

January 17, 2024

BY EMAIL AND FILED VIA RESS

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 Rates Application
Response to HRAI Intervention Request and GEC Change of Counsel Notice**

We represent Enbridge Gas.

We write in response to the recent correspondence from counsel to Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI) and Green Energy Coalition (GEC).

HRAI requests intervenor status in Phase 2 and Phase 3 of this proceeding, as well as cost eligibility. GEC requests that its representative be changed.

Enbridge Gas objects to HRAI's intervention request, and asserts that HRAI's intervention should be denied, or only permitted on a limited basis. If HRAI's intervention is permitted, then cost eligibility should be denied, and HRAI should not be permitted to expand the scope of the proceeding.

At this time, as the proceeding moves to Phase 2, and in light of GEC's request to change its representative to be the colleague of the current representative of Environmental Defence (ED), Enbridge Gas requests that the OEB direct that the interventions of ED and GEC be combined with single cost eligibility for both.

The reasons for these positions are set out below.

Response to HRAI Intervention Request

By letter dated January 10, 2024, counsel for HRAI (Jay Shepherd) filed an intervention request on behalf of HRAI for Phases 2 and 3 of this proceeding. Mr. Shepherd already represents School Energy Coalition (SEC) in this proceeding. The letter does not explain how Mr. Shepherd

proposes to represent two distinct entities with interests in the same areas within the same proceeding.¹

HRAI's letter says that its intervention is focused on the effects of a new Enbridge Gas unregulated activity being carried on through Enbridge Sustain. As explained in the letter, HRAI has already made a complaint to the OEB about Enbridge Sustain and that complaint is being pursued by the OEB's compliance office. Enbridge Gas disagrees with many of the allegations made in HRAI's letter about Enbridge Sustain, but it is not necessary to engage on those items at this time. Enbridge Gas does want to clarify the record, though, to note that it has not received any notice of an investigation by the Competition Bureau related to Enbridge Sustain.

HRAI asserts that it has a substantial interest in the issues in Phases 2 and 3 of this proceeding, and seeks intervenor status.

Enbridge Gas does not agree.

Rule 22.02 of the [OEB Rules of Practice and Procedure](#) states that:

The person applying for intervenor status must satisfy the OEB that he or she has a substantial interest and intends to participate responsibly in the proceeding. A person has a substantial interest if they have a material interest that is within the scope of the proceeding; for example, a person that: (i) primarily represents the direct interests of consumers (e.g., ratepayers) in relation to services that are regulated by the OEB; (ii) primarily represents an interest or policy perspective relevant to the OEB's mandate and to the proceeding; or (iii) has an interest in land that is affected by the proceeding. Examples of participation include participating in discovery, making submissions, and filing evidence.

It is clear that HRAI would only qualify under part (ii) above – as an entity that “primarily represents an interest or policy perspective relevant to the OEB's mandate and to the proceeding”.

HRAI submits that the Phase 2 and Phase 3 issues in which it is interested are: (i) Incentive Rate Mechanism (IRM); (ii) Utility / Non-Utility Cost Allocation; (iii) Revenue Horizon on New Connections; (iv) Energy Transition Technology Fund (ETTF); and (iv) Earnings Sharing Mechanism (ESM).

Enbridge Gas disputes that the business activities of Enbridge Sustain are relevant to the issues noted by HRAI.

In any event, though, the issues highlighted by HRAI are ratepayer issues. HRAI itself is not a ratepayer. Its members are service providers, not ratepayers. There is already a very large number of active intervenors in this case, many of whom represent ratepayer interests. Twenty different parties (including OEB staff) filed argument in Phase 1. If questions related to Enbridge Sustain such as those set out on pages 4 and 5 of the HRAI letter are relevant in Phases 2 and

¹ On this point, the HRAI letter indicates interest in general Phase 2 rates issues such as incentive ratemaking mechanism, ESM and cost allocation. It is fair to assume that SEC is also interested in those issues.

3 of this proceeding (which Enbridge Gas disputes), there is nothing to stop any of these existing parties from pursuing such questions. There is no reason why HRAI's participation is necessary.

Further, Enbridge Gas disputes that HRAI has an interest or policy perspective that is important for the OEB to consider (in addition to all the existing parties) in relation to the issues identified. HRAI is not directly impacted by the IRM or ESM or ETTF. Even HRAI's members are not impacted in their capacity as HVAC contractors.

HRAI appears to complain about cost allocation between Enbridge Gas regulated utility and the Enbridge Sustain business. These issues have already been highlighted to the OEB through HRAI's previous letter, and there is an OEB compliance review underway. These are not Issues that are relevant to Phase 2 of the rebasing proceeding. The parties resolved Enbridge Gas's O&M budget through the OEB-approved Phase 1 Settlement Proposal. The only remaining utility/non-utility cost allocation issues in Phase 2 relate to gas storage costs (see Issue #50 on the January 27, 2023 Issues List). It would not be appropriate for HRAI to be able to expand the scope of the already expansive Phase 2, to re-open items already determined. Additionally, Enbridge Gas is concerned that HRAI seeks to have the same questions about cost allocation dealt with in two forums – through a compliance process and in a rate proceeding. This risks conflicting outcomes, and inefficiency. The compliance process (which HRAI initiated) should run its course first. If compliance staff believe that some remedy is necessary, they will take appropriate steps.

Enbridge Gas acknowledges that HRAI may have a perspective on how new customers will be served in a zero revenue horizon context. It is not clear, though, whether that perspective is important and relevant to Phase 2 unless the Issues List is updated. If HRAI's true interest in intervening is as set out at page 4 of the HRAI letter (to provide evidence to the OEB about paths towards energy transition), then its intervention request should focus on that. As it stands, the intervention request is much broader.

For the reasons stated above, Enbridge Gas objects to HRAI's requested intervention.

In the event that HRAI is granted intervenor status, Enbridge Gas submits that no cost eligibility should be granted. Section 3.04 of the [Practice Direction on Cost Awards](#) indicates that in making a determination of whether a party is eligible for costs, the OEB may:

(a) in the case of a party that is an association or other form of organization comprised of two or more members, have regard to whether the individual members would themselves be eligible or ineligible;

(b) in the case of a party that is a commercial entity, have regard to whether the entity primarily represents its own commercial interest (other than as a ratepayer), even if the entity may be in the business of providing services that can be said to serve an interest or policy perspective relevant to the Board's mandate and to the proceeding for which cost eligibility is sought; ...

Enbridge Gas submits that these factors point against cost eligibility for HRAI. It is an organization representing commercial interests of HVAC contractors. Those parties would not individually qualify for cost awards for issues related to their business concerns. This

intervention is aimed at protecting the business interests of HRAI members – it is not appropriate that ratepayers fund the intervention. This is particularly the case where virtually all of the concerns raised by HRAI can be pursued by one of the many existing ratepayer-funded intervenors.

Response to change in representative for GEC

By letter dated December 15, 2023, counsel to GEC filed a letter with the OEB indicating that a new lawyer will be representing GEC on this matter, effective immediately. The new lawyer is Amanda Montgomery, who works with Kent Elson (main representative for ED) at the two lawyer [Elson Advocacy](#) office. Both of these lawyers are already listed as the representatives for ED in this proceeding (see Procedural Order No. 1, Schedule A, page 6).

Through the course of Phase 1 of this proceeding, the positions taken by GEC and ED have been virtually indistinguishable. These parties jointly retained the same expert. The lines of questioning pursued by each party, as well as the interrogatories submitted, are substantially similar. Each party submitted lengthy argument in Phase 1 focusing on the exact same issues and seeking very similar outcomes. Enbridge Gas submits that the overlapping participation of GEC and ED in this proceeding runs contrary to the OEB's direction in Procedural Order No. 1 (see page 3) and to the more general principle that intervenors should each represent distinct interests or constituencies (or should combine efforts where appropriate). Enbridge Gas does not believe that it is reasonable or appropriate for cost eligibility to continue for two virtually identical intervenors, especially where they are represented by two colleagues in the same small office.

Enbridge Gas submits that the start of Phase 2, and the change in counsel for GEC, presents an opportunity for the OEB to require that the interventions of GEC and ED be combined, with single cost eligibility. These parties have often worked together in the past, and it should be even easier for them to do when represented by two colleagues.

Please let us know if you have questions about this letter.

Yours truly,

AIRD & BERLIS LLP



David Stevens
DS/

c: Jay Shepherd, counsel to HRAI
Amanda Montgomery, counsel to GEC
Kent Elson, counsel to ED
All parties registered in EB-2022-0200