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**BY EMAIL**

July 5, 2023

Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
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Dear Ms. Marconi:

**Re: Enbridge Gas Inc. (Enbridge Gas)  
2024 Rebasing Application  
Ontario Energy Board (OEB) Staff Submission on Settlement Proposal  
OEB File Number: EB-2022-0200**

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In accordance with Procedural Order No. 6, please find attached OEB staff's submission on Enbridge Gas's settlement proposal for the above noted proceeding. This document has been sent to Enbridge Gas and to all other registered parties to this proceeding.

Yours truly,

Khalil Viraney  
Case Manager EB-2022-0200

Encl.

cc: All parties to EB-2022-0200



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission on Settlement Proposal**

**Enbridge Gas Inc.**

**2024 Rebasing Application**

**EB-2022-0200**

**July 5, 2023**

## Introduction

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) under section 36 of the *Ontario Energy Board Act, 1998* (OEB Act) seeking approval for changes to the rates that it charges for natural gas distribution, transportation and storage, beginning January 1, 2024. Enbridge Gas has also applied for approval of an incentive rate-making mechanism for the years 2025 to 2028.

A settlement conference was held from May 29, 2023 to June 9, 2023 with respect to the Phase 1 issues in the proceeding. Enbridge Gas and 23 intervenors participated in the settlement conference (collectively, the Parties).<sup>1</sup>

Enbridge Gas filed a settlement proposal with the OEB on June 28, 2023. The Parties reached complete agreement on the following Phase 1 issues:

Category	Issue Numbers <sup>2</sup>
Overall	4
Volumes & Revenues	9-11
Operating Costs	19
Cost Allocation	24*
Rate Design	25-28*, 30
Deferral & Variance Accounts	31
Other	35-36, 39*

\* The Parties agreed that issue 24 (cost allocation) and some / all of issues 25-28 (rate design) and issue 39 (storage space/deliverability methodology) should be deferred to a subsequent phase of the proceeding.

The Parties also reached agreement on parts of the following Phase 1 issues:

Category	Issue Numbers
Rate Base	6
Operating Costs	12-14, 17-18
Cost of Capital	21
Rate Design	29
Deferral & Variance Accounts	32-33

The settlement proposal states that no party objected to the issues that are identified as settled.

<sup>1</sup> The full list of intervenors that participated in the settlement conference can be found in the [Settlement Proposal](#), June 28, 2023, pp. 5-6.

<sup>2</sup> The issue numbers correspond with the approved Issues List set out in the OEB's [Decision on Issues List & Expert Evidence and Procedural Order No. 2](#), January 27, 2023.

OEB staff notes that the settlement proposal reflects a partial settlement of the Phase 1 issues in the proceeding. If the OEB accepts the settlement proposal, a number of Phase 1 issues would proceed to oral hearing or directly to written argument.<sup>3</sup>

## **OEB Staff Submission on the Settlement Proposal**

In the preamble to the settlement proposal, the Parties stated that “none of the provisions of this Settlement Proposal are severable. If the OEB does not accept the provisions of the Settlement Proposal in their entirety, there is no Settlement Proposal (unless the Parties agree that any portion of the Settlement Proposal that the OEB does accept may continue as a valid Settlement Proposal).”<sup>4</sup> In OEB staff’s view, treating the settlement proposal as a package is the appropriate approach. The Parties have resolved a number of Phase 1 issues (fully or in part). The parties have also agreed to changes to the process that will allow for the timely setting of 2024 rates on an interim basis while ensuring that other matters are fully addressed in Phase 2 and a proposed new Phase 3 of the proceeding.

OEB staff submits that the Parties have provided sufficient explanation in the settlement proposal for why the agreed upon resolution is appropriate, including by citing the applicable sections of the evidence.

OEB staff also notes that, as is typical for a large rate proceeding like this one, a number of stakeholders participated, representing a broad range of perspectives. In total, Enbridge Gas and 23 intervenors participated in the settlement conference. Many of the most experienced practitioners before the OEB were in the virtual settlement room.

For those reasons, in this submission, OEB staff will examine the settlement proposal as a whole, rather than commenting on every aspect on an issue by issue basis.

OEB staff submits that the settlement proposal, if approved, would result in: (i) a significant reduction to the revenue deficiency resulting from Enbridge Gas’s application; and (ii) reasonable adjustments to the phasing of the current proceeding.

OEB staff notes that the financial outcome of the settlement proposal is an approximate \$90 million reduction to the revenue deficiency resulting from Enbridge Gas’s

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<sup>3</sup> In [Procedural Order No. 6](#), dated June 23, 2023, the OEB set out the issues that would proceed directly to written argument.

<sup>4</sup> [Settlement Proposal](#), June 28, 2023, p. 8.

application (see table below). This represents an approximate 30% reduction to the total revenue deficiency of \$298.3 million as set out in Enbridge Gas's June 16, 2023 Capital Update.<sup>5</sup>

	Item	Revenue Deficiency Impact (\$ millions)
1.	Adjustments to 2024 Opening Rate Base (WAMS and GTA Project)	(6)
2.	Adjustment to customer additions	(5)
3.	UFG base volume adjustment	(6)
4.	Net Operations & Maintenance budget reduction	(50)
5.	Removal of Dawn to Corunna Project from Opening Rate Base <sup>6</sup>	(23)
6.	<b>Total decrease resulting from settlement proposals<sup>7</sup></b>	<b>(90)</b>

The largest component of the reduction to the revenue deficiency is the approximate \$50 million reduction to the O&M budget, net of overhead capitalization and exclusive of DSM costs previously approved by the OEB<sup>8</sup> (net O&M budget). OEB staff notes that this reflects an approximate 6% reduction to the net O&M budget.<sup>9</sup> OEB staff submits that this is a reasonable reduction based on the evidence.

OEB staff notes that applying Enbridge Gas's proposed overhead capitalization methodology to the agreed-to adjustment to the net O&M budget results in a gross O&M budget of \$1,113 million, exclusive of DSM-related amounts, which represents a reduction in the gross O&M budget of \$68 million (approximately 6%). Therefore, capitalized overhead is reduced by \$18 million. However, as the capitalized overhead amount and methodology are not settled, the Parties have agreed that if a different capitalized overhead amount is eventually approved, the Parties are free to argue how any resulting adjustment should be applied to the overall O&M budget envelope to account for the reduced, or increased, portion of gross O&M being recovered as capitalized overhead.

<sup>5</sup> The \$298.3 million revenue deficiency figure reflects the revenue deficiency before the removal of the Dawn to Corunna Project and includes the levelized Panhandle Regional Expansion Project impact.

<sup>6</sup> As set out in the settlement proposal, the revenue deficiency implications of the Dawn to Corunna Project will be addressed in Phase 2 and will become part of the final revenue requirement and rates for 2024.

<sup>7</sup> As set out in the settlement proposal, the revenue deficiency impact figure excludes gas supply costs that will continue to be recovered in the gas supply deferral and variance accounts with no base rate adjustments in Phase 1. Updates to the gas supply costs in rates will be addressed in Phases 2 and 3.

<sup>8</sup> EB-2022-0002.

<sup>9</sup> [Settlement Proposal](#), June 28, 2023, p. 30. The settlement proposal notes that the 2024 as-filed net O&M budget will be reduced by \$50 million to \$821 million.

OEB staff also submits that the Parties have agreed on a plan that appropriately rationalizes the remaining process to ensure that related issues are heard together in subsequent phases of the proceeding (e.g., appropriate allocation of the cost of the Dawn to Corunna Project to the unregulated business and load balancing issues with other storage-related matters in Phase 2, etc.) and allows Enbridge Gas the time needed to prepare additional cost allocation and rate design evidence that is important for the OEB to make fully informed findings on Enbridge Gas's rate harmonization proposals (proposed Phase 3).

OEB staff notes that, as a result of the settlement to address Enbridge Gas's rate harmonization proposals in a proposed Phase 3, the settlement proposal states that Enbridge Gas will maintain current rate zones and classes and proportionally apply the impact of any revenue deficiency/sufficiency determined in the current proceeding to the 2023 approved rates in place for each rate zone and class.<sup>10</sup> OEB staff notes that this is a unique approach to establishing rates in a rebasing year. However, OEB staff submits that this approach is appropriate in the current circumstances as it will allow for the timely setting of interim 2024 rates and a comprehensive review of the cost allocation, rate design and rate harmonization proposals at a later stage of the proceeding.

OEB staff's understanding of the settlement proposal with respect to the setting of 2024 rates is that after the OEB issues its decision on the Phase 1 issues, rates would be set on an interim basis as there are outstanding issues that impact the 2024 revenue requirement to be addressed in Phase 2. After the OEB renders its determinations on the Phase 2 issues, 2024 rates would be set on a final basis. For 2025 rates, if the OEB has not rendered its determinations on the Phase 3 harmonization-related issues in time for implementation on January 1, 2025, the final 2024 rates (inclusive of any adjustments to the interim rates resulting from the Phase 2 decision), will be adjusted by the approved rate adjustment mechanism approved in Phase 2 to set final 2025 rates. The Phase 3 issues with respect to rate zone and class harmonization, including the common reference price methodology<sup>11</sup>, will be implemented on a go-forward basis

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<sup>10</sup> [Settlement Proposal](#), June 28, 2023, p. 13. OEB staff notes that uniform residential DSM unit rates will be implemented in conjunction with the 2024 interim rates, consistent with the OEB's previous determination that uniform residential DSM rates be implemented "as soon as practical" (EB-2021-0002 Decision and Order, November 15, 2022, p.32).

<sup>11</sup> [Settlement Proposal](#), June 28, 2023, p. 35. Parties agreed that until the common reference price methodology is established in Phase 3, Enbridge Gas will use its current approved reference price methodologies, with the exception of in the calculation for unaccounted for gas, compressor fuel, own use gas and gas in inventory. The settlement proposal noted that as these categories of costs are common amongst rate zones, Enbridge Gas will use its proposed harmonized weighted average reference price to calculate these costs.

whether that be for 2025 rates (if implementable based on the timing of the Phase 3 decision) or for a future year's rates.

The Parties have also appropriately addressed the OEB's direction in its May 23, 2023 and May 26, 2023 letters asking the Parties to describe how the settlement proposal addresses the allocation and mitigation of risk resulting from the energy transition. In response to this request, the Parties stated that the issues resolved in the settlement proposal are not the primary issues that directly relate to material energy transition or Integrated Resource Planning (IRP) issues in this proceeding. The Parties noted that the approval of the settlement proposal would assist in setting rates for 2024 but would not restrict the ability of the Parties to address the items that relate to the energy transition or IRP.

Finally, OEB staff provides below a few comments regarding the settlement of issue 4 with respect to the appropriate consideration of the unique rights and concerns of Indigenous customers and rights holders in the application.<sup>12</sup> OEB staff has no concerns with the proposed establishment of the Indigenous Working Group (IWG), the capacity funding estimated for 2024 nor the IWG deferral account to capture the capacity funding and other related costs. OEB staff does emphasize that it supports the capacity funding mechanism in the context of this particular application and settlement proposal; this submission should not be construed as expressing support for any approach to funding beyond this term or for other regulated entities. OEB staff also has no concerns with the proposed annual filing of the IWG Report as part of Enbridge Gas's annual Deferral and Variance Account (DVA) Disposition proceeding. However, OEB staff submits that the IWG report should be filed for information purposes only and that no OEB approvals or findings are expected to be made directly with respect to the IWG Report in the DVA Disposition proceeding.

The settlement proposal provides for a dispute resolution mechanism in respect of issue 4, in cases where one party to the settlement alleges that there has been a breach of the settlement agreement.<sup>13</sup> If the dispute cannot be resolved amongst the parties, a party may ultimately refer the dispute to the OEB "for binding resolution." It is not clear to OEB staff what types of disputes parties believe should be referred to the OEB, and what powers the OEB would have to resolve any such disputes. The exact nature of an OEB process related to dispute resolution is not set out; however it appears to contemplate (at least in some cases) an OEB hearing, as it allows any party to the settlement agreement to apply for "intervention status" with respect to the dispute.

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<sup>12</sup> [Settlement Proposal](#), June 28, 2023, pp. 16-23.

<sup>13</sup> [Settlement Proposal](#), June 28, 2023, p. 22.

The settlement for issue 4 involves the creation of a working group that will meet regularly to discuss a number of Indigenous and energy related matters. Some of these topics are set out in the settlement agreement, but working group discussions are not limited to these topics. The settlement of issue 4 also involves the filing of an IWG Report annually. That report will include the minutes of working group meetings, and summarize activities and planned initiatives of the working group. It does not appear that the working group members have to “agree” to anything in the IWG Report – the report simply summarizes discussions at meetings and any initiatives that arise in relation to the working group.

OEB staff invites the parties to provide more details regarding the dispute resolution process, in particular: what types of disputes can be brought to the OEB, who at the OEB should hear the dispute, what process should be used to hear any disputes, and a description of what powers the OEB would have to settle disputes arising out of the settlement of issue 4 (which may turn on the type of dispute that arises). The OEB already has a complaints process and an enforcement regime for cases where there are breaches to enforceable provisions (including OEB orders under the OEB Act), and it is not clear what the dispute resolution process described in the settlement agreement is intended to add to this, or indeed what jurisdiction the OEB would have to address disputes that cannot already be addressed through existing processes. The OEB should be reluctant to approve a portion of a settlement that creates a new OEB process unless the OEB clearly understands the purpose and scope of that process. The OEB panel may wish to ask its own questions on this settled issue, possibly at the beginning of the oral hearing.

Overall, OEB staff submits that the settlement proposal represents a good outcome for ratepayers. The settlement proposal is consistent with the OEB’s mandate to set just and reasonable rates and with the OEB’s statutory objectives under section 2 of the OEB Act, including, the protection of consumers with respect to prices and reliability and quality of gas service.

In closing, OEB staff commends the Parties for their diligence in developing a settlement proposal that OEB staff believes is in the public interest. OEB staff submits that the OEB should approve the settlement proposal as filed, subject to the clarifications sought above.

~All of which is respectfully submitted~