

July 7, 2023

BY EMAIL

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc. ("Enbridge Gas")
EB-2022-0200 – 2024 Rebasing**

We are writing in response to OEB Staff's submissions dated July 5, 2023 in respect of the Partial Settlement Proposal ("**Settlement Proposal**") dated June 28th, 2023. We are writing on behalf of Enbridge Gas, Ginoogaming First Nation and Three Fires Group (collectively the "**Settlement Parties**") in response to OEB Staff's comments in respect of Issue #4.

We are pleased that OEB Staff are supportive of the Settlement Proposal in respect of this issue. OEB Staff specifically state that they have:

*... no concerns with the proposed establishment of the creation 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;...*¹

OEB Staff raised several points and asked for clarifications in respect of the dispute resolution process ("**DRP**") that is contemplated in the settlement proposal at Issue #4. We deal with these separately below.

First, while OEB Staff also stated that they have 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, OEB Staff submitted 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.²

The Settlement Parties hereby confirm that they do not anticipate seeking OEB approvals or findings arising from the IWG Report filing as part of the annual DVA application (other than the IWG Report being used to support the request for clearance of the amounts recorded in the IWG Deferral account).

¹ OEB Staff Submission on Settlement Proposal, July 5, 2023, p. 5.

² *Ibid*

Second, OEB Staff state:

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. 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.

The Settlement Parties note that the DRP provided for at Issue #4 begins with serving a “Dispute Notice” on the members of the IWG and all parties to this proceeding. This is then followed by a 30 day “Cure Period”. It is the fervent expectation of the Settlement Parties that any dispute will be resolved at this stage.

If, however, the dispute is not resolved within the Cure Period, then under the wording of the Settlement Proposal, “any such Settlement Party may refer the dispute to the OEB (including, without limitation, by invoking the OEB’s complaint process) for binding resolution. All parties to the original application EB-2022-0200 shall be eligible to apply to the OEB for intervention status with respect to the dispute”.

OEB Staff correctly note at page 6 of their submission that members of the IWG do not need to agree on anything in the IWG Report. The purpose of the IWG is to provide information and receive feedback and engage in discussion about matters of interest to the IWG in relation to Enbridge Gas rates and services³. In the event that a consensus is reached on a particular matter which requires OEB approval, an application will be made in a future appropriate proceeding. Where the IWG cannot reach a consensus on a particular matter, for example on one of the topics identified in the Settlement Proposal, while this disagreement may be documented in the IWG Report, the DRP cannot be used to resolve the disagreement. The DRP is not intended to allow a Settlement Party the ability to bring forward to the OEB for adjudication and determination substantive issues discussed by the IWG for which no consensus is reached.

OEB Staff requested more detail about the nature of the disputes that might be the subject of the DRP. At a high level, the types of disputes which might be referred are what can be described as structural or logistical in nature. Disputes might include a complaint about IWG meetings being held less frequently than required; issues about the sufficiency of representation or the over-representation of parties at meetings; the failure to draft and file minutes as required; and/or a failure of a party(s) to meaningfully participate by not engaging in good faith about a topic or by not having qualified people in attendance when appropriate. The most likely dispute we believe might relate to requests for capacity funding which the parties may disagree on with respect to its reasonableness.

As most disputes will likely be of the types identified above, it is anticipated that the disputes, if not resolved during the cure period, would be directed to the OEB’s Compliance and Enforcement Process in the first instance by way of a Dispute Notice that would be copied to all parties to the

³ Settlement Proposal, p. 17

IWG and the parties to the original application (EB-2022-0200). It is anticipated that the Compliance Office would attempt to informally mediate and attempt to reach a resolution as is common with many complaints that are directed to it. In the event that this fails, the Settlement Parties propose that the Compliance Office would refer the matter to the OEB for resolution and other parties to the original application (EB-2022-0200) would be eligible to intervene in such a process. In this manner, either the Compliance Office or the OEB would render its views on the appropriate outcome based on submissions provided by interested parties. The Settlement Parties have agreed that this determination would be final.

Given that the IWG may include Indigenous communities that did not participate in the settlement conference and that may not necessarily be familiar with the OEB and its complaints and compliance and enforcement processes, the Settlement Parties believe it is appropriate to provide in the Settlement Proposal regarding Issue #4 for a dispute being referred to the OEB directly should the dispute be sufficiently material to warrant referral. It is anticipated that as the Indigenous community participants become more familiar with the process and comfortable with the IWG, the likelihood of any disputes being referred to the OEB will diminish. It is certainly not the intended purpose of the DRP that minor, immaterial matters be referred to the OEB for determination by a panel. However, in the unlikely event that a disputed matter of some materiality arises, the Settlement Parties have provided for the matter to be directed to the OEB for determination. Whether the OEB in fact has jurisdiction over a particular issue would remain live but it is not possible at this stage to generate a comprehensive list of all possible matters that fall within its jurisdiction.

We trust this satisfactorily responds to the questions raised by OEB Staff.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary
DMO/vf

cc: All parties registered in EB-2022-0200

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