EB-2021-0148

ONTARIO ENERGY BOARD

ENBRIDGE GAS INC.

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

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 CANADIAN MANUFACTURERS & EXPORTERS ("CME")

March 4, 2022

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I N D E X

I. INTRODUCTION

1. On October 15, 2021, Enbridge Gas Inc. ("**EGI**") filed an application seeking approval to fix rates and other charges for the sale, distribution, transmission, and storage of natural gas, commencing on January 1, 2022. Specifically, EGI sought approval for incremental capital module ("**ICM**") treatment for the following five projects:

(a) St. Laurent Ottawa North Replacement Phase 3;

(b) NPS20 Replacement Cherry to Bathurst;

(c) Dawn to Cuthbert Replacement and Retrofits;

(d) Byron Transmission Station; and

(e) Lateral Replacement.[1] (collectively, the "**ICM Projects**")

2. The total ICM funding request for the ICM Projects would amount to a $277.3 million addition to rate base, with a revenue requirement, prior to tax shield, of $27.3 million in 2023.[2]

3. The Board issued Procedural Orders on November 29, 2021 and February 3, 2022 (the "**Procedural Orders**").[3]

4. The Procedural Orders provided for a written discovery process, with interrogatories and responses completed by January 21, 2022.[4] They also provided for a settlement conference, which was held on February 22, 2022. Procedural Order #2 provided that, if no complete settlement was reached, written submissions were required by March 4, 2022.[5]

[1] EB-2021-0148, Exhibit B, Tab 2, Schedule 1, p. 24 of 35.
[2] EB-2021-0148, Exhibit I.SEC.6.
[3] EB-2021-0148, Procedural Order #1, November 29, 2021; EB-2021-0148, Procedural Order #2, February 3, 2022.
[4] EB-2021-0148, Procedural Order #1, November 29, 2021 at p. 3.
[5] EB-2021-0148, Procedural Order #2, February 3, 2022 at p. 4.

5. The parties were unable to come to a complete settlement on all of the issues, as outlined in EGI's letter dated February 24, 2022.[6] Accordingly, the following are CME's submissions with respect to EGI's ICM application.

6. CME submits that four of the five ICM Projects are ineligible for ICMs, at least at the present time. The Kirkland Lake Lateral Replacement Project, Byron Transmission Station Project, and Dawn to Cuthbert Replacement and Retrofits programs are all too small to be material when compared to EGI's overall capital budget, and as a result, are ineligible for ICM treatment. Additionally, EGI has not yet received, and may not receive, leave to construct for the St. Laurent Ottawa North Replacement Phase 3 Project. Assuming it receives the Board's leave to construct, it may be too late for EGI to complete the project and have it in service in 2022.

7. Moreover, CME is concerned about EGI's project prioritization. While the ICM Projects are largely meant to address integrity concerns, many of the projects included by EGI in their original capital budget do not seem to be nearly as urgent. CME is therefore concerned that the effect of EGI's prioritization of projects is to shield less important capital projects within their original envelope while exposing more critical integrity related projects to the ICM mechanism.

8. While CME submits that the ICM Projects are a worthwhile capital investment from a safety and reliability standpoint, it does not believe that EGI should be granted ICM treatment with respect to the four projects outlined above.

II. The St. Laurent Ottawa North Replacement Project has Not Received Leave to Construct

9. EGI applied for leave to construct regarding the St. Laurent Ottawa North Replacement Phase 3 as part of OEB file EB-2020-0293. This leave to construct proceeding is still ongoing. As

[6] EB-2021-0148, Report on Settlement Conference, February 24, 2022.

CME understands it, some of the issues that remain in the proceeding are the need, cost effectiveness, and timing of the proposed project.[7]

10. Pursuant to Procedural Order #5, issued by the Board on January 13, 2022, final arguments in EB-2020-0293 are not due until March 21, 2022, with EGI's reply due on April 4, 2022. A decision by the Board could not be completed until some time afterwards.

11. The status of EB-2020-0293 is concerning for two reasons:

(a) The Board should not approve the St. Laurent Ottawa North Replacement Phase 3 Project for an ICM until the Board has made a determination in the leave to construct application; and

(b) Given the current timetable in EB-2020-0293, CME does not believe that EGI is likely to complete the project, such that it is in service in 2022.

12. In order for a project to be eligible for an ICM, EGI must establish, *inter alia*, that the project is needed and prudent.[8] The Board's ICM policy provides that amounts related to the ICM must be "non-discretionary" and "clearly outside of the base upon which rates were derived" in order to meet the "need" requirement.[9] Prudence is defined to mean the ICM amounts must represent the most cost-effective option for ratepayers.[10]

13. As indicated, the Board's Procedural Order in EB-2020-0293 indicates that, parties, such as the School Energy Coalition, Pollution Probe, and the City of Ottawa are submitting evidence

[7] EB-2020-0293, Procedural Order #5, January 13, 2022 at p. 2.
[8] Report of the OEB, EB-2014-0219, *New Policy Options for the Funding of Capital Investments: Supplemental Report*, January 22, 2016 at p. 22.
[9] EB-2014-0219 Report of the Board, *New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, September 18, 2014 at p. 16.
[10]

that speaks to the need and cost effectiveness of the St. Laurent Ottawa North Replacement Phase 3 Project.

14. Given that the need and prudence of the St. Laurent Ottawa North Replacement Phase 3 Project is currently a live issue in another proceeding, CME submits it would be duplicative and potentially lead to conflicting results if this panel also made findings regarding these aspects of the project. Consequently, there will not be a basis to evaluate whether or not this project meets the Board's ICM requirements until after EB-2020-0293 is concluded.

15. CME is also concerned that the necessary timing of the Board's decision in EB-2020-0293 will make it difficult, if not impossible, for the project to be in service during 2022. As indicated above, the Board's Procedural Order provides for final arguments to be provided by March 21, 2022, and EGI's reply argument to be filed by April 4, 2022. The Board will not be in a position to render its decision until it has considered those arguments.

16. In its pre-filed evidence for this proceeding, EGI anticipated that the project would be in-service as of December, 2022.[11] Since filing its evidence in this proceeding, the procedural steps in EB-2020-0293 have been pushed back, in order to accommodate EGI's request for additional time, as well as requests by other parties to submit evidence and additional discovery steps to accommodate that evidence.[12] Consequently, CME is concerned that EGI's in service date will likely be in 2023, and therefore, the project would not be eligible for ICM treatment in 2022.

III. Several of EGI's Proposed ICM Projects Are Not Material

17. The Board's policy on ICMs provides that in order to be eligible for ICM treatment, the proposed projects must meet a two-pronged test for materiality. For the first component, the

[11] EB-2021-0148, Exhibit B, Tab 2, Schedule 1, p. 27 of 35.
[12] For instance, the Board notes in EB-2020-0293, Procedural Order #4 that EGI requested an extension to file interrogatory responses, and notes that the previously scheduled time for submissions (including EGI's reply was February 22, 2022).

proposed projects must exceed the Board defined materiality threshold, and must "clearly have a significant influence on the operation of the distributor."[13] In the second component, the Board compares the project-specific capital expenditure to the utility's overall capital spending. The Board found that "Minor expenditures in comparison to the overall capital budget should be considered ineligible for ACM or ICM treatment."[14]

18. In this case, CME submits that three projects are "immaterial" when compared to EGI's overall capital budget: the Dawn to Cuthbert Replacement and Retrofits Project; the Byron Transmission Station Project; and the Kirkland Lake Lateral Replacement Project (the "**Immaterial Projects**").

19. In total, EGI's capital expenditures for 2022 are budgeted to be $1.277.4 billion, across both the Union and EGD rate zones.[15] As a percentage of the total capital budget, the Immaterial Projects range from 1.6% of the total budget (Kirkland and Byron) to 1.8% of the budget (Dawn to Cuthbert).[16]

20. CME submits that the Immaterial Projects do not make up a significant enough portion of EGI's budget to warrant additional ICM funding. The Board must expect EGI to absorb a certain level of additional project expenditure over and above the Board defined threshold, pursuant to the ICM policy, and consistent with the precepts of incentive ratemaking.

21. Moreover, the Kirkland Lake Lateral Replacement Project is even less material than the other projects as a result of the incremental revenue EGI will earn once it is complete. In EB-2020-0181, for EGI's 2021 ICM application, the Board clarified that incremental revenues earned

[13] EB-2014-0219 Report of the Board, *New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, September 18, 2014 at p. 16.
[14] EB-2014-0219 Report of the Board, *New Policy Options for the Funding of Capital Investments: The Advanced Capital Module*, September 18, 2014 at p. 17.
[15] EB-2021-0148, Exhibit I.APPrO.10, p. 2.
[16] EB-2021-0148, Exhibit I.APPrO.10, p. 2.

by the utility are not to be included in the calculation of the materiality threshold, a separate deferral account, or included in an ICM rate rider.[17] However, the Board found that the test for whether a proposed project has a significant impact on the operations of the utility *must* consider incremental revenues.[18]

22. With respect to the Kirkland Lake Lateral Replacement Project, EGI initially indicated that there were no incremental revenues associated with any of the projects at issue in this application.[19] However, EGI later clarified that it will be connecting an additional customer, Macassa Mine, which would increase EGI's revenues by $222,000 in 2022 and $430,000 in 2023.[20]

23. In its additional evidence, EGI argues that the driver of the Kirkland Lake Lateral Replacement Project is integrity concerns around the existing NPS 4 pipe, and that the addition of Macassa Mine does not require additional capacity.[21] CME presumes, as a result, that EGI does not believe that the incremental revenue at Macassa Mine should be attributed to the Kirkland Lake Lateral Replacement Project.

24. However, this denies the reality of the situation. EGI's evidence is that it is adding a customer with a significant natural gas load. While that additional load may not require an increase in the size of the pipe, it very much impacts the need and criticality of the replacement of the existing line. In short: EGI needs to address integrity concerns on this section of the pipe now because additional load will be put on the system.

25. While CME agrees that ensuring integrity of the system and safety of system participants is paramount, the ability of EGI to collect additional revenue from Macassa Mine is directly tied to

[17] EB-2020-0181, Decision and Order, May 6, 2021 at p. 16.
[18] EB-2020-0181, Decision and Order, May 6, 2021 at p. 16.
[19] EB-2021-0148, Exhibit I.STAFF.1, p. 3.
[20] EB-2021-0148, Additional Information Request from Settlement Conference, February 28, 2022.
[21] EB-2021-0148, Additional Information Request from Settlement Conference, February 28, 2022.

the need and timing of the Kirkland Lake Lateral Replacement Project. The incremental revenue from Macassa Mine should therefore be considered when reviewing the project's materiality. CME submits that, when reviewed, in light of EGI's overall capital budget, the Kirkland Lake Lateral Replacement Project is immaterial and ineligible for ICM treatment.

IV. EGI's Prioritization of Capital Projects for the ICM Leads to a Surge In Capital Spending

26. In order to be eligible for ICM treatment for capital projects, EGI must forecast spending that is greater than the threshold level of spending.[22] In EGI's case, the threshold values are calculated separately for the legacy utilities, Union and EGD.[23] If EGI forecasts greater spending than the threshold levels, then the additional projects, if they meet the Board's criteria of materiality, need, and prudence, can be eligible for the ICM treatment.

27. In this application, EGI has chosen five projects to put forward for ICM treatment. EGI stated that all of them relate to integrity concerns regarding the pipe or station.[24] CME agrees that projects relating to the safety and reliability of the distribution or transmission system are higher priority projects that should be completed.

28. However, CME is concerned that EGI's prioritization of capital spending is inappropriate and highlights a flaw in the current ICM policy, which allows for significant inflation of capital spending during plan terms.

29. In EGI's pre-filed evidence, EGI outlined its proposed 2022 capital spending, which shows $734.3 million in spending in the EGD rate zone, and $543.1 million in spending for the Union rate zone.[25] For both rate zones, EGI's evidence shows a marked increase in capital spending for 2022 from historical averages in categories, such as general plant. For the Union rate zone, actual

[22] EB-2021-0148, Exhibit B, Tab 2, Schedule 1, p. 16 of 35.
[23] EB-2021-0148, Exhibit B, Tab 2, Schedule 1, p. 17 of 35.
[24] See EB-2021-0148, Exhibit B, Tab 2, Schedule 1, pp. 26-29 of 35.
[25] EB-2021-0148, Exhibit B, Tab 2, Schedule 1, Attachment 1, Tables A and B.

general plant spending from 2017-2020 averaged $44.2 million per year.[26] The budgeted spending for 2022 is $70.1 million. Similarly, in the EGD rate zone, the 2017-2020 average actual spending on general plant was $54.275 million.[27] The budgeted spending for 2022 is $81 million.

30. When asked about the nature of the marked increase in general plant spending in the Union rate zone, EGI indicated that the increase in costs were due to the construction of new field offices in the Union rate zone and renovations to the Keil Drive location in Chatham (the "**Office Renovations**").[28] CME is not aware of any evidence on the record indicating that the Office Renovations were critical to EGI's operations, or that they were required by municipal or provincial building codes or requirements. CME is therefore not aware of any reason why these projects needed to be completed in 2022.

31. This ultimately exposes a flaw in the ICM mechanism. While the projects put forward for the ICM must demonstrate need and prudence, the capital projects that fit within the original rates envelope do not. This incentivizes a utility to organize its capital projects, such that critical safety and reliability related projects are relegated outside of the normal budgetary envelope, while less critical and perhaps unnecessary projects, such as the Office Renovations, are funded as a matter of course.

32. In CME's view, the evidence of general plant spending shows that EGI had flexibility in the budget to defer less critical capital spending for projects, such as the Office Renovations, in order to provide for funding for the ICM projects within the original capital envelope. EGI did not need to resort to ICM funding in this application. As a result, CME questions whether any of the ICM Projects should receive ICM funding.

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[26] Derived from the average spending on general plant in the Union rate zones outlined in EB-2021-0148, Exhibit B, Tab 2, Schedule 1, Attachment 1, Table B.

[27] Derived from the average spending on general plant in the Union rate zones outlined in EB-2021-0148, Exhibit B, Tab 2, Schedule 1, Attachment 1, Table A.

[28] EB-2021-0148, Exhibit I.FRPO.4.

33. Ultimately, CME does not advocate for any specific disallowances regarding the ICM Projects as a direct result of EGI's prioritization. CME does however submit that four of the five ICM Projects (Kirkland Lake Lateral Replacement Project, Byron Transmission Station Project, and Dawn to Cuthbert Replacement and Retrofits and the St. Laurent Ottawa North Replacement Phase 3 Project) do not meet the criteria for ICM treatment.

V. COSTS

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of March, 2022.

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