ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B)(the "Act")

AND IN THE MATTER OF an Application by Enbridge Gas Inc. pursuant to Section 36(1) of the Act for an order or orders approving its Demand Side Management Plan for 2023-2027.

FINAL ARGUMENT
OF THE
SCHOOL ENERGY COALITION

May 22, 2022

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1 GENERAL COMMENTS

1.1 *Introduction*

1.1.1 On May 3, 2021 the Applicant Enbridge Gas Inc. ("Enbridge", "EGI" or the "Applicant") filed an Application to approve a six year DSM Plan covering the period 2022-2027 inclusive. By order dated August 26, 2021, the OEB ordered the continuation of the existing DSM Plan through the end of 2022, with the same aggregate budget as 2021, and applying the same scorecards. The order also provided that the 2023 would become the base year for the new, five year plan going forward. References in this Final Argument to the DSM Plan, and to the Application, are intended to refer to the 2023-2027 DSM Plan sought by the Applicant in response to that order.

1.1.2 The Application seeks approval for base spending of about $780 million[1], plus certain spending already in rates[2], plus provisions for overspending[3], incentives[4], and other amounts[5]. The aggregate amount appears to be at least $1 billion[6], and likely much higher.

1.1.3 The case included extensive interrogatories from many parties, plus expert evidence from OEB Staff, customers, and environmental groups. There was a three-day technical conference, a full day of presentations from parties to the Commissioners on the issues, and a five day oral hearing. There was no ADR.

1.1.4 The Argument-in-Chief was filed by the Applicant on April 29, 2022. This is the Final Argument of the School Energy Coalition.

1.1.5 The Board will be aware that some of the customer and environmental groups who intervened in this proceeding have worked together throughout the proceeding to avoid duplication, including sharing ideas, positions, and drafts. That has continued in the argument phase. We have been assisted in preparing this Final Argument by that co-operation amongst parties.

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[1] The total budget is $780.2 million: see Ex. D/1/1, p. 9 and J1.4.
[2] See JT2.16 and J3.3. Amounts already embedded in rates are 8.65% to 10.19% of the DSM Budget, so $67.5 to $79.5 million in total over five years.
[3] Maximum overspend is 15%, i.e. approx. $117 million.
[4] Most of the proposed $20.9 million annual shareholder incentive is indexed, not starting in 2023, but starting in 2022: I.5.EGI.SEC.12. The total available incentive over the five years is just over $120 million.
[5] Enbridge is made whole through normalized average use adjustments, rebasing of rates, and LRAM for lost distribution margin as a result of DSM. In theory, this amount must be more than the DSM budget (or the spending would not be cost-effective), but it is impossible to calculate the total of these amounts with any accuracy based on the record before the OEB in this proceeding.
[6] Ignoring reimbursement of lost distribution margin, the total five year spend of customer money for which authorization is being sought in this Application is $1,085 million to $1,097 million. This assumes 2% inflation, not the inflation rates currently being seen in Ontario.

1.1.6 On September 9, 2021 the OEB approved a final issues list for this proceeding, and on April 11, 2022 the Commissioners provided guidance to the parties on certain issues on which they were particularly seeking submissions. SEC has organized this Final Argument to follow the approved Issues List, while paying close attention to the areas flagged in the Commissioners' letter. In order to maintain the appropriate flow of analysis, in many cases we have dealt with related issues together, and cross-referenced those submissions for better understanding by the reader.

1.1.7 SEC has not expressed a position on every issue. Where SEC does not state its position, approval of the Applicant's position or any other position should not be assumed. Silence is just silence.

1.2 ***The Context of this Application***

1.2.1 On Presentation Day, SEC emphasized two important contexts[7] within which the OEB should, in our submission, consider this Application. While this Final Argument seeks to touch on many issues that should be of concern to the OEB, including these, it is these two overarching issues that, in our submission, are the most important.

1.2.2 ***What Do the Customers Expect for their Billion Dollars?*** Enbridge is proposing to spend more than a billion dollars of customer money on DSM programs over five years. If they are successful in achieving the goals of the customers, that could be money well spent.

1.2.3 So, what do the customers want out of this spending? What are those goals that this spending should achieve? In fact, they want four things[8]:

(a) Lower customer gas bills.

(b) Reduced consumption of natural gas in Ontario.

(c) Reduced greenhouse gas emissions.

(d) Reduced capital additions to the natural gas distribution system.

1.2.4 We have been at this DSM thing since the late 90s, spending more than $2 billion of ratepayer money in the process ($3 billion by the time this five year plan is completed), and none of these things has happened:

[7] These two points were the high level themes of the SEC Presentation: Presentation Day Tr.:189,192.
[8] Which are, not co-incidentally, the four goals of DSM as expressed by the OEB in its letter of December 1, 2020.

(a) Lower Bills? The average customer – whether residential, commercial, industrial or institutional – pays at least twice as much today as they did when this all started. Even if you adjust for inflation, customers are paying more, and that is despite the fact that the retail cost of the gas commodity has generally fallen relative to inflation over the last two decades.

(b) Reduced Throughput? Throughput has also doubled since we started this. If you look at average use per customer, that has increased in all classes except residential. Residential has gone down slightly, but residential customers have also been the targets of government programs, electricity efficiency programs, tightening of building codes, more efficient appliance standards, and many other factors aside from the Enbridge DSM programs.

(c) Reduced GHG Emissions? Enbridge has not only NOT contributed to reductions in GHG emissions in Ontario, but has in fact made the situation worse through increased natural gas combustion[9], and proposes to continue to do so in the coming years[10].

(d) Lower Capital Spending? In the five years 2017-2021, EGI (and its predecessors) added $5.2 billion of capital assets. In the five years 2022-2026, it plans to add $7.3 billion of capital assets, an increase of almost 40%[11].

1.2.5 The point of spending this DSM money is to achieve goals/outcomes that the customers consider valuable. That is why the OEB allows the utility to spend customer money on DSM. By any measure, the DSM programs from Enbridge have not delivered the outcomes the customers want.

1.2.6 This sad reality is made more important by the fact that fossil fuels are at an inflection point in Canada and in Ontario. Carbon reduction plans are coming out almost daily now, whether from federal[12], provincial[13] or municipal[14] governments, or from the private sector[15], or from other public sector organizations. (The theme of this year's IGUA conference is "The Energy Transition".[16])

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[9] Which directly translates to increases in GHG emissions: Tr.1:172.
[10] I.1.EGI.SEC.1, p. 2-3; I.5.EGI.GEC.3, Attach 1, p. 1 (also K3.8, p. 25, 26, 28), all despite the Made in Ontario Environmental Plan, which contemplates 3 megatonnes of absolute reductions in GHG emissions as a result of natural gas conservation. See in this regard Tr.3:133-137, in which Enbridge witnesses struggle to reconcile their forecast of increases in throughput with the government's expectations that they will deliver GHG reductions.
[11] EB-2021-0148, Exhibit B/2/1, p. 5-6.
[12] I.2.EGI.CCC.4, Attach 1.
[13] K3.9 and K3.10.
[14] EB-2020-0293, Sponsors' Evidence
[15] See K1.2 for examples.
[16] This is in sharp contrast to the Argument in Chief, with its strong focus on the past and the status quo: see AIC, p. 4, as an example.

1.2.7 McKinsey just released their 2022 Global Energy Outlook, which shows that natural gas use peaks worldwide in 2035, with most of that in Asia by that time. Gas use for buildings is expected to decline worldwide (not just in Canada) starting in 2025[17].

1.2.8 Further, the dominant issue in the upcoming Enbridge 2024-2028 Rate Application, due to be filed in November 2022, is going to be how Enbridge adapts to the changing role of natural gas in the Ontario energy mix. The Utility System Plan will be the subject of a much greater than normal review and critique, and the load forecast will, we expect, be substantially contested by many parties.

1.2.9 This is the context in which DSM, and particularly the outcomes we expect it to deliver, really matters the most. This is the time when, as they say, "the rubber hits the road".

1.2.10 It will be a theme of this Final Argument that it is no longer good enough to do a "good enough" job at this, to slow the increase in combustion of natural gas by a little bit[18].

1.2.11 In SEC's submission, this is the time that the OEB should make very clear to Enbridge that these results – lower bills, reduced throughput, reduced GHG emissions, and lower capital spending - are not just expected, but required. It is no longer enough for Enbridge to say that it would have been worse, but for their programs. It has to be better, period.

1.2.12 Further, we will later in this Final Argument propose that achievement of these results be tied directly to the shareholder incentives Enbridge can earn delivering these programs.

1.2.13 ***Enbridge Is Naturally Conflicted in Delivering DSM Programs.*** Most parties in this proceeding, including all of the expert witnesses[19], believe correctly that a gas distribution company that makes its money delivering natural gas to customers has a natural conflict when it comes to programs that try to reduce the amount of natural gas they deliver to customers[20].

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[17] See the Appendix to this Final Argument, which is two excerpts from the McKinsey Report, April 2022. The full report is here: https://www.mckinsey.com/~/media/McKinsey/Industries/Oil%20and%20Gas/Our%20Insights/Global%20Energy%20Perspective%202022/Global-Energy-Perspective-2022-Executive-Summary.pdf.

[18] Tr.3:134-135.

[19] But notably, perhaps not including Enbridge.

[20] This is seen somewhat glaringly in the "core utility" discussion during the oral hearing [Tr.3:138-138, and then again at 150].

1.2.14 This is not the fault of Enbridge, and pointing out their natural conflict is not in any way a criticism of them, nor intended to be read in a pejorative way. It is just a fact.

1.2.15 In the past, the OEB has relied on profit signals and restoration of lost revenues to incent the utility to make its DSM programs successful, in effect trying to overcome that natural conflict. Each of Enbridge and Union were given the opportunity – spending and investing none of their own money – to make up to $10 million per year by delivering successful DSM programs, plus get fully compensated for the lost distribution margin arising because of that success[21].

1.2.16 A lot of good things were done using that model, and it would be unfair to simply ignore that. Many homes and businesses in Ontario are currently more efficient than they would otherwise have been because the ratepayers spent that $2+ billion, and the utility and its predecessors delivered successful programs.

1.2.17 As budgets have increased, in general achievements have increased, even as there was less low-hanging fruit to pick.

1.2.18 This is all despite the fact that the actual profit available to Enbridge for successful DSM is a small fraction of the profit it delivers to its shareholders. In 2020, Enbridge Gas Inc. made a pre-tax profit of $555 million[22]. Out of that, $6.3 million was from its DSM programs, i.e. about 1% of the total[23]. It is self-evident that, on pure financial terms, it is the traditional pipes in the ground business that has to drive management priorities.

1.2.19 In addition, as a number of people have noted in this proceeding, the day to day visibility by stakeholders in the DSM programs has declined, even as the visibility of the results (through the Evaluation Advisory Committee) has greatly improved.

1.2.20 As a result, at a time when, as noted above, the delivery of results from these programs is more critical than it has ever been, capital spending is continuing to rise, throughput is higher, and GHG emissions from natural gas are out of control.

1.2.21 SEC believes that we have achieved what we can from the "incent them to do a good job" DSM model, and the OEB must now tackle the natural conflict head on.

1.2.22 The best solution may well be to shift responsibility for DSM programs to an

[21] Through the Lost Revenue Adjustment Mechanism, the adjustments to normalized average use, and the load forecast in cost of service proceedings.
[22] EGI 2021 Financial Statements (prior year data).
[23] EB-2022-0007. In 2021 the profit was $614 million, but the DSM incentive is likely lower, so the percentage is dropping.

independent, fuel-agnostic third party organization, not connected to any existing utility business. Even if the OEB has the jurisdiction to order such a solution (which is an issue worth debating), that is likely not in scope in this proceeding, and in our view there has certainly not been enough discussion and evidence to warrant moving in that direction immediately.

1.2.23 On the other hand, later in this Final Argument SEC will propose a kind of "board of directors" for the DSM Plan, an independent advisory body managed by the OEB (in the same manner as the EAC) that has three primary goals:

(a) Maintain and ensure transparency by regular review of DSM programs, operations, and achievements, much like a board of directors.

(b) Provide advice and guidance to the management of the DSM programs on program design, operations, and other such matters.

(c) Review and approve certain routine steps in the operation of the DSM programs, such as budget transfers, changes to programs or targets, etc.

1.2.24 Nothing the OEB can do or say will make the natural conflict Enbridge has, i.e. between profits driven by natural gas growth, and profits driven by natural gas conservation, go away. However, SEC believes that the OEB can, by dealing with this conflict directly, in the short term reduce its impact, assist Enbridge in continuing to deliver successful programs, and protect the interests of the customers who are relying on the results those programs need to deliver.

1.3 ***Summary of Submissions***

1.3.1 The positions of SEC as set out in this Final Argument can be summarized as follows (following the headings in the OEB's April 11, 2022 letter):

1.3.2 ***DSM Policy.*** SEC takes the following positions with respect to Issues 2, 3 and 5

(a) ***Targets and budgets.*** These should almost certainly be increased by substantial amounts. However, these increases should not be ordered until the OEB has had the benefit of the Enbridge five year distribution system plan and rate application, due to be filed in November. In that proceeding the energy transition, and Enbridge's role within it, will be discussed in detail. Arising from that evidentiary base it will be possible to develop a strategy for the use of efficiency (along with many other tools) to reduce throughput, capital spending, and GHG emissions. This may need to include aspects such as use of a fuel-agnostic third party program administrator for some offerings, or new approaches to collaboration between electric and gas programs.

(b) ***Electrification***. SEC does not believe that the OEB should require Enbridge to offer incentives to non-gas customers without first giving parties a full opportunity to make submissions on the legal and policy issues underlying that question. Those include issues of jurisdiction, notice, and regulatory policy. The result may be that the DSM Plan (whether delivered by Enbridge or a third party) should include electrification measures, including off-gas measures, but such a decision should be made with the benefit of a full analysis in which all perspectives are heard. That issue should be addressed urgently.

(c) ***Gas Equipment.*** The OEB should prohibit Enbridge from using DSM funds to incent the use of any equipment that combusts natural gas, unless it can be demonstrated that there is no viable non-gas alternative to that equipment available in the market (even if not currently cost-effective).

1.3.3 ***Term.*** SEC takes the following positions with respect to Issue 4:

(a) ***Governance and Changes.*** In lieu of a shift of some or all of the programs to an independent third party program administrator, in the meantime a stakeholder and expert committee should be established as a kind of "board of directors" to which DSM management at Enbridge is required to report on a regular basis, preferably monthly. The goals of the committee should be:

(i) Provide expert and stakeholder input to Enbridge.

(ii) Ensure transparency in the operational decision-making that affects the success of DSM programs.

(iii) Give Enbridge flexibility in adapting to market conditions.

The committee should have an advisory role with respect to program design and implementation, process evaluation, and other operational issues. If Enbridge seeks to move budget money around, shift emphasis, or make significant changes to its program offerings, the committee should be given the responsibility to review those matters and provide interim approval. At the immediately following DSM DVA clearance proceeding the OEB should review any interim approvals and determine whether they can continue. At all times the monthly reports of Enbridge to this operating committee should be posted on the OEB website for public information. Until this committee can be established, the Evaluation Advisory Committee should be asked to expand its role to include these responsibilities.

(b) ***Mid-Term Review.*** The limited mid-term review proposed by Enbridge should be rejected. Instead, the OEB should order that it will, on its own motion, review the budgets, targets, and all other aspects of the DSM Plan immediately

after the conclusion of the upcoming Enbridge five year rate proceeding, to ensure that the DSM Plan properly supports the energy transition.

1.3.4 ***Cost Recovery.*** SEC takes the following positions with respect to Issue 7:

(a) ***Amortization.*** The OEB should not order or allow amortization of DSM costs of any type at this time. If and when a case is made that a substantial expansion of targets and budgets is required, parties should be invited to provide proposals that include:

(i) Phase in of increased budgets so that amortization does not produce wide rate swings.

(ii) Express accounting for the tax impacts of the timing differences between expenses and amortized costs, to ensure that the customers benefit from those timing differences in their rates.

(iii) Integration of performance-based incentives and cost of equity capital so that the net profit for shareholders is appropriately targeted.

(iv) A detailed plan to either exit amortization in the future, or reach an equilibrium in which new program offerings are properly funded, but the annual cost in rates does not continue to rise.

(b) ***Union Rates M1 and 01.*** Until the OEB approves a harmonization plan for Enbridge and Union general service rates, DSM costs associated with residential programs in the former Union service territory should be recovered from customers in the monthly customer charge or the first volumetric tranche, so that non-residential customers in those classes do not continue to subsidize residential programs inappropriately.

1.3.5 ***Incentives and Programs.*** SEC has the following positions with respect to Issues 8, 9 and 10:

(a) ***Incentive Holdback.*** In order to ensure that the ultimate goals of the DSM Plan are achieved, a percentage of each year's scorecard-based shareholder incentive should be held back until the end of the five year plan. When the plan is completed, that money should be released to Enbridge on a sliding scale, and only if two of the following three conditions is true: a) Enbridge gas throughput in 2027, after normalizing for weather and GDP, has declined by at least 1% since 2022 actuals, b) the average capital budget in the 2028-2032 Utility System Plan, adjusted for inflation, is no higher than 95% of the average actual capital additions for the period 2017-2021, and c) natural gas combustion in Ontario is causing at least 1% lower GHG emissions in 2027

than in 2021. The amount of the holdback should be 20% of the actual incentive earned in 2023, 30% in 2024, 40% in 2025, 50% in 2026, and 60% in 2027. Details are provided in Section 4.2 of this Final Argument.

(b) ***Scorecards***. The annual scorecards should be based on lifetime rather than annual savings, and the performance range should be the existing 75% to 150% of targets, rather than the 50% to 150% of targets proposed by Enbridge, and with the current 40/60 split around target retained, instead of the 50/50 proposed by Enbridge.

(c) ***Target Adjustment Mechanism***. The TAM proposal should not be approved. Targets should be established on a fixed, cumulative basis in the OEB's order for all years of the DSM Plan, subject to amendment at the Mid-Term Review. The TAM by its nature locks in the status quo, and that is the last thing the customers need right now. The customers need to be assured that their billion dollars of spending is intended to achieve known cumulative results.

(d) ***Specific Programs:***

(i) The ***large volume self-direct*** program should be changed to a voluntary opt-out by those customers, and the commercial/industrial offerings should be expanded to ensure that large volume customers that choose not to opt out will have a broader range of program offerings.

(ii) The ***Building Beyond Code*** program should not be approved as long as it requires builders to agree to natural gas connections in order to participate. This creates a bias against cost-effective electrification.

(iii) Enbridge should not be allowed to enter into an agreement with the Federal government to deliver the ***Greener Homes Grant*** program in Ontario without the OEB's approval of that agreement. The Enbridge Whole Home program and the federal program should be delivered jointly, if possible, but they should be delivered by a fuel-agnostic delivery agent.

(iv) The ***Low Carbon Transition*** offering should not be approved by the OEB. Electric, but not gas, heat pumps should be promoted and incented, but inclusion of such a program in the DSM Plan should await the OEB's review and determination of whether electrification incentives are allowed and appropriate within the plan.

(v) The ***Energy Performance pilot in schools*** should be approved. Enbridge should be authorized to expand its scope if the initial uptake and results are favourable, and should be encouraged to collaborate with other agencies to ensure that it includes electricity as well as gas.

1.3.6 ***Other Issues.*** SEC takes the following positions on certain other issues before the

OEB in this proceeding:

(a) ***Changes to EM&V Rules.*** The OEB has an EM&V system, managed by OEB Staff, with an experienced third party Evaluation Contractor and an expert panel of advisors, that is working very well. The intent of the changes proposed by Enbridge is to limit the flexibility of the evaluators and the EAC in a manner favourable to the interests of Enbridge, and thus limit ability of that system to be effective. Those changes should be rejected by the OEB. If the OEB believes that any of the Enbridge proposals should be considered, the OEB should ask the EAC and the Evaluation Contractor for input on those proposals before making any changes.

(b) ***Integrated Resource Planning.*** No orders related to IRP are required at this time. The IRP Working Group is in its initial phase, and IRP will also be an underlying issue in the upcoming rate application.

2 ISSUES 1 THROUGH 5 – GENERAL/FRAMEWORK ISSUES

2.1 *The Issues*

2.1.1 The Issues List includes the following issues relevant to this area:

> ***"1. Does Enbridge Gas's 2023-2027 DSM Framework and DSM Plan adequately respond to previous OEB direction and guidance on future DSM activities (e.g., DSM Mid-Term Review Report, 2021 DSM Decision, OEB's post-2021 DSM guidance letter)?***
>
> ***2. Does Enbridge Gas's 2023-2027 DSM Framework and DSM Plan adequately support energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to consumers' economic circumstances?***
>
> ***3. Is Enbridge Gas's 2023-2027 DSM plan consistent with energy conservation industry best practices in Ontario and other relevant Canadian and U.S. jurisdictions?***
>
> ***4. Is Enbridge Gas's proposed DSM Plan term of 2023-2027 appropriate?***
>
> ***5. Is Enbridge Gas's proposed DSM policy framework, including guiding principles and guidance related to budgets, targets, programs, evaluation, and accounting treatment appropriate?"***

2.1.2 SEC believes that these are the most important aspects of this proceeding, and has focused its attention on these matters throughout.

2.2 *Are the Targets and Budgets Sufficient?*

2.2.1 ***Enbridge Position.*** The Applicant's position is that it can only handle the budgets and targets that are proposed its Application, and any material increase in those budgets and targets would require that Enbridge go back to the drawing board to develop an entirely new plan[24].

2.2.2 In effect, Enbridge has said to the OEB "You told us to propose only modest budget increases, so that's what we've done. If you succumb to the blandishments of parties that want a more aggressive plan, everything will be disrupted, and that certainly won't be our fault".

2.2.3 The subtext, though, is that Enbridge doesn't want a more aggressive plan, and has been consistent in opposing such an approach. Whatever the OEB has said about targets and budgets in the DSM Letter, Enbridge strongly prefers to keep their DSM programming limited and contained. In that regard, it is instructive to note the submissions of Enbridge in EB-2019-0003 relating to the contents of the DSM

[24] AIC, p. 14-15, 29.

Framework for 2021 onwards[25]:

> *"The Environment Plan outlined the provincial government's intention to work with the OEB and the gas utilities to gradually expand natural gas conservation programs to simultaneously reduce GHG emissions and lower customer energy bills. Enbridge Gas interprets this to mean a gradual increase in DSM budgets between 2021 and 2030. Enbridge Gas recommends the OEB define an acceptable budget range that responds to the government's call for a gradual increase in budgets but importantly results in an acceptable rate impact to customers that can be absorbed over the duration of the next term." [emphasis added]*

2.2.4 In that submission, Enbridge placed responsibility for limiting their conservation activities on the government[26]. In their current Final Argument, it is the OEB telling them to do it[27].

2.2.5 The Applicant's response to JT1.16 drives this home, but also reveals just how opposed Enbridge is to a more aggressive DSM Plan.

2.2.6 Asked what it would take to deliver a 20% annual increase in savings compared to their current proposal, they concluded that by 2027 they would need to spend almost $3 billion per year on DSM activities. The full estimate is as follows[28]:

		revised 2024-2027 to model 20% incremental gas savings ramp up scenario			
	2023 Budget	**2024 Budget**	**2025 Budget**	**2026 Budget**	**2027 Budget**
Program budget	$123,900,000	$272,580,000	$599,676,000	$1,319,287,200	$2,902,431,840
Portfolio Administration budget	$18,360,000	$23,868,000	$31,028,400	$40,336,920	$52,437,996
Total budget	**$142,260,000**	**$296,448,000**	**$630,704,400**	**$1,359,624,120**	**$2,954,869,836**
Budget Increase yr/yr		108%	113%	116%	117%
Target (Annual net m^3)	**105,558,506**	**126,670,207**	**152,004,249**	**182,405,098**	**218,886,118**
Gas Savings Increase yr/yr		20.0%	20.0%	20.0%	20.0%

2.2.7 ***Are Increases Required?*** This is a difficult question. What does the OEB know for sure?

2.2.8 One thing the OEB knows is that customer bills, throughput, capital spending and GHG emissions are all continuing to go up. If the goal is to reduce that trend, the Applicant's programs are not succeeding. Clearly business as usual is not supported by the evidence before the OEB right now.

[25] EB-2019-0003, Submissions of Enbridge June 27, 2019 ("Framework Submissions"), at p. 13-14.
[26] Which, it should be noted, wants DSM to deliver 3 Mt of net GHG reductions by 2030: Tr.3:124.
[27] SEC notes that the OEB Letter also includes "directives" [Enbridge's characterization – AIC p. 7] to "increase natural gas savings" and "improve cost-effectiveness", neither of which is achieved by the proposed DSM Plan. Despite quoting the OEB Letter many times, the Applicant does not quote these parts of the OEB guidance.
[28] JT1.16, p. 3.

2.2.9 That does not mean that throwing more money at the problem is the answer, nor does it mean that setting much higher targets is the answer.

2.2.10 We have been increasing DSM budgets for more than two decades, year after year, and that strategy hasn't worked so far.

2.2.11 As for increasing targets, there is no point in setting very high targets for Enbridge if they have told you categorically that they can't reach them. Pushing the utility is one thing. If you set a target that is not achievable, that is not motivation. In fact, it is the opposite[29].

2.2.12 ***Context Matters.*** In our submission, the issue here is that DSM is no longer a "side gig" that is a) nice to have, but is b) not part of the "core utility"[30]. The sector is in a transitional phase, which the OEB knows and is addressing[31]. So are governments. Enbridge will inevitably also have to address that transition, and the upcoming 2024-2028 Rate Application, expected to be filed in November 2022, will be the process in which the OEB will initiate that debate.

2.2.13 In the upcoming five year rate application, the issue of fossil fuel combustion as it relates to a low carbon future may be the central issue being discussed. It will impact obvious things such as capital spending on long-lived (and potentially stranded) assets, and such as load/demand/peak forecasts. Many parties will weigh in, from those who see the demise of gas distribution as an imminent reality, to those (perhaps including Enbridge) who believe that the long-term future will include a lot of natural gas.

2.2.14 No-one expects this to be pretty. This is about a) the survival of EGI as a viable gas distribution business, and b) who will be left paying the cost of a multi-billion dollar infrastructure that may be less financially viable over time.

2.2.15 Meanwhile, in this current proceeding the OEB is faced with trying to determine how to get the Applicant to achieve the goals that the customers (and society) demand. In our view, there is insufficient evidence before the Commissioners in this case to do that.

2.2.16 Some of the environmental groups, like the Green Energy Coalition, Environmental Defence, and Pollution Probe, will argue in favour of higher budgets and targets.

[29] When you propose a target, and the person assigned that target says flatly it is not achievable, you have two choices: a) negotiate a different target, or b) get someone else to achieve the target. The existence of the second choice keeps the negotiation on the first choice realistic.
[30] Tr.3:137-138.
[31] For example in EB-2021-0118 (Framework for Energy Innovation Working Group), and EB-2021-0246 (Integrated Resource Planning Working Group).

They may also have suggestions for how those budgets could be spent. Many of those suggestions will be valuable, based on strong expert evidence.

2.2.17 But it is one thing to provide a critique. It is another thing for the OEB to replace the Enbridge DSM Plan with a DSM Plan the OEB creates based on the evidence before it. Even assuming that is actually possible, it is not the role of this regulator.

2.2.18 ***SEC Recommendation.*** SEC believes that higher DSM budgets (and targets), whether provided to Enbridge, to a third party administrator, or some other entity, are likely inevitable if gas use, and GHG emissions, and customer bills are to decline substantially over time due to efficiency gains.

2.2.19 Gas use and GHG emissions will in any case decline over time due to market forces, including both the cost of carbon and changing consumer preferences. It is within the context of that external reality that gains through DSM must be planned, executed, and achieved.

2.2.20 SEC therefore submits that the OEB, in its Decision in this proceeding, should signal that the proposals of Enbridge are insufficient, and will have to be beefed up. Further, the OEB should direct Enbridge to be ready, following the OEB's decision in its five year rate application, to propose a significantly more aggressive DSM Plan, consistent with the rate plan.

2.2.21 Further, the OEB should advise other parties in this proceeding that, at the same time as Enbridge is beefing up its plan, they should be making ready to prepare their own alternatives, which may include the potential to shift responsibility for DSM from Enbridge to a fuel-agnostic third party administrator.

2.3 ***Governance Changes and Independence***

2.3.1 SEC has made no secret of its view that Enbridge, because of its inherent conflict, has become a barrier to, rather than a driver of, improving efficiency of buildings, industrial processes, and other energy uses. In our view, it is likely true that this can really only be solved by shifting responsibility for these programs to an independent third party program administrator. This is commonly done in other jurisdictions, and has been successful. The experts from both Optimal[32] and Energy Futures Group[33] have confirmed that this is a common, sometimes preferred approach taken in other places to avoid utility conflicts.

2.3.2 The question today, however, is what should the OEB do in this proceeding to deal

[32] See 3.FRPO.1.OEBStaff.1.
[33] Mr. Neme, of Energy Futures Group, provides an excellent analysis of the pros and cons of moving to a third party administrator in an interrogatory response, included in K3.8, p. 31-2.

with Enbridge's inherent conflict?

2.3.3 ***What Is the Problem That Needs to be Addressed?*** The basic conflict between growing the gas distribution business and reducing the use of natural gas cannot be solved while Enbridge remains the sole program administrator. The issue can be controlled and managed, but that would require a change in the paradigm of program administrator independence.

2.3.4 Under the current paradigm, the utility as program administrator is given the responsibility to design and implement DSM programs, and a broad discretion about how to do so. In the interests of flexibility and "nimbleness", Enbridge is allowed to change its emphasis, integrate DSM activities with other priorities of the utility, add and subtract staff positions and program offerings, and many other things. Anything that would limit Enbridge's broad freedom is labelled "micromanagement"[34].

2.3.5 This culminates in a desire for a completely hands-off approach, described well in the approvals being sought, including[35]:

> *"While certain parties may have views on the specific types of measures and level of incentives that should be offered, the Company believes that decisions about such matters are the responsibility of the Program Administrator. The actual delivery of approved programs should be left to the Company. The Company would retain the flexibility inherent in the Proposed Framework to operate and manage the various program offerings as permitted thereunder."[emphasis added]*

2.3.6 In other words, after this proceeding is over, leave us alone and let us do our thing, with complete *carte blanche* and no supervision.

2.3.7 That approach is no longer working. Four examples can help to make that clear:

(a) ***New Municipal Liaison Officer.*** On April 22, 2022 Environmental Defence brought to the OEB's attention a LinkedIn job posting by Enbridge for a new individual in their DSM group that would, among other things[36]:

> *"Advocate for the continued use of natural gas and its role as a low carbon option in the development of Municipal Energy Plans.*
>
> *Develop a strong understanding of all Demand Side Manage Program and*

[34] For example, AIC, p. 39.
[35] AIC, p. 55.
[36] Letter of Kent Elson for Environmental Defence dated April 22, 2022, Attachment p. 2.

work with DSM Program Managers to develop customized solutions which result in increased municipal participation in DSM programs and Business Development offerings.

Track, record and communicate interactions with municipalities and partners to ensure alignment and awareness.

Communicate internally key threats identified through interactions with Municipalities and assist in developing solutions to offset these threats." [emphasis added]

Under the guise of freedom to run the programs the way they see fit[37], Enbridge is using ratepayer money earmarked to reduce gas use to, instead, promote increased use of natural gas and fight off GHG reduction programs of municipalities[38]. It is not known how many other examples like this exist.

(b) Goals of Senior Management. The DSM Group reports to the Vice-President of Business Development and Regulatory, who for 2021 had a goal statement that included[39]:

"OEB Approval of an IRP framework and internal approval of a next gen DSM plan that preserve growth opportunities including in non-pipe Alternatives" [emphasis added]

Asked to confirm that the specific individual, and all members of senior management, are entitled to significant personal compensation based on increasing rate base and net income, Enbridge successfully resisted answering that question[40].

(c) Reporting Structure. The internal structure of the DSM Group includes[41]:

"Accountability for the delivery of both the Large Industrial program and the residential new construction program report to the Director, Distribution In-Franchise Sales."

Asked about this in cross-examination, Mr. Fernandes had difficulty explaining

[37] This new position is part of what Enbridge characterizes as "collaboration with municipalities": K1.1.
[38] The OEB has seen a recent example of a municipal plan in EB-2020-0293, the City of Ottawa Energy Evolution Plan. Many other municipalities have similar plans to get to zero emissions.
[39] I.3.EGI.SEC.4, p. 3. Under cross-examination [Tr.3:150-1], Mr. Fernandes from Enbridge sought to soften this, but failed to change the underlying import, i.e. that DSM and IRP are fine as long as they don't get in the way of growth in the gas distribution business.
[40] Tr.3:151-155.
[41] I.3.EGI.SEC.4, p.2.

why individuals responsible for reducing gas use report to someone whose job is to increase gas sales[42]. As SEC notes later in this Final Argument, the goals of the residential new construction offering appear to include convincing builders to commit to natural gas as the primary energy source for space and water heating.

(d) Free Ridership Strategy. J3.6 attaches a Free Ridership Mitigation Strategy implemented by Enbridge in April, 2021. Enbridge has a significant free ridership problem, as detailed in part in the document, but it appears that the mitigation strategy they are currently implementing was neither discussed with stakeholders, nor shared with the Evaluation Advisory Committee (which is responsible for measuring free ridership). It was also not included in the Application in this proceeding, and only came to light because it was referred to in an interrogatory response, and then only released by the Applicant in response to an undertaking at the oral hearing. This is perhaps unsurprising, because the mitigation strategy appears to have six components[43]:

Program Design and Implementation Changes[44]

(i) Change incentive amounts to ensure that the programs will have more influence over customer decisions.

(ii) Screen applications more carefully so that obvious free riders are screened out.

(iii) Remove measures/offerings that have become standard industry practice.

Regulatory Process and Perception Changes

(iv) Work with trade allies to ensure that Enbridge gets more credit for influencing projects.

(v) Initiate Enbridge-led surveys immediately after projects are completed to gather evidence that the free ridership studies by the OEB run evaluation process are wrong[45].

(vi) Change the rules relating to measurement of net to gross to make them more favourable to Enbridge.

The first three are the normal responses of a program administrator that wants to reduce their actual free ridership. The second three are directed at ensuring, not lower actual free ridership, but rather a lower measurement of free ridership.

[42] Tr.3:147-150.
[43] J3.6, Attachment 1.
[44] See. Tr. 3:142-143.
[45] See Tr.3:141, where the Enbridge witnesses stress that they "have concerns" about how free ridership is being calculated.

2.3.8 In SEC's view, the approach in which Enbridge designs and delivers its DSM programs unsupervised and without any ongoing transparency allows these examples, and the many others that may exist but have not come to light, to happen.

2.3.9 ***How Do We Fix This?*** The obvious answer is that a fuel-agnostic third party administrator should be given the responsibility for delivering conservation programs. This may in fact include many of the very talented and committed people working in the Enbridge DSM Group right now, but accountability and reporting would be to management of an entity that had only one goal: energy efficiency.

2.3.10 There are two practical problems with that.

2.3.11 First, there is no third party administrator waiting in the wings, ready to take this on. Although the OEB could presumably open it up for bids, and there would likely be ample market interest[46], that is not something that is going to happen tomorrow.

2.3.12 Second, it is not clear at this point whether the OEB has the jurisdiction or mandate to order such a step. That is something that would presumably be the subject of legal and policy debate, discussion and submissions, none of which has as yet taken place. It may also be something on which the government has a view, given that the IESO reports directly to them.

2.3.13 On the other hand, the conflict problem can be disaggregated into three components:

(a) The people who are delivering the DSM Plan on a day to day basis, who with a few exceptions have as their sole focus (within the strictures imposed by management) the reduction of gas use.

(b) Supervision by management, including senior management, that have competing priorities.

(c) Lack of real-time transparency.

2.3.14 Generally speaking, SEC has few concerns about the first component. There are 145 people[47] delivering Enbridge DSM programs, and if a third party administrator were contracted, there is a high probability that most of them would end up working for that administrator. They have expertise, commitment, and experience. And, they would provide continuity. This is not, in our view, the crux of the

[46] Tr.TC3:50.
[47] JT2.11.

problem.

2.3.15 That leaves a need for more independent, focused supervision, and for greater ongoing transparency.

2.3.16 ***A New DSM "Board of Directors".*** In our view, the OEB can move a long way in the direction of ameliorating this concern by appointing an independent expert/stakeholder committee to whom the Enbridge DSM Group is required to report on a regular (likely monthly) basis.

2.3.17 This committee, with membership by individuals with similar backgrounds and expertise as those on the current EAC, and managed by OEB Staff in the same way as the EAC, would operate in a manner similar to a Board of Directors, as follows:

(a) ***Advisory.*** At periodic meetings DSM management would report on the design, implementation and results of the DSM program offerings, including everything from process evaluations to staffing issues to customer feedback, etc. As is common with boards of directors, the committee members would ask questions, provide input, and generally assist management by offering their expertise and differing perspectives. Also as is the case with boards of directors, the committee would typically not be making any decisions, as day-to-day operations are usually the function of management. The purpose of this component of the role is two-fold: input from experts and stakeholders, and accountability by DSM management to an independent expert group. Some of the issues listed above would probably not arise (such as the municipal lobbyist) if they first had to be discussed with the committee[48].

(b) ***Decision-Making***. The OEB in its Decision in this proceeding would assign specific day to day decision-making functions to the committee. This could include approvals of budget transfers, new or amended offerings, etc. This would allow Enbridge to make changes in a timely manner. To ensure that the ultimate arbiter of major changes in the DSM Plan remains the OEB, every decision of the committee would be effective only until the next DSM DVA proceeding before the OEB, at which time the OEB would be able to confirm, modify, or disapprove the decision going forward. This is modelled on the approval by corporate shareholders at each annual meeting of any by-laws initially passed by the Board of Directors.

(c) ***Transparency***. Reports and materials provided to the committee would be posted on the OEB's website, much like EAC materials are today, so that all stakeholders and the OEB would have near real-time visibility into what Enbridge is doing. The committee would have the discretion to determine that

[48] See the comments of Mr. Neme on this aspect: Tr.4:101.

certain materials not be posted, or posted with a delay, if it would be prudent to do so.

2.3.18 SEC notes, in this regard, that the process of establishing such a committee might take some time. In the interim, SEC submits that assigning those responsibilities to the current Evaluation Advisory Committee would be an appropriate first step. That committee already has an appropriate mix of individuals with expertise in this area, and an existing administrative infrastructure that works. It may also be the case that, as the composition of the EAC goes through a renewal in the near term, that can be coordinated with the formation of the new operating committee.

2.3.19 The longer term solution to Enbridge's inherent conflict may still be the appointment of a third party, fuel-agnostic administrator. SEC submits that, until that can reasonably be considered, more direct supervision and input could be a significant improvement, and could provide learnings to the OEB that may inform the process of shifting to a third party administrator**.**

2.4 ***Electrification***

2.4.1 In their Framework submissions in 2019, Enbridge proposed that the OEB add a new Guiding Principle, as follows[49]:

> *"DSM plans may support fuel-switching efforts that contribute to an overall reduction in greenhouse gas emissions."*

2.4.2 In this proceeding, Enbridge has made clear how limited its view of fuel switching and electrification is today, saying the following[50]:

> *"The Company understood from the OEB DSM Letter that its program offerings should be directed at natural gas customers. This would not include incentivizing current gas customers to leave the system entirely and/or incenting potential new customers to not become natural gas customers. Enbridge Gas submits that there is no direction from the Government of Ontario which supports natural gas customers paying incentives towards customers leaving the system or potential new customers never joining the system. The fact that the IESO in its 2021-2024 CDM plan does not include any incentives for residential electric heat pumps is in the Company's view telling. As a matter of ratepayer equity, it seems unfair to require natural gas ratepayers to subsidize customers to leave the system or prospective customers to never join it particularly when electric ratepayers are not similarly providing such incentives." [emphasis added]*

[49] Enbridge Framework Submissions, p. 10.
[50] Argument in Chief, p. 12-13.

2.4.3 And, while Enbridge does say that they support fuel-switching[51], their position is that participants in their DSM must be current and future natural gas customers.

2.4.4 The lack of IESO incentives as justification for limiting gas DSM programs is, of course, unfair, as Enbridge appears to admit, saying[52]:

> *"MR. FERNANDES: …I understand what you are saying, but the Ontario that we live in is not an Ontario that has funding for some other party to deliver new construction programs. This is the Ontario that we live in. We're the only one that is actually in market, and the IESO which would be the other natural party hasn't got funding, and their programs are scheduled out to the end of 2024 in their current program." [emphasis added]*

2.4.5 However, the legal and policy issue remains. Does the OEB have the authority to order a gas utility to use ratepayer funding to incent exiting the system? No legal submissions have been provided to the OEB on this point. Further, even if the OEB has the legal authority, is it good policy? Who should in fact be funding electrification efforts?

2.4.6 SEC believes that the answers to these questions are not obvious, and the issue must be looked at in more detail before the OEB makes a determination.

2.4.7 SEC therefore submits that the OEB should not in this proceeding require Enbridge to include incentives for full electrification in its DSM Plan, but should determine that dealing with that issue should be a near term priority of the OEB. In the meantime, as we have proposed elsewhere in this Final Argument, Enbridge should be prohibited from "occupying the field" by incenting the use of gas equipment, however efficient it is, when there are available non-fossil fuel alternatives. Further, Enbridge should be prohibited from offering any program in which there is a condition of participation that the participant commit to future use of natural gas.

2.5 ***Mid-Term Review***

2.5.1 SEC supports the idea of a Mid-term Review, and believes it may be an opportunity to expand the DSM programs and make more fundamental changes than are possible in the context of the current Application.

2.5.2 ***Enbridge Proposal is Too Limited.*** That having been said, the Enbridge proposal is for a very limited review, essentially locking in the current unambitious DSM Plan except for changes initiated by Enbridge. This is not appropriate.

[51] I.5.EGI.SEC.13
[52] Tr.3:167.

2.5.3 ***Energy At an Inflection Point.*** As noted earlier, gas distribution (and energy generally, for that matter) is at an inflection point. This was brought home even more clearly with the announcement this March of the Energy Transition Panel as follows[53]:

> *"Whereas the Government of Ontario is committed to ensuring a reliable, affordable and sustainable supply of energy for Ontarians;*
>
> *And whereas the Government of Ontario is reviewing its current long-term energy planning process to increase the effectiveness, transparency, predictability, and accountability of energy decision-making in Ontario in order to enable better use of resources and increase benefits to customers;*
>
> *And whereas the Government of Ontario understands that the successful transition to a clean energy economy and increased electrification will bring with it wide-ranging consequences that require careful consideration and coordination;[emphasis added]*

2.5.4 The Energy Transition Panel is expected to report by April 1, 2023. In parallel with that process (and many others that are going on both provincially and federally right now), the OEB will consider the five year rate application from Enbridge, scheduled to be filed in November 2022[54].

2.5.5 It is no secret that the rate application, and its components the load/demand forecast and the utility system plan, will bring to a head strongly opposing views of the future. The Enbridge future presented in the Application is expected to be continued growth of their gas distribution business in Ontario. Some parties will support that. Others, however, will see a future in which the gas distribution business is being wound down over time. This is consistent with the Energy Transition referred to in the Order in Council, and with the Made in Ontario Environment Plan[55]. Both anticipate greater electrification of current fossil fuel combustion, lower GHG emissions, and decarbonization of the electricity generation system.

2.5.6 In some respects, this current proceeding, and the IRP proceeding in 2021, have foreshadowed that upcoming debate, but there is little doubt that the real question

[53] Ontario Order in Council 698/2022.
[54] And many other things will be unfolding: See Tr.1:140-141.
[55] Enbridge has implied throughout this proceeding that perhaps the Made in Ontario Environment Plan is no longer government policy. That is not the case, and Enbridge in fact recently admitted that in another OEB proceeding. See e.g. EB-2022-0072, Enbridge Gas Supply Plan, Stakeholder Conference Transcript May 6, 2022, p. 73. That idea – that government policies can be treated as temporary – still permeates the Applicant's thinking: see e.g. Tr.3:127-128.

that the OEB will have to answer will not be front and centre until that rate application. The OEB will be faced with having to establish policy – and rates – to navigate a dangerous and potentially painful transition. It will be informed by the report of the Energy Transition Panel, and other proceedings going on over 2022 and 2023, but in the end as regulator the OEB will be left with the task of figuring out how to make it all work.

2.5.7 ***Potential Impact of the Rate Decision.*** SEC believes that the decision of the OEB in that rate application will potentially change the fundamental nature of the discussion about Enbridge's DSM Plan[56]. It may be that budgets and targets will have to be increased very significantly. Things like amortization of DSM spending may have to be looked at in much more detail. The legality and appropriateness of incenting electrification of gas uses (using funding from gas customers) will have to be determined. Even the question of whether Enbridge is the appropriate entity to be delivering DSM will be presented with more urgency.

2.5.8 All of those issues, and others almost as fundamental, have been raised in this proceeding. However, SEC believes that this panel of Commissioners does not have before it a sufficient evidentiary record to make informed decisions on those issues. This process is constrained by the fact that it is about a specific plan from a specific utility that takes a very particular perspective on DSM programs. In fact, when this process started in 2018 and 2019, that perspective may have been acceptable. Changes are happening, and the OEB will now have seen that the "modest increases" approach to DSM, including targets that are lower than past achievements, has been overtaken by events.

2.5.9 ***SEC Recommendation.*** SEC therefore recommends that the OEB, in its decision in this proceeding, establish an expectation that the evolution of the DSM Plan in Ontario will be the subject of a continued review commencing six months after the decision of the OEB in the Enbridge five-year rate application has been released. Further, the OEB in its decision should direct the parties as follows:

(a) Enbridge should come to the review with multiple options for DSM Plans going forward, including some with substantial expansions of the budgets and targets[57].

(b) Other parties who want to propose significant changes to DSM delivery in Ontario should come to that review with fully-developed proposals that the OEB can consider, and other parties can test.

[56] The Enbridge witnesses imply much the same thing: see e.g. Tr.3:137-139.
[57] Arguably Enbridge should have done that in this proceeding, instead of saying that an increase in budget would require them to go back to the drawing board: Argument in Chief, p. 27.

(c) If parties wish to propose delivery of DSM by someone other than Enbridge, they should come to the review not only with detailed proposals, but with legal and policy support for those proposals.

(d) If parties wish to propose full or partial amortization of DSM costs, whether by Enbridge or by a third party, they should come to the review with detailed proposals to do so, including transitional provisions, and including tax and other impacts.

(e) In all other respects, parties including Enbridge should come to that review prepared to develop and/or debate major changes to how gas DSM is managed, delivered, and funded in Ontario.

3 ISSUES 6 AND 7 – BUDGETS AND COST RECOVERY

3.1 *The Issues*

3.1.1 The Issues List includes the following issues relevant to this area:

> ***"6. Does Enbridge Gas's proposed budget, including program costs and portfolio costs result in reasonable rate impacts while addressing the OEB's stated DSM objectives in its letter issued on December 1, 2020, including having regard to consumers' economic circumstances?***
>
> ***7. Is Enbridge Gas's proposed cost recovery approach appropriate while addressing the OEB's stated objectives in its letter issued on December 1, 2020?"***

3.2 *Budgets and Rate Impacts*

3.2.1 SEC has no submissions on the proposed budgets. As we have noted in Section 2.3 of this Final Argument, budgets and targets probably have to go up significantly. However, in our view there is insufficient evidentiary base for the OEB to make that order, and the context of the five year Enbridge distribution plan is essential if the OEB is to respond appropriately.

3.2.2 Similarly, SEC has no specific proposals with respect to rate impacts. The current DSM Plan is not achieving the customers' goals, so **any** rate impact is too much, but as a practical reality that can't be helped. A plan that does achieve those goals has not and will not be presented to the OEB by any party in this proceeding (least of all Enbridge), so its rate impacts cannot be assessed[58].

[58] SEC can say with confidence that $3 billion per year to produce just over twice the current claimed savings, as set out in JT1.16, does not produce a reasonable rate impact.

3.3 *Cost Recovery - Amortization*

3.3.1 ***Interest of Schools.*** From a short term financial point of view, amortization of DSM costs is in the best interests of schools. Schools are generally early adopters of conservation and energy efficiency measures, and have a lot of near term opportunity to improve their building envelopes and other aspects of energy use with assistance from utility programs. On the other hand, schools will be among the early groups of customers to exit the use of fossil fuels for space and water heating. They have already started to do so. The combination of these factors creates the potential that schools can benefit from program spending now, but not be on the system later when amortized costs have to be recovered in rates.

3.3.2 We note the Applicant's position that it is agnostic about whether to amortize DSM costs[59].

3.3.3 ***SEC Policy Position.*** Those things having been said, SEC does not believe that amortization of DSM costs is good public or regulatory policy, and recommends that the OEB reject the proposals of various parties to implement this change right now.

3.3.4 ***Factors in Favour of Amortization***. There are two main reasons for supporting amortization of DSM costs:

(a) ***Matching Principle.*** DSM investments are designed to produce long term benefits, on average 16.4 years[60]. By amortizing the cost over a similar period, the rate impact is matched to the benefits, which in accounting and policy terms is generally thought of as a good thing.

(b) ***Rate Shock.*** If the OEB wants a substantial increase in DSM spending, a properly implemented transition to amortization of those costs could ameliorate the rate shock by effectively deferring and smoothing it.

3.3.5 Both reasons have caveats, however:

(a) ***Participants vs. Non-Participants.*** Matching the benefits to costs seems good, but it is the participants that benefit, and the non-participants that bear the bulk of the costs. Therefore, for most customers there is no matching at all.

(b) ***No Free Lunch.*** All methods of smoothing and deferring rate shock come at a price. In the end, if you spend more money, the customers will be paying for it. As the OEB saw from the examples from the experts, eventually the annual

[59] Argument in Chief, p. 26.
[60] JT1.28

cost in rates is always higher if the initial annual cost is amortized.

3.3.6 ***Drawbacks to Amortization.*** In addition to the caveats noted above, there are a number of other problems that may be created if amortization of costs is ordered:

(a) ***Intergenerational Equity.*** Amortization assumes a steady-state industry (as does the rate base concept on which it is based), in which the customer base is constant or growing, and the same people on whose behalf the spending is occurring are also those that will pay in the end. In a legacy business like gas distribution, where the future includes customers exiting the system, there is the real possibility that customers who benefit from the DSM spending today will, for example now that their building envelopes are much more efficient, leave the gas system and electrify their loads. In the most extreme situation, those who cannot exit are ultimately left holding the bag[61].

(b) ***Cost of Capital.*** Utility capital is relatively expensive money, from the point of view of ratepayers. While utilities can borrow at fairly low rates, the cost of equity, plus the tax gross-up, increases the cost substantially. Today, with interest rates and therefore all returns rising, that cost may be more than 10% per annum[62]. For the customer, this is a little like spending money today, but putting the cost on the credit card for payment later.

(c) ***Large Future Obligation.*** Spending, say, $200 million per year on DSM, but amortizing the cost over 16 years, produces a growing obligation borne by future ratepayers. Assuming that the $200 million annual budget is escalated by inflation, for example, the result is that at the end of year 16 there is more than $1.8 billion still owing on that spending, even though billions have already been collected in rates, and the annual cost in rates has, since year nine, been higher than if the amounts had been expensed.

(d) ***Stranded Assets***. As the energy mix changes, and fewer people rely on fossil fuels in the future, recovery of the cost of utility assets will become less certain. While the bigger problem is, of course, billions of dollars of unamortized physical infrastructure, it is a live issue whether adding further potential stranded assets for DSM is a prudent approach.

3.3.7 ***Tax Impacts.*** SEC notes that none of the experts that commented on amortization had knowledge of the Canadian tax impacts of such a plan. Even when they tried their best to build in the unfamiliar tax impacts[63], they got the results quite wrong,

[61] See Tr. 5:157.
[62] For each million dollars spent in year one, the total cost in rates over the amortization period is more than $1.6 million when the cost of capital is added to the declining balance each year and the tax impacts are factored in.
[63] See J4.5, J5.1, and Tr.5:154-5, by way of example.

and as a result the OEB in this proceeding has no useful evidence on the real annual impacts of amortization when tax impacts are taken into account.

3.3.8 Simply put, amortized DSM costs are fully deductible by Enbridge for tax purposes. Since the basic regulatory principle of the OEB is that the amount included in rates is net of tax impacts (the "taxes paid" approach to revenue requirement), the result is that the first year revenue requirement must be negative.

3.3.9 Just to use the $200 million annual example one more time, if that is amortized over sixteen years, and financed at WACC, the revenue requirement in year 1 is composed of three parts:

(a) ***Amortization Amount.*** This is 1/16 of the spending, or $12.5 million.

(b) ***Cost of Capital.*** At current WACC, this is about $11.3 million in year one.

(c) ***Tax Shield.*** The total expenditure, plus deductible interest, less the amounts above collected in rates (which are income), produce taxable income of -($181 million), resulting in year one tax savings for Enbridge of $48.0 million, which is then grossed-up to a pre-tax figure of $65.4 million for regulatory purposes.

3.3.10 The end result is a net negative revenue requirement in year one of $41.6 million. This compares to the net positive revenue requirement, if expensed, of $200 million. This is then reversed in years two and subsequent, because the full tax deduction has been used up, but the utility is still receiving revenue on this asset. On the other hand, the spending for year two will also have a tax shield of similar impact. The cumulative effects become more complicated over time.

3.3.11 SEC was somewhat surprised that the OEB was not provided with detailed models of this effect, which is quite substantial. Enbridge has standard tax shield models that it uses to calculate the impact of timing differences like this for every capital project they do. Cumulative tax impact models are a regular feature of Enbridge planning, and of their regulatory filings relating to capital projects.

3.3.12 That having been said, the OEB in this proceeding does not have proper models before it that show the true impact of amortization on annual and cumulative revenue requirement. The models that have been provided are incorrect, and the OEB cannot rely on them. The differences are material.

3.3.13 ***When Is Amortization Appropriate?*** SEC agrees with the experts that amortization is something to consider when a regulator wants to implement a rapid escalation of spending. That does not mean it should be approved. It just means that it is one of the options available to the OEB to smooth the rate impact of spending increases.

3.3.14 ***What Should be Considered in Any Amortization Proposal?*** SEC submits that the following factors are relevant if the OEB is looking at amortizing DSM costs:

(a) ***Cost of Capital.*** The utility will argue that its cost of capital is known, and includes equity return. This assumes the basic utility paradigm, i.e. that utilities make their money by providing capital, and that profit is not dependent on their level of performance. The alternative argument is that the financing component of amortized costs should be the market cost, which is a debt cost. However, the utility is also entitled to a profit level arising out of its DSM Plan. That profit level is not based on money invested, but on performance to standards. Thus, the equity component of the utility financing is still compensation. It is just compensation based on performance instead of spending[64].

(b) ***Transition In.*** It is not in the interests of the customers to move to full amortization, which would drop rates significantly, then immediately raise them annually on a steep trajectory. Instead, any amortization proposal should include a transition plan, for example a provision that an increasing percentage of budget increments be amortized each year until a stable point is reached.

(c) ***Tax Impacts.*** As noted above, the tax impacts will be material, and any plan to bring in amortization must not only model the tax impacts, but ensure that those timing differences benefit the customers by reducing their rates.

(d) ***Transition Out.*** In a legacy business like gas distribution, the OEB cannot rely on continuous future growth in the business to cover the cost of accumulating unamortized capital assets. The amortization plan must include a plan for exiting the structure that doesn't leave assets stranded, and doesn't create rate shock at the end.

3.3.15 SEC believes that the OEB currently does not have sufficient evidence in this proceeding to deal with those issues. Further, in any case the rapid expansion of budgets that would be the rationale for amortization, if any, does not appear to us to be possible on the record in this proceeding.

3.3.16 ***SEC Recommendation.*** SEC therefore recommends that the OEB in this proceeding reject calls to amortize all or part of the DSM Plan.

3.3.17 Instead, the OEB should advise parties that, if and when expansion of budgets is considered in a future proceeding, parties (including the program administrator) should also bring proposals for amelioration of rate shock, which could include

[64] See Tr.5:214, 218.

amortization proposals. However, those proposals should deal with the issues set forth above in detail.

3.4 ***Cost Recovery – Rates M1 and 01***

3.4.1 In the legacy Union Gas territory, non-residential general service customers like small businesses, landlords, and schools are lumped into the same rate classes as residential customers[65], i.e. rates M1 in Union South and 01 in Union North[66].

3.4.2 This creates a problem because of the substantial increases in the amounts of DSM spending being directed at residential customers[67], and because DSM costs are recovered in the volumetric rates.

3.4.3 This plays out as follows. The total cost allocated to rate M1 over the five year plan is $150 million, and to rate 01 $33 million, for a total of $183 million[68]. Of that, 24% of the rate M1 amount, and 26% of the rate 01 amount, will under the Enbridge proposal be paid by non-residential customers[69].

3.4.4 Those customers are therefore forecast to pay $44.6 million for DSM programs over the plan period. The non-residential programs in which they are entitled to participate are significantly lower (about $27.4 million, including all portfolio and low income allocations), meaning that those customers will be subsidizing residential programs in which they cannot participate by more than $17 million[70].

3.4.5 This problem is exacerbated by two additional facts. First, amounts can be shifted into residential programs from other programs outside of those rate classes (subject to limits), and amounts can be shifted into residential programs from non-residential programs within those rate classes, with no limits. Both types of transfer have been done in the past. Second, shareholder incentives are allocated on the same basis as program costs, meaning that the additional $21 million in potential annual shareholder incentive cost can increase the intra-class subsidy by another $2-3 million.

3.4.6 This problem is further exacerbated for the larger customers in these classes, which typically includes schools. A typical school in Union South uses about 40,000

[65] J3.2.
[66] This is not the case in legacy EGD, where residential are in Rate 1 and Non-residential are in Rate 6.
[67] From 2014 to 2023, it is proposed to increase residential spending from 9% of budget to 35% of budget, at the same time as the overall budget is increasing: JT1.5.
[68] Ex. F/1/3.
[69] J3.2.
[70] These can also be calculated using the budgets net of low income allocations, found in Ex. F/1/2. This produces a total allocation to these classes of $135 million, of which $32.8 million is paid by non-residential customers. Their share of non-residential program costs is then $19.6 million, for a net subsidy of $13 million.

cubic metres of gas annually, and so over the five years can be expected to pay about $1,800 in DSM charges. A typical residential customer, for whom the main bulk of the programs are designed, can be expected to pay less than $100 over that same period. This is despite the fact that, in Rate M1, only 13% of the program dollars are available to non-residential customers.

3.4.7 Enbridge serves just under 2,000 schools in the legacy Union territory.

3.4.8 It is possible that the rate application upcoming in November will include a harmonization plan for these rate classes, as well as Rates 1 and 6 in the legacy EGD territory. If that is the case, then this intra-class subsidy will either be solved, or made worse, depending on whether the harmonization plan splits residential and non-residential, or not.

3.4.9 In the meantime, SEC believes that the OEB can fix this problem quite easily. For rates M1 and 01 in the legacy Union territory, SEC believes that the cost recovery for residential programs should be in the fixed monthly charge, and the cost recovery for non-residential programs should be in the volumetric charge, as is presently the case.

3.4.10 The result should be that, while non-residential customers will pay a small amount in their fixed charge for residential programs, residential customers will pay a small amount in their volumetric charge for non-residential programs, and the two will offset each other. Any remaining differences will be *de minimis*.[71]

3.4.11 ***SEC Recommendation.*** SEC therefore recommends that the OEB order that the cost of residential programs in the Union M1 and 01 rate zones be recovered in the fixed monthly charge, and the cost of non-residential programs in those rate zones continue to be recovered in the volumetric charge.

4 ISSUES 8 AND 9 – INCENTIVES AND SCORECARDS

4.1 *The Issues*

4.1.1 The Issues list includes the following issues relevant to this area:

> ***"8. Are Enbridge Gas's proposed shareholder incentives appropriate?***

[71] SEC calculates, for example, that for rate M1 the fixed component would be an average of $1.183 per month over the five year plan (program/portfolio costs for residential), and the volumetric component would average 0.3092 cents per cubic metre over those five years (non-residential program/portfolio costs plus low income costs). In the result, non-residential customers would end up paying approximately 24% of the low income charges (their share by volume), and 13% of the program and portfolio costs (their share by programs). Calculations are based on Ex. F/1/2 and F/1/3.

> ***a. Is Enbridge Gas's proposed annual maximum shareholder incentive, including structure, and amount appropriate?***
> ***b. Is Enbridge Gas's proposed Long Term shareholder incentives appropriate?***
> ***c. Is Enbridge Gas's Annual Net Benefits Shared Savings proposal appropriate?***
> ***d. Are there any other incentive mechanisms that should be included in addition to or to replace those proposed by Enbridge Gas?***
>
> ***9. Are Enbridge Gas's proposed scorecards, including performance metrics, metric weightings, and targets appropriate?***
>
> ***a. Is Enbridge Gas's proposed annual target adjustment mechanism appropriate?***
> ***b. Is Enbridge Gas's proposed Residential Program Scorecard, including targets and performance metrics appropriate?***
> ***c. Is Enbridge Gas's proposed Low Income Program Scorecard, including targets and performance metrics appropriate?***
> ***d. Is Enbridge Gas's proposed Commercial Program Scorecard, including targets and performance metrics appropriate?***
> ***e. Is Enbridge Gas's proposed Industrial Program Scorecard, including targets and performance metrics appropriate?***
> ***f. Is Enbridge Gas's proposed Large Volume Program Scorecard, including targets and performance metrics appropriate?***
> ***g. Is Enbridge Gas's proposed Energy Performance Program scorecard, including targets and performance metrics appropriate?***
> ***h. Is Enbridge Gas's proposed Building Beyond Code Program scorecard, including targets and performance metrics appropriate?***
> ***i. Is Enbridge Gas's proposed Low Carbon Transition Program scorecard, including targets and performance metrics appropriate?***
> ***j. Is Enbridge Gas's proposed Long Term Greenhouse Gas Reduction target appropriate?***
> ***k. Should there be any other scorecards, targets and/or metrics included in addition to or to replace those proposed by Enbridge Gas?"***

4.1.2 SEC is aware that there are other parties that will provide extensive submissions on some or all of the incentives and scorecards. This Final Argument will therefore stick to specific issues of particular concern to us.

4.2 ***Shareholder Incentives***

4.2.1 ***Enbridge Proposal.*** Enbridge has proposed shareholder incentives that are in some respects similar to the existing Plan, but have some changes:

(a) The maximum incentives start out at the current $20.9 million, but then are indexed to inflation starting with a 2022 base[72].

(b) Incentives are based on a performance range of 50% of target to 150% of target, rather than the current 75% to 150%[73].

[72] I.5.EGI.SEC.12.
[73] EB-2015-0029/49, Decision with Reasons, p. 75-76.

(c) The incentive is allocated 50% to below the target, and 50% above, rather than the current 40% below and 60% above, so more can be earned without meeting target.

(d) Volumetric measures, which make up the bulk of the scorecards, would be changed from lifetime cubic metres to annual cubic metres.

(e) An amount of up to $6.63 million of the annual incentive is re-allocated from scorecards to net benefits.

(f) Another, smaller amount of the cumulative incentives is re-allocated from scorecards to long-term measures.

4.2.2 SEC is aware that other parties will be making submissions on those proposed changes, almost all opposing them. SEC agrees that none of these changes are justified, and in each and every case their purpose is to increase the probability that Enbridge will earn maximum incentives from current levels of performance. None of them, it appears to us, incent the utility to improve their performance.

4.2.3 ***SEC Holdback Proposal.*** SEC has been clear throughout this proceeding that the achievement of actual, measurable results on the goals that matter to customers is not sufficiently reflected in the shareholder incentives paid. It is submitted that the OEB can and should improve the incentive to achieve those goals.

4.2.4 The difficulty is that these goals cannot be measured on an annual basis. Those goals – reducing throughput, capital spending, and GHG emissions – take time to achieve, and annual measurement is counterproductive.

4.2.5 Therefore, SEC proposes that the OEB implement a gradual holdback of incentives earned each year, with the intention that the cumulative holdback will be paid out at the end of the plan based on achievement of the customers' long term objectives.

4.2.6 The details of the SEC Holdback Proposal are as follows:

(a) ***Amounts.*** Of the actual shareholder incentives earned for 2023, 20% would be held back and made contingent on achievement of the long term objectives. That percentage would increase to 30% of 2024 incentives, 40% of 2025, 50% of 2026, and 60% of 2027. Assuming the maximum earned annually, the total holdback could reach $42 million. However, at typical incentive earning levels from the past, the total holdback is unlikely to exceed about $20 million.

(b) Objectives. The three longer term objectives of the customers applicable would be:

(i) Throughput. The target would be a 3% reduction in weather and GDP normalized actual throughput in 2027 compared to 2022. The minimum would be a 1% reduction.

(ii) GHG Emissions. The target would be a 2 Mt reduction in actual GHG emissions from natural gas combustion by Enbridge customers in 2027 compared to 2019. The minimum would be a 1 Mt. reduction. This would not be weather or GDP normalized. GHG reduction is an absolute goal, consistent with the Made in Ontario Environment Plan[74].

(iii) Capital Planning. The target would be a 20% reduction in the average annual planned capital additions for the period 2028-2032, relative to the actual annual capital in-service additions for the period 2017-2021, all calculated in constant 2028 dollars. The minimum would be a 5% reduction.

(c) Earnings Formula. The holdback could not be earned unless the minimums in two of the three objectives had been met. Assuming at least two of the three objectives had been met, the percentage success in each of the three would be calculated linearly between minimum and target, with minimum or less being 0% and target or more being 100%. The average of the three results would be applied to the holdback to determine the amount of the incentive paid to Enbridge. The balance would be returned to the customers. For example, if the throughput decreased by 2.5%, GHG emissions decreased by 0.5%, and capital additions decreased by 10%, the respective percentages would be 75%, 0%, and 33.3%, and the average would be 36.1%. That percentage of the holdback would be paid to Enbridge.

4.2.7 SEC notes that we have proposed a Mid-term Review that could include substantial increases in budgets and targets, as well as other changes to the DSM Plan. If the OEB determines that substantial changes are required at that time, SEC would assume that changes to the SEC Holdback Proposal would also be appropriately considered, but on a prospective basis only.

4.3 ***Target Adjustment Mechanism***

4.3.1 SEC is aware that a number of parties will have thorough submissions opposing the proposed Target Adjustment Mechanism. We agree with them. SEC believes that the TAM incents poor performance and locks in the status quo[75], and therefore

[74] Although even this requirement would not get Enbridge to the 3 Mt. target in that Plan: see J3.8, p. 2 and Tr.3:124.
[75] See Tr.5:164-166.

should be abandoned.

4.3.2 In fact, SEC notes that the only justification that Enbridge has provided for retaining the TAM is that it has been around for a long time[76]. At no point has Enbridge shown that reducing targets for poor performance and increasing targets for good performance produces the appropriate results[77]. Intuitively, it does not.

4.3.3 Detailed analysis is being provided to the OEB by others.

4.3.4 In place of the TAM, SEC submits that fixed targets should be established by the OEB at this time, increasing each year in line with budgets.

4.3.5 Further, we agree with the experts[78] that those targets should be cumulative in nature, so that to the extent that Enbridge misses a target in one year, and stages a comeback in a subsequent year, Enbridge would be entitled to the same incentive as if they had achieved the target initially.

5 ISSUES 10 and 11 – PROPOSED PROGRAM OFFERINGS

5.1 *The Issues*

5.1.1 The Issues List includes the following issues relevant to this area:

> ***"10. Has Enbridge Gas proposed an optimal suite of program offerings that will maximize natural gas savings and provide the best value for rate payer funding?***
>
> ***a. Are Enbridge Gas's proposed program offers for residential customers appropriate?***
> ***b. Are Enbridge Gas's proposed program offerings for low-income customers appropriate?***
> ***c. Are Enbridge Gas's proposed program offerings for commercial customers appropriate?***
> ***d. Are Enbridge Gas's proposed program offerings for industrial customers appropriate?***
> ***e. Are Enbridge Gas's proposed program offerings for large volume customers appropriate?***
> ***f. Are Enbridge Gas's proposed energy performance program offerings appropriate?***
> ***g. Are Enbridge Gas's proposed beyond building cost program offerings appropriate?***
> ***h. Should there be any other program offerings included in addition to or to replace those proposed by Enbridge Gas?***
> ***i. Are Enbridge Gas's proposed program offerings appropriate for customers in Indigenous communities?***
> ***j. Is Enbridge Gas's proposed low carbon transition program appropriate?***

[76] See, e.g. Argument in Chief, p. 28, and Tr.3:116-117.
[77] Except to reiterate that the mechanism is symmetrical: see e.g. Tr.3:115.
[78] Tr.5:167, for example, as described in more detail in the Optimal Report.

11. Are Enbridge Gas's proposed research and development activities appropriate?"

5.1.2 As with incentives and scorecards, our submissions in this area reflect the fact that other parties will have more complete analysis, and we should focus on the areas of most concern to SEC.

5.1.3 Before getting to that, though, SEC notes in passing the comments in the Argument-in-Chief to the effect that their specific programs have for the most part not been challenged in the proceeding[79], the implication being that they therefore must be OK.

5.1.4 Nothing could be further from the truth. There have already been thousands of pages of interrogatories and undertakings. With three days for a technical conference, and one week scheduled for an oral hearing, did the OEB want parties to spend several days going through the details of the Enbridge programs line by line to demonstrate that they were mostly[80] unambitious, warmed over versions of old programs, with little innovation and aggressiveness?

5.1.5 There is a risk in a proceeding like this, with many issues large and small, that not every issue will end up getting the attention it might warrant if it were being considered on its own. We are sure that the OEB will be conscious of this when Enbridge seeks to have the many smaller issues slip through as if unopposed and therefore by implication "good enough".

5.2 ***General Program Design Issues***

5.2.1 There are two general aspects of Enbridge program design that are of particular concern to SEC.

5.2.2 ***Incentives for Gas Equipment.*** Most DSM program offerings are in one of four categories:

(a) Building envelope and similar changes (such as insulation or efficient windows, but also including process changes in some industrial uses) that reduce the amount of energy used, independent of the energy source.

(b) Add-on equipment, such as smart building controls, destratification fans, heat recovery ventilation, and other such gear, that reduce the energy use by existing equipment, often equipment that uses gas as its energy source.

(c) Operational and behavioral changes, such as steam trap surveys and

[79] Argument in Chief, p. 36.
[80] Not all, to be fair.

maintenance protocols, that reduce the energy consumption through more efficient operations, which sometimes is dependent on the energy source.

(d) Equipment that burns natural gas as a fuel, but is more efficient than standard practice or than the in situ equipment.

5.2.3 The first three categories are for the most part independent of energy source. It is the fourth category that is a particular concern.

5.2.4 Many parts of the Plan include incentives and other program benefits, such as technical assistance, for new or replacement equipment that uses natural gas as its fuel. In each case, the justification for this is that Enbridge is influencing customers who would be buying gas equipment anyway to select more efficient models and configurations. This has been one of the foundations of Enbridge DSM offerings for decades, and it is often successful in reducing the combustion of natural gas.

5.2.5 There is a less favourable side to this as well, however. Every time Enbridge influences a distribution customer or prospective customer to buy and install a new piece of gas equipment, Enbridge is creating an installed base and built-in demand for gas for a period of 10-40 years into the future. In an era in which the combustion of natural gas has to go down, this approach locks in gas use and reduces the future ability to lower GHG emissions.

5.2.6 This is, in fact, one of the reasons why it is problematic to have a gas utility delivering DSM programs. While they are influencing more efficient use of gas, they are at the same time building their long-term customer base, supporting more use of gas in the future.

5.2.7 The OEB cannot, in our view, prohibit incentives for equipment that burns natural gas, at least not right now. That would decimate the Enbridge suite of program offerings.

5.2.8 On the other hand, allowing Enbridge to continue to build installed base with DSM dollars, without restriction, is in our submission unwise.

5.2.9 Therefore, SEC submits that the OEB should place restrictions on providing incentives for natural gas equipment. The two restrictions SEC proposes are:

(a) The gas equipment being incented must be cost-effective (individually and not just as part of a package offering), taking into account the cost of the incentive, in reducing natural gas use. This would, for example, rule out incentives for upgrading from 95% to 97% AFUE furnaces, and for many gas water heaters.

(b) There is must be no alternative, non-fossil fuel solution that is competitive or close to being competitive to the gas solution, and is available in the market. This would, for example, rule out incentives for natural gas heat pumps.

5.2.10 This modest restriction would still allow Enbridge to incent most pieces of efficient gas equipment, particularly in industrial and commercial applications.

5.2.11 ***Commitment to Gas***. Programs that target new construction or new activities appear to require a commitment by the participant that they will use natural gas as their primary energy source[81]. This is clearly true in Building Beyond Code, but may also (we don't know) be a requirement in many other parts of the Plan. This would be consistent with the statements by Enbridge in this regard[82].

5.2.12 This has a similar effect to the gas equipment issue. Enbridge is offering, in many cases, ratepayer money to those who will build or design more efficiently. This is a good thing. On the other hand, if the customer says that they are not going to use gas, then the ratepayer money is no longer available. This is a disincentive for the customer to choose the fuel-agnostic option that is best for the situation.

5.2.13 This is not as easily solved as the equipment problem, and a thorough solution is probably dependent on the results of a process to deal with electrification measures.

5.2.14 In the meantime, SEC has proposed that the Building Beyond Code program not be approved at this time, despite the fact that it is very similar to a program (Savings by Design) that many schools very much liked. It is submitted that the OEB should, in its decision in this proceeding, both flag this issue for Enbridge, and direct Enbridge that, if it is going to make a gas commitment a condition for participation in any program, it should first get input from the operational committee that SEC has proposed elsewhere in this Final Argument.

5.3 ***Whole Home Program Offering***

5.3.1 Enbridge proposes its largest program offering will be a residential program, and that it hopes to offer it jointly with the federal Greener Homes program, with Enbridge as the delivery agent for both. No details have been provided on this partnership with the feds.

5.3.2 SEC is aware that other parties will be analyzing the risks associated with OEB approval of what would effectively be a joint program, without knowing any of the details of that joint program. SEC agrees that this seems like an unnecessary regulatory risk, and inconsistent with the OEB's normal practice of basing its

[81] Tr.2:37, and many other places.
[82] See Section 2.4.

approvals on evidence before it. We believe that the submissions of others on this point will provide a basis for the OEB to reach this conclusion.

5.3.3 SEC has a completely different concern about this program and proposed relationship.

5.3.4 We agree that this combination of offerings – feds and Enbridge – should be offered together by a single delivery agent. The advantages are obvious.

5.3.5 On the other hand, that delivery agent must most certainly be fuel-agnostic, and have no inherent bias for or against any options available to the homeowner. That delivery agent should not be Enbridge.

5.3.6 This is not a question of either expertise or experience, and it is equally not a question of money. Many of the potential participants in this combined program will need reliable advice recommending that they should exit the natural gas system. That will be their best solution, and it is unreasonable to expect Enbridge to provide them with that advice[83].

5.3.7 SEC therefore submits that the OEB should advise Enbridge that it may not proceed with the Whole Home program with NRCan without first getting the OEB's approval of the terms of the partnership. Further, it would be appropriate, it is submitted, to advise Enbridge right now that it should not be the primary delivery agent for the combined program.

5.4 *Large Volume Self-Direct*

5.4.1 SEC is aware of the position of the Industrial Gas Users Association with respect to the large volume program, and generally agrees with that position.

5.4.2 The materials provided by IGUA[84] make it readily apparent to parties and to the OEB that large industrial users are highly motivated to proceed with efficiency investments that meet their needs and their investment criteria. It is, however, equally clear that they will not proceed with efficiency investments that do not meet those criteria, and there is nothing the utility really can do to change that.

5.4.3 It seems fairly straightforward. High energy intensity companies like the IGUA members deploy capital based on a process that applies minimum hurdle rates, and then prioritization of benefits and goals as between competing capital projects. Energy efficiency projects are far too large for any incentives from Enbridge to

[83] It is possible, of course, that NRCan will build in protections to the deal to ensure that this problem does not arise. However, without seeing the terms of the deal, the OEB cannot have any confidence that will be the case.
[84] K1.2

make a difference to those calculations[85].

5.4.4 Further, while smaller industrial and commercial customers can benefit from the expertise of Enbridge staff, it will be rare that Enbridge staff will have sufficient domain knowledge relative to the businesses of these large customers to add any material value[86].

5.4.5 What, then, is the purpose of taking money from those customers in rates, then giving some of it back to them for projects that they would have done anyway, and expending administrative dollars in the process?

5.4.6 SEC submits that if the utility can't provide the customer with enough cash incentive to matter, and doesn't have sufficient customer-specific expertise to add value that way, the utility should allow the customer to do what it was going to do anyway, and leave them alone.

5.4.7 Therefore, SEC recommends that large volume customers be allowed to opt out of DSM, and receive a rebate equal to the amount included in their rates (less their share of low income costs).

5.4.8 At the same time, SEC is conscious that a few large customers do want access to DSM programming. It is submitted that the OEB should direct Enbridge to consult with those customers, and propose at the Mid-term Review program offerings that are tailored to the needs of those that want to participate.

5.5 ***Energy Performance Pilot – Schools***

5.5.1 This program, described in detail in the evidence[87], builds on a successful non-utility program called Sustainable Schools[88]. It uses benchmarking to promote operational and behavioral changes that improve the energy use in schools. The Enbridge program will add small financial incentives to the "healthy competition" aspect of the Sustainable Schools program.

5.5.2 We discussed this program in detail with Mr. Grochmal of Enbridge during the oral hearing[89], and it should have been evident that SEC strongly supports this initiative. SEC therefore submits that this program should be approved by the OEB.

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[85] This is why free ridership is so high, in some cases approaching 100%. See K3.8, p. 5, 17, and Tr.5:150-151.
[86] In fact, when Union Gas explored offering large volume customers DSM assistance on a pay for service basis several years ago, there were no takers. Mr. Neme is more cautious in his comments about this, however: Tr.4:96-97.
[87] Ex. E/2/1.
[88] Tr.3:176.
[89] Tr. 3:175-185.

5.5.3 However, we believe that the OEB should go further in its comments on this. This is a program that has two potential expansions: a) inclusion of both electricity and natural gas, and b) offering the same program to sectors other than schools[90]. That is the direction Enbridge is heading, assuming the initial pilot works well. In our submission, the OEB should encourage Enbridge to implement these expansions as soon as it is reasonably possible to do so.

5.6 ***Building Beyond Code***

5.6.1 The concept behind Building Beyond Code is a good one, particularly as it relates to residential new construction. Builders and developers can sometimes be resistant to increasing the energy efficiency of the houses and other dwellings they build, especially when the market for new residential housing exhibits high demand, as has been the case for several years[91].

5.6.2 This resistance continues to be true despite the blandishments of many municipalities, who have enacted green plans that give developers planning and approval credits for improving the energy efficiency of their offerings. In essence, it is easier for the builders to get approvals, and the planners give them more flexibility, if they make commitments to more efficient homes[92].

5.6.3 The problem is that, when a developer or builder is building out a new area, the public interest is often served better if the homes, instead of being served by gas infrastructure, were designed to rely primarily or exclusively on electricity. In many cases, a district energy system or other method could be used, sometimes with geothermal heating and cooling, or with rooftop solar, or with local battery storage, or some combination. These options would be in the long term interests of the residents of the community, and the province as a whole.

5.6.4 Instead, because the incremental cost of the gas infrastructure, particularly in the GTA, is quite low, builders will often prefer gas. It is familiar to them, their capital cost is lower, and it is today acceptable to their buyers.

5.6.5 Enbridge is now proposing to seek to influence builders to improve building envelopes and otherwise improve the energy efficiency of the homes they build. The overriding condition is that the primary heating source for space and water heating must be natural gas. For the next forty years or more, that group of homes is going to be locked in to the gas distribution system.

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[90] Tr. 3:185. Enbridge already sees these as future expansions, and we agree.
[91] As one builder famously said, a few years back, "I could build a shack, and someone will buy it."
[92] There are dozens of municipalities in the GTA, for example, with programs like this, sometimes called "Green Standards".

5.6.6 Building Beyond Code is a program that should be offered, and almost certainly it will be. It must, however, be fuel-agnostic, because in a low carbon future it will increasingly be in the public interest (and eventually a market imperative) not to choose gas for new homes.

5.6.7 SEC therefore submits that, until the issues of electrification and a third party program administrator can be sorted out, the Building Beyond Code program for residential new construction should not be approved.

5.7 *Low Carbon Transition*

5.7.1 SEC has reviewed the submissions of a number of other parties with respect to offering natural gas heat pumps[93] as a low carbon offering. In general we agree with them that this program should not proceed.

5.7.2 We note that, if the OEB accepts the SEC recommendation in Section 5.2 above, Enbridge would be restricted from providing incentives for equipment such as natural gas heat pumps in any case. We also note that, in Section 4.2 above, we have agreed with other parties that the reallocated incentive for this program should not be approved.

6 ISSUES 12 TO 14 – EM&V AND ACCOUNTING PROPOSALS

6.1 *The Issues*

6.1.1 The Issues List includes the following issues relevant to this area:

> ***"12. Are Enbridge Gas's proposed changes to the OEB's evaluation, measurement and verification process appropriate, including the proposed Terms of Reference?***
>
> ***13. Are Enbridge Gas's proposed updates to the treatment of input assumptions, cost-effectiveness screening, and avoided costs appropriate?***
>
> ***14. Is Enbridge Gas's proposed accounting treatment, including the function of various deferral and variance accounts appropriate?"***

6.2 *Changes to the EM&V Rules*

6.2.1 Issues 12 and 13 relate to proposals by Enbridge that would make the calculation of savings, and therefore shareholder incentives, more favourable to Enbridge. The Enbridge proposals are not appropriate, and should be rejected. The OEB has a smoothly functioning and effective measurement and verification process that does

[93] Which even Enbridge admits are not cost-effective: Tr.3:172.

not need the kind of utility-centric changes proposed by Enbridge.

6.2.2 SEC could go through the proposed changes line by line, and analyze each change and its potential impacts in detail.

6.2.3 However, we don't think that is necessary. The OEB has established an independent, supervised audit and evaluation process which has expert advisors and an independent evaluation contractor. Many EM&V issues have been discussed in detail at the EAC and with the Evaluation Contractor, mostly with results that are based on consensus or something similar.

6.2.4 If the changes being proposed by Enbridge were in the public interest, and in the interests of the customers in improving the process and results, then the obvious course of action would have been to make the proposals to the EAC, and have the EAC provide a recommendation to the OEB on what changes are appropriate. The fact that was not done is a glaring omission[94].

6.2.5 The reason Enbridge did not bring the EM&V changes to the EAC first is that those changes are intended to reduce the flexibility of the Evaluation Contractor and the EAC to get the right answer. The changes are intended to improve the position of Enbridge in making and supporting savings claims[95], and limit the ability of the Evaluation Contractor and the EAC to question those savings claims[96].

6.2.6 EM&V is not supposed to work that way. It is supposed to be objective, not favour one result or another. It is a process of trying to get to the truth.

6.2.7 SEC therefore recommends that the OEB should reject the limitations Enbridge proposes for the EM&V process[97].

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[94] SEC counsel is a member of the EAC, as is GEC consultant Chris Neme, and it is managed by the OEB Staff Case Manager in this proceeding, Josh Wasylyk. Are any of SEC, GEC or OEB Staff going to support the changes proposed by Enbridge?

[95] See Tr.3:158-159.

[96] SEC notes one obvious example of this, in J3.7. A significant percentage of Enbridge results have, for many years, been calculated using a model called e-Tools, designed and built by Enbridge. In a study by the Evaluation Contractor with input from the EAC, it was found that e-Tools over-estimates savings by 43% to 61% relative to actual measured savings [J3.7, Attach 1, p. 3]. A second phase of the study has been launched, not to validate the results [see Tr.3:161], which are already validated, but to find out why e-Tools results are so high relative to actuals, and see if the model can be fixed. That is ongoing. The Enbridge EM&V proposals would mandate the use of e-Tools, a model known to be flawed [see I.5.EGI.SEC.18]. SEC notes that the e-Tools results were filed by Enbridge only after cross-examination by SEC. They were not provided to the OEB when they were known by Enbridge.

[97] SEC notes that a similar approach appears to be part of the Enbridge Free Ridership strategy as well. See Section 2.3.7(d) above and J3.6.

7 ISSUES 15 TO 18 - OTHER AREAS

7.1 *The Issues*

7.1.1 The Issues List includes the following issues relevant to other areas:

> ***"15. Does Enbridge Gas's proposed 2023-2027 DSM Plan require any changes to be consistent with the OEB's decision and guidance regarding Enbridge Gas's Integrated Resource Planning proposal (EB-2020-0091)?***
>
> ***16. Has Enbridge Gas proposed a reasonable approach to ensure natural gas DSM programs are effectively coordinated with electricity conservation programs and other energy conservation and greenhouse gas reduction programs applicable in its service territory?***
>
> ***17. Is Enbridge Gas's stakeholder engagement proposal reasonable, including its engagement with Indigenous communities?***
>
> ***18. What transition and implementation steps are appropriate as a result of the OEB's decision on the 2022 DSM Plan and its final decision and order?"***

7.2 *Integrated Resource Planning*

7.2.1 This is being dealt with in a separate process, and at this time it is premature to seek to integrate DSM and IRP policies.

7.3 *Co-Ordination with Non-Gas Programs*

7.3.1 See Section 5.3.

7.4 *Stakeholder Engagement*

7.4.1 SEC has made a proposal for a "Board of Directors" to which DSM management would report on a regular basis. That would include one or more direct stakeholders, plus independent experts. In addition, transparent posting on regular information would be a part of that change.

7.4.2 Subject to that proposal, SEC is leaving submissions on stakeholder engagement to other parties.

8 OTHER MATTERS

8.1 *Costs*

8.1.1 The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

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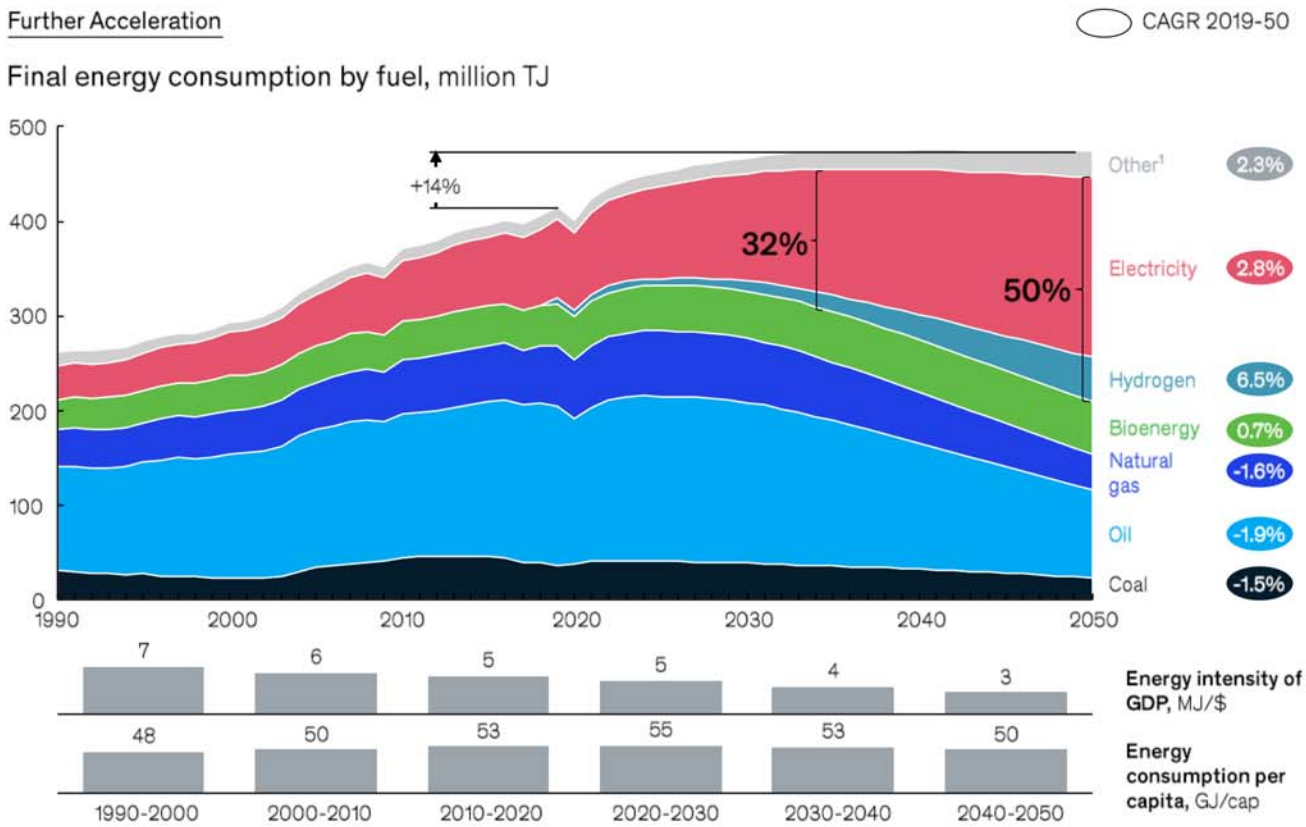
Jay Shepherd
Counsel for the School Energy Coalition

Analysis conducted before the invasion of Ukraine in February 2022

The global energy mix is projected to shift rapidly towards power and hydrogen

Share of electricity and hydrogen in final consumption may grow to 32% by 2035, and 50% by 2050



1. Includes heat and synthetic fuels

Source: McKinsey Energy Insights Global Energy Perspective 2022

Global energy consumption is projected to flatten in the coming decades. Despite rapid growth of the global economy and population growth of two billion people, energy consumption is projected to grow by only 14%

Continued reductions in the energy intensity of GDP are a key driver, triggered by greater end-use efficiency in buildings, transport, and industry. Electrification plays an important role in this, as a shift to electrical solutions tends to come with a step-change in efficiency in many segments, such as space heating and passenger cars

The role of electricity in the final consumption mix is projected to grow from ~20% today to 40% by 2050. The corresponding doubling of electricity consumption combined with uptake of hydrogen is projected to offset fossil-fuel consumption (which excludes primary demand of coal and gas for power generation), which could be ~40% lower in 2050 compared to 2020

Analysis conducted before the invasion of Ukraine in February 2022

Natural gas demand

Chapter summary

Gas has gradually increased its share in the energy mix and is expected to play a key role throughout the transition with its wide range of applications

The global gas price rally in 2021 was supported by high gas demand due to rapid economic recovery and unexpected weather conditions, and a lower supply due to unexpected outages and underinvestment

Uncertainty around the pace and shape of the energy transition may impact the volatility in gas prices and lead to even more pronounced investment cycles

Going forward, gas could play a new role in blue hydrogen and ammonia production, and gas infrastructure could be repurposed for low-carbon fuels such as hydrogen and biogas, or CO_2 transportation for CCUS

Gas demand is projected to grow by 10% in the next decade in all scenarios. After 2030, gas projections diverge across scenarios driven by increasing decarbonization pressure in buildings and industry

The demand for gas is projected to be more resilient than for other fossil fuels. Its share in primary energy demand is expected to decline from 23% today to 23—15% by 2050

In the Achieved Commitments scenario, the remaining gas demand in 2050 is due to countries without net-zero commitments, carbon offsets, or the deployment of CCUS, which explains 54%, 15%, and 31% of gas demand respectively

Relatively robust absolute gas demand translates into a reducing role of gas in providing heat and power due to high growth of low-carbon alternatives in these sectors

Gas demand is projected to peak by 2035. Demand growth in power and industry, particularly in Asia, may eventually be offset by decline, especially in buildings

Gas demand in power is set to grow strongly until between 2035 and 2040, after which it is projected increasingly to play the role of back-up to renewables

Long-term gas demand is likely to be supported by industry (for high-temperature heat and chemicals), particularly in Asia

Gas demand in buildings is expected to decline after 2025. The decline will likely be driven by increased insulation, electrification, and usage of green gases such as hydrogen or biomethane

The regional shift of gas demand to Asia is expected to continue, as China's role of demand-growth engine is taken over by Southeast Asia after 2030

China's gas consumption is likely to be supported by coal-to-gas switching and the role of CCUS in power and industry

Almost all additional demand for imported gas is supplied by LNG , which is projected to lead to a growth of 20–70% in 2050 compared to 2019, depending on the scenario

Source: McKinsey Energy Insights Global Energy Perspective 2022