

March 7, 2022

Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Toronto, Ontario  
M4P 1E4

Dear Ms Marconi:

**EB-2021-0148 – Enbridge Gas Inc. – 2022 Rates – Phase 2 – Incremental Capital Module**

Please find, attached, the Final Argument of the Consumers Council of Canada pursuant to the above-referenced proceeding.

Please feel free to contact me if you have questions.

Yours truly,

**Julie E. Girvan**

Julie E. Girvan

CC: All parties

# FINAL SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: EB-2021-0148

## ENBRIDGE GAS INC. – 2022 RATES – PHASE 2

### 1. Introduction:

On June 30, 2021, Enbridge Gas Inc. (EGI) filed with the Ontario Energy Board (OEB) an Application for approval of its 2022 distribution rates. Phase 1 of the proceeding dealt with the annual rate escalation, pass-through costs, capital pass-through adjustments and the Parkway Delivery Obligation rate adjustments rates. A Settlement Proposal resolving all of the Phase 1 issues was filed on September 29, 2021. On October 15, 2021, EGI filed evidence in support of Phase 2 of its 2022 rates Application. Phase 2 addresses matters related to incremental capital module (ICM) funding. Specifically, EGI is seeking ICM funding for the following five projects:

- St. Laurent Ottawa North Replacement (Phase 3) - \$86 million
- NPS 20 Replacement Cherry to Bathurst - \$126.7 million
- Dawn to Cuthbert Replacement and Retrofits - \$23 million
- Byron Transmission Station - \$20.4 million
- Kirkland Lake Lateral Replacement - \$20.7 million

The total ICM funding request is \$277.3 million.<sup>1</sup> The average annual incremental revenue requirement associated with these projects is \$5.4 million.<sup>2</sup>

These are the submissions of the Consumers Council of Canada (Council) regarding EGI's ICM funding requests.

### 2. Submissions:

The Council accepts that EGI has access to the ICM as approved by the OEB through the merger application. Having said that EGI must, in each proceeding demonstrate that the incremental funding is required. As set out in the OEB's ICM policies the projects must be material, and have a significant influence on the operation of the distributor. The OEB also expects that certain degree of project expenditure over and above the OEB-defined threshold calculation is expected to be absorbed within the total capital budget.<sup>3</sup>

For the reasons set out below, the Council submits that with the exception of the Cherry to Bathurst Project, the OEB should not approve EGI's request ICM relief.

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<sup>1</sup> Ex. B/T2/S1/p. 24

<sup>2</sup> Ex. B/T2/S1/p. 31

<sup>3</sup> EB-2014-0219 Report of the Board dated September 18, 2014 (ACM Report), p. 17

## **EGD Rate Zone Projects:**

### **St. Laurent Ottawa North Replacement – Phase 3**

EGI is seeking \$86 million in ICM funding for the St. Laurent Ottawa North Replacement Project (St. Laurent Project).<sup>4</sup> The projected in-service date for the project is December 2022. This project is subject to a Leave to Construct Application that is currently before the OEB in another proceeding. Accordingly, need and prudence are not within the scope of this proceeding.

The Council submits that it would be premature, at this time, for the OEB to approve ICM funding for this project. Need and prudence have not been determined by the OEB. In addition, given the projected in-service date and the fact the proceeding is still ongoing, EGI may well be challenged to meet that date. A one-month deferral, which given the timing of the proceeding is possible, would make the project ineligible for 2022 ICM recovery. As a matter of principle, the Council does not support the OEB granting ICM relief, and recovering the costs from ratepayers prior to the establishment of project need and prudence.

### **NPS 20 Replacement – Cherry to Bathurst**

EGI is seeking \$126.7 million in ICM funding for the Cherry to Bathurst Replacement Project. This project was the subject of a Leave to Construct proceeding and on December 17, 2020 the OEB approved the project. Need and prudence have been established.

## **Union Gas Rate Zone Projects:**

EGI is seeking ICM relief for the following three projects in the Union Gas Rate Zone

- Dawn to Cuthbert Replacement and Retrofits - \$23 million
- Byron Transmission Station - \$20.4 million
- Kirkland Lake Lateral Replacement - \$20.7 million

These projects have not been the subject of Leave to Construct applications. From the Council's perspective given EGI's overall capital budget, these projects are clearly not material. EGI's overall capital budget for 2022 is \$1.277 billion.<sup>5</sup> These represent a relatively small portion of that overall budget. The OEB referred to project-specific materiality in its merger decision noting that for any individual project the in-service capital must be at least \$10 million.<sup>6</sup> The OEB did not say all projects above \$10 million are automatically eligible for ICM funding, but rather projects considered for funding must exceed the \$10 million threshold.

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<sup>4</sup> Ex. B/T2/S1/p. 24

<sup>5</sup> Ex. B/T2/S1/pp. 5-6

<sup>6</sup> OEBC Decision, EB-2017-0306/0307, pp. 32-33

The Council notes that in EGI's 2021 rate proceeding EGI sought approval for the Sarnia Industrial Line Reinforcement. EGI's funding request for the Sarnia project was \$28.8 million. In that Decision the OEB specifically noted:

"The OEB denies ICM funding for the Sarnia Project. The OEB finds that the Sarnia project fails the project-specific materiality test as it is not significant in the context of the overall utility. In assessing significance, the OEB has considered the \$5.8 million expected incremental revenue relative to the \$3.9 million requested revenue requirement over the 2021 to 2023 deferred rebasing period, and the \$1.207 billion 2021 capital budget forecast for Enbridge Gas"<sup>7</sup>.

In the 2021 rates Decision the OEB also referred to the fact that EGI's Application did not indicate that the Sarnia project was forecast to generate \$5.8 million of incremental revenue. The OEB noted that in the interest of efficiency forecast incremental revenues should be included all ICM funding requests.<sup>8</sup> With respect to the Kirkland Lake Project it was not until after the completion of the Settlement Conference that EGI indicated that this project would generate incremental revenue. In this case the assumption that incremental revenue will be associated with the project further highlights that the criteria of project materiality has not been met.

The Council submits that given these projects have failed the project materiality criteria established by the OEB, they should not be eligible for ICM funding.

### **3. Conclusion:**

Access to ICM funding should be carefully considered by the OEB. The Council acknowledges that the ICM funding mechanism has been made available to EGI through the OEB's decision approving the merger transaction. It should not however, be used to simply pass through all of EGI's capital expenditures. In the absence of a full review of EGI's 2022 capital budget it is difficult to determine whether these projects are truly incremental. At the time of EGI's rebasing the need for, and structure of the ICM, should be reviewed to ensure that rate adjustments going forward are just and reasonable.

The Council submits that it would be premature to approve incremental funding for the St. Laurent Ottawa North Replacement Project in the absence of OEB approval in the LTC proceeding.

The Council is of the view that the Cherry to Bathurst Project does qualify for ICM relief as defined by the OEB. With respect to the three projects in the Union Rate Zone, they have not

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<sup>7</sup> EB-2020-0181 - OEB Decision and Order dated May 6, 202, pp. 15-16

<sup>8</sup> Ibid

met the OEB's established criteria for project materiality and should therefore ICM funding for these projects should not be approved.

**All of which is respectfully submitted.**