EB-2024-0078

ONTARIO ENERGY BOARD

Ontario Power Generation Inc.

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

AND IN THE MATTER OF an Application by Enbridge Gas Inc., pursuant to section 36(1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2024.

AND IN THE MATTER OF the OEB's Decision and Order dated December 21, 2023.

AND IN THE MATTER OF Rules 8 and 40, 42 and 43 of the Rules of Practice and Procedure of the Ontario Energy Board.

SUBMISSIONS OF
CANADIAN MANUFACTURERS & EXPORTERS ("CME")

July 29, 2024

Scott Pollock
Borden Ladner Gervais LLP
Barristers & Solicitors
100 Queen Street
Suite 1300
Ottawa, ON K1P 1J9

Counsel for CME

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1.0 INTRODUCTION

1. These submissions are made on behalf of Canadian Manufacturers & Exporters ("**CME**") regarding the motion made by Enbridge Gas Inc ("**EGI**") to review and vary the Ontario Energy Board's (the "**OEB** or the **Board**") Decision and Order in EB-2022-0200, which related to EGI's application for 2024 Rates – Phase 1 (the "**Decision**").

2. EGI filed an application with the OEB for approval to change rates charged to customers beginning January 1, 2024. EGI's application was complex and included thousands of pages of evidence.[1] It was EGI's first rebasing application since Enbridge Gas Distribution ("**EGD**") amalgamated with Union Gas Limited ("**Union**"). Prior to the amalgamation, EGD had not rebased since approximately 2013.[2]

3. The Decision covered a significant number of issues. The Board made, *inter alia*, the following determinations:

   (a) That EGI's proposal with respect to the asset life parameters of seven classes of assets was inappropriate, and the asset life parameters proposed by InterGroup Consultants Ltd. ("**Intergroup**") and agreed to by Emrydia Consulting Corporation ("**Emrydia**") better reflected what was known about the service lives of the assets. (the "**Asset Lives Issue**").[3]

   (b) That EGI would not be allowed to include the undepreciated capital costs for integration capital in its 2024 rate base (the "**Integration Capital Issue**").[4]

4. On December 21, 2024, the OEB released the Decision. On January 29, 2024, EGI filed an initial motion to review and vary the Decision. On May 29, 2024, EGI filed an amended

[1] EB-2022-0200, Decision and Order on Costs, June 14, 2024, p. 4.
[2] EB-2017-0306/7 Decision and Order, August 30, 2018, p. 23.
[3] EB-2022-0200, Decision and Order, December 21, 2023, p. 86.
[4] EB-2022-0200, Decision and Order, December 21, 2023, p. 74.

motion to review and vary the Decision with respect to the Asset Lives Issue, and the Integration Capital Issue.

5. On June 21, 2024, the Board issued Procedural Order #1, which asked parties to make submissions on whether EGI's Amended Motion meets the Board's threshold criteria pursuant to *Rule* 43 of the Board's *Rules of Practice and Procedure*.[5]

6. CME submits that EGI's motion does not meet the threshold requirement pursuant to *Rule* 43. The Board's decision with respect to the Asset Lives Issue and the Integration Capital Issue do not demonstrate that there are "errors" in the Decision which, if corrected, would result in the Board varying, cancelling, or suspending the Decision. At their highest, EGI's issues are simply disagreements about the weighting the OEB ascribed to particular facts and how it exercised its discretion.

2.0 THE THRESHOLD TEST

7. Pursuant to *Rule* 43, the Board has the power to review whether a motion to review and vary "raises relevant issues material enough to warrant a review of the decision or order on the merits".[6]

8. The *Rules* provide that when determining whether an issue passes the threshold test, considerations can include, among other things:

    (a) Whether any of the alleged errors are actually errors (as opposed to disagreement about the weighting the OEB ascribed to particular facts or how it exercised its discretion);

    (b) Whether there are any new facts;

    (c) Whether the errors or facts could be expected to change the decision; and

[5] EB-2024-0078, Notice of Hearing and Procedural Order #1, June 21, 2024, p. 2.
[6] Ontario Energy Board, *Rules of Practice and Procedure*, Revised February 1, 2024, p. 32.

(d) Whether the moving party's interests are materially harmed by the decision such that it is sufficient to warrant a full review of the decision.[7]

9. The Board found that in order for the applicant to demonstrate that there are "actual errors", the applicant must show that the:

(a) Findings in the decision are contrary to the evidence that was before the panel;

(b) That the panel failed to address a material issue; or

(c) That the panel made inconsistent findings.[8]

10. In addition to the above, or an error similar to the above listed errors, an applicant must also demonstrate that the errors could be expected to change the decision and that its interests are materially harmed such to warrant a full review.

3.0 THERE WERE NO ERRORS REGARDING THE ASSET LIVES ISSUE

11. As CME apprehends it, EGI does not take the position that there are new facts relevant to the Asset Lives Issue or the Integration Capital Issue. EGI instead argued that the Board made reviewable errors.

12. With respect to the Asset Lives Issue, EGI argued that the Board made inconsistent findings, set rates that were not "just and reasonable", and failed to provide sufficient reasons for its decision.[9]

13. Contrary to EGI's assertions, the Board's determination regarding the Asset Lives Issue was internally consistent, consistent with the evidence before the panel at the hearing, and the Board addressed all of the material issues through fulsome reasons.

[7] Ontario Energy Board, *Rules of Practice and Procedure*, Revised February 1, 2024, pp. 32-33.
[8] EB-2014-0369, Decision and Order, January 28, 2016, at para. 23.
[9] EB-2024-0078, Argument-in-Chief, Draft Submissions for Motion for Review and Variance, p. 9.

3.1 THE DECISION WAS INTERNALLY CONSISTENT AND CONSISTENT WITH THE EVIDENCE

14. EGI argued that the Decision on the Asset Lives Issue was inconsistent with the rest of the Decision. EGI premised its argument by comparing the Board's findings on the Asset Lives Issue with several other parts of the Decision such as the Board's reduction of EGI's capital budget.[10] EGI also asserted that the Decision was not consistent with the evidence.

15. However, the Decision, when properly interpreted, is entirely consistent both internally and with the evidence presented.

16. The Board accepted in the Decision that the energy transition is underway, and that it will have impacts for EGI and its business. However, the energy transition does not impact every area in the same way or to the same extent.

17. The Decision reasonably tailored its findings to the specific evidence tendered with respect to each issue. Where the Board had the necessary evidence to understand the specific risks posed by the energy transition it addressed that risk in the Decision. For instance, the Board found that accelerating the rate of capital spending in the context of the energy transition was not reasonable or appropriate, and so reduced EGI's capital budget.[11]

18. However, EGI's evidence regarding whether and how depreciation policy should respond to the energy transition was incomplete.

19. The Board was presented with three sets of recommendations regarding the proper depreciation methodology and asset life parameters from three separate experts. Each of Emrydia, InterGroup and Concentric had recommendations on asset lives split into

[10] For instance, see EB-2024-0078, Argument in Chief, Draft Submissions for Motion for Review and Variance at para. 53.
[11] EB-2022-0200, Decision and Order, December 21, 2023, pp. 57-58.

categories depending on the assets in question. Emrydia and InterGroup substantially agreed with one another on many of the asset categories.[12] The outlier in many categories was EGI's expert, Concentric.

20. Concentric argued that its view of asset life parameters should be preferred to that of Emrydia and InterGroup because it "considered" the impact of energy transition.[13]

21. However, the evidence regarding the likely impact of the energy transition on specific asset classes was unclear. Concentric admitted that climate policies could either shorten or lengthen the expected service lives depending on the different asset types, [14] but did not clearly identify how each asset's service life would be affected, why, and how it impacted its analysis.

22. Similarly, InterGroup's evidence repeatedly stressed the uncertainty around the energy transition's impact on depreciation and the asset life parameters of specific classes of assets.[15] [16] [17] [18] Intergroup's representative, Mr. Bowman, stated that if depreciation experts were just picking a number in the depreciation calculation arbitrarily to account for energy transition risks, that he no longer understood "what the analytical part of the depreciation study would be doing anymore."[19]

23. While Concentric claimed to have taken energy transition into consideration with respect to asset lives, it failed to demonstrate what considerations it made and what impact its considerations had on its findings for the appropriate lives of specific classes of assets.[20] Accordingly, it was impossible for the Board to determine the specific impact that the

[12] EB-2022-0200, Decision and Order, December 21, 2023, pp. 84-85, Table 3.
[13] EB-2022-0200, Transcript, Volume 17, p. 48.
[14] EB-2022-0200, Transcript, Volume 16, pp. 101-102.
[15] EB-2022-0200, Transcript, Volume 17, p. 182.
[16] EB-2022-0200, Transcript, Volume 17, p. 194.
[17] EB-2022-0200, Transcript, Volume 17, p. 194.
[18] EB-2022-0200, Transcript, Volume 17, p. 196.
[19] EB-2022-0200, Transcript, Volume 17, p. 197.
[20] EB-2022-0200, Transcript, Volume 17, p. 116.

energy transition had on Concentric's recommendations, and judge whether EGI's proposal was reasonable.

24. The Decision responded to the evidence. The Decision specifically cited the lack of clarity regarding how EGI's recommended response to the energy transition addressed the actual risks facing its assets.[21]

25. The Board decided that it should not apply unclear and poorly understood "considerations" to specific asset service lives. The Board recognized that responding in an uninformed way could be harmful to the overall goal of depreciation. In other words, EGI did not demonstrate that its chosen response to the energy transition's impact on depreciation was correct. The Board therefore ordered EGI to sharpen its pencil and complete a more detailed analysis on the impact of the energy transition.[22]

26. CME submits that far from being an error, the Decision responded appropriately to the evidence available for each issue and is internally consistent. There is no reviewable error.

3.2 THE DECISION PROVIDED FOR JUST AND REASONABLE RATES

27. EGI argued that because lengthening asset life parameters increases EGI's business risk, the resulting rates are not "just and reasonable" and therefore represent an error. CME disagrees.

28. The Board is required to set "just and reasonable rates" pursuant to Section 36(2) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B (the "**Act**"). However, both the Act and the case law have determined that the Board has a broad and flexible ability

[21] EB-2022-0200, Decision and Order, December 21, 2023, p. 86.
[22] EB-2022-0200, Decision and Order, December 21, 2023, p. 84.

to set just and reasonable rates, which do not require the Board to arrive at a single correct number, or even use a single method of calculation.

29. Section 36(3) provides that the Board has the power to “adopt any method or technique that is considers appropriate”. The Supreme Court of Canada has confirmed the Board’s wide latitude when determining just and reasonable rates.[23]

30. Pursuant to Section 36(6) of the Act, the Burden of proof is on the utility to demonstrate that its proposed rates are just and reasonable.

31. EGI argues that the “just and reasonable” standard must allow the utility to earn its reasonable costs of service and earn a reasonable rate of return. However, the Supreme Court determined that a utility must be allowed the opportunity to recover its costs and a return over the long run.[24] The Court specifically recognized that the Board is not required to accept every cost submitted by the utility, or that the rate of return to investors is guaranteed.[25]

32. Accordingly, just and reasonable rates is a broad and flexible concept. The Board has the flexibility to fashion what “just and reasonable” rates look like within a wide range of potential rates depending on the unique circumstances and facts of each case.

33. CME submits that the Decision does not deprive EGI the opportunity to recover its costs and earn a fair return over the long run, and therefore rates are just and reasonable. In this regard:

(a) There is nothing certain about the energy transition and whether or not the risk of stranded assets will be realized. In its argument-in-chief in EB-2022-0200, EGI’s

[23] *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at para. 77.
[24] *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at para. 16.
[25] *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at para. 17.

"Key Message 1" was that the nature and pace of energy transition remains uncertain.[26] EGI's expert admitted that energy transition could lengthen or shorten asset lives.[27] InterGroup opined that any numerical adjustments made to asset lives in response to energy transition risk at this point would be arbitrary.[28] There is no evidence that EGI's business risk has in fact increased as a result of Board's decision on the Asset Lives Issue.

(b) the Board will review depreciation policy and the energy transition again in the next rebasing application. Accordingly, the Board has the opportunity to change asset lives parameters well in advance of any potential stranded asset risks crystallizing.

34. In its Argument-in-Chief, EGI seems to suggest that a negative impact to EGI's business risk, absent a failure to set "just and reasonable" rates, would also be a reviewable error.[29] CME disagrees. The Board's decisions regularly balance the interests of ratepayers and the utility. If all of the Board's decisions which made an adverse finding against the utility (and thereby increased its business risk) necessarily were in error, CME submits that there would be no purpose to the threshold test. CME submits that the Board should reject this line of reasoning.

3.3 THE BOARD PROVIDED SUFFICIENT REASONS

35. Contrary to EGI's assertions, the Decision, when properly interpreted, provided ample reasons for its decision to prefer the analysis set out by Emrydia and InterGroup over that provided by Concentric.

[26] EB-2022-0200, EGI Argument-in-Chief, p. 19 of 296.
[27] EB-2022-0200, Transcript, Volume 16, pp. 101-102.
[28] EB-2022-0200, Transcript, Volume 17, p. 197.
[29] For instance, EGI asserts that it is a reviewable error for the Board to fail to "acknowledge the significant negative impact of its Decision on the business risk of Enbridge Gas". EB-2024-0078, Argument-in-Chief, p. 2 of 9. This seems to be asserted even apart from the assertion that rates are not "just and reasonable".

36. The Supreme Court of Canada has determined that formal reasons are not to be judged against the standard of perfection, and are not required to include every argument, statutory provisions, case law or other details that it could have.[30] Instead, formal reasons should demonstrate that the decision was:

> "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker."[31]

37. The Decision and the reasons given demonstrates that the Board was guided by a coherent, rational, and justified chain of analysis. The Decision:

(a) stated that the Board could not tell what impact the energy transition had on Concentric's recommendations. The frailties of Concentric's evidence have been outlined earlier in these submissions;

(b) ordered EGI to complete a proper risk assessment and determine the extent to which the energy transition risk should be addressed through depreciation policy;

(c) Stated that the Board would review the issue (amongst others) at EGI's next rebasing application with the benefit of better evidence and a comprehensive record;

(d) stated that it preferred the evidence of Emrydia and InterGroup; and

(e) approved the changes to the asset service lives recommended by InterGroup and which were supported by Emrydia.

38. Reading the Decision as a whole, it is clear that the Board preferred InterGroup/Emrydia to Concentric for two main reasons. First, Concentric did not properly demonstrate how it took energy transition risk into consideration. Without a basis to determine whether Concentric's choices about depreciation were appropriate, the Board was not comfortable

[30] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 91.
[31] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 85.

basing a decision on its evidence. In contrast, InterGroup and Emrydia took greater account of traditional depreciation risks and modelling, which have been proven to result in appropriate depreciation outcomes. Second, both InterGroup and Emrydia agreed on several asset life parameters. Accordingly, the weight of expert evidence supported those findings.

39. It was an exercise of the Board's discretion to prefer Emrydia/InterGroup's evidence over Concentric's. *Rule* 43 makes it clear that disagreements about the weight accorded by the Board to particular evidence or how it exercised its discretion is not properly the subject of a motion to review and vary. Accordingly, EGI has failed to demonstrate that there is a reviewable error in this regard.

4.0 THERE WERE NO ERRORS REGARDING THE INTEGRATION CAPITAL ISSUE

40. EGI alleges that the Board made numerous errors with respect to the Integration Capital Issue. EGI alleges that the Decision is not consistent with the Board's handbook for amalgamations (the "**MAADs Handbook**"), the Board's decision in EB-2017-0306/7 (the "**MAADs Decision**"), or the "benefits follow costs" principle, and that the Board made several incorrect findings of fact.

41. CME submits that the Decision is fully consistent with the MAADs Handbook, the MAADs Decision and the "benefits follow costs" principle. Moreover, the findings of fact cited by EGI are not material errors, but even if they were, they do not have an impact on the Board's decision and as such, they do not pass the Board's threshold test.

4.1 THE DECISION IS CONSISTENT WITH THE MAADS HANDBOOK AND MAADS DECISION

42. The Decision is consistent with the "benefits follow costs" principle, the MAADs Handbook and the MAADs Decision. In this regard:

    (a) Both ratepayers and the utility pay a cost for the utility to be able to amalgamate. The utility pays the costs of achieve synergies and integration. Ratepayers forego the opportunity to enjoy lower rates which would occur as a result of the savings achieved in the previous ratemaking term, which it otherwise would absent the amalgamation.[32]

    (b) Therefore, the "benefits follow costs principle" in the context of an amalgamation requires that the Board apportion the benefits of amalgamation between the utility and the ratepayers.

    (c) The MAADs Handbook guides the Board's apportionment. The MAADs Handbook in force when the Board published the Decision stated that "incremental transaction and integration costs are not generally recoverable through rates".[33] The subsequent paragraph provides that utilities are allowed to defer rebasing for up to ten years to grant them the opportunity to realize on anticipated gains and retain achieved savings for a period of time to "offset the costs of the transaction".[34] In other words, the reason that utilities are allowed to defer rebasing is to recover the transaction and integration costs which they are not allow to recover directly through rates.

    (d) The apportionment of benefits between the utility and ratepayers is therefore determined through the deferred rebasing period. The longer the deferred rebasing

[32] EB-2017-0307, Decision and Order, August 30, 2018, p. 23.
[33] Ontario Energy Board, Handbook to Electricity and Distributor and Transmitter Consolidations, January 19, 2016, p. 8.
[34] Ontario Energy Board, Handbook to Electricity and Distributor and Transmitter Consolidations, January 19, 2016, pp. 8-9.

period, the greater savings are granted to the utility, and less to ratepayers. The MAADs Handbook only provides that the Board should give the utility the "opportunity" to keep savings to offset the costs of the transaction.[35] It is not required to guarantee that the utility will recover them.

(e) In the MAADs Decision, the Board reviewed the MAADs Handbook and the evidence in the proceeding and determined that the appropriate deferred rebasing period would be five years.[36]

(f) The Decision recognized that the Board had already reviewed a fulsome record in EB-2017-0306/7 and made a determination about the appropriate apportionment of benefits as a result of its finding regarding the length of the deferred rebasing period. Accordingly, the Decision found that altering the allocation of benefits now to further favour the utility would represent a windfall to EGI and was inappropriate.

43. EGI argued that the revisions to the MAADs Handbook made in 2024 show that the Decision is inconsistent with the MAADs Handbook. Setting aside the impropriety of judging the Decision on the basis of revisions to the MAADs Handbook which did not exist when the Decision was published, the Decision is consistent with the 2024 revisions as well.

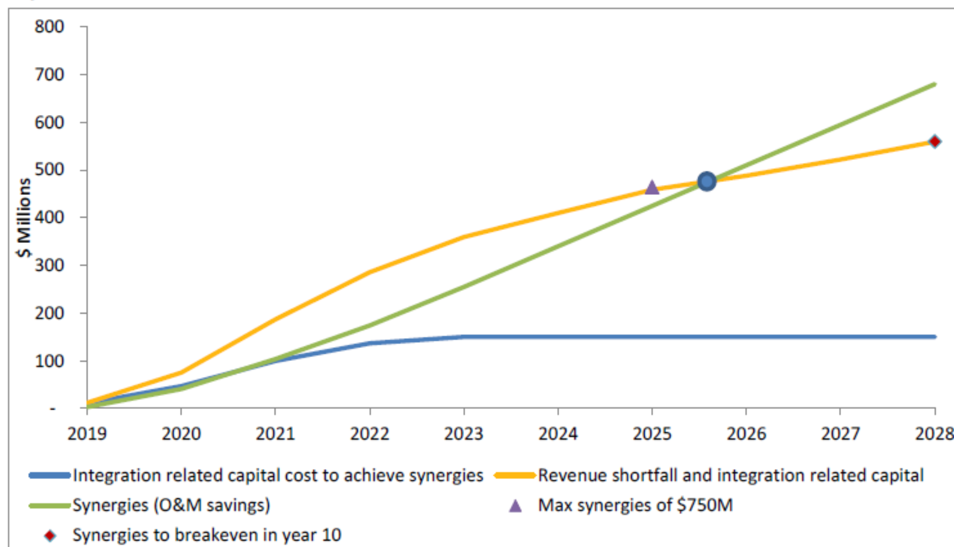
The MAADs Handbook now provides that the Board will review capitalized costs incurred by the utility to see whether they should be included in rate base after the deferred rebasing period or "whether there was an expectation that these costs be recovered through the consolidation savings."[37]

[35] Ontario Energy Board, Handbook to Electricity and Distributor and Transmitter Consolidations, January 19, 2016, pp. 8-9, 11-12.
[36] EB-2017-0307, Decision and Order, August 30, 2018, p. 22.
[37] Ontario Energy Board, Handbook to Electricity Distributor and Transmitter Consolidations, July 11, 2024, p. 14.

44. In this case, both EGI and the Board expected the costs at issue, namely capitalized costs, to be recovered through the consolidation savings and not being passed on to ratepayers after the deferred rebasing period.

45. EGI included its forecast of the capital costs necessary for integration in its evidence in EB-2017-0306/7. EGI stated that their "base case" was $150 million in spending. EGI's own evidence was that the $150 million integration capital spending (the blue line) would be recovered through savings (the green line) by 2021:[38]

The diamond mark found at year 2028 of the yellow line identifies that if Amalco spends $150 million in capital investment and achieves savings of $560 million, the payback period would be 10 years.



Graph 1: Case A with $150 million capital investment and $680 million Net O&M savings

A Base Case: $150M/$680M (capex/synergies)

Payback Net cash flow approach ($ Millions)	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Source/Calculation
A.1 Revenue shortfall to meet allowed ROE	1	28	59	62	60	50	49	30	34	38	Exhibit B, Tab 1, Table 3
Cumulative	1	29	87	149	209	260	309	338	372	410	
A.2 Integration related capital cost to achieve synergies	11	36	53	37	13	-	-	-	-	-	Exhibit B, Tab 1, Attachment 12
Cumulative	11	47	100	137	150	150	150	150	150	150	
A.3 Revenue shortfall and integration related capital	12	64	112	99	73	50	49	30	34	38	Line A.1 plus Line A.2
Cumulative Shortfall	12	76	187	286	359	410	459	488	522	560	
A.4 Synergies (O&M savings)	3	38	63	70	81	85	85	85	85	85	Exhibit B, Tab 1, Attachment 12
Cumulative	3	41	104	174	255	340	425	510	595	680	
A.5 Gap - synergies vs revenue shortfall and integration related capital	(9)	(35)	(83)	(112)	(104)	(70)	(34)	22	73	120	Cumulative A.4 less Cumulative Shortfall (A.3)

Table 1: Data and sources for Case A and Graph 1

[38] EB-2017-0306/7, Undertaking Response J2.4, May 11, 2018.

46. The table and the chart make it clear that the $150 million cost included "capital costs to achieve synergies". In other words, EGI's evidence demonstrated that their expectation was that they would be able to recover what they had forecast to be the capital costs of the amalgamation through savings.

47. Based on the evidence, including the chart reproduced above, the Board in EB-2017-0306/7 decided that the deferred rebasing period should be five years and rejected EGI argument that it should be granted a longer deferred rebasing period.[39]

48. The Decision recognized that EGI and the Board's expectation was that EGI would recover its capital costs through the amalgamation savings:

> "The OEB granted a deferred rebasing period of five years on the basis that the five years was a reasonable opportunity to recover transition costs. When hearing the MAADs application, the OEB was presented with evidence describing the nature of capital investments and the cost of those investments. After hearing that evidence, the panel clearly turned its mind to the five-year period as a reasonable opportunity to recover those costs during the five years against the savings that would be achieved and retained by the utility."[40]

49. The Decision is consistent with the MAADs Decision, the MAADs Handbook and the expectations of the parties regarding the recoverability of integration capital costs. There is no reviewable error.

4.2 THERE IS NO ERROR WITH RESPECT TO THE TYPES OF PROJECTS

50. EGI argued that the Board misunderstood the projects that made up the integration capital costs that it proposed to add to rate base. EGI pointed to real estate projects referenced

[39] EB-2017-0307, Decision and Order, August 30, 2018, p. 22.
[40] EB-2022-0200, Decision and Order, December 21, 2023, p. 74.

by the Decision which are not included in the integration costs that EGI sought to add to rate base as evidence of this alleged error.

51. The Decision discloses no material error when properly interpreted. The Board found that projects that were caused by the amalgamation should be considered amalgamation related capital spending, and therefore not eligible to be added to rate base and paid for by ratepayers. CME acknowledges that the real estate projects referenced in the Decision are not included in the capital costs EGI is seeking to add to rate base. However, the Board's underlying reasoning is equally applicable to the projects that are included in EGI's remaining integration costs.

52. EGI argued that the primary capital cost for integration was IT related projects. EGI argued that since IT projects would have been needed even absent the amalgamation, ratepayers should bear the cost of those projects after the deferred rebasing period.

53. While EGI may have been required to incur capital costs to update IT infrastructure at some point in the future, the reason why they were required to spend it during the deferred rebasing period, and the scope of the projects (and therefore the cost) was tied directly to the amalgamation of EGD and Union. Accordingly, ratepayers were denied the benefit of continuing with the existing IT infrastructure (and therefore not having to pay additional capital costs), or of smaller scale and less expensive projects (with more modest scopes of work) because of the shareholder's corporate desire to amalgamate.

54. The Decision recognized that requiring ratepayers to pay for projects caused by the amalgamation would be unfair. The fact that the Decision cited real estate projects that ultimately were not included in the integration capital that EGI requested to add to rate base is irrelevant, as the reasoning remains the same even if applied to IT projects the cost of which EGI is looking to add to rate base.

4.3 THERE IS NO ERROR WITH RESPECT TO THE AMOUNT OF INTEGRATION SAVINGS

55. EGI argued that the Board's finding that the savings from amalgamation were greater than EGI's costs for amalgamation is an error. While the difference between the amount of savings and the amount of costs can vary depending on what to include in each category, ultimately, the Decision is correct and grounded in the evidence.

56. The evidence in EB-2022-0200 made it clear that not only was EGI given the opportunity to earn back the costs of amalgamation during the rebasing period, but it also succeeded in doing so:

> "Q: the outcome of that deferred rebasing was the company earned more than its -- the gross earnings above its ROE were sufficient to recover its integration costs, including the amounts you are seeking to put into rate base for 2024. Correct?
>
> A: Correct."[41]

57. EGI in fact earned more than $231 million more than its allowed ROE.[42] Accordingly, regardless of whether the savings were from the amalgamation projects themselves, or the existing efficiencies that were never passed on to ratepayers as a result of the deferred rebasing, or another source, EGI had its opportunity to earn back the costs of amalgamation and capitalized on that opportunity.

58. Moreover, even if EGI's overearnings were not greater than the costs of amalgamation, that fact is irrelevant, and would not be expected to alter the Decision.

[41] EB-2022-0200, Transcript, Volume 14, p. 171.
[42] EB-2022-0200, Transcript, Volume 14, pp. 169-170.

59. As outlined above, the MAADs Handbook describes the purpose of the policy with respect to a utilities' recovery of the costs of integration. It states that utilities are provided with the "opportunity to offset transaction costs with any achieved savings" (emphasis added).

60. Neither the MAADs Handbook nor the MAADs Decision guarantee that EGI will offset the transaction costs with achieved savings. They do not provide that ratepayers will pay for transaction costs if EGI fails to offset the costs with achieved savings. All the MAADs Handbook provides is that EGI be given the opportunity to offset its costs. EGI agreed with this proposition in EB-2022-0200.[43] That's exactly what the Board provided to EGI. Whether EGI succeeded or not is irrelevant.

61. Accordingly, CME submits that even if this panel were to find that the Decision is wrong about whether amalgamation costs were offset by EGI's savings, that would not be expected to the change the Decision and therefore do not pass the threshold test.

5.0 COSTS

62. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of July, 2024.

Scott Pollock

Counsel for CME

[43] EB-2022-0200, Transcript, Volume 14, p. 164.