



**Enbridge Gas Inc.**

**Application to change its natural gas rates and other  
charges beginning January 1, 2024**

**DECISION ON ISSUES LIST**

**AND PROCEDURAL ORDER NO. 2**

**May 30, 2024**

This is a decision by the Ontario Energy Board (OEB) approving an Issues List to define the structure and scope of Phase 2 of this proceeding. The OEB is also providing a procedural schedule for Phase 2.

Enbridge Gas Inc. (Enbridge Gas) filed an application with the OEB under section 36 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B) (OEB Act), seeking approval for changes to the rates that Enbridge Gas charges for natural gas distribution, transportation and storage, beginning January 1, 2024. Enbridge Gas also applied for approval of an incentive rate-setting mechanism (IRM) for the years 2025 to 2028.

On August 17, 2023, the OEB approved a settlement proposal between Enbridge Gas and the intervenors on some Phase 1 issues (Phase 1 Settlement Proposal).<sup>1</sup> After a hearing, the OEB issued its Decision and Order on the remaining Phase 1 issues on December 21, 2023 (Phase 1 Decision).<sup>2</sup> An Interim Rate Order for 2024 rates was issued on April 11, 2024.<sup>3</sup>

Enbridge Gas filed its Phase 2 evidence on April 26, 2024.

The OEB issued Procedural Order No. 1 on April 26, 2024, which dealt with certain administrative matters and provided a draft Issues List for Phase 2. The starting point for this draft was the Issues List approved by the OEB early in Phase 1.<sup>4</sup> It was updated

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<sup>1</sup> EB-2022-0200, Decision on Settlement Proposal, August 17, 2023.

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

<sup>3</sup> EB-2022-0200, Interim Rate Order, April 11, 2024.

<sup>4</sup> EB-2022-0200, Decision on Issues List and Expert Evidence and Procedural Order No. 2, January 27, 2023.

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.

The OEB provided for written submissions on the draft Phase 2 Issues List but limited comments to characterization of the Phase 2 issues stemming from the Phase 1 Decision, as identified in the footnotes to the draft Issues List in Schedule A. The remaining issues were considered to be final, pending any additional issues raised by Enbridge Gas's Phase 2 evidence.

The OEB also invited submissions on the request by the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI) for Phase 2 to include an examination of Enbridge Gas's "Enbridge Sustain" business initiative, as well as Environmental Defence's request to explore the appropriateness of imposing limits on Enbridge Gas's use of ratepayer funds for communications and lobbying efforts aimed at promoting the expansion of natural gas.

On May 6, 2024, Enbridge Gas filed its submission on the draft Issues List. Intervenors filed their submissions by May 13, 2024, followed by Enbridge Gas's reply on May 17, 2024.

## **A. ISSUES LIST**

### **Submission of Enbridge Gas on Issues List**

Enbridge Gas generally agreed with the draft Issues List for Phase 2 set out in Procedural Order No. 1. Enbridge Gas proposed four additional issues and the expansion of two issues. The Company further disagreed with one of the proposed issues, relating to an examination of "safe bet" capital spending.

Enbridge Gas proposed the following additional or expanded issues be included in the draft Issues List:

1. As part of the overall storage cost allocation issue, Enbridge Gas proposed that it would be helpful to split the issue, so that the evidence and submissions related to the Dawn to Corunna project costs are organized separately from the storage cost allocation issue. Enbridge Gas proposed adding the following new issue to the "Other" category:
  - Is the proposed 2024 Dawn to Corunna project rate base amount appropriate?
2. In its Phase 2 evidence, Enbridge Gas requested the establishment of two new deferral / variance accounts – OEB Cost Assessment and OEB Directives. Enbridge Gas proposed 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 proposed two modifications to the requested Incremental Capital Module (ICM) for the IRM term – an opportunity for approval of ICM funding as part of leave to construct applications and an adjustment to ICM treatment for asset life extension projects. Accordingly, Enbridge Gas proposed 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. With respect to performance metrics, Enbridge Gas proposed a modification to the manner in which the Meter Reading Performance Measurement is calculated, to exclude inaccessible meters. Enbridge Gas proposed 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. Because the 2024 rates that the OEB 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 proposed 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. Enbridge Gas suggested adding an issue with respect to implementing 2025 rates as soon as possible after the Phase 2 Decision. Enbridge proposed adding the following issue:
- What is an appropriate process to approve 2025 rates as soon as possible after the Phase 2 Decision on the IRM is complete?

The School Energy Coalition (SEC) proposed modified wording for that issue:

- What is an appropriate process to approve 2025 rates after the issuance of the Phase 2 Decision on the IRM issues?

In reply, Enbridge Gas disagreed with SEC's proposed change noting that timely implementation of 2025 rates is very important for the Company.

Additionally, Enbridge Gas proposed modified wording to some of the other issues and disagreed with some other issues being added to the final Issues List, as described below.

Enbridge Gas proposed a modification to the wording of draft issue #20 ("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?").

In the Phase 1 process, the OEB approved the site restoration forecasts and site restoration cost calculations. Enbridge Gas submitted that it was not necessary nor useful at this time to examine whether the calculations and forecasts required to be filed could be done differently or were calculated appropriately. Enbridge Gas noted that it 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. Accordingly, Enbridge Gas proposed 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?

Enbridge Gas further disagreed with adding issue #18 to the Issues List ("Are the energy transition safe bet proposals with capital spending in the IRM term appropriate?"). Enbridge Gas was of the opinion that there was no need for this issue. Enbridge Gas noted that almost all of the "safe bet" items will require supplementary OEB approvals and/or oversight including demand side management, low-carbon energy in the gas supply, integrated system planning with electric utilities, phase 2 of the Low Carbon Energy Project, the proposed Energy Transition Technology Fund and ongoing Integrated Resource Planning activities. According to Enbridge Gas, many of these "safe bet" items include little or no capital spending and the only safe bet item listed that would not require supplementary OEB approval or oversight is the Hydrogen Blending Grid Study.

Enbridge Gas expressed concerns that adding this issue would 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. However, should the OEB not agree, Enbridge Gas submitted that the draft 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. Enbridge Gas suggested that the issue should be focused solely on the proposed Hydrogen Blending Grid Study.

## Intervenor Positions and Enbridge Reply on Issues List

Environmental Defence and the Green Energy Coalition (GEC) suggested the addition of an issue to explore the impact of energy transition on the proposed IRM. Both parties believed that the proposed IRM parameters offer a high incentive to build fossil fuel assets and expand the rate base. If the OEB believed an additional issue is required, Environmental Defence and GEC proposed the following:

- Is the proposed incentive rate-setting mechanism and its proposed elements appropriate in light of the potential outcomes of the energy transition?

In reply, Enbridge Gas submitted that the existing draft issues (1 and 2) were sufficiently broad to permit parties to include energy transition as one of the factors in the proposed IRM.

The Consumers Council of Canada (CCC) did not agree with Enbridge Gas's proposed changes to the issues list with the exception of those related to rate implementation. CCC supported the two additions noting that there could be a range of options for the OEB's consideration regarding rate approval and implementation.

The London Property Management Association (LPMA) supported the suggestions of Enbridge Gas on most of the issues with some exceptions. LPMA sought clarification regarding the issue of performance metrics and submitted that the issue should relate to all performance metrics and not just meters. LPMA suggested the addition of a new performance metric that tracks inaccessible meters and records the percentage and absolute number of inaccessible meters along with a breakdown of why the meters were inaccessible. In reply, Enbridge Gas submitted that LPMA's suggestion is incorporated in Enbridge Gas's proposed expanded wording.

LPMA opposed Enbridge Gas's suggestion to add an issue requesting two new deferral accounts (OEB Cost Assessment Variance and OEB Directive Deferral Accounts). LPMA submitted that OEB assessment costs are included in base rates and Enbridge Gas should be able to manage the costs as part of their overall management of costs under their proposed IRM. With respect to the OEB Directive Deferral Account, LPMA argued that Enbridge Gas should request the account when the need arises and not in this application. In reply, Enbridge Gas submitted that parties are free to take positions on the deferral accounts in the proceeding, but the OEB should review Enbridge Gas's evidence on the proposed accounts.

The Canadian Manufacturers and Exporters (CME) and LPMA did not support Enbridge Gas's proposed elimination of issue #18 that would address "safe bet" proposals related

to the energy transition.<sup>5</sup> However, LPMA agreed that the issue should be more narrowly defined, to avoid re-examination of energy transition and capital spending issues that were already reviewed in Phase 1 of the proceeding. SEC sought clarity from the OEB on what is in scope with respect to energy transition within this issue. Pollution Probe proposed expanding the issue to include review of “safe bets” with both capital and O&M spending. In reply, Enbridge Gas submitted that this would make the Phase 2 process even broader and risk further re-opening and re-examining issues already considered in Phase 1.

The Vulnerable Energy Consumers Coalition (VECC) agreed with Enbridge Gas’s suggested changes to the issues list with a few exceptions. VECC disagreed with Enbridge Gas’s recommendation to change the wording on issue #20 (site restoration costs). VECC submitted that the OEB needs to determine the appropriateness of the long-term forecast.

Pollution Probe suggested adding a number of sub-issues to issue #7 related to the Integrated Resource Planning (IRP) framework and IRP alternatives.<sup>6</sup> The Federation of Rental-housing Providers of Ontario (FRPO) suggested a small change (adding the word “replacement” to gas infrastructure in issue #7).

CME, Environmental Defence/GEC, FRPO and SEC disagreed with Enbridge Gas’s suggestion to move issue #7 to the “other” category. CME submitted that there is sufficient nexus between incentive ratemaking and issue #7 to include it as part of the IRM issues. In reply, Enbridge Gas agreed to keep the issue as part of IRM.

Pollution Probe further recommended an additional issue for storage which would look at storage being operated in an integrated manner and the value that it provides to ratepayers. Pollution Probe also recommended adding several sub-issues related to the review of marketing materials provided by Enbridge Gas and the accuracy of such information.

In reply, Enbridge Gas submitted that none of the proposed additional issues or sub-issues by Pollution Probe should be included in the Phase 2 Issues List. Enbridge Gas argued that all issues proposed by Pollution Probe would expand Phase 2 beyond its expected scope.

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<sup>5</sup> Are the energy transition safe bet proposals with capital spending in the IRM term appropriate?

<sup>6</sup> Issue 7: How should Enbridge Gas be incentivized to implement economic alternatives to gas infrastructure and how should the recovery of the costs be treated?

## OEB Findings

A number of parties including Enbridge Gas suggested additional issues or amendments to the draft Phase 2 Issues List.

Enbridge Gas proposed two modifications to issue #3 given the proposals in its Phase 2 evidence. Specifically, the opportunity for approval of ICM funding as part of leave to construct applications and adjustment to ICM treatment for asset life extension projects. Accordingly, Enbridge Gas proposed a modification to issue #3. The OEB approves the proposed modification.

In its initial submission, Enbridge Gas proposed that issue #7 related to incentivizing economic alternatives to gas infrastructure should not be under IRM. In reply, Enbridge Gas agreed that the issue should remain under IRM. There is therefore no change to this issue.

Environmental Defence and GEC suggested the addition of an issue under IRM to explore the impact of energy transition. The OEB is of the view that the issues as drafted under IRM are sufficiently broad to address energy transition as one of the factors in the proposed IRM framework.

Pollution Probe suggested adding a number of sub-issues to issue #7 under IRM. The OEB does not accept that these sub-issues are required including the additional issue proposed for storage as draft issues #7 and #12 are sufficient. Also, the OEB is of the view that issue #24 is sufficient to review the accuracy of marketing materials (previously issue #21 in the draft Issues List).

Enbridge Gas proposed a modification to issue #8 regarding the manner in which the Meter Reading Performance Measurement is calculated, to exclude inaccessible meters. The OEB approves the proposed modification to reflect information filed in the Phase 2 evidence.

Also regarding issue #8, LPMA suggested the addition of a new performance metric that tracks inaccessible meters. The OEB is of the view that the modification to issue #8 is sufficient to test Enbridge Gas's proposals.

Enbridge Gas proposed to split issue #12 to separate the Dawn to Corunna rate base amount. The OEB does not accept the proposed change. The issue as drafted allows for the consideration of the common elements in OEB directives from two previous proceedings.

Enbridge Gas disagreed with adding issue #18 (energy transition safe bet proposals) to the Issues List. If the OEB decides to add the issue, then Enbridge Gas submitted that it

should be narrowly defined to include items that remained after Phase 1. Most intervenors with the exception of VECC submitted that the issue should remain as proposed. The OEB agrees that the wording needs to scope the issue to ensure that matters reviewed in Phase 1 are not re-examined in this proceeding. Accordingly, the OEB has modified the draft issue to ensure sufficient delineation between Phase 1 and Phase 2 while reflecting the intent of the Phase 1 Decision.

With respect to issue #20 which addresses the calculation of site restoration costs and the long-term forecast, Enbridge Gas proposed revised wording. Enbridge Gas submitted that it will not have better forecasts of site restoration costs until the net salvage and depreciation study is completed at the next rebasing. The OEB does not accept Enbridge Gas's proposed wording. The OEB believes that the issue as originally worded enables the consideration of ratemaking options related to the long-term forecast of total funds and the annual amounts of site restoration costs prior to the next rebasing.

Enbridge Gas proposed a sub-heading "Rate Implementation" and proposed two additional issues with respect to implementing changes to 2024 interim rates and the process to approve 2025 rates. Several intervenors supported the addition of the two issues and agreed that there could be many options for the OEB's consideration regarding finalizing 2024 rates and implementing 2025 rates. The OEB approves the additions of issues #21 and #22 under the heading "Rate Implementation".

In its Phase 2 evidence, Enbridge Gas requested the establishment of two new deferral accounts – OEB Cost Assessment and OEB Directives. The OEB approves the addition of issue #26 in response to the evidence filed by Enbridge Gas.

## **Enbridge Sustain**

HRAI advised that Enbridge Sustain is a new business within the utility company that is involved in the business of supplying, installing, servicing and financing different types of heating and cooling systems including heat pumps. HRAI alleged that although it is a competitive activity, the business is being carried out as an unregulated ancillary business within the regulated utility. HRAI submitted that the OEB has no evidence about Enbridge Sustain and that Enbridge Gas intends to keep it that way by opposing its inclusion in the final Issues List of this proceeding. HRAI recommended that the most transparent and straightforward way to deal with this matter is to add it to the Phase 2 Issues List. HRAI suggested the following wording:

- Are the existing and planned activities of Enbridge Gas related to Enbridge Sustain, and the proposal to carry on that business as an unregulated ancillary



business within the regulated entity, appropriate, and do the terms and procedures under which it is and will be operated fully protect the ratepayers?

In its application to intervene, HRAI clarified that it “does not seek to re-open or challenge any aspect of 2024 rates or revenue requirement, and fully accepts the record in Phase 1, including the Decision with Reasons of December 21, 2023. HRAI’s interests are related only to 2025 and beyond, and the issues the Commissioners determine are live in Phases 2 and 3.”

Enbridge Gas disputed the position of HRAI that the business activities of Enbridge Sustain are relevant to the issues in this proceeding. Enbridge Gas noted that HRAI has already made a complaint to the OEB compliance group about Enbridge Sustain and that complaint is being investigated. Enbridge Gas argued that a duplication of review presents a risk of conflicting outcomes and inefficiency. Enbridge Gas further noted that the O&M budget for 2024 Rates has already been approved through the Phase 1 settlement proposal and it would not be appropriate for HRAI to re-open items already determined.

The Association of Power Producers of Ontario (APPrO), CCC, CME, Energy Probe, Environmental Defence, FRPO, GEC, Ontario Greenhouse Vegetable Growers (OGVG), Pollution Probe and SEC supported HRAI’s request. Environmental Defence and the GEC argued that the OEB would benefit from hearing multiple perspectives on this issue which would not be possible in a compliance review.

CCC, FRPO, OGVG and SEC submitted that it was important to examine whether ratepayers are subsidizing the Energy Sustain program and if so, how to address the cross-subsidization going forward. Energy Probe argued that if Enbridge Gas is offering behind the meter services to customers through Energy Sustain without approved rates for these services, then it may be in contravention of the OEB Act. If parties were aware of the Energy Sustain program, Energy Probe and SEC submitted that it would have asked relevant questions in Phase 1 and taken a different position. CME submitted that it is critical for the OEB to review the Enbridge Sustain program to ensure that it is making an appropriate decision with respect to Enbridge Gas’s IRM framework and rates for the next several years.

VECC did not necessarily object to the inclusion of the Energy Sustain issue but recommended that the OEB include the issue in Phase 3 of the proceeding. VECC submitted that by the time Phase 3 would start, the OEB’s compliance report on Enbridge Gas’s Energy Sustain program could be made public and Enbridge Gas could file the appropriate evidence that would form the basis of any future process.

In reply, Enbridge Gas reiterated its position that there is no need to examine Enbridge Sustain in the context of this proceeding. Enbridge Gas submitted that Enbridge Sustain is operating as an ancillary business as permitted by the undertakings governing Enbridge Gas's business activities. However, in a subsequent letter dated May 27, 2024, Enbridge Gas noted that it has completed its assessment of logistics required to move the Enbridge Sustain line of business into an affiliate entity of Enbridge Gas and has decided to move ahead with this transition, with completion targeted for the end of 2024.

Enbridge Gas rejected the view that the OEB has no evidence about Enbridge Sustain. Enbridge Gas confirmed that it has responded to questions and provided detailed information about Enbridge Sustain as part of the compliance investigation. Enbridge Gas clarified that Enbridge Sustain will not benefit from the Energy Transition Technology Fund program and Enbridge Sustain will not use the Enbridge Gas bill for its activities. Enbridge Gas further confirmed that there is no sharing of customer information from the utility to Enbridge Sustain and none of Enbridge Sustain's assets are included in rate base or paid for by ratepayers.

Enbridge Gas confirmed that it is not seeking any OEB approval to operate the Enbridge Sustain business within the regulated utility and no portion of the company's utility O&M or capital budgets are directed to Enbridge Sustain.

## **OEB Findings**

HRAI suggests that Enbridge Gas is using money collected from ratepayers to subsidize Enbridge Sustain. Enbridge Gas denies this. In its Reply, it asserts that "No Enbridge Sustain assets are included in utility rate base or paid for by ratepayers." It adds that "No portion of the Company's utility O&M or capital budgets are directed to Enbridge Sustain. Said differently, there is no 'ratepayer funding' for Enbridge Sustain."

If HRAI were correct that Enbridge Gas is using ratepayer funding for Enbridge Sustain (whether it is carried out as an ancillary business or through an affiliate), that would be concerning. The challenge is that there is no actual evidence on the record in this proceeding to support or refute that allegation. The OEB is of the view that it is appropriate to explore that narrow ratemaking question in Phase 2.

The OEB finds that the issue as phrased by HRAI in its May 10, 2024 submission is too broad and risks overlapping with the inspection that the OEB's compliance group has initiated – at HRAI's request. It will be for the OEB's compliance group to consider whether Enbridge Sustain is carried out in compliance with applicable legal requirements. HRAI submitted that the OEB's compliance group "has no jurisdiction to consider 'just and reasonable rates', or to assess how the Applicant's actions related to

Enbridge Sustain affect rates”. The OEB agrees that just and reasonable rates are properly within the scope of this proceeding.

Accordingly, the following issue will be included in the Phase 2 approved issues list:

- Has Enbridge Gas demonstrated that Enbridge Sustain’s activities are not funded through rates?

### **Environmental Defence Motion**

On February 2, 2024, Environmental Defence filed a Notice of Motion seeking an interlocutory order prohibiting Enbridge Gas from using ratepayer funds to promote the expansion of gas service, policies geared toward the expansion of gas service or lessened regulatory oversight. In the cover letter to its Notice of Motion, Environmental Defence submitted that if the OEB believes the issues raised in the Notice of Motion should not be dealt with by way of an interlocutory motion, then the issues could be added to the Phase 2 Issues List. On February 7, 2024, Enbridge Gas filed a letter objecting to Environmental Defence’s motion on a number of grounds.

Procedural Order No. 1 invited submissions on the expansion of the scope of Phase 2 to include the issues raised by Environmental Defence in its Notice of Motion, as part of the written submissions on the draft Phase 2 Issues List.

Enbridge Gas reiterated and expanded on the points it made in its February 7, 2024 letter. Enbridge Gas argued firstly that, assuming Environmental Defence’s real concern is that the company is being misleading in its communications to customers and potential customers, that question is already being dealt with under issue 24 on the draft Issues List (which flowed from the OEB’s direction in the Phase 1 Decision and Order requiring Enbridge Gas to conduct a review of certain marketing materials), and also by the Competition Bureau (in response to a complaint made by Environmental Defence).

Secondly, Enbridge Gas asserted that there is no basis for the OEB to restrict its activities to promote the expansion of natural gas, as “there is no Government of Ontario policy prohibiting or even limiting gas system expansion or addition of new customers.”

Thirdly, Enbridge Gas submitted that Environmental Defence’s request for restrictions on how Enbridge Gas can spend its O&M budget amounts to a collateral attack on the OEB-approved settlement agreement in Phase 1.

Environmental Defence (in a joint submission with GEC), proposed that the following issue be added to the issues list: “Are directions restricting the use of ratepayer funds for certain lobbying and public relations efforts warranted?”

Environmental Defence explained that it “seeks orders prohibiting or restricting the use of ratepayer funds” for lobbying and public relations campaigns that are “pro-gas and/or anti-electrification”. It added that “these uses are for the benefit of the shareholder, not customers, and in some cases harm customers. Furthermore, customers should not be forced to pay through their gas bills for lobbying and public relations campaigns for policies that are contrary to their conscience, especially when those campaigns are based on misleading or false information.”

In response to Enbridge Gas’s objection that these issues will be examined under issue 21 (issue #24 in the approved Issues List) and by the Competition Bureau, Environmental Defence argued that “those relate solely to the accuracy of marketing materials”, not to the appropriateness of using ratepayer funds for “pro-gas and anti-electrification lobbying and public relations campaigns.” Environmental Defence also took issue with Enbridge Gas’s argument that provincial policy does not limit gas system expansion, saying, “We do not agree that government policy in Ontario supports the use of ratepayer funding for pro-gas and anti-electrification lobbying. But in any event, any arguments around government policy should be made in final submissions, not at this stage.”

Finally, Environmental Defence denied that its proposed issue amounts to a collateral attack on the approved settlement. It said that it does not challenge the budget envelope that the parties to the settlement agreed upon. However, the parties “did not agree that Enbridge could spend those dollars to the benefit of the shareholder”, and anyway the extent of the company’s lobbying and public relations efforts was not known at the time of the settlement.

In its reply, Enbridge Gas submitted that Environmental Defence presupposes that Enbridge Gas’s communications include misleading or false information. Enbridge Gas further added that Environmental Defence “would use any opportunity arising from the addition of its proposed issue as a back-door way to get more information to fuel its public relations campaigns”.

Most intervenors took no position on Environmental Defence’s request. In addition to GEC, Environmental Defence’s request received support from FRPO, LPMA, and Pollution Probe; VECC opposed it.

## **OEB Findings**

The OEB will not add Environmental Defence’s proposed issue to the Issues List.

The OEB agrees with Enbridge Gas that Environmental Defence’s request conflicts with the approved settlement agreement in Phase 1. That agreement reflected a full

settlement on the O&M budget; it did not include any restrictions on the use of any O&M funds for lobbying or public relations. Phase 2 is too late in this proceeding to seek the imposition of such restrictions.

To the extent Environmental Defence's concerns relate to allegedly misleading communications to customers, the OEB is of the view that those concerns may be explored in Phase 2 under Issue #24 in the OEB approved Issues List (previously Issue #21 in the Draft Issues List). There is also the Competition Bureau process. But it would not be appropriate to reopen the O&M issue which was settled in Phase 1.

The OEB-approved Issues List is attached as Schedule A to this Decision and Procedural Order.

## **B. LATE INTERVENTION REQUESTS**

### **HRAI**

On January 10, 2024, HRAI filed a letter with the OEB requesting late intervenor status in Phases 2 and 3 of the proceeding, as well as cost eligibility. The focus of the intervention related to Enbridge Sustain.

In a letter dated January 17, 2024, Enbridge Gas objected to HRAI's intervention request and submitted that HRAI's intervention should be denied, or permitted only on a limited basis. Enbridge Gas noted that HRAI is itself not a ratepayer and its members are service providers and not ratepayers. Enbridge Gas stated that there are already a number of active intervenors in this proceeding, many of whom represent ratepayer interests and therefore HRAI's participation was not necessary. Enbridge Gas further submitted that if HRAI's intervention is approved, then cost eligibility should be denied. It pointed to section 3.04 of the *Practice Direction on Cost Awards* and argued that because HRAI "is an organization representing commercial interests of HVAC contractors", it would not be appropriate for ratepayers to fund its participation.

On January 24, 2024, HRAI filed a letter in response to Enbridge Gas, reiterating its position that its interests relate to the Phase 2 and 3 issues and arguing that it has unique knowledge of the industry Enbridge Sustain operates in, which other intervenors do not have. On the question of cost eligibility, HRAI noted that its predecessor the HVAC Coalition, had been found eligible for costs in previous OEB proceedings, as had its affiliate the Ontario Geothermal Association. HRAI explained that it "understands that being found eligible is just a preliminary step. Then HRAI must, with its intervention, add value that benefits the ratepayers. If HRAI and its members talk about how Enbridge Sustain will hurt their commercial interests, they will not get an award of costs."

In Procedural Order No. 1, the OEB explained that it would make a determination on HRAI's intervention request, including cost eligibility, once the Phase 2 issues list has been finalized.

## **OEB Findings**

As discussed earlier, the OEB has added issue #27 related to Enbridge Sustain to the approved Phase 2 Issues List. This was in response to the concerns raised by HRAI – which were then echoed by many ratepayer groups and other intervenors. The new issue is fundamentally about just and reasonable rates, not about competition within the HVAC sector.

Nevertheless, the OEB is of the view that HRAI is uniquely positioned and potentially affected by Enbridge Gas's application. It follows that HRAI will be granted intervenor status. The OEB accepts that HRAI did not apply to intervene earlier – in Phase 1 – because Enbridge Gas's Phase 1 evidence did not discuss Enbridge Sustain.

HRAI will also be eligible to claim its costs. As HRAI noted, both its predecessor the HVAC Coalition and its affiliate the Ontario Geothermal Association have been found to be eligible in prior proceedings and HRAI is expected to participate responsibly within the scope of this proceeding.

## **Minogi Corp.**

On May 8, 2024, Minogi Corp. (Minogi), filed a letter seeking late intervenor status and cost eligibility. Minogi is an Indigenous business corporation that represents the interests of Mississaugas of Scugog Island First Nation and its members. Minogi explained that its "late intervention request results from the fact that it has only recently become engaged with many of the issues that the Board will consider in Phase 2 and its recent decision to participate in the Indigenous Working Group, established in Phase 1 of this proceeding."

In a letter dated May 24, 2024, Enbridge Gas said that it did not object to Minogi's intervention request but proposed that Minogi's intervention should be combined with the existing intervention from Three Fires Group Inc. (Three Fires) for purposes of Phase 2.

Enbridge Gas noted that both organizations are represented by the same law firm and their areas of interest appear to be aligned. Enbridge Gas suggested that the regulatory process is more efficient if parties with similar interests work together. Enbridge Gas noted that both Minogi and Three Fires intervened jointly in the proceeding to review Enbridge Gas's 2024 Annual Update to its five-year natural gas supply plan.

Counsel to Minogi and Three Fires filed a letter dated May 27, 2024, confirming that Minogi and Three Fires will consider combining their intervention for this proceeding. They will also consider coordinating throughout the proceeding in a responsible and efficient way to advance each of their interests and will work together to provide joint interrogatories, submissions, and testing of evidence.

However, the letter emphasized that “Minogi and Three Fires represent the rights and interests of two separate and distinct First Nations,” and that Three Fires and Minogi each reserve the right to identify unique issues and interests and make separate submissions on such issues and interests. It added that counsel were still “in the process of seeking further instructions from our clients”.

### **OEB Findings**

The OEB approves Minogi’s late intervention request as well as its request for cost eligibility. The OEB understands that Minogi and Three Fires represent distinct First Nations and commends them for exploring how to co-ordinate their participation and encourages them to avoid duplication wherever possible.

## **C. NEXT PROCEDURAL STEPS**

### **OEB Staff and Intervenor Evidence**

If OEB staff or any intervenor wishes to file evidence (including expert evidence) in Phase 2 it must submit a request in accordance with Rule 13 of the OEB’s *Rules of Practice and Procedure*. Deadlines are set out below.

### **Interrogatories**

Provision is being made for written interrogatories on the Phase 2 evidence. Parties should consult sections 26 and 27 of the OEB’s [\*Rules of Practice and Procedure\*](#) for information related to interrogatories. Similar to Phase 1, the OEB will be using the exhibit and tab numbers as the reference for naming interrogatories. The numbering for each interrogatory should be continuous and start from one for this proceeding. Parties should not restart the numbering for interrogatories associated with each exhibit and tab of the evidence. As an example, OEB staff’s fifth interrogatory could be related to the energy transition technology fund. Therefore, it would be titled as “1.10-Staff-5”. OEB staff’s 40<sup>th</sup> interrogatory could be related to IRM. Therefore, it would be titled as “10.1-Staff-40”.

### Technical Conference

A transcribed technical conference will be held to provide clarification on interrogatory responses. In preparation for the technical conference, the OEB will require parties to file a description of the specific areas that they will be focusing on and an estimate of time required for each area of focus. This will allow a technical conference schedule to be developed. If parties wish to file specific questions in advance, they may do so.

The technical conference will start on **July 22, 2024** and continue on **July 23, 2024**, if necessary. Responses to undertakings from the technical conference shall be filed with the OEB by **July 30, 2024**.

### Settlement Conference

A settlement conference will be held from **September 10 to September 12, 2024**. No later than September 12, 2024, a letter from OEB staff shall be filed with the OEB indicating whether a tentative agreement has been reached or whether parties believe additional time is needed.

The OEB will evaluate whether there is value in the settlement conference continuing based on the settlement progress letter.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

### THE ONTARIO ENERGY BOARD ORDERS THAT:

#### OEB Staff and Intervenor Evidence

1. If OEB staff wishes to file evidence (including expert evidence) it shall submit a request in accordance with Rule 13 by **June 7, 2024**. Any intervenor wishing to file evidence (including expert evidence) shall submit a request in accordance with Rule 13 by **June 11, 2024**.
2. If OEB staff or any intervenor obtains leave from the OEB to file evidence under Rule 13, that evidence shall be filed with the OEB, and copied to Enbridge Gas and intervenors, by **August 12, 2024**.
3. If any party is seeking information and material with respect to any evidence filed by OEB staff or any intervenor that is in addition to the evidence filed with the OEB, and that is relevant to this proceeding, that information shall be requested by written



interrogatories filed with the OEB and copied to Enbridge Gas and intervenors by **August 23, 2024**.

4. OEB staff or intervenors that receive interrogatories on their evidence shall file with the OEB complete responses to the interrogatories and copy the responses to Enbridge Gas and intervenors by **September 6, 2024**.

### Interrogatories

5. OEB staff and intervenors shall request any relevant information and documentation from Enbridge Gas that is in addition to the evidence already filed by Enbridge Gas, by written interrogatories filed with the OEB and served on all parties by **June 19, 2024**.
6. Enbridge Gas shall file with the OEB complete written responses to all interrogatories and serve them on OEB staff and all intervenors by **July 8, 2024**.

### Technical Conference

7. A transcribed technical conference will be held on **July 22, 2024** starting at 9:30 a.m. If necessary, the technical conference will continue to **July 23, 2024**. OEB staff and intervenors shall file with the OEB, and provide to Enbridge Gas, a description of the specific areas they will focus on at the technical conference, and time estimates by **July 17, 2024**. Further information on how to participate will be communicated to parties closer to the date.
8. Responses to undertakings from the technical conference shall be filed with the OEB and sent to all parties by **July 30, 2024**.

### Settlement Conference

9. A settlement conference among the parties and OEB staff will be convened on **September 10, 2024**, starting at 9:30 a.m. and will continue to **September 12, 2024**, if required. Further information on how to participate will be communicated to parties closer to the date.
10. No later than **September 12, 2024**, OEB staff shall file a letter informing the OEB of the status of the settlement discussions including whether a tentative agreement has been reached or if the parties propose to continue the settlement discussions.
11. If a settlement is reached between the parties, Enbridge Gas shall file the settlement proposal, and send a copy to all intervenors, by **October 4, 2024**. In addition to

outlining the terms of any settlement, the settlement proposal should contain a list of any unsettled issues.

12. Any submission from OEB staff on the settlement proposal shall be filed with the OEB and sent to all parties by **October 15, 2024**.

### Issues List

13. The approved Issues List is attached as Schedule A.

### Late Intervention Requests

14. The requests by HRAI and Minogi to intervene in Phases 2 and 3 are approved. Both intervenors are eligible for costs.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0111** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Khalil Viraney at [Khalil.Viraney@oeb.ca](mailto:Khalil.Viraney@oeb.ca) and OEB Counsel, Ian Richler at [Ian.Richler@oeb.ca](mailto:Ian.Richler@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **May 30, 2024**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar

**SCHEDULE A**

**ENBRIDGE GAS INC.**

**EB-2024-0111**

**APPROVED ISSUES LIST**

## Enbridge Gas Rebasing – Phase 2

### **A. Incentive Rate Setting Mechanism**

- 1) Are the proposed Price Cap Incentive Rate-Setting Mechanism, Annual Rate Adjustment Formula, and term appropriate?
- 2) Are the proposed elements of Enbridge Gas's Price Cap Incentive Rate-Setting Mechanism appropriate?
- 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?<sup>7</sup>
- 4) Is the proposed earnings sharing mechanism appropriate?
- 5) Is Enbridge Gas's proposal for annual proceedings for clearance of deferral and variance accounts and presentation of utility results (and any ESM amounts) and scorecard results appropriate?
- 6) Is the proposed mechanism to reduce the capitalized indirect overhead balance by \$50 million in each year of the IRM term and expense it as O&M appropriate?<sup>8</sup>
- 7) How should Enbridge Gas be incentivized to implement economic alternatives to gas infrastructure and how should the recovery of its costs be treated?<sup>9</sup>
- 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?

### **B. Storage**

- 9) Should the cap on cost-based storage service for in-franchise customers established in the NGEIR decision remain at 199.4 PJ?
- 10) Is the purchase of storage service at market-based rates by Enbridge Gas from Enbridge Gas for in-franchise customers appropriate?
- 11) Is the proposal to add 10 PJ of market-based storage at a cost not currently included in the 2024 Test Year gas cost forecast appropriate?

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<sup>7</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, p. 95; EB-2022-0200, Decision on Settlement Proposal, dated August 17, 2023, Schedule A, p. 25.

<sup>8</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, pp. 98, 99 and 140.

<sup>9</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, p. 52.

- 12) Is the allocation of capital assets and costs between utility and non-utility (unregulated) storage operations appropriate, including Enbridge Gas's proposal to recover Dawn to Corunna project costs in 2024 rate base?
- 13) How should the determinations made for the Phase 2 Storage issues be addressed and implemented, including any required changes to 2024 costs and revenues, the Gas Supply Plan and gas supply deferral and variance accounts?
- 14) Is the proposed harmonized methodology for determining the amount of storage space and deliverability required to serve in franchise customers appropriate, and is the proposed allocation of storage space and deliverability among customers appropriate?

***C. Energy Transition Capital Spending, Technology Fund & Voluntary RNG Program***

- 15) Are the specific proposed parameters for an Energy Transition Technology Fund and associated rate rider appropriate?
- 16) Is the proposal to establish a new Energy Transition Technology Fund Variance Account appropriate? <sup>10</sup>
- 17) Are the specific proposals to amend the Voluntary RNG Program and to procure low-carbon energy as part of the gas supply commodity portfolio, appropriate?
- 18) Are the energy transition safe bet proposals with capital spending in the IRM term that were not addressed in Phase 1, such as the Energy Transition Technology Fund and the Low-Carbon Renewable Natural Gas Program, appropriate?<sup>11</sup>

***D. Operating Expenses***

- 19) In relation to the 2024 Test Year gas cost forecast,
  - a) Are the 2024 load balancing costs including storage appropriate? <sup>12</sup>
  - b) Is the proposed harmonized approach to determining operational contingency space) appropriate? <sup>13</sup>

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<sup>10</sup> EB-2022-0200, Decision on Settlement Proposal, dated August 17, 2023, Schedule A, pp. 55-57.

<sup>11</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, p.16.

<sup>12</sup> EB-2022-0200, Decision on Settlement Proposal, dated August 17, 2023, Schedule A, p. 35.

<sup>13</sup> EB-2022-0200, Decision on Settlement Proposal, dated August 17, 2023, Schedule A, p. 36.

- 20) 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?<sup>14</sup>

***E. Rate Implementation***

- 21) How should the OEB implement any changes to 2024 interim rates resulting from determination and decisions on the issues in Phase 2?
- 22) What is an appropriate process to approve 2025 rates as soon as possible after the Phase 2 Decision on the IRM is complete?

***E. Other***

- 23) Is the proposed harmonized methodology for determining the amount of storage space and deliverability required to serve in franchise customers appropriate, and is the proposed allocation of storage space and deliverability among customers appropriate?<sup>15</sup>
- 24) Has Enbridge Gas appropriately reviewed the energy comparison information in its informational and marketing materials, and taken appropriate actions based on its review?<sup>16</sup>
- 25) Has Enbridge Gas appropriately responded to relevant OEB directions and commitments from previous proceedings, including issues related to the IRP Framework?<sup>17</sup>
- 26) Is the proposal to establish the OEB Cost Assessment Variance Account and the OEB Directive Deferral Account appropriate?
- 27) Has Enbridge Gas demonstrated that Enbridge Sustain's activities are not funded through rates?

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<sup>14</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, pp. 94 and 140.

<sup>15</sup> EB-2022-0200, Decision on Settlement Proposal, dated August 17, 2023, Schedule A, p. 61.

<sup>16</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, pp. 47 and 140.

<sup>17</sup> EB-2022-0200, Decision and Order, dated December 21, 2023, p. 108.