.

3. On October 15, 2021, EGI filed Phase 2 of its 2022 Rate Application, which addresses matter related to its 2022 ICM funding request ("**ICM Application**"). The ICM Application is seeking Board approval for ICM funding for five projects in 2022:

    a. the St. Laurent Ottawa North Replacement (Phase 3) Project in the Enbridge Gas Distribution ("**EGD**") rate zone;
    b. the NPS 20 Replacement Cherry to Bathurst Project in the EGD rate zone,
    c. the Dawn to Cuthbert Replacement and Retrofits Project in the Union South rate zone,
    d. the Byron Transmission Station Project in the Union South rate zone; and
    e. the Kirkland Lake Lateral Replacement Project in the Union North rate zone

    (collectively, the "**ICM Projects**").

4. APPrO makes the following submissions with regards to the ICM Application.

1. THE UNION RATE ZONE PROJECTS DO NOT MEET THE PROJECT SPECIFIC MATERIALITY TEST

5. On May 6, 2021, the OEB issued its Decision and Order in respect of EGI's 2021 "Phase 2" ICM Application (EB-2020-0181) (the "**Previous ICM Decision**"). APPrO actively

participated in the proceeding that led to the Previous ICM Decision.

6. In the Previous ICM Decision, the OEB approved EGI's request for ICM funding of $124 million for the London Line Replacement Project and the OEB denied EGI's request for ICM funding of the $28.8 million Sarnia Industrial Line Reinforcement Project.

7. With regards to the Sarnia Industrial Line Replacement Project, the OEB found that the Sarnia Industrial Line Reinforcement Project failed to meet the project-specific materiality test as it was not significant in the context of the overall utility.[1] In making this decision, the OEB expressly considered EGI's $1.207 billion 2021 capital budget forecast, the expected incremental revenue requirement arising from the ICM request, and the expected incremental revenue related to the project.

8. On the facts, the Sarnia Line Replacement Project was 2.3% of EGI's 2021 capital budget.[2]

9. In the context of the Previous ICM Decision, EGI is now seeking ICM funding for three projects each of which are smaller than the Sarnia Industrial Line Replacement Project. Specifically:

- the Dawn to Cuthbert Replacement and Retrofits Project is forecasted to cost $23.5 million,
- the Byron Transmission Station is forecasted to cost $20.4 million, and
- the Kirkland Lake Lateral Replacement is forecasted to cost $20.7 million.[3]

10. In this regard, APPrO sought evidence to assess the significance of each of the ICM Projects as it relates to the OEB's project-specific materiality threshold.

11. In response to APPrO-10(b), EGI confirmed that in comparison to EGI's forecasted $1.277 billion capital budget in 2022:

- the Dawn to Cuthbert Replacement and Retrofits Project cost is 1.8% of EGI's total

[1] Previous ICM Decision at page 15.
[2] $28.8 million / $1207 million
[3] Exhibit B, Tab, 2, Schedule 1 at Table 11.

capital budget;

- the Byron Transmission Station cost is 1.6% of EGI's total capital budget; and
- the Kirkland Lake Lateral Replacement cost is 1.6% of EGI's total capital budget.

12. Clearly each of these three projects constitute minor expenditures in comparison to EGI's overall capital budget. A certain degree of project expenditure over and above the OEB-defined threshold calculation is expected to be absorbed within the total capital budget. In this case, that would encompass all three of these Union rate zone projects. ICM funding should be denied for this reason alone.

2. THE UNION RATE ZONE PROJECTS ARE PART OF EGI'S TYPICAL ANNUAL CAPITAL PROGRAM

13. In addition, each of these three projects are part of EGI's typical annual capital program and thus should not be eligible for ICM funding.

14. A good example of this is the Byron Transmission Station project, which was originally scheduled to be completed as part of EGI's annual capital program in 2021 and was subsequently deferred until 2022.[4]

15. APPrO sought to understand in APPrO-7 why this project was considered part of EGI's typical annual capital program in 2021 without the need for ICM funding but this suddenly changed in 2022. In response EGI claims "it was not possible to accommodate the Byron Transmission Station below the materiality threshold and it was put forward for ICM treatment."[5]

16. APPrO submits that this response is not credible. In the ICM Application, EGI is proposing a negative incremental revenue requirement associated with the Byron Transmission Station project.[6] Specifically, the project, if accepted for ICM funding, would result in an annual rebate of $211,000 per year to ratepayers. On the evidence, EGI does not need incremental

[4] Exhibit B, Tab 2, Schedule 1, Page 11 of 35.
[5] APPrO-7.
[6] Exhibit B, Tab 2, Schedule 1, Appendix E, page 4 of 5.

revenue to support the Byron Transmission Station project. Rather, EGI would need to rebate money to customers.

17. On the evidence, the Byron Transmission Station project is clearly part of EGI's typical annual capital program. This is how EGI treated the same project in 2021 and EGI has failed to provide a compelling reason for that treatment to change in 2022.

18. By denying ICM funding Byron Transmission System, EGI stands to avoid rebating $211,000 per year to customers over the next two years. That is not an appropriate outcome in the circumstances.

19. Rather, APPrO submits that the OEB should making a finding that EGI must accommodate both the Byron Transmission Station and the Dawn to Cuthbert Replacement and Retrofits Project in its typical annual capital program. Both projects are part of a typical annual capital program for EGI. Both projects benefit customers in the Union South rate zone. And EGI can use the $211,000 per year that they wouldn't need to rebate to customers associated with the Byron Transmission Station project to help fund more than 40% of the incremental revenue requirement associated with the Dawn to Cuthbert Replacement and Retrofits Project (the net incremental revenue requirement for the two projects combined is merely $295,000 per year). This net amount is minor for EGI and should be funded as part of its typical annual capital program.

20. With regards to the Kirkland Lake Lateral Replacement project, in addition to being a part of EGI's typical system renewal capital program there is the additional issue of incremental revenue associated with the project that must be considered when assessing the project.

21. While the Kirkland Lake Lateral Replacement project has been characterized by EGI as a system renewal project, driven primarily by integrity concerns, the reason the project needs to be completed in 2022 is that it is required to alleviate existing capacity limits on the current pipeline system to accommodate new customer demand. Specifically, in response to CCC-6 EGI explained that the Kirkland Lake Lateral Replacement project must be completed by November 2022 to remove existing pressure restrictions on the NPS 4 pipeline

to be able to accommodate a new contract customer that has a planned in-service date of November 1, 2022. Because the NPS 4 and NPS 8 lines must be able to operate together at a common pressure to meet all peak demand day scenarios, the pressure restriction on the existing NPS 4 pipeline limits EGI's ability to accommodate the new contract customer.

22. In this context it is noteworthy that in the Previous ICM Decision, the OEB expressly noted that with regards to the Sarnia project:

> "*The OEB notes that Enbridge Gas's application did not indicate that the project was forecast to generate $5.8 million of incremental revenue. This evidence was adduced through intervenor interrogatories. Enbridge Gas's application was lacking in this regard. In the interest of efficiency, forecast incremental revenues should be included in all ICM funding requests.*"[7]

23. Despite this clear direction, the ICM Application failed to include a forecast of incremental revenues expected in connection with the Kirkland Lake Lateral Replacement project.

24. In this context, OEB Staff asked EGI directly in Staff-1(b) to indicate whether there are any incremental revenues associated with the three non-LTC projects (being Dawn to Cuthbert, Byron Transmission Station, and Kirkland Lake Lateral Replacement). EGI responded unambiguously that:

> "*There are no incremental revenues associated with any of the non-LTC or LTC related projects included in this application.*"[8]

25. On review of the evidence, this response is simply not credible.

26. We know from the response to CCC-6 that the timing of the Kirkland Lake Lateral Replacement is being driven by the need to meet the needs of a new contract customer in November of 2022. This is why the project is being proposed for ICM funding in 2022 and not some other year.

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[7] Previous ICM Decision at page 16.
[8] Exhibit I.Staff.1

27. We also know from the evidence filed in response to PP-9(b) that EGI filed a copy of an April 1, 2021 contract with Kirkland Lake Gold Ltd. regarding the planned expansions of Shafts 3 and 4 of the Macassa Mine due to be completed in November in 2022 (the same date EGI says the project must be completed by).

28. Schedule 1 of this contract is heavily redacted, however it is clear that the Macassa Mine expansion would drive incremental revenue to EGI. If this wasn't the case, then there would have been no need to redact Schedule 1 of the contract.

29. In this context, it was not until February 28, 2022 that EGI filed a response to a request for additional information following the settlement conference held on February 22, 2022 in which EGI projected revenues from the Macassa Mines of approximately $222k in 2022 and approximately $430k in 2023.[9] While APPrO understands that some of this incremental annual revenue will be used to fund the $4.4 million connection costs – EGI has, to-date, not been transparent or forthcoming in evidence about what residual incremental revenues would be left after the connection costs have been funded. We are now at the submissions phase of the process without this information on the evidentiary record.

30. In short:

- EGI knew about these incremental revenues since at least April 1, 2021, the date the contract for service was signed with the customer.
- EGI failed to comply with the Previous ICM Decision by not disclosing these incremental revenues clearly and upfront in the ICM Application.
- EGI appears to have (whether intentionally or not) mislead the parties and the OEB in their response to Staff-1(b) when they claim incorrectly that there are no incremental revenues associated with any of the proposed ICM projects.
- It was not until February 28, 2022 that EGI formally advised the OEB and parties of the actual incremental revenues associated with the Macassa Mines project.

31. APPrO is concerned that EGI is not taking seriously the OEB's direction EGI in the Previous

[9] Exhibit I.ADR Request.1.

ICM Decision that all incremental revenue must be disclosed upfront in an application in a request for ICM funding. The intent of the direction was to ensure that all parties including the OEB are given a comprehensive understanding not only of the incremental costs but also of all incremental revenues associated with any new ICM projects at the outset of the application process. It should never be the case that there is still information missing at the submission phase.

32. Given this, APPrO submits that the OEB should deny ICM funding for the Kirkland Lake Lateral Replacement Project because the project constitutes a minor expenditure in comparison to EGI's overall capital budget, the project is part of EGI typical annual capital program, and there is insufficient credible evidence on the record about the incremental revenues being generated by the project.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF MARCH, 2022

BORDEN LADNER GERVAIS LLP

Per: J Vellone

John Vellone
Counsel to APPrO