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May 6, 2024

**VIA RESS AND EMAIL**

Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (Enbridge Gas, or the Company)**  
**EB-2024-0111 - 2024 Rebasing and IRM – Phase 2**  
**Enbridge Gas Submissions on Issues List**

Phase 1 of the Company's 2024 Rebasing and Incentive Rate Mechanism (IRM) Application (EB-2022-0200) was completed with a December 21, 2023 Decision and Order, and a May 1, 2024 Interim Rate Order. Through the Phase 1 process, the OEB directed that certain issues related to the Application be heard as Phase 2 and Phase 3 of the proceeding.

Enbridge Gas filed the evidence for this Phase 2 of the 2024 Rebasing and IRM proceeding on April 26, 2024, under docket number EB-2024-0111. As explained in our April 26 cover letter, the Company's Phase 2 evidence addresses the following issues and items that Enbridge Gas understands to be included in Phase 2: (i) the Phase 1 issues that were deferred to Phase 2 as a result of the Settlement Agreement; (ii) the Phase 2 issues identified in the EB-2022-0200 Issues List (other than Issues 54-57, which are for Phase 3); and (iii) the items from the Phase 1 Decision that Enbridge Gas is expected to address and/or report on in Phase 2 of the rebasing proceeding.

On April 26, 2024, the OEB issued Procedural Order No. 1 in this Phase 2 proceeding. The Procedural Order includes a draft Phase 2 Issues List which is described as follows:

*A draft Phase 2 issues list is attached as Schedule A to this procedural order. The starting point for this draft was the issues list approved early in Phase 1. It has been updated to reflect (a) the changes that were agreed to in the Phase 1 Settlement Proposal, and (b) the findings and directions in the Phase 1 Decision. For simplicity, the draft Phase 2 issues list has been re-numbered.*

In substance, the draft Issues List aligns with the issues that Enbridge Gas identified and addressed in its Phase 2 evidence. The main differences are the numbering of the already defined issues and the inclusion of new issues to articulate the OEB's directions

from its Phase 1 Decision. With one exception (noted below), Enbridge Gas's evidence addresses all of the issues in the draft Issues List attached to Procedural Order No. 1. Unless the OEB orders otherwise, Enbridge Gas does not plan to update its Phase 2 evidence to expressly note the numbering and text of the Phase 2 Issues List.

Procedural Order No. 1 asks parties to comment on three items: (i) the draft Issues List; (ii) whether the Issues List should reflect the issues about Enbridge Sustain raised in the Heating, Refrigeration and Air Conditioning Institute of Canada's (HRAI) intervention request; and (iii) whether the Issues List should reflect the issues raised in Environmental Defence's motion.

## **Summary**

Enbridge Gas generally agrees with the draft Issues List for Phase 2 set out in Procedural Order No. 1. Based on the Phase 2 evidence that it has now filed, Enbridge Gas proposes four additional issues, and proposes that the wording of two proposed issues be expanded. The Company does not agree with one of the proposed issues, relating to examination of "safe bet" capital spending. Enbridge Gas also has very brief comments and suggestions on the categorization and wording of proposed issues.

Enbridge Gas does not agree that the proposed Issues List should be read to include questions about Enbridge Sustain. The complaints advanced by HRAI are being dealt with through the OEB's complaint process and are not relevant to Phase 2. Enbridge Gas further asserts that the OEB should decline to add the Environmental Defence Motion to the Issues List or consider the Motion at this time. The key concerns raised by Environmental Defence about allegedly misleading marketing communications are already being addressed under proposed issue #21 in this case, and by the Competition Bureau.

## **Comments on draft Issues List**

Unless otherwise noted below, Enbridge Gas accepts the wording and contents of the draft Issues List attached to Procedural Order No. 1.

In the Company's prefiled evidence, several new proposals are included that are not expressly addressed by the draft Issues List. To ensure that these items are fully canvassed, Enbridge Gas proposes the following additional or expanded issues be included in the draft Issues List.

1. In its evidence<sup>1</sup>, Enbridge Gas seeks the inclusion of all costs from the Dawn to Corunna Project in rate base (this item was deferred from Phase 1). The determination of this request will include a review of actual costs as well as consideration of whether any part of the project costs should be allocated to unregulated operations. Proposed issue #12 addresses these items, but as part of the overall storage cost allocation issue. Enbridge Gas proposes that it would be helpful to split the issues out, so that the evidence and submissions related to the Dawn to Corunna project costs are organized separately from the storage cost

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<sup>1</sup> Exhibit 1, Tab 13, Schedule 4 (including Attachments).

allocation issue. Enbridge Gas proposes adding the following new issue to the “Other” category:

- Is the proposed 2024 Dawn to Corunna project rate base amount appropriate?
2. In its evidence<sup>2</sup>, Enbridge Gas has requested that the OEB approve the establishment of two new deferral / variance accounts – OEB Costs and OEB Directives. Enbridge Gas proposes adding the following new issue to the “Other” category:
- Is the proposal to establish the OEB Cost Assessment Variance Account and the OEB Directive Deferral Account appropriate?
3. In its evidence, Enbridge Gas proposes two modifications to the ICM for the IRM term – opportunity for approval of ICM funding as part of LTC applications<sup>3</sup> and adjustment to ICM treatment for asset life extension projects<sup>4</sup>. Enbridge Gas proposes expanding the wording of proposed issue #3:
- Is the proposed approach to incremental capital funding appropriate, including: (i) the proposed inclusion of overhead costs in ICM amounts; (ii) the opportunity to request ICM funding in leave to construct applications; and (iii) the proposed different ICM treatment for asset life extension projects?
4. In its evidence about the performance metrics and scorecard<sup>5</sup>, Enbridge Gas proposes a modification to the manner in which the Meter Reading Performance Measurement is calculated, to exclude inaccessible meters. Enbridge Gas proposes expanding the wording of proposed issue #8:
- Are the proposed scorecard Performance Metrics and Measurement targets for the amalgamated utility, including the proposed change to the calculation of the Meter Reading Performance Measurement, appropriate?
5. The 2024 rates that the OEB has approved in the Phase 1 Rate Order are interim rates, pending further adjustments that may be required as a result of Phase 2 (and potentially Phase 3). Enbridge Gas proposes that it would be appropriate to add a “rate implementation” issue, to address how the updated rates resulting from the Phase 2 outcomes will be implemented:
- How should the OEB implement any changes to 2024 interim rates resulting from determinations and decisions on the issues in Phase 2?
6. As set out in the Administration evidence, Enbridge Gas plans to request that the OEB approve and implement 2025 rates as soon as possible after the Phase 2 Decision on the IRM is complete<sup>6</sup>. Enbridge Gas expects that it will propose that the

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<sup>2</sup> Exhibit 9, Tab 1, Schedule 3.

<sup>3</sup> Exhibit 10, Tab 1, Schedule 1, pages 17-22.

<sup>4</sup> Exhibit 1, Tab 17, Schedule 1, pages 11-17.

<sup>5</sup> Exhibit 1, Tab 7, Schedule 1, pages 4-19.

<sup>6</sup> Exhibit 1, Tab 2, Schedule 1, page 8.

OEB approve 2025 rates as part of the Phase 2 draft rate order process. Enbridge Gas proposes adding the following new issue to the "Other" category:

- What is an appropriate process to approve 2025 rates as soon as possible after the Phase 2 Decision on the IRM is complete?

Additionally, Enbridge Gas proposes a modification to the wording of proposed issue #20. That proposed issue currently asks "Is the annual amount for site restoration costs calculated appropriately, and is the long-term forecast of the total funds required for site restoration costs appropriate?" Enbridge Gas is concerned about the inclusion of the question of whether the long-term forecast of the total funds required for site restoration costs is "appropriate".

The expectation expressed in the Phase 1 Decision is for Enbridge Gas to "[f]ile evidence indicating how the annual amount for site restoration costs is calculated and to provide a long-term forecast of the total funds required to pay for site restoration costs".<sup>7</sup> Enbridge Gas interprets the OEB's direction to require an informational filing, rather than a filing that would form the basis for an OEB approval. The evidence filed by Enbridge Gas is responsive to this direction.<sup>8</sup> In the Phase 1 process, the OEB approved the site restoration forecasts and site restoration cost calculations. Enbridge Gas submits that it is not necessary nor useful at this time to examine whether the calculations and forecasts required to be filed could be done differently – Enbridge Gas will not have better forecasts of site restoration costs until it finishes the OEB-ordered net salvage study and depreciation study required for the next rebasing case. Taking this into account, Enbridge Gas proposes the following wording for issue #20:

- Has Enbridge Gas appropriately responded to the directive to file the calculation of site restoration costs and a long-term forecast of the total funds required for site restoration costs?

There is one proposed issue on the draft Issues List that Enbridge Gas does not accept. Proposed issue #18 asks "Are the energy transition safe bet proposals with capital spending in the IRM term appropriate?" The reference given for the inclusion of this proposed issue is a statement in the Phase 1 Decision stating that capital spending for several additional "safe bet" proposals related to energy transition will be examined in Phase 2.<sup>9</sup>

Enbridge Gas does not believe that there is a need for this proposed issue #18, for the following reasons:

1. As stated in the Phase 1 Decision, the "safe bets" proposed are modest in scope. These items are set out at pages 15 to 16 of the Phase 1 Decision.<sup>10</sup> Almost all of these "safe bet" items will require supplementary OEB approvals and/or oversight,

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<sup>7</sup> EB-2022-0200 Decision and Order, December 21, 2023, page 140 (Item 9(g)).

<sup>8</sup> Exhibit 1, Tab 16, Schedule 1 (and Attachments).

<sup>9</sup> EB-2022-0200 Decision and Order, December 21, 2023, page 16.

<sup>10</sup> EB-2022-0200 Decision and Order, December 21, 2023, pages 15-16. The safe bets are described in Enbridge Gas's Argument in Chief in Phase 1 (EB-2022-0200), at page 40 (Table 2).

including DSM, low-carbon energy in the gas supply, integrated system planning with electric utilities, phase 2 of the LCEP, the proposed ETTF and ongoing IRP activities. Many of these “safe bet” items include little or no capital spending. The only safe bet item listed that would not require supplementary OEB approval or oversight is the Hydrogen Blending Grid Study.

2. Enbridge Gas submits that there is already sufficient direction and future oversight about the “safe bet” activities such that they do not need to be a separate issue for Phase 2 of the proceeding.
3. Enbridge Gas is concerned that adding this issue will lead to a re-examination of a wide range of energy transition issues and the capital spending issues already canvassed at length in Phase 1. This will dramatically add to the time, evidence and resources required for Phase 2.
4. Enbridge Gas notes that if the proposed issue #18 is added to the Issues List, then the Company will have to update its Phase 2 evidence to include evidence about the “safe bets”, which are not otherwise part of the record or relief sought for this Phase 2 proceeding. In this regard, Enbridge Gas notes that while there is a single sentence on page 16 of the Phase 1 Decision indicating that safe bets spending would be examined in Phase 2, that reference could have been read to refer to items such as ETTF and the low-carbon energy (RNG) proposals being advanced in Phase 2. It was not apparent at all from the OEB’s directions at page 140 of the Phase 1 Decision (where the items to be addressed in Phase 2 were summarized) that a re-examination of safe bet capital spending would be in scope for Phase 2.
5. Enbridge Gas does not agree that there is a need for any issue related to capital amounts that might be spent on “safe bets” during the 2025 to 2028 term. However, should the OEB not agree, then Enbridge Gas submits that the proposed issue #18 should be much more narrowly defined to ensure that the scope of what is examined is limited to what remains after Phase 1. In that regard, Enbridge Gas suggests that the issue would be focused solely on the proposed Hydrogen Blending Grid Study.

Finally, Enbridge Gas suggests that proposed issue #7 (“How should Enbridge Gas be incentivized to implement economic alternatives to gas infrastructure and how should the recovery of its costs be treated?”) properly belongs with the “Other” Issues, rather than as part of the Incentive Regulation Mechanism (IRM) Issues. As set out in Enbridge Gas’s evidence about Asset Life Extension and System Pruning, the Company’s proposed approach to these items is separate from the proposed IRM.

### **Issues raised by HRAI re Enbridge Sustain**

In its January 10, 2024 letter requesting intervenor status in Phase 2, HRAI raises issues about Enbridge Sustain that HRAI says are relevant to Phase 2. Enbridge Gas does not agree that any issues related to Enbridge Sustain should be added to the Issues List nor that any of the currently proposed Phase 2 issues should include examination of Enbridge Sustain.

Enbridge Gas relies on its earlier response to the HRAI intervention request (attached for convenience) but wishes to summarize and add to what has already been said.

As a starting point, Enbridge Gas continues to dispute HRAI's characterizations of Enbridge Sustain and of alleged improprieties. Enbridge Gas applies all applicable regulatory rules in relation to the operation of Enbridge Sustain, including rules as to cost allocation. HRAI has made a complaint to the OEB compliance group about Enbridge Sustain, and that complaint is being investigated. There is no need for a second investigation inside this already-complex rate application.

Phase 2 is aimed at approval of remaining items from Enbridge Gas's Rebasing and IRM Application, apart from cost allocation which will be addressed in Phase 3. This is seen in the proposed Phase 2 Issues List.

None of the items in the proposed Issues List directly relate to the Enbridge Sustain business. In its January 10, 2024 letter, HRAI indicates that there its concerns about Enbridge Sustain are relevant to several issues that it lists in that letter. Enbridge Gas disagrees.

1. *Incentive Rate Mechanism* – There is no reason why the parameters of the ratemaking mechanism for the regulated utility would be impacted by unregulated activities. Base revenue requirement has been set (subject to modest adjustments through Phase 2), and the IRM is aimed at the annual adjustment of the resulting 2024 rates.
2. *Utility/Non-utility Cost Allocation* – This issue is expressly limited to cost allocation for storage activities, to harmonize the approach to be used by Enbridge Gas. That does not involve Enbridge Sustain in any way. To expand this issue to look at cost allocation for all utility operations effectively re-opens the complete settlement reached by all parties on the base O&M budget<sup>11</sup>, and materially expands the scope of Phase 2.
3. *Revenue Horizon on New Connections* – Any issues related to this item for Phase 2 are currently stayed, pending the expected approval and implementation of Bill 165 by the Ontario Legislature.
4. *Energy Transition Technology Fund* – The Company's evidence is clear that the activities contemplated to be funded by the ETTF are for the benefit of the regulated utility and its customers.<sup>12</sup> This has nothing to do with Enbridge Sustain.
5. *Earnings Sharing Mechanism* – There is no reason why the ESM should be impacted by the activities of Enbridge Sustain, which are separate from the utility. The notion that Enbridge Gas should have to share earnings from unregulated business activities should be rejected.

In its January 10, 2024 letter, HRAI says that it is not seeking to reopen or challenge any aspect of 2024 rates or revenue requirement. Importantly, 2024 rates (and the

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<sup>11</sup> EB-2022-0200, Exhibit O1, Tab 1, Schedule 1, pages 30-31.

<sup>12</sup> Exhibit 1, Tab 10, Schedule 7.

underlying revenue requirement) set the base for the determination of IRM rates from 2025 to 2028.

HRAI does indicate, though, that it seeks to obtain, review and make submissions about Enbridge Gas's 2025 to 2028 budgets, in order to consider if adjustments should be made to take account of Enbridge Sustain. This amounts to a collateral attack on the Phase 1 Decision and Phase 1 Settlement Agreement as well as an attempt to reframe Enbridge Gas's application as a multi-year cost of service case. If Enbridge Gas is not permitted to file and request rates based on its cost of service for each year of the IRM term under the rules of the OEB's [Handbook for Utility Rate Applications \(Rate Handbook\)](#), then it should not be proper for HRAI (or any party) to be allowed to require the production and review of the year-by-year costs of the utility during an IR term under the guise of setting an IRM.

Enbridge Gas does not know whether HRAI will propose any specific Phase 2 issue addressing its concerns about Enbridge Sustain. At a high level, Enbridge Gas disputes that any issue should be added, however, the Company will set out its position on any such proposal in reply submissions as contemplated by Procedural Order No. 1.

Finally, while Enbridge Gas acknowledges that the OEB will consider HRAI's intervention at a later date, the Company expects to maintain its objection to both the intervention request and the costs eligibility request. Enbridge Gas disputes that HRAI has a recognized material interest in the proceeding or that HRAI will bring a new and necessary perspective to Phase 2 of the proceeding, based on the proposed draft Issues List. On the costs eligibility item, Enbridge Gas notes that HRAI is advancing what is essentially a business issue (not a customer issue) affecting HVAC contractors on behalf of its 1150 members who (according to the HRAI website) deliver \$12 billion to the Canadian economy. It has been some years since the OEB considered a request from HRAI for costs eligibility in a new matter (as compared to an ongoing matter like Open Bill). Enbridge Gas expects to take the position that this is not a proper circumstance for costs eligibility even if funding has been available in the past.

### **Environmental Defence Motion**

On February 2, 2024, Environmental Defence filed a Motion requesting that the OEB direct that Enbridge Gas be prohibited from using ratepayer funds to promote the expansion of gas service. Essentially, the Motion alleges that Enbridge Gas is misleading customers with communications about expansion of gas service and therefore the utility should not be permitted to use ratepayer funds for promotion of the expansion of gas service. The Motion relies on a similar order being granted in Massachusetts. Not mentioned is the fact that Massachusetts has a different policy environment from Ontario.

In a letter dated February 7, 2024, Enbridge Gas set out its response to why the Motion should not proceed. Enbridge Gas continues to rely on those submissions (attached for convenience) but wishes to summarize and add to what has already been said.

To be clear, Enbridge Gas submits that there is no need for this Motion to be added to the proposed Issues List, or to be heard at all. Below are the main reasons why.

1. Assuming that Environmental Defence's real concern is that Enbridge Gas is being misleading in its communications to customers and potential customers (which the Company denies), then this question is already being dealt with in two separate ways.

- (a) In the Phase 1 Decision, the OEB directed Enbridge Gas to do the following as part of Phase 2:

*Review the energy comparison information in its informational and marketing materials, including its website,*

- i. to determine whether it fully discloses what is being compared and on what basis, and what assumptions are being used for the comparison*
    - ii. make any necessary corrections to the information, or remove it, and*
    - iii. file a report on the review it undertook and the actions it took as a result of the review marketing materials.*<sup>13</sup>

Enbridge Gas has complied with this direction and filed the required evidence as part of this Phase 2.<sup>14</sup> The proposed issue #21 in the draft Issues List asks:

*Has Enbridge Gas appropriately reviewed the energy comparison information in its informational and marketing materials, and taken appropriate actions based on its review?*

Enbridge Gas does not object to the inclusion of proposed issue #21 and expects that it will address the fundamental question in Environmental Defence's Motion, which is whether Enbridge Gas is providing misleading information.

- (b) Environmental Defence has made a complaint to the Competition Bureau, alleging that Enbridge Gas is engaged in deceptive marketing. According to Environmental Defence, this complaint is being investigated.
2. If Environmental Defence's concern is based on a position that Enbridge Gas should not be using ratepayer funds to promote the expansion of gas, then there is no basis for the OEB to make a finding based on that position. As explained in the Company's February 7, 2024 letter, there is no Government of Ontario policy prohibiting or even limiting gas system expansion or addition of new customers. The opposite is true. The Minister of Energy stated as much in his December 22, 2023 response to the Phase 1 Decision and Order.<sup>15</sup> There is no basis to conclude that ratepayer interests are best served by having the Company restrict its activities as argued by Environmental Defence and no benefit is achieved by adding the matters included in the Motion to the Issues List.

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<sup>13</sup> EB-2022-0200 Decision and Order, December 21, 2023, page 140 (Item 9(d)).

<sup>14</sup> Exhibit 1, Tab 16, Tab 1.

<sup>15</sup> [Ontario Government Standing Up for Families and Businesses | Ontario Newsroom](#)



3. Enbridge Gas submits that Environmental Defence's Motion, which seeks restrictions about how Enbridge Gas can spend its O&M budget, amounts to a collateral attack on the OEB-approved Settlement Agreement that set the Company's O&M budget.<sup>16</sup> There were no restrictions on what the Company could do with its O&M budget when all parties reached a complete settlement on the amount of that budget. To seek to add restrictions now alters what has very recently been considered, agreed to and approved.

### **Environmental Defence and GEC Interventions**

In Procedural Order No. 1, the OEB determined that both Environmental Defence and Green Energy Coalition (GEC) could continue as separate intervenors in Phase 2, despite the fact that they will be represented by the same law firm. Enbridge Gas does not challenge that decision but would like to highlight that it will be relying on the OEB's direction that the two intervenors are expected to coordinate their efforts. Enbridge Gas agrees that Environmental Defence and GEC have acted responsibly and in a coordinated manner in retaining their expert (Mr. Neme of Energy Futures Group). Enbridge Gas does not agree, though, that there was sufficient coordination in the way that Environmental Defence and GEC themselves addressed the issues in Phase 1. This is evidenced by the fact that each of those intervenors addressed all the same issues and each intervenor advanced very large numbers of interrogatories and questions at the technical conference and the oral hearing on the very same issues. Subsequently, there was no effort to combine positions in written submissions; instead, each intervenor filed lengthy argument on exactly the same issues. While Environmental Defence and GEC may receive instructions from different principals and while they provide assurances that they represent "distinct interests", that was not apparent in the approach and positions taken in Phase 1. Enbridge Gas trusts that there will be more coordination and less duplication among Environmental Defence and GEC in Phase 2.

Should you have any questions, please let us know.

Sincerely,

Vanessa Innis  
Program Director, Strategic Regulatory Applications – Rebasing

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<sup>16</sup> EB-2022-0200, Exhibit O1, Tab 1, Schedule 1, pages 30-31.

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**

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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.<sup>1</sup>

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

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<sup>1</sup> 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

February 7, 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 Environmental Defence Motion**

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We represent Enbridge Gas.

We write in response to the February 2, 2024 Motion Record from Environmental Defence seeking an interlocutory order "prohibiting Enbridge from using ratepayer funds to promote the expansion of gas service, policies geared toward the expansion of gas service, or lessened regulatory oversight".

Enbridge Gas objects to Environmental Defence's motion on four grounds.

First, Environmental Defence's motion is a collateral attack on the OEB-approved Settlement Proposal in this case. In Issue 12 of the Settlement Proposal, parties (including Environmental Defence) agreed to an overall O&M budget envelope for Enbridge Gas.<sup>1</sup> There was no stipulation as to how Enbridge Gas could, or could not, spend the budget amount. Environmental Defence seeks to now add conditions that could have been included in the Settlement Proposal but which were not. This is not appropriate or permissible. The motion should not be permitted.

On this same topic, Environmental Defence did raise concerns during the Phase 1 hearing about certain of Enbridge Gas's marketing materials. The OEB considered those submissions, and directed Enbridge Gas to consider, update and report on the energy comparison information on its website in Phase 2 (Phase 2 directives).<sup>2</sup> Environmental Defence's motion is an attempt to broaden and/or relitigate that topic after the OEB has issued its decision.

Second, the grounds set out in Environmental Defence's motion are not a proper basis for proceeding. There is no Government of Ontario policy prohibiting or even limiting gas system expansion or addition of new customers. The opposite is true. The Minister of Energy stated as much in his December 22, 2023 response to the Phase 1 Decision and Order.<sup>3</sup> There is no basis to conclude that ratepayer interests are best served by having the Company restrict its activities

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<sup>1</sup> Exhibit O1, Tab 1, Schedule 1, pages 30-31.

<sup>2</sup> EB-2022-0200 Decision and Order, December 21, 2023, pages 46-47 and 140.

<sup>3</sup> [Ontario Government Standing Up for Families and Businesses | Ontario Newsroom](#)

as argued by Environmental Defence. The fact that all ratepayers do not share the same views as Environmental Defence is seen by the fact that no other party (except for the Green Energy Coalition) endorsed a customer attachment policy that would effectively end attachments of new residential and small customers.

Third, the example given by Environmental Defence about a similar remedy being granted recently by the Massachusetts Department of Public Utilities (DPU) should not be viewed as a precedent or guide for the OEB. The statutory objectives guiding the Massachusetts DPU are entirely different from Ontario. The *OEB Act* instructs the OEB to support the rational expansion of the gas system.<sup>4</sup> The Massachusetts DPU is obliged to prioritize reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits.<sup>5</sup> The proceeding that led to the Massachusetts DPU Order relied upon by Environmental Defence is entirely different from the current Enbridge Gas rate proceeding. The Massachusetts DPU proceeding was an “inquiry .. to examine the role of Massachusetts gas local distribution companies (“LDCs”) in helping the Commonwealth achieve its 2050 climate targets ... potentially recasting the role of LDCs in the Commonwealth”.<sup>6</sup> In that proceeding, the Massachusetts DPU “specifically sought to develop a regulatory and policy framework to guide the evolution of the gas distribution industry in the context of a clean energy transition that requires the Department to consider new policies and structures to protect ratepayers as the Commonwealth reduces its reliance on natural gas.”<sup>7</sup>

The Enbridge Gas 2024 rate case is not an analogous proceeding. While the broad policy framework proceeding undertaken by the Massachusetts DPU, consistent with its statutory mandate, provided a basis for that regulator to issue an order restricting the marketing activities of gas distributors, the same is not true in this Enbridge Gas case. There is no regulatory and policy framework setting out the future role of gas distributors in Ontario in the context of energy transition – indeed, the recent Electrification and Energy Transition Panel points to this as something that the Government of Ontario should consider<sup>8</sup>.

Fourth, and in any event, Enbridge Gas disputes that there is any reason for Environmental Defence’s motion to be heard on an urgent or interlocutory basis. The Company’s O&M budget has been approved on consent from Environmental Defence and many other parties, without limitations such as those now proposed by Environmental Defence that amount to micro-managing Enbridge Gas communications activities. Should the OEB determine that it will consider Environmental Defence’s request, there is no reason for this to be done on an expedited basis, separate from the ongoing rate proceeding. Environmental Defence recognizes this in its cover letter and suggests that the items set out in its motion could be added to the issues list for Phase 2. If that is the OEB’s intention, the Company requests the opportunity to make submissions on the proper scope of any additional issues.

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<sup>4</sup> *Ontario Energy Board, 1998*, section 2(3).

<sup>5</sup> Section 1A of Chapter 25 of the Massachusetts General Laws - [Massachusetts General Laws, c. 25, s. 1A](#).

<sup>6</sup> [DPU-20-80-B-Order-12.6.2313.pdf \(clf.org\)](#), page 4.

<sup>7</sup> [Ibid.](#)

<sup>8</sup> [Ontario's Clean Energy Opportunity - Report of the EETP](#), section 5.7 Policy Direction on Natural Gas, pages 72-74.

As a final comment, Enbridge Gas objects to Environmental Defence's continued inaccurate and unfair accusations about "misleading and false information" being published by Enbridge Gas. The Company strongly disputes these allegations and will respond to the OEB's Phase 2 directives in accordance with the OEB's procedural directions.

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

Yours truly,

AIRD & BERLIS LLP



David Stevens  
DS/

c: All parties registered in EB-2022-0200