ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B, and in particular, sections 90 (1) and 97 thereof;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders granting leave to construct natural gas pipelines in the Municipality of Chatham-Kent and Essex County;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order or Orders approving the proposed forms of pipeline easement and temporary land use agreements.

ATURA POWER

WRITTEN SUBMISSIONS

EB-2022-0157

December 14, 2023

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I. INTRODUCTION

A. Atura's Interest in the Enbridge Application

1. Atura Power ("**Atura**") is a wholly-owned subsidiary of Ontario Power Generation. It owns and operates four combined-cycle, gas-fired power plants in Ontario, including the Brighton Beach Generating Station ("**Brighton Beach**") in Windsor. Brighton Beach, constructed in 2004, has a nominal capacity of 570 megawatts ("**MW**") which is contracted to the Independent Electricity System Operator ("**IESO**") pursuant to a Early Mover Clean Energy Supply Contract with Shell Energy. This agreement expires on July 15, 2024 but, pursuant to an April 27, 2023 Ministerial Directive, the IESO entered into a new, 10-year Clean Energy Supply Contract with Atura Power, commencing July 16, 2024 (the "**CES Contract**").[1] The new contract also provides for a 42.5MW efficiency upgrade which will increase the total capacity of Brighton Beach, improve overall efficiency and reduce fuel consumption per megawatt-hours generated.

2. The Brighton Beach plant receives natural gas via a 3.1 kilometre Enbridge Gas Inc.("**Enbridge**") distribution pipeline that connects the plant to Enbridge's existing Panhandle Transmission System. Atura is one of the expansion shippers who underpin Enbridge's application for leave to construct (the "**Application**") the Panhandle Regional Expansion Project (the "**Panhandle Expansion Project**" or the "**Project**").

B. Atura's Position on the Application

3. Atura supports Enbridge's Application and requests that the Ontario Energy Board ("**OEB**" or "**Board")** approve it, as filed. Leaving aside its interest as an underpinning shipper, there are three overarching reasons why Atura takes this position. Atura has coordinated its participation in the Application with the Association of Power Producers of Ontario ("**APPrO**") in an effort to streamline its intervention, avoid duplication and facilitate the efficiency in the hearing process. In this context, Atura has reviewed the APPrO submissions in respect of the Application, and supports them without reservation.

4. First, there is a clear and compelling need for the Project. The Project is required to meet forecasted existing and new firm customer demand, commencing November 1, 2024. Without the Project, demand on the Panhandle Transmission System will exceed capacity by 66 terajoules per day ("**TJ/d**"), beginning in Winter 2024/2025, increasing to 156 TJ/d by Winter 2028/2029.[2]

5. Second, the record of this proceeding demonstrates that the Panhandle Expansion Project is economically feasible. It passes the three-stage feasibility test for expansions of a transmission system, based on combined stage 1 and stage 2 costs and benefits. The quantified stage 3 benefits are substantial and further improve the net present value ("**NPV**") and Profitability Index of the Project. The Board, in two relatively recent decisions involving the Panhandle transmission system, approved system expansions that had negative NPVs at stage 1 but positive benefits at stage 2.[3]

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[1] Directive – Order in Council 586/2023 from the Minister of Energy to the Independent Electricity System Operator.

[2] EB-2022-0157, Enbridge Gas Inc., Argument-in-Chief, p.2; Exhibit A-3-1, p.1 at para 6.

[3] Union Gas Panhandle Reinforcement Project: EB-2016-0186, and Union Gas Kingsville Transmission Reinforcement Project: EB-2018-0013.

6. Third, the unquantified public interest benefits of the Project (not accounted for in stage 3) are significant and cannot be ignored. The Project will contribute to decarbonization and energy transition goals in Ontario, by enabling increased electrification. It will also support the integration of renewable energy generation. Finally, the Project will enable Brighton Beach and other power generators in the region to provide critical electricity system reliability benefits in the Windsor-Essex region. Conversely, there would be a very significant adverse effect on the public interest if the Application were not approved or if a contribution-in-aid-of-construction or "**CIAC**" requirement for expansion shippers were imposed, as some intervenors are proposing.

II. PROJECT NEED

A. Demand for Incremental Capacity

7. The Panhandle Expansion Project is required to continue to reliably serve the requirements of all customers who are supplied by distribution systems and laterals that are connected to the Panhandle Transmission System. In response to an Expression of Interest ("**EOI**") process launched in February, 2023, Enbridge received a total of 42 bids from 39 entities. Of the 42 EOI bids, 38 were from the greenhouse sector, two from the power sector and two from the commercial sector.[4] This response reflects the explosion of economic development in the Windsor, Essex and Chatham Kent region and, in particular, in the greenhouse and power sectors.

8. As for the greenhouse sector, the region currently accounts for approximately 80 percent of Ontario's vegetable greenhouse acreage; planned expansions are expected to result in a doubling of this sector's contribution to gross domestic product, with farmgate sales, alone, exceeding two billion dollars/year by the end of the decade.[5] Without new natural gas pipeline capacity, this growth in the greenhouse sector will simply not occur. Non-retail, large scale greenhouses cannot viably operate without a reliable supply of natural gas, which used to heat greenhouses and supply the carbon dioxide required to grow plants. At this time and for the foreseeable future, there is no acceptable alternative to natural gas.[6] On this issue, Atura adopts and relies upon Enbridge's critique, in its Argument-in-Chief, of the evidence of the witness for Environmental Defence and agrees with Enbridge that her evidence should be given no weight.

9. As for the power sector, Ontario's electricity demand is projected to increase at an average rate of two percent over the next 20 years, driven by decarbonization and emerging electrification initiatives, as well as economic development in the agricultural and manufacturing sectors.[7] This growth in electricity demand, coupled with supply shortfalls the result of nuclear retirements and refurbishments and expiring contracts with existing generation facilities, will lead to electricity capacity shortfalls by 2025.[8]

10. At the regional level, southwestern Ontario, especially the Windsor-Essex region, is experiencing rapid growth in electricity demand, driven by the requirements of the agricultural sector (mainly

[4] Exhibit B-1-1, p. 7, para 26.

[5] Exhibit K-3.2 (November 6, 2023), p.1.

[6] EB-2022-0157, Transcript, Vol 3 (November 15, 2023), p. 119 line 28 – p.120 line 2, p.133, line 4- p.134 line 21.

[7] Independent Electricity System Operator, "2022 Annual Planning Outlook Report" (December 28, 2022), online: <https://www.ieso.ca/-/media/Files/IESO/Document-Library/planning-forecasts/apo/Dec2022/2022-Annual-Planning-Outlook.ashx> at p. 16, as referenced in Exhibit B-1-1 p.17, para 56.

[8] Exhibit B-1-1, p. 17, para 56; Directive – Order in Council 1348/2022 from the Minister of Energy to the Independent Electricity System Operator.

greenhouses) and the manufacturing sector (e.g., automotive and emerging lithium-ion battery). Peak electricity demand in the Windsor-Essex and Chatham areas is forecast to increase from about 500 MW in 2022 to about 2,100 MW in 2035. This is the equivalent of adding cities the size of Ottawa and London to the grid.[9]

11. In response to this on-going and growing electricity demand and in order to ensure the reliable operation of Ontario's electricity system, on October 6, 2022, Ontario's Minister of Energy directed the IESO to procure approximately 4,000 MW of new generation capacity, including up to 1,500 MW of natural gas-fired generation. Subsequently, on April 27, 2023, the Minister of Energy directed the IESO to re-contract Brighton Beach. This directive noted that Brighton Beach was uniquely positioned to meet reliability needs in the Windsor-Essex region, "ensuring that the region has the power it needs during demand peaks and supporting the integration of renewable generation already in place."[10] Brighton Beach, an existing facility, will not only enable decarbonization by contributing to widespread electrification in a region facing shortfalls: it will also contribute to a clean electricity grid by supporting the integration of renewable generation.

12. These procurements reflect the fact that, in Ontario, natural gas generation plays a crucial role in ensuring and maintaining the reliability of the electricity grid. Natural gas generators provide services that no other resource can provide, such as running for extended periods when other resources are not available and producing large amounts of power during periods of peak demand.[11]

13. The unique operating characteristics of natural gas generators, including their flexibility and quick response times, also contribute to a reliable grid. No other technology has the ability to be deployed in the timeframe and scale required to respond to system needs. There is no like-for-like replacement for gas-fired generation. More specifically:

> *Ontario's natural gas generators can be turned on and ramped up quickly to ensure the province does not need to be reliant on emergency actions such as conservation appeals and rotating blackouts to stabilize the grid, according to the IESO. While during most hours throughout the year Ontario can meet its electricity generation needs with nuclear, hydroelectric, bioenergy, wind and solar power, natural gas generation also acts as the province's insurance policy that can be turned on if the wind is not blowing or sun is not shining, or another generator is offline for repairs. There is currently no like-for-like replacement for natural gas and the IESO has concluded it is needed to maintain system reliability until nuclear refurbishments are complete and new non-emitting technologies such as storage mature.*[12]

14. In sum, natural gas-fired generation is required to address an electricity shortfall in southwestern Ontario that is forecast to emerge in 2025. Firm and reliable gas-fired generation requires a firm and reliable supply of natural gas. There is no alternative for the power sector. A firm and reliable

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[9] See Directive – Order in Council 586/2023 from the Minister of Energy to the Independent Electricity System Operator and Exhibit I.Staff.25, p. 5; also cited in by APPrO in Exhibit I.APPrO.10.

[10] Directive – Order in Council 586/2023 from the Minister of Energy to the Independent Electricity System Operator.

[11] Exhibit I.Staff.25, p.5; Exhibit I.APPrO.10, p.3; EB-2022-0157, Transcript, Vol 3 (November 15, 2023), p. 109, lines 25-26.

[12] Exhibit I.APPrO.10, p. 3, quoting from Ontario Ministry of Energy, "Powering Ontario's Growth", (July 10, 2023) online: <https://www.ontario.ca/files/2023-07/energy-powering-ontarios-growth-report-en-2023-07-07.pdf> at p. 49.

supply of natural gas, in turn, requires a firm and reliable supply of pipeline transportation service. A firm and reliable supply of pipeline transportation requires the Panhandle Expansion Project.

B. Contracted Expansion Capacity

15. To date, 131 TJ/d of the 168 TJ/d of the total expansion capacity of the Project, or 78 percent, is underpinned by executed or under negotiation contracts for firm transportation in 2024 and 2025.[13] Enbridge's evidence is that the current focus of discussions and contract negotiations is with customers who submitted EOIs in the 2023 bidding process, for capacity in the near term (i.e., 2024-2025). Over the next 12 to 24 months, Enbridge intends to engage with other contract customers who require service, beyond 2025.[14]

16. Enbridge has executed four firm transportation contracts for expansion capacity, with contract rate customers, three of which are with existing customers who are expanding their greenhouse operations.[15] The fourth such contract is with Atura, who has executed a five-year Gas Storage and Distribution T2 Contract for firm expansion capacity.[16] This contract commences July 16, 2024, coincident with the commencement of the term of Atura's new contract with the IESO. Atura is also negotiating with Enbridge for additional firm capacity (commencing in 2025) related to the Brighton Beach efficiency upgrade. Together, these Atura contracts represent almost 40 percent of the total incremental capacity of the Project and almost 50 percent of the current demand for the Project.

17. Enbridge is also engaged in active discussions and negotiations with customers who did not submit EOI bids but who require transportation capacity on the Panhandle Transmission System. Such customers include companies who are locating in the Windsor, Essex County and Chatham-Kent areas, involved in electric vehicle battery manufacturing sectors.[17]

III. ECONOMIC FEASIBILITY

A. The Appropriate Test

18. The March 31, 2022 Natural Gas Facilities Handbook[18] includes the following clear and unambiguous confirmation that the appropriate tests of economic feasibility, for expansions of natural gas transportation systems, are the tests articulated in the reports of the Board in Proceeding EBO 134 (for transmission system expansions)[19] and Proceeding EBO 188 (for distribution system expansions):[20]

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[13] Exhibit I.Staff.24, p.2.

[14] Exhibit I.Staff.24, p.3.

[15] Exhibit J2.12, p.1.

[16] Exhibit.I.PP.32, Attachment 1.

[17] Exhibit B-1-1, p. 20; Exhibit B-1-1, Attachment 6; Exhibit.I.PP.24; see also Invest Windsor Essex letter of support, EB-2022-0157.

[18] Ontario Energy Board, *Natural Gas Facilities Handbook*, EB-2022-0081 (March 1, 2022), p. 27 ("**Natural Gas Facilities Handbook**").

[19] Ontario Energy Board, *Report of the Board on the Expansion of the Natural Gas System in Ontario,* E.B.O. 134 (June 1, 1987).

[20] Ontario Energy Board, Report to *The Ontario Energy Board on The Alternative Dispute Resolution Conference in E.B.O. 188 A Generic Hearing on Natural Gas System Expansion in Ontario*, E.B.O. 188 (January 30, 1998).

> *Two decisions issued by the OEB, EBO 188 and EBO 134, describe some of the economic thresholds that natural gas expansion plans need to meet to be eligible for cost recovery through OEB approved rates. The EBO 188 economic feasibility test guidelines apply to distribution pipelines, whereas the EBO 134 economic feasibility test guidelines apply to transmission pipelines.*[21] [emphasis added.]

19. The key principle behind the EBO 188 economic test is that total portfolio of distribution system expansion projects should have a Profitability Index or "PI" of at least 1.0, while individual projects (within the portfolio) should have a Profitability Index of at least 0.8. In cases where the PI is less than 0.8, the distributor may ask the new customer(s) to pay an upfront contribution-in-aid-of-construction, reflecting the benefit that such customers receive from the Project.

20. The EBO 134 sets out the three-stage economic test that is used to evaluate a proposed expansion of the transmission system. A Project is considered economic if it passes the stage 1 DCF analysis with a PI of at least 1.0. If the PI is less than 1.0, EBO 134 looks beyond the stage 1 DCF analysis and considers ratepayer and public interest benefits (and costs) associated with the expansion project, at stages 2 and 3, respectively. This methodology recognizes that many, if not most, transmission projects have a negative stage 1 NPV and a Profitability Index of less than 1.0 and, therefore, fail the EBO 134 test at stage 1.

21. The difference between the EBO 188 test and the EBO 134 test reflects the fundamental and functional difference between a distribution system and a transmission system. A distribution system supplies natural gas directly (via connection laterals) to individual customers. It is, therefore, possible to calculate a financial contribution that fairly reflects the benefits that such customers receive, thereby minimizing cross-subsidization by customers who are not supplied by the expansion facilities and who do not benefit from it.

22. A transmission system, on the other hand, "serves a broad geographic region that is comprised of thousands of customers, multiple distribution systems, and various customer types, under both general service and contract rates".[22] Such customers are not connected to or supplied directly by the transmission system. It is the aggregate requirements (existing and incremental) of all these customers that trigger the need for an expansion of the transmission system.

23. For all of the reasons described above, it makes sense that the EBO 134 test does not require transmission projects to pass the stage 1 test, provided the negative stage 1 NPV is outweighed by the quantum of customer and public interest benefits, calculated at stages 2 and 3 of the test (i.e. the combined NPV is greater than $0).

B. Transmission vs Distribution

24. In light of the above, it is important to properly characterize a pipeline expansion as being either "transmission" or "distribution". The *Natural Gas Facilities Handbook* defines a transmission pipeline, in effect, as one that has no distribution customers directly connected to it;[23] in other words, a pipeline that does not provide service to individual distribution customers, via service

[21] Natural Gas Facilities Handbook, p. 27.

[22] EB-2022-0157, Transcript, Vol 1 (November 13, 2023), p.4, lines 14-18.

[23] Natural Gas Facilities Handbook, p. 28.

connections or other distribution facilities. Enbridge, in its evidence, confirms that it defines "transmission pipeline" in the same way.[24]

25. The Project will not connect, directly, to any individual customer, including Brighton Beach, which receives service via an existing a 3.1 kilometre distribution lateral. Based on the OEB's definitions of "transmission" vs "distribution", this is dispositive of the issue. However, there are at least three other reasons why the Panhandle Expansion Project is properly characterized as an expansion of a transmission pipeline, with no distribution components.

26. First, the Panhandle Expansion Project involves a trunk pipeline, akin to the trunk of a tree. The trunk supports (i.e. supplies) many distribution laterals or branches (to continue the analogy). The sole purpose of the Project is to reinforce the trunk. No distribution facilities or branches form part of the Project.[25] Specifically, when constructed, the Project will comprise a "loop" of the Panhandle Transmission System which transports natural gas for the benefit of all customers located within the Panhandle market, including storage and transportation customers. Once in service, the expansion facilities will form part of the overall integrated Panhandle Transmission System which transports natural gas for the benefit of <u>all</u> customers, located within the Panhandle market, whether or not such customers are expansion shippers. The natural gas that flows through the Panhandle Transmission System cannot be differentiated on the basis of which gas molecules supply which customer or which specific pipeline loop serves which customer. As Mr. Gillett stated, in his testimony on behalf of Enbridge, "[I]n other words, gas supply that flows through these pipelines can serve any customer that is attached to the distribution networks that ultimately connect to the transmission pipelines."[26]

27. Second, the Project will provide broad system benefits that are not customer-specific; for example, the expansion facilities will relieve two pressure constraints and two bottlenecks thus improving the reliability of service for existing customers and accommodating growth from both existing and new customers.[27]

28. Third, although the Project will facilitate service to a broad geographic area with multiple distribution systems and customer types, it will not, as some intervenors have suggested, supply new markets or serve new geographic areas.[28]

29. As the expansion facilities will form part of an integrated transmission system which transports natural gas for the benefit of <u>all</u> customers within the Panhandle System, whether they be expansion customers or existing customers, transmission expansion costs cannot be fairly and accurately allocated to individual expansion customers. **In the result, the EBO 134 test is the appropriate test of economic feasibility to apply to the proposed Panhandle Expansion Project.**

[24] Exhibit JT1.2, p.1.

[25] EB-2022-0157, Transcript, Vol 2 (November 14, 2023) p.112, p.113, lines 24-28; p.114, lines 1-2.

[26] EB-2022-0157, Transcript, Vol 1 (November 13, 2023) p.4, lines 19-22.

[27] Exhibit A-4-2, p.6; Exhibit A-3-1, p.2, Exhibit I.Staff.25, p.3.

[28] Exhibit K1.1, p.9 and EB-2022-0157, Transcript, Vol 2 (November 14, 2023) p.112, lines 15-19.

C. The Project Passes the EBO 134 Test

30. The Application sets out and discusses the economic analysis of the Project, completed in accordance with the EBO 134 test.

31. The Panhandle Expansion Project passes the three-part EBO 134 economic feasibility test at stage 2, because the positive net present value at stage 2 ($226M-353M) materially outweighs the negative NPV at stage 1 (-$150M). At stage 3, the quantified and non-quantified benefits are significant. Given that the Project already passes the economic feasibility test at stage 2, the quantified stage 3 benefits of $257 million can be viewed as a "bonus." When the stage 3 NPV of $257 million is combined with stage 1 and stage 2, the total NPV for the Project ranges from $333 million to $460 million. Put another way, the net benefits of the Project (from stages 2 and 3), outweigh the stage 1 costs by more than three times (-$150M vs $483M-$610M).

32. The Project's stage 3 benefits do not take into account unquantified public interest benefits, including the critical electricity reliability benefits that are described above. With continued increasing firm demand forecasted in the Panhandle market, primarily from greenhouse, automotive and power generation customers in the Windsor, Leamington, and Kingsville market areas, the Project will support the economic well-being of southwestern Ontario. Affordable energy, including reliable and affordable sources of electricity, is critical to the development and prosperity of communities and businesses. Affordable energy promotes and enables growth in the economy, provides savings for residential customers and helps maintain the global competitiveness of Ontario's businesses.[29]

D. CIAC Issues

33. That the Project passes the EBO 134 test at stage 2, with "bonus" quantified stage 3 benefits of $257 million and significant and material unquantified public interest benefits, is dispositive of the issue of economic feasibility. The Project is economically feasible and no contribution-in-aid-of-construction is required.

34. Despite this and notwithstanding that Enbridge is not seeking approval of a CIAC methodology in this proceeding, the Board accepted the request of some intervenors to include, as an issue in this proceeding, the need for a contribution-in-aid-of-construction. Unfortunately, none of these intervenors filed evidence and, in the result, the Board is left with a confusing, contradictory and incomplete record on the issue. It is for this reason that Atura is compelled to address the following three CIAC-related issues:

- is there a case for imposing a CIAC in this proceeding?
- are there potential adverse consequences of requiring a contribution-in-aid-of-construction?
- should the Board change its long-standing economic feasibility policies in the context of an application-specific proceeding?

[29] Exhibit A-3-1, p. 3, Exhibit, B-1-1, p. 14-20.

A. <u>No Case for a CIAC</u>

35. During his questioning of Mr. Szymanski appearing on behalf of Enbridge, Presiding Commissioner Moran stated that "[T]he only perfect rate would be each person paying exactly what it cost to serve that person, and that is not a practical way to set rates". [30] Atura agrees. Atura further agrees with the Presiding Commissioner that "each of the rate classes that are affected by the costs associated with the transmission system are all contributing to the costs of that system […] and within that rate class some people are paying more than they should be and some people are paying less than they should be."[31] This is always the case with regulated utility rates; there are no " perfect" rates.

36. The "Bill Impact Table", included in Enbridge's response to an interrogatory from the Industrial Gas Users Association ("**IGUA**")[32] shows the Project's impact on the annual bills of "typical" small and large customers in various rate classes, in dollar amounts and as a percentage of the customer's annual delivery charges, under the current OEB-approved cost allocation methodology. In particular, the Bill Impact Table shows that:

- the largest bill impact of the Panhandle Expansion Project (as a percentage of delivery charges) is on typical contract rate customers in the M4, M7, T1 and T2 rate classes;[33]

- the smallest bill impact of the Panhandle Expansion Project is on typical Residential M1 customers ($0.88 annual bill increase or a 0.2% increase of the currently approved delivery bill); and

- the largest bill impact of the Panhandle Expansion Project is on T2 customers; a typical Large T2 customer has billing units of 1.2 million m3/day, an annual bill increase of $171,000 or 5.4%, (as a percentage of current delivery charges).

37. Power generator customers, such as Atura and Capital Power, take service under the T2 rate.[34] Atura is not a typical Large T2 customer; its contract demand is materially higher and, in the result, its annual bill increase, as a result of the Project, would be about 40% higher than the annual bill increase of a "typical" Large T2 Customer. Together, Atura and Capital Power will pay over $300,000/year as a result of the Project.[35] It is fair to say that the two power generator customers will not be "free riders".

38. <u>**The imposition of a CIAC on a handful of expansion shippers would not align Project costs with system-wide Project benefits and, in the result, would exact an undue burden on these expansion shippers.**</u> The whole amount of a CIAC, however calculated and whatever the amount, would be borne by these shippers, without regard to the extent to which other customers, who are not expansion shippers or who have not executed contracts, will benefit from the Project. These other benefitting customers, including General Service customers who comprise approximately six

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[30] EB-2022-0157, Transcript, Vol 3 (November 15, 2023), p. 97, lines 22-25.

[31] EB-2022-0157, Transcript, Vol 3 (November 15, 2023), p. 98, lines 1-4 and 6-8.

[32] Exhibit I.IGUA.2, Attachment 1, p. 2.

[33] Contract rate customers (M/BT4, Rate M/BT5, Rate M/BT7, Rate T-1 and Rate T-2) comprise 94% of Project capacity. (Exhibit B-1-1, p. 10). The Bill Impact Table shows only bill impacts for M4, M7, T1 and T2 contract customers, presumably because the Rate Zone has no contract rate customers in the other classes. The two power generators with executed contracts and/or contracts under negotiation, will take service under the T2 rate.

[34] EB-2022-0157, Transcript, Vol 3, p.99, lines 21-27.

percent of the Project's incremental capacity, would become free riders at the expense, in particular, of the power sector customers. While it is not possible to calculate a CIAC for individual expansion customers, it would be safe to say that power sector customers could be required to pay at least $79 million of the $150 million shortfall. In other words, two expansion shippers could bear over half of the shortfall in respect of a transmission expansion that benefits all customers on the Panhandle Transmission System.

B. Adverse Consequences of CIAC

39. As part of its EOI process launched in February 2023, Enbridge reached out to customers who had indicated their intention to submit an EOI bid, to obtain their position about a requirement to pay a CIAC.[36] As part of this outreach, Enbridge engaged with customers to determine whether the market would be willing to accept a CIAC related to the transmission project. Customers, in particular power generators, the greenhouse sector and municipal areas with economic development clients, responded that there would be adverse reactions and reservations to such changes.[37]

40. Enbridge's evidence is that a change to the current CIAC policy under EBO 134, would "very likely have a direct impact on capital investment and job creation throughout the province".[38] Customers make business decisions with the expectation that, absent proper notice, the OEB will continue to apply its rules, regulations and guidelines in a manner that is consistent with previous practices. Existing customers who contracted capacity on previous transmission expansion projects, were not required to pay a CIAC and they had a reasonable belief that nothing had changed in this regard. Enbridge's evidence is that in light of this, the introduction of a CIAC could cause customers, who participated in the EOI, to reconsider their business plans and, thus, their need for expansion capacity.[39] Were this to occur, the economic feasibility of the Project could be adversely affected and the ensuing "domino effect", with shippers abandoning the Project, could lead to its demise. The adverse public interest consequences of this would be extraordinary.

41. As for the consequences of a CIAC on Atura: The CES Contract between Brighton Beach Power L.P., doing business as Atura Power, and the IESO, was entered into on April 27, 2023.[40] It has a term that begins on July 16, 2024 and ends on July 15, 2034, subject to any future negotiation for extension that the parties may agree following the term expiry. The CES Contract obligates Atura to reserve a certain amount of electricity generation capacity (the "**Contract Capacity**") for use in the IESO wholesale market. While the contract requires Brighton Beach "…to use Commercially Reasonable Efforts to maintain or enter into any fuel supply contracts that are necessary for the proper operation of the Facility during the Term…"[41] to allow the Contract Capacity to be dispatched by the IESO wholesale market, Atura "…shall be free to operate the Facility (including the nomination and purchase of Gas) and generate Electricity and Related Products at its own

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[36] Exhibit I.Staff.25, p.2.

[37] EB-2022-0157, Transcript, Vol 3 (November 15, 2023), p. 117-118.

[38] Exhibit I.APPrO.9, p.1-2.

[39] Exhibit I.APPrO.9, p.1-2.

[40] Clean Energy Supply (CES) Contract between Brighton Beach Power L.P. and the Independent Electricity System Operator dated April 27, 2023 (available online at: https://www.ieso.ca/-/media/Files/IESO/Document-Library/energy-procurement/Brighton-Beach/BBGS-CES-Contract.ashx) As excerpts referred to in Exhibit K.2.5 (the "**CES Contract**")

[41] CES Contract, section 2.3 (c).

discretion and for its own account…"[42] and enter into such fuel supply or delivery contract in a manner that does not adversely impact its economics. As such, there is no "must-offer obligation" in the CES Contract that obligates Atura to generate a specific amount of electricity.

42. On December 14, 2022 before contract negotiations between the IESO and Atura had been concluded, the OEB issued Procedural Order 4 which, *inter alia*, expressed the view that the economics of the Project, the applicability of EBO 134 and EBO 188 and the extent to which contributions in aid of construction should be required, were issues within the scope for this proceeding. <u>In response to the possibility of the imposition of a CIAC and the resultant adverse effect on Atura's contract economics (which were not reflected in Atura's initial capacity pricing), the parties proceeded to negotiate the CIAC-related provisions that are included in Exhibit X to the CES Contract</u>.[43]

43. Schedule X provides that in the event a CIAC payment is required or incremental costs above the posted tariff (the "**Rate Rider**") are payable by Atura in connection with the Panhandle Expansion Project, the IESO will reimburse 60 percent of the CIAC or the Rate Rider. If the Panhandle Expansion Project were not to proceed, the Net Revenue Requirement (as defined in the CES) would be increased.

44. If a CIAC were to be imposed, Atura would need to assess the economic impact of assuming its 40 percent share, under the CES Contract.[44] As there is no "must-offer obligation" in the CES Contract that obligates Atura to generate a specific amount of electricity, Atura would have the option of reducing the amount of electricity that it generates. Given the critical role that Brighton Beach is expected to play in ensuring electricity reliability in the region, such a decision could have immediate and significant "knock on" effects in terms of electricity supply and security (including "emergency actions such as conservation appeals and rotating blackouts to stabilize the grid").[45]

C. <u>Ad Hoc, One-Time Changes to Economic Feasibility Policies</u>

45. Atura appreciates that regulatory rules and policies are not "cast in stone" and are subject to periodic review and revision in order to ensure that they continue to reflect current legal, economic, social and political circumstances. However, such reviews and, if necessary, revisions, should not occur in an *ad hoc* fashion, in the context of a specific application and in the absence of a clear and complete record. Ideally, such a record would be informed by the opinions of experts on the matters at issue and the views of all affected and potentially affected parties, who have received proper notice of the Board's intentions. Potentially affected parties would include parties who are not, now, expansion shippers on the Project, but who may require new or incremental capacity on future expansions of the Panhandle Transmission System or indeed, expansions on other gas transmission systems in Ontario.

46. We do not have such a record in this proceeding. At best, we have an assortment of conflicting formulas, some of which are underpinned by invalid assumptions. At worst, we have a "mish mash"

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[42] CES Contract, Exhibit G, section 1 (a).

[43] EB-2022-0157, Transcript, Vol 2 (November 14, 2023), p. 192 lines 26-28 and p.193, lines 1-2.

[44] EB-2022-0157, Transcript, Vol 2 (November 15, 2023), p.193, lines 3-8.

[45] See Exhibit I.APPrO.10, p. 3, quoting from Ontario Ministry of Energy, "Powering Ontario's Growth", (July 10, 2023) online: <https://www.ontario.ca/files/2023-07/energy-powering-ontarios-growth-report-en-2023-07-07.pdf> at p. 49.

of competing and confusing methodologies, posited by various intervenors, representing various interests, during the course of time-limited cross-examination. In either case, neither the Board nor any party had the opportunity, in this proceeding, to carefully and methodically examine any CIAC-related proposal.

47. The development of a CIAC policy would require the Board to consider many complex technical and methodological issues and consider many competing factors, even supposing it were possible to develop a cogent and fair CIAC policy for transmission systems. In this regard, Enbridge's evidence is that the nature of integrated transmission system expansions is such that it is not possible to develop an equitable and workable CIAC methodology.[46]

IV. CONCLUSIONS

48. In conclusion, Atura submits that the Commission should approve Enbridge's Application, as filed, to enable completion of the Project in the 2024 construction period. Approval of the Application will facilitate economic development and growth and foster economic prosperity in the Windsor-Essex region and in Ontario, more broadly.

49. The Board's decisions should not be made in a vacuum. While the Board <u>must</u> have regard to its "gas objectives" in section 2 of the *Ontario Energy Board Act, 1998* (the "**Act**"),[47] it <u>should</u> also have regard to its "electricity objectives" in section 1 of the Act. Given the magnitude of change and infrastructure development that will be required to support energy transition in Ontario, coordination and planning alignment between the natural gas and electricity sectors is critical. Enbridge's Application is as much an "electricity case" as it is a "gas case" and the Board should view it through this lens.

50. Some intervenors in this proceeding have questioned the need for the Project in light of concerns about achieving decarbonization and energy transition objectives. In the region served by the Panhandle Transmission System, electrification is a key pathway to decarbonization. It is axiomatic that electrification requires a reliable supply of electricity. Gas generation is critical to achieving such reliability, especially in a region that is facing electricity shortfalls. By enabling increased gas-fired generation, this Project will contribute to decarbonization and the integration of renewable energy generation.

51. Finally, with respect to the CIAC: There is no case to support the imposition of a CIAC requirement. The Project easily passes the EBO 134 test of economic feasibility. Moreover, the broader public interest benefits of the Panhandle Expansion Project are significant and these benefits are not reflected in the results of the EBO 134 test. The imposition of a CIAC on a handful of expansion shippers would be an unacceptable economic burden on these shippers and, as Enbridge testified, has the potential to jeopardize the Project.[48]

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[46] EB-2022-0157, Transcript, Vol 2 (November 14, 2023), p.8 lines 25-28- p.9; lines 1-3.

[47] *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, s 2.

[48] EB-2022-0157, Transcript, Vol 2 (November 14, 2023), p.191 lines 11-25, p.192 lines 20-193 line 8.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th DAY OF DECEMBER, 2023

DENTONS CANADA LLP

Per:

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Helen Newland

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