



**BY EMAIL and RESS**

**Mark Rubenstein**  
mark@shepherd rubenstein.com  
Dir. 647-483-0113

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

June 20, 2023  
Our File: EB20220200

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2022-0200 – Enbridge Gas Inc. 2024-28 Phase 1 – Capital Update**

We are counsel to the School Energy Coalition ("SEC"). On Friday, June 17th, Enbridge Gas Inc. ("Enbridge") filed what it has called a 'Capital Update', which provides, among other things, an updated capital budget for 2023 and 2024, and the impact on the proposed rate base and revenue requirement.

Enbridge filed the evidence update as a new schedule to Exhibit 2, but did not make corrections or updates to the existing record, including pre-filed evidence, interrogatories, and Technical Conference undertaking responses. Based on SEC's preliminary review of its own interrogatories and undertakings responses, a significant portion is now out of date and includes inaccurate information as it relates to 2023 and 2024.<sup>1</sup> Enbridge has informed intervenors that it does not plan to update any other aspect of the evidentiary record.<sup>2</sup> This is in contrast to other evidence updates during this proceeding, where the company updated the full evidentiary record, where applicable.

SEC, and likely other intervenors, are in an untenable position with the hearing less than three weeks away. Much of the evidentiary record related to capital, which parties helped amass over the preceding 6 months, is now of limited use. Parties now have incomplete and inaccurate information to assess the application and cross-examine the company. This is procedurally unfair.

Moreover, we note that even basic information was not included in Enbridge's 'Capital Update.' No information has been provided on the changes on an in-service additions basis (as opposed to capital expenditures). Revised capital expenditures have not been broken down by OEB categories, and there

---

<sup>1</sup> Out of date/inaccurate and cannot be corrected by information in the 'Capital Update': 2.5-SEC-108, 2.5-SEC-109, 2.6-SEC-112, 2.6-SEC-113, 2.6-SEC-114(a,b), 2.6-SEC-116, 2.6-SEC-128, 2.6-SEC-129(b), 2.6-SEC-131(b), 2.6-SEC-133(b), 2.6-SEC-136(b), 2.6-SEC-137, 2.6-SEC-138, 2.6-SEC-140, JT4.24, 2.6-SEC-141, JT5.14, 2.6-SEC-141. Possibly requiring updating: 2.6-SEC-117, 2.6-SEC-118, 2.6-SEC-140.

<sup>2</sup> Email from David Stevens (Enbridge counsel) to Kent Elson (Environmental Defense counsel) (See Appendix to this letter)

has been very limited information related to specific capital projects that have been moved forward, and their updated costs.

Enbridge has told intervenors that "[i]n large part, the changes set out in the 'Capital Update' involve reallocation and reprioritization of capital spending, rather than major changes to overall levels."<sup>3</sup> This may be correct but misleading, as the appropriateness of that overall amount is not simply a function of the total spending amount but also the underlying capital work. To put the changes in perspective, while Enbridge's forecasted 2024 capital expenditures have decreased by \$21M, \$79M of previous spending has been moved to 2024, \$123.9M of new spending has been added, \$368.3M of work has been cancelled or deferred, and \$144.3M of 'Other' increases (net of the removal of \$194.4 related to the Panhandle Regional Expansion Project).<sup>4</sup> These are significant changes to projects that underlie the overall 2024 capital expenditure forecast and are of a magnitude greater than what would reasonably be expected over time.

The genesis of the 'Capital Update' appears to be a discussion between SEC counsel and Enbridge at the Technical Conference. SEC counsel had pointed out that, based on the evidence at that time, it appeared Enbridge knew that a significant portion of its capital work would not be completed, as set out in its pre-filed evidence.<sup>5</sup> At that time, Enbridge refused to make changes to its capital budget.<sup>6</sup> According to its response to Undertaking JT5.02, \$276.9M of the then-forecasted 2023 capital expenditures would be deferred or delayed.<sup>7</sup> It is unfair to wait until right before the hearing to bring forward new projects or cost variances. These issues were known to the company months ago. Enbridge cannot simply wait until just before the hearing to make a selective update to the evidence and claim there is inadequate time to do the rest of the work.

SEC emphasizes that it does not wish to delay the hearing, but Enbridge's approach is unreasonable. We ask that the OEB order the company to update the evidentiary record, particularly the interrogatory and Technical Conference undertaking responses, as they relate to 2023 and 2024 information, as soon as possible, to ensure a fair hearing.

Yours very truly,  
**Shepherd Rubenstein P.C.**

Mark Rubenstein

cc: Brian McKay, SEC (by email)  
Applicant and intervenors (by email)

---

<sup>3</sup> *Ibid.*

<sup>4</sup> Exhibit 2-5-4, p.20

<sup>5</sup> Technical Conference Transcript, Day 5, p.9-10, SEC has referenced earlier that about \$80M in 2024 LTC projects had been deferred or cancelled (See discussion Day 4, p.212-215 referencing response 2.6-SEC-117)

<sup>6</sup> Technical Conference Transcript, Day 4, p.215

<sup>7</sup> Undertaking JT 5.02

## Mark Rubenstein

---

**From:** David Stevens <dstevens@airdberlis.com>  
**Sent:** Tuesday, June 20, 2023 9:38 AM  
**To:** Kent Elson  
**Cc:** Dennis M. O'Leary; Angela Monforton; david.butters@appro.org; cboyle@blg.com; margaret.koontz@aturapower.com; aengel@foglers.com; ijarvis@enerlife.com; gillian.henderson@enerlife.com; mrutledge@foglers.com; mrb@mrblaw.com; jgreen@biogasassociation.ca; vincent.caron@cme-mec.ca; eblanchard@blg.com; spollock@blg.com; jaya.chatterjee@kitchener.ca; Khaled.abu-eseifan@kitchener.ca; vincent@rngcoalition.com; jgirvan@uniserve.com; legal@enercare.ca; tom.ladanyi@rogers.com; spainc@rogers.com; amanda@elsonadvocacy.ca; jack@cleanairalliance.org; drquinn@rogers.com; kkempton@oktlaw.com; lisa@resilientllp.com; dpoch@eelaw.ca; kai@millyard.ca; cneme@energyfuturesgroup.com; RegulatoryAffairs@ieso.ca; info@marshallgarnick.com; bettyboop07@execulink.com; Farhan.shah8910@gmail.com; hlpca52@gmail.com; ian.mondrow@gowlingwlg.com; srahbar@igua.ca; claire.burum1@kochind.com; john.wingate@kochps.com; troy.brown@kochind.com; randy.aiken@sympatico.ca; Ian Richler; slewis@lagasco.ca; Khalil Viraney; pbudd.bei@rogers.com; valerie.young@askjupiter.ca; scott.walker@askjupiter.ca; a.cristine@ogvg.com; ottercreek@bellnet.ca; michael.brophy@rogers.com; chandyd@electrocables.com; mdmcl@kos.net; SEC@oesc-cseo.org; mark@shepherdubenstein.com; jay@shepherdubenstein.com; jane.scott@rogers.com; tracy@sixnatgas.com; wainwright@sympatico.ca; philip.lee@threefiresgroup.com; ChiefMaryDuckworth@caldwellfirstnation.ca; don.richardson@threefiresgroup.com; soongikiniw@gmail.com; jonathan@resilientllp.com; nicholas@resilientllp.com; namrita\_sohi@tcenergy.com; kevin\_musial@tcenergy.com; Rob.Roca@unifor.org; jlawford@piac.ca; markgarner@rogers.com; registrar@oeb.ca; Goyal, Reena; Vanessa Innis; Joel Denomy; Robin Stevenson; Laura Sheehan; Julie Rader; Elena Chang; Robert Rutitis; Michael Millar; Mark Kitchen; Vanessa Innis  
**Subject:** RE: Enbridge Gas Inc. - EB-2022-0200 - 2024 Rebasings - Capital Update

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

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error.  
If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

**From:** Kent Elson <kent@elsonadvocacy.ca>  
**Sent:** Monday, June 19, 2023 2:14 PM  
**To:** David Stevens <dstevens@airdberlis.com>  
**Cc:** Dennis M. O'Leary <doleary@airdberlis.com>; Angela Monforton <angela.monforton@enbridge.com>; david.butters@appro.org; cboyle@blg.com; margaret.koontz@aturapower.com; aengel@foglers.com; ijarvis@enerlife.com; gillian.henderson@enerlife.com; mrutledge@foglers.com; mrb@mrb-law.com; jgreen@biogasassociation.ca; vincent.caron@cme-mec.ca; eblanchard@blg.com; spollock@blg.com; jaya.chatterjee@kitchener.ca; Khaled.abu-eseifan@kitchener.ca; vincent@rngcoalition.com; jgirvan@uniserve.com; legal@enercare.ca; tom.ladanyi@rogers.com; spainc@rogers.com; amanda@elsonadvocacy.ca; jack@cleanairalliance.org; drquinn@rogers.com; kkempton@oktlaw.com; lisa@resilientllp.com; dpoch@eelaw.ca; kai@millyard.ca; cneme@energyfuturesgroup.com; RegulatoryAffairs@ieso.ca; info@marshallgarnick.com; bettyboop07@execulink.com; Farhan.shah8910@gmail.com; hlpca52@gmail.com; ian.mondrow@gowlingwlg.com; srahbar@igua.ca; claire.burum1@kochind.com; john.wingate@kochps.com; troy.brown@kochind.com; randy.aiken@sympatico.ca; Ian Richler <ian.richler@oeb.ca>; slewis@lagasco.ca; Khalil Viraney <khalil.viraney@oeb.ca>; pbudd.bei@rogers.com; valerie.young@askjupiter.ca; scott.walker@askjupiter.ca; a.coristine@ogvg.com; ottercreek@bellnet.ca; michael.brophy@rogers.com; chandyd@electrocables.com; mdmcl@kos.net; SEC@oesc-cseo.org; mark@shepherdhubenstein.com; jay@shepherdhubenstein.com; jane\_scott@rogers.com; tracy@sixnatgas.com; wainewright@sympatico.ca; philip.lee@threefiresgroup.com; ChiefMaryDuckworth@caldwellfirstnation.ca; don.richardson@threefiresgroup.com; soongikiniw@gmail.com; jonathan@resilientllp.com; nicholas@resilientllp.com; namrita\_sohi@tcenergy.com; kevin\_musial@tcenergy.com; Rob.Roca@unifor.org; jlawford@piac.ca; markgarner@rogers.com; 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>  
**Subject:** Re: Enbridge Gas Inc. - EB-2022-0200 - 2024 Rebasing - Capital Update

**CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.**

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

---

Kent Elson, LL.B.  
Elson Advocacy  
1062 College Street, Lower Suite  
Toronto, Ontario M6H 1A9

tel.: 416-906-7305

fax: 416-763-5435

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**

TEL: 519-436-4619 | [angela.monforton@enbridge.com](mailto:angela.monforton@enbridge.com)

50 Keil Drive North, Chatham, ON, N7M 5M1

[enbridge.com](http://enbridge.com)

**Safety. Integrity. Respect. Inclusion**