ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF the 2024 annual update to Enbridge Gas Inc.'s five-year natural gas supply plan.

EB-2024-0067

WRITTEN COMMENTS OF

THREE FIRES GROUP INC. AND MINOGI CORP.

July 17, 2024

OVERVIEW

1. We are counsel to Three Fires Group Inc. (**Three Fires**) and Minogi Corp. (**Minogi**) (collectively, **Three Fires and Minogi**) in the Ontario Energy Board's (the **Board**) review of the annual update (the **Update**) to Enbridge Gas Inc.'s (**EGI**'s) five-year natural gas supply plan (the **Plan**) in keeping with the gas supply plan assessment process contemplated in the *Report of the Board: Framework for the Assessment of Distributor Gas Supply Plans* (the **Framework**).[1]

2. Three Fires and Minogi provide these comments with the aim of assisting the Board in understanding the considerations of Indigenous communities in achieving and maintaining access to energy in a manner that is cost-effective, reliable, and secure. Their comments focus on the Update's inadequacies in terms of its treatment of the impact of climate change and the energy transition, which will have significant consequences for Indigenous communities and more broadly, and the lack of engagement with First Nations in the annual update process.

3. The Update's analysis of the potential effects of the energy transition is relatively superficial. Given the large impact that energy transition will have on the energy sector and for EGI's gas supply operations specifically, this superficial treatment is inconsistent with the Framework's requirement to report on "changes to the supply and demand conditions" as they relate to the underlying gas supply plan.[2] In particular, the Update is notably silent on such matters as:

   (a) Global policy developments and how those developments may affect forecasted demand;

   (b) EGI's views on how trends relating to the energy transition are developing, as well as the cumulative impact for gas supply in Ontario should such trends continue;

   (c) How energy transition is unfolding in Ontario on a more localized basis, including consequences for EGI's First Nations customers, and whether any divergences if they

[1] EB-2017-0129, "Report of the Ontario Energy Board: Framework for the Assessment of Distributor Gas Supply Plans", available online at: https://www.oeb.ca/sites/default/files/Report-of-the-Board-Gas-Supply-Plan-Framework-20181025.pdf, [**Framework**].

[2] https://www.oeb.ca/sites/default/files/OEB-Draft-Report-Framework-Assessment-Distributor-Gas-Supply-Plans-20180412.pdf at page 16

continue to accumulate could have impacts for remote or vulnerable energy consumers; and

(d) Engagement with First Nations and advancing reconciliation.

4. A more meaningful and ongoing analysis of trends relating to the energy transition is not only consistent with the Framework's requirement to report on material changes, it is also essential towards mitigating the risks that the energy transition poses for Ontario ratepayers, especially Indigenous communities, as well as vulnerable and remote ratepayers.

5. Accordingly, these submissions recommend items that EGI should be required to address as part of its annual updates, increasing the likelihood that the Board and Ontario ratepayers will have access to the information necessary to promote objectives relating to affordability, access, reliability, and reconciliation in the medium and long-term to the benefit of all Ontarians and EGI's First Nations customers.

EGI ACKNOWLEDGES THAT THE ENERGY TRANSITION MAY PRODUCE MASSIVE TRANSFORMATION

6. The Update's cursory approach to the energy transition is inconsistent with EGI's acknowledgment in other proceedings that efforts across the globe to decarbonize will mean massive transformation for energy systems in Ontario and worldwide,[3] as well as the Update's acknowledgment that the energy transition is expected to result in lower demand for natural gas in the future.[4]

7. EGI stated in its recent rebasing application (EB-2022-0200) (the **Rebasing Application**) that the energy transition is "unlike any other challenge that management is facing".[5] It further acknowledged that "[t]here is potential that climate change legislation and government policy, such as municipal or provincial plans to phase out the use of natural gas, could have a life-shortening effect on EGI's system."[6]

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[3] EB-2022-0200 ("**Rebasing Application**"), Exhibit 1, Tab 10, Schedule 4, paragraph 52. See also evidence of Tanya Ferguson, Hearing Transcript, Day 8, page 65
[4] Update, page 14
[5] Rebasing Application Evidence of Tanya Ferguson, Hearing Transcript, Day 8, page 65.
[6] Rebasing Application Exhibit 1, Tab 10, Schedule 4, paragraph 52.

8. EGI's only expert evidence in the Rebasing Application to speak directly to the risks that EGI faces was even more express in articulating the extreme risk that the energy transition poses for EGI's operations as a gas distributor in Ontario. In particular, Concentric argued that EGI faces risks that threaten its core business activities:

> Depending on the specific pathways ultimately taken by the Canadian federal government and the province of Ontario, the Company may no longer be able to engage in the provision of its main business enterprise: the distribution of natural gas.[7]

9. EGI's expert evidence stated that EGI's operations face significant risk even in less extreme transition scenarios. For example, EGI's expert Concentric recognized the risk "that large scale retirement of assets may be required in the periods between now and 2050."[8]

10. EGI's acknowledgment that the energy transition could impact its core business activities underscores its significance for Ontario gas customers, as well as the importance of requiring gas distributors to provide regular updates concerning the transition's likely impacts on a distributor's gas supply and demand as transition pathways advance and more information continually becomes available.

11. We provide specifics regarding Update's general failure to address the ongoing and future impacts of the energy transition in the sections below.

THE UPDATE CONTAINS ONLY A SUPERFICIAL TREATMENT OF THE ENERGY TRANSITION AND ITS IMPACTS ON GAS SUPPLY

12. EGI includes energy transition as a proper subject for the Update, but its treatment of the subject is superficial. EGI's references are limited, and the Update includes almost no insight as to EGI's ongoing and updated views on how energy transition will affect its operations in the medium and longer-term. Instead, the Update's core review concerning future supply and demand scenarios is limited to a summary of:

    (a) Canada Energy Regulator's (**CER**) outlook for Canada's natural gas supply and demand under three energy transition scenarios;[9] and

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[7] Rebasing Application Exhibit 5, Tab 3, Schedule 1, Attachment 1, page 41.
[8] Rebasing Application Exhibit 4, Tab 5, Schedule 1, Attachment 1, section 3.2.3.
[9] Update Pages 8-13

(b) U.S. Energy Information Administration forecasts for production of natural gas.[10]

13. EGI has stated that the purpose of including these reports is to demonstrate demand uncertainty. The intended purpose therefore does not include providing any further insight as to EGI's updated views concerning trends or likely developments as further information becomes available to the company. As it stated at the consultation:

> "Reports like the [CER]'s Canada's Energy Future, 2023 and the EIA report referenced in evidence demonstrate a wide range of potential future outcomes and highlight the timing and extent of how demand may change in the future and how that (sic) is uncertain. Enbridge acknowledges that there may be lower annual demands for natural gas in the future, however, in the near-term Enbridge must ensure adequate assets to meet the immediate needs of its customers.[11]
>
> […]
>
> The scenarios presented in the CER's Energy Futures 2023 report are not forecasts or predications, they are scenarios to show what net zero by 2050 in Canada could look like.
>
> No likelihood has been assigned to the outcomes in this report and Enbridge Gas has not assessed or considered whether any of the scenarios presented in the CER report are likely, let alone which of the scenarios may be more likely. However, Enbridge Gas acknowledges that the transition is expected to result in lower annual demand for natural gas in the future. The extent and timing of these impacts on both annual and design day need of Enbridge Gas' customers does remain uncertain. The uncertainty is demonstrated by the range of potential future changes in the gas supply and demand presented in CER's report."[12]

14. EGI's treatment of public policy considerations relating to energy transition is similarly lacking. The Update includes short sections on the Federal Carbon Charge and the Federal Clean Fuel Regulation,[13] but it contains no analysis of broader trends that could affect its forecasts. It similarly contains no analysis of global policy developments, such as border carbon adjustments, despite the fact that EGI acknowledged as part of the consultation in this proceeding that "[i]mpacts to the budgeted demand or volumes can result from things

[10] Update Pages 9-13
[11] Consultation transcript, Page 24.
[12] Update Pages 26-27.
[13] Update Page 20.

such as evolution of policy that impacts gas demand in Ontario and other jurisdictions outside of Ontario".[14]

15. EGI's limited treatment of the energy transition is likely based in part on its position that the role of the gas supply plan is to address immediate demands (i.e., the upcoming year), as opposed to any trends extending beyond that short timeframe. EGI explained this position at the consultation:

> Question: …Why isn't [there] a running commentary on – given the importance of the energy transition, there are these events taking place out there, again, more information every day but it doesn't impact what's happening in terms of what we're projecting on gas supply, at least in the near-term?
>
> Answer: What we can maybe do is consider that as something to add to the next 5-year plan filing and include there but for, like I mentioned, there is a lot happening, you know, politically, environmentally, that type of thing but we haven't yet seen that have huge changes on the gas demand forecast. And like I said, that could come in time, we just haven't seen it in the short-term and our gas supply plan does need to address the immediate demands, meaning the next year's demands.[15]

16. EGI's lack of meaningful commentary likely also arises in part from its view that its underlying Plan is flexible enough to accommodate demand uncertainty without the need for alteration. It explained this approach at its recent consultation as follows:

> Enbridge continues to ensure the gas supply plan is flexible to adapt to changes that occur year over year and over time. Flexibility is becoming increasingly important, as there is more uncertainty in the forecast for demand into the future.[16]

ONGOING ANALYSIS OF ENERGY TRANSITION SHOULD APPEAR IN UPDATE

17. EGI's limited treatment of the energy transition is inconsistent with the Framework's requirement to report on "changes to the supply and demand conditions" as they relate to the underlying gas supply plan.[17] EGI's consistent acknowledgment of the scale of impact that the energy transition will produce underscores that the transition will have

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[14] Update Page 25.
[15] Consultation transcript, page 59-60.
[16] Consultation to Review 2024 Annual Update to Five-Year Natural Gas Supply Plan, July 2, 2024, pages 13-14.
[17] https://www.oeb.ca/sites/default/files/OEB-Draft-Report-Framework-Assessment-Distributor-Gas-Supply-Plans-20180412.pdf at page 16

accumulating, ongoing, and fundamental consequences for each of the Framework's three guiding principles for natural gas supply plans, which promote the supply of natural gas in a manner that is:

(a) cost-effective;

(b) reliable (secure); and

(c) achieves public policy objectives.[18]

18. EGI's position that the energy transition has produced no immediate effects relevant to its supply of gas is, absent further explanation, inconsistent with its acknowledgment that the transition is both ongoing and will represent massive change. It also begs the question of why EGI chose to include certain projections relating to the transition but no meaningful analysis.

19. The failure to include an ongoing and meaningful analysis of trends relating to the energy transition is not only inconsistent with the Framework's requirement to report on material changes, regardless of whether their effects are cumulative or isolated, it is also essential towards mitigating the risks that the energy transition poses for Ontario ratepayers, especially EGI's First Nations customers, as well as other vulnerable and remote ratepayers.

20. The energy transition presents significant risks to Indigenous communities, far beyond the limited threshold of impacts on traditional lands or Aboriginal and Treaty rights. Many Indigenous communities, including many of EGI's First Nations customers, are economically vulnerable and likely to face significant risks, including (i) being saddled with the growing cost of stranded assets as they are left on the gas system, (ii) difficulties in transitioning to non- and low-emitting energy, and (iii) their inability for technical or financial reasons to adopt more energy efficient means of heating and cooling their homes.

21. EGI has acknowledged the scale of the energy transition, as discussed above, but its failure to meaningfully engage with the question of how the transition is proceeding means that it fails to address the related question of how the transition may disproportionally affect EGI's

[18] Framework, p. 7

First Nations customers, as well as whether risks relating to affordability, security, or other public policy objectives are increasing, decreasing, or maintaining over the course of the Plan's five-year period. The Update lacks a discussion and analysis of the impacts of the energy transition on vulnerable and remote communities more generally, and how they may be specifically impacted by the risks and issues identified in the reports relied upon in the Update.

22. Accordingly, EGI should be required, at a minimum, to provide an update on the following matters related to the energy transition as a routine part of its annual update:

(a) Global policy developments and how those developments may affect forecasted demand;

(b) EGI's own analysis and views on how trends relating to the energy transition are developing, as well as the cumulative impact for gas supply in Ontario should such trends continue;

(c) EGI's understanding of how energy transition is unfolding in Ontario on a more localized basis and whether any divergences, especially if they continue to accumulate, could have impacts for First Nations customers, as well as remote or vulnerable energy consumers;

(d) How developments relating to the energy transition have adhered to (or diverged from) relevant assumptions in EGI's underlying Plan.

THE UPDATE SIMILARLY SUFFERS FROM A FAILURE TO CONSULT WITH EGI'S FIRST NATIONS CUSTOMERS

23. EGI's failure to address the energy transition is exacerbated by its position that Indigenous consultations were unnecessary for the purposes of the Update.

24. The company argues that such consultations were unnecessary with the justification that the Update does not have an impact on traditional lands or on Aboriginal and treaty rights. EGI confirmed its position at the consultation as follows:

> The gas supply plan update does not have an impact on traditional lands or on Aboriginal and treaty rights, and, therefore, Enbridge Gas has not undertaken a

consultation as it would in relation to an application for facilities that may have a potential impact on traditional lands or Aboriginal and treaty rights.[19]

25. EGI's position is flawed in the following ways:

(a) It is necessarily predicated on its inappropriate omission of any meaningful analysis of developments relating to the energy transition, which will have significant consequences for First Nations in Ontario, as described above; and

(b) It is inconsistent with the principles of reconciliation, which EGI's public policies endorse as further discussed below.

26. Reconciliation is the process of establishing and maintaining a mutually respectful relationship between Indigenous and non-Indigenous peoples in Canada.[20] EGI's public polices endorse the principles of reconciliation:

(a) Enbridge Inc.'s Indigenous Peoples Policy (**IPP**) states that "[c]ompanies can play a role in advancing reconciliation through meaningful engagement with and inclusion of Indigenous peoples and perspectives in their business activities" and that Enbridge will "seek the input and knowledge of Indigenous groups to identify and develop appropriate measures to avoid and/ or mitigate the impacts of [its] projects and operations that may occur on their traditional lands".

(b) The Indigenous Reconciliation Action Plan (**IRAP**) provides that "Enbridge understands meaningful engagement and respectful relationships are foundational to advancing reconciliation. [Enbridge is] committed to developing strategies, mechanisms and opportunities that support and nurture dialogue and engagement between Enbridge and Indigenous groups throughout the lifecycle of [its] projects and operations."

27. In the annual update process, advancing reconciliation, at the very least, means that EGI engages and has conversations with its First Nations customers to canvas their views and ideas in order to better understand the risks and impacts of issues identified in the Update and determine how to address and mitigate any risks.

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[19] Consultation Transcript, pp. 22-23.
[20] Truth and Reconciliation Commissions, "Honouring the Truth, Reconciling for the Future", p. 6.

28. The Update would benefit from the inclusion of Indigenous Peoples and their perspectives throughout the annual update development process. Their perspectives can assist in identifying and developing appropriate measures to avoid and mitigate the impacts of EGI's operations, including the procurement of gas, providing an important mechanism to track progress on implementable actions and measures.

29. A requirement for EGI to engage with impacted First Nations on significant developments such as the energy transition will improve the quality of the Update by ensuring that the concerns and perspectives of EGI's First Nations customers are identified. It will also increase the likelihood that any risks and opportunities are identified early, enabling EGI to take meaningful action when it is most cost-effective to do so

30. EGI's failure to engage with its First Nations customers means that it is unable to track, in the Update and at future updates, how the energy transition may negatively impact Indigenous communities across Ontario. It also means that there is no meaningful analysis that can be considered and relied upon to understand how and when these impacts will affect EGI's First Nations customers.

31. Accordingly, Three Fires and Minogi request that the Board require EGI to engage with its First Nations customers on the subject of energy transition (as well as any other significant and ongoing matters) as part of its processes underlying future gas supply plans and annual updates. Three Fires and Minogi also request that future gas supply plans and annual updates include sections specifically addressing:

(a) commentary on how First Nation customers were engaged;

(b) any developments relevant to First Nations;

(c) the consequences of issues identified in the update for First Nations; and

(d) actions being taken or considered by EGI to address any identified issues and risks.

PROCUREMENT OF RESPONSIBLY SOURCED GAS MUST ADVANCE RECONCILIATION AND RESPECT THE RIGHTS OF INDIGENOUS PEOPLES

32. Responsible sourced gas (**RSG**) is an important inclusion in EGI's gas supply. Three Fires and Minogi are generally supportive of procuring RSG as part of EGI's supply. However,

EGI's procurement of RSG must take place in a way that advances reconciliation and recognizes the rights of Indigenous Peoples, including a requirement to obtain the free, prior, and informed consent (**FPIC**) of RSG-impacted Indigenous Peoples and communities. There is no evidence in the record that EGI has satisfied these conditions as part of its policies and programs to procure RSG.

33. In its response to questions related to whether EGI procures RSG certified under frameworks that ensure the rights of Indigenous Peoples are recognized and respected, EGI acknowledged that it has not assessed whether RSG certifications frameworks are compatible with its public policies, including the IPP and IRAP, and noted that only one of the frameworks expressly addresses the rights of Indigenous Peoples.[21]

34. Any RSG certification scheme or framework that does not expressly respect the rights of Indigenous Peoples, including obtaining FPIC of impacted communities, does not advance reconciliation and should not be considered by EGI or the Board as providing any sort of 'responsibly' sourced gas and should be excluded from EGI's RSG procurement policies and practices.

35. Three Fires and Minogi suggest that, at minimum, EGI undertake an assessment of each of the RSG certifications frameworks and their compatibility with the IPP and IRAP, and the rights of Indigenous Peoples including a requirement to obtain FPIC of impacted Indigenous Peoples and communities.

36. Until such time as EGI requires that any RSG it procures is certified under a framework that expressly addresses the rights of Indigenous Peoples and requires that FPIC has been obtained, the Board should reject the inclusion of RSG as part of EGI's gas supply and procurement process and limit any associated ESG-type claims based on the procurement and/or use of such 'R'SG.

CONCLUSION

37. Accordingly, these submissions recommend items that EGI and other Ontario gas distributors should be required to address as part of their annual updates, increasing the likelihood that the Board, Ontario ratepayers, and EGI's First Nations customers, will have

[21] Consultation Transcript, p. 182.

access to the information necessary to promote objectives relating to affordability, access, reliability, and reconciliation in the medium and long-term to the benefit of all Ontarians.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF JULY, 2024.

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