

# Elson Advocacy

June 20, 2023

**Ms. Nancy Marconi**

Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc. 2024 to 2028 Rates Application  
EB-2022-0200**

I am writing regarding Enbridge's decision not to update its evidence, interrogatory responses, and undertaking responses to reflect the information in and underlying its capital update.

By way of background, Enbridge filed a "capital update" late on Friday afternoon, which consisted of a new, stand-alone schedule (Exhibit 2, Tab 5, Schedule 4). On Monday, there were some discussions among intervenors regarding the capital update and I was asked to write to Enbridge to confirm when it would be filing updates to its evidence to reflect the new information in and underlying the capital update. This morning Enbridge notified us that it would not be providing any such updates on the basis that it would take too long (see attached). However, for the reasons set out below, Enbridge cannot justify its proposed capital spending, especially the new spending underlying its capital update, without updating its other evidence and interrogatory/undertaking responses.

First, a substantial portion of the material on the record is now out of date and inaccurate. Enbridge acknowledged in its response this morning that substantial portions of the evidence would require updating in addition to updates to the interrogatory and undertaking responses. However, it has declined to do so based on the time required. This is an insufficient justification to leave outdated and inaccurate information on the record uncorrected.

Second, the parties cannot adequately plan for cross-examinations without updated information. We cannot know for sure which exhibits are up-to-date or not. We also cannot plan questions without knowing the full details underlying the capital update. Enbridge states that witnesses can answer questions on the capital update at the hearing. However, that would be too little and too late. The capital spending details are required up-front so that we can prepare our questions.

Third, we may waste a significant amount of hearing time if we do not have the updated details beforehand. Discovery of basic facts and figures can be a time-consuming process. It should be conducted before the hearing, not during the hearing in front of a full panel of Commissioners.

Fourth, updates are required by rule 11.02 of the OEB's *Rules of Practice and Procedure*, which reads as follows:

11.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the OEB before the decision or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.

Fifth, the updates are very substantial. For instance, they include \$200.6 million in new capital spending over 2023 and 2024.<sup>1</sup> They also include \$270.2 million in net "other" spending over 2023 and 2024, which appears to consist largely of capex estimate increases. Furthermore, the extent of the updates is masked by the grouping of updates into categories, such that decreases in spending act to offset increases in spending. For instance, the \$270.2 million increase in "other" spending is a net figure that has been offset by other amounts.

Sixth, the updates focus on high-level financial impacts, without providing specific project-by-project details. Nor does it provide a breakdown in the OEB-mandated Utility System Plan categories. Enbridge clearly has the underlying details, which it must have used to calculate the high-level financial impacts, but it has not provided these. It is unclear how Enbridge expects intervenors to be able to test its high-level spending figures without the underlying details.

It is telling to contrast this update with the update that Enbridge provided in relation to the Guidehouse pathways report. When that report was updated, Enbridge simultaneously updated all the evidence, interrogatory, and undertaking materials that would be impacted. The same needs to be done here to justify the relief Enbridge seeks.

Without an update, Environmental Defence does not believe Enbridge can justify its capital spending, particularly the new capital spending referred to in the capital update. Of course, Enbridge has the burden to justify its proposed spending. We are prepared to proceed to the hearing on July 10<sup>th</sup> on that basis without any further evidence updates. However, under this scenario, we would object to Enbridge providing further details to justify the changes in undertaking responses following the oral hearing as this evidence would be submitted too late to be tested by the parties.

Alternatively, the OEB could direct Enbridge to update the evidence, interrogatory responses, and undertaking responses to reflect the information in and underlying its capital update prior to the oral hearing. However, it appears from Enbridge's response to our request that this would require a delay in the hearing schedule. That may even require deferral until September seeing as all parties and their counsel, and perhaps also the Panel Members, have organized their summer work schedules and summary holiday schedules around this July hearing, such that many are unavailable for portions of August. If the hearing is rescheduled into August, we request that the August portion of the hearing be held virtually to help partly manage the scheduling conflicts that would arise.

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<sup>1</sup> Exhibit 2, Tab 5, Schedule 4, pp. 15 and 20.

If the OEB directs Enbridge to update its evidence, we also request an opportunity for brief supplementary interrogatories to better understand exactly what has changed, and why. For instance, it is unclear why Enbridge now thinks it is necessary to spend what appears to be roughly \$200 million on new projects over 2023 and 2024 that were not deemed necessary when this application was originally filed in March. We only anticipate one or two supplementary interrogatories, which could be prepared on 48 hours notice.

Thank you for considering this matter and please let me know if any further information is required.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', with a stylized, cursive script.

Kent Elson

cc: Parties to the above proceeding

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## RE: Enbridge Gas Inc. - EB-2022-0200 - 2024 Rebasing - Capital Update

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David Stevens <dsteven@airdberlis.com>

Tue, Jun 20, 2023 at 9:38 AM

To: Kent Elson <kent@elsonadvocacy.ca>

Cc: "Dennis M. O'Leary" <doleary@airdberlis.com>, Angela Monforton <angela.monforton@enbridge.com>, "david.butters@appro.org" <david.butters@appro.org>, "cboyle@blg.com" <cboyle@blg.com>, "margaret.koontz@aturapower.com" <margaret.koontz@aturapower.com>, "aengel@foglers.com" <aengel@foglers.com>, "ijarvis@enerlife.com" <ijarvis@enerlife.com>, "gillian.henderson@enerlife.com" <gillian.henderson@enerlife.com>, "mrutledge@foglers.com" <mrutledge@foglers.com>, "mrb@mrb-law.com" <mrb@mrb-law.com>, "jgreen@biogasassociation.ca" <jgreen@biogasassociation.ca>, "vincent.caron@cme-mec.ca" <vincent.caron@cme-mec.ca>, "eblanchard@blg.com" <eblanchard@blg.com>, "spollock@blg.com" <spollock@blg.com>, "jaya.chatterjee@kitchener.ca" <jaya.chatterjee@kitchener.ca>, "Khaled.abu-eseifan@kitchener.ca" <Khaled.abu-eseifan@kitchener.ca>, "vincent@rngcoalition.com" <vincent@rngcoalition.com>, "jgirvan@uniserve.com" <jgirvan@uniserve.com>, "legal@enercare.ca" <legal@enercare.ca>, "tom.ladanyi@rogers.com" <tom.ladanyi@rogers.com>, "spainc@rogers.com" <spainc@rogers.com>, "amanda@elsonadvocacy.ca" <amanda@elsonadvocacy.ca>, "jack@cleanairalliance.org" <jack@cleanairalliance.org>, "drquinn@rogers.com" <drquinn@rogers.com>, "kkempton@oktlaw.com" <kkempton@oktlaw.com>, "lisa@resilientllp.com" <lisa@resilientllp.com>, "dpoch@eelaw.ca" <dpoch@eelaw.ca>, "kai@millyard.ca" <kai@millyard.ca>, "cneme@energyfuturesgroup.com" <cneme@energyfuturesgroup.com>, "RegulatoryAffairs@ieso.ca" <RegulatoryAffairs@ieso.ca>, "info@marshallgarnick.com" <info@marshallgarnick.com>, "bettyboop07@execulink.com" <bettyboop07@execulink.com>, "Farhan.shah8910@gmail.com" <Farhan.shah8910@gmail.com>, "hlpcas2@gmail.com" <hlpcas2@gmail.com>, "ian.mondrow@gowlingwlg.com" <ian.mondrow@gowlingwlg.com>, "srahbar@igua.ca" <srahbar@igua.ca>, "claire.burum1@kochind.com" <claire.burum1@kochind.com>, "john.wingate@kochps.com" <john.wingate@kochps.com>, "troy.brown@kochind.com" <troy.brown@kochind.com>, "randy.aiken@sympatico.ca" <randy.aiken@sympatico.ca>, Ian Richler <ian.richler@oeb.ca>, "slewis@lagasco.ca" <slewis@lagasco.ca>, Khalil Viraney <khalil.viraney@oeb.ca>, "pbudd.bei@rogers.com" <pbudd.bei@rogers.com>, "valerie.young@askjupiter.ca" <valerie.young@askjupiter.ca>, "scott.walker@askjupiter.ca" <scott.walker@askjupiter.ca>, "a.coristine@ogvg.com" <a.coristine@ogvg.com>, "ottercreek@bellnet.ca" <ottercreek@bellnet.ca>, "michael.brophy@rogers.com" <michael.brophy@rogers.com>, "chandyd@electrocables.com" <chandyd@electrocables.com>, "mdmcl@kos.net" <mdmcl@kos.net>, "SEC@oesc-cseo.org" <SEC@oesc-cseo.org>, "mark@shepherdruenstein.com" <mark@shepherdruenstein.com>, "jay@shepherdruenstein.com" <jay@shepherdruenstein.com>, "jane\_scott@rogers.com" <jane\_scott@rogers.com>, "tracy@sixnatgas.com" <tracy@sixnatgas.com>, "wainewright@sympatico.ca" <wainewright@sympatico.ca>, "philip.lee@threefiresgroup.com" <philip.lee@threefiresgroup.com>, "ChiefMaryDuckworth@caldwellfirstnation.ca" <ChiefMaryDuckworth@caldwellfirstnation.ca>, "don.richardson@threefiresgroup.com" <don.richardson@threefiresgroup.com>, "soongikiniw@gmail.com" <soongikiniw@gmail.com>, "jonathan@resilientllp.com" <jonathan@resilientllp.com>, "nicholas@resilientllp.com" <nicholas@resilientllp.com>, "namrita\_sohi@tcenergy.com" <namrita\_sohi@tcenergy.com>, "kevin\_musial@tcenergy.com" <kevin\_musial@tcenergy.com>, "Rob.Roca@unifor.org" <Rob.Roca@unifor.org>, "jlawford@piac.ca" <jlawford@piac.ca>, "markgarner@rogers.com" <markgarner@rogers.com>, "registrar@oeb.ca" <registrar@oeb.ca>, "Goyal, Reena" <rgoyal@mccarthy.ca>, Vanessa Innis <Vanessa.Innis@enbridge.com>, Joel Denomy <Joel.Denomy@enbridge.com>, Robin Stevenson <Robin.Stevenson@enbridge.com>, Laura Sheehan <Laura.Sheehan@enbridge.com>, Julie Rader <Julie.Rader@enbridge.com>, Elena Chang <Elena.Chang@enbridge.com>, Robert Rutitis <Robert.Rutitis@enbridge.com>, Michael Millar <Michael.Millar@oeb.ca>, Mark Kitchen <Mark.Kitchen@enbridge.com>

Hello Kent.

Enbridge Gas is not planning to provide further updates to evidence and interrogatories and undertakings. Enbridge Gas aimed to provide sufficient detail in the Exhibit 2, Tab 5, Schedule 4 Capital Update to make it a stand-alone presentation. It includes updates to the directly impacted schedules. In large part, the changes set out in the Capital Update involve reallocation and reprioritization of capital spending, rather than major changes to overall levels. The time associated with updating all the already-filed evidence (which would involve updating more than 65 schedules and some narrative evidence) would be substantial, not including the time required to update impacted interrogatory and undertaking responses. Considering how close we are to the hearing, Enbridge Gas does not believe that there is sufficient time to complete that work and provide it meaningfully in advance of the hearing start date. Of course, the Enbridge Gas witnesses will be available and prepared to answer follow-up questions about the Capital Update at the hearing.

Dave

**David Stevens**  
**Aird & Berlis LLP**

**T 416.865.7783**  
**E [dstevens@airdberlis.com](mailto:dstevens@airdberlis.com)**

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**From:** Kent Elson <[kent@elsonadvocacy.ca](mailto:kent@elsonadvocacy.ca)>  
**Sent:** Monday, June 19, 2023 2:14 PM  
**To:** David Stevens <[dstevens@airdberlis.com](mailto:dstevens@airdberlis.com)>  
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**Subject:** Re: Enbridge Gas Inc. - EB-2022-0200 - 2024 Rebasing - Capital Update

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Good Afternoon David,

There have been some discussions among intervenors regarding the capital update and I have been asked to follow up with you to confirm when Enbridge will be filing updates to its evidence to reflect the new information in and underlying the capital update, including updates to the interrogatory responses and undertaking responses. Could you please let us know?

Thanks,

Kent

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Kent Elson, LL.B.

Elson Advocacy

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On Fri, Jun 16, 2023 at 4:40 PM Angela Monforton <[angela.monforton@enbridge.com](mailto:angela.monforton@enbridge.com)> wrote:

Good Afternoon,

As noted during the Technical Conference, Enbridge Gas committed to providing a capital update in advance of the hearing. The updated evidence reflects Enbridge Gas's changes to its capital budget for 2023 and 2024. This update has been filed with the OEB and will appear on Union's [webpage](#) shortly.

Please see the attached cover letter for additional details of the submission.

Thank you,

**Angela Monforton**

Coordinator IV Regulatory

**Regulatory Affairs**

**ENBRIDGE**

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