EB-2024-0111

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, as amended (the "OEB Act");

AND IN THE MATTER OF Phase 2 of an Application by Enbridge Gas Inc. to set rates for the transmission, distribution and storage of natural gas for the period 2024-2028.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of Practice and Procedure.*

NOTICE OF MOTION

The Heating, Refrigeration and Air Conditioning Institute of Canada ("HRAI") will make a motion to the Ontario Energy Board ("the OEB") at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the OEB.

PROPOSED METHOD OF HEARING:

In order to move the proceeding forward as efficiently as possible, HRAI proposes that this motion be heard orally.

THE MOTION IS FOR:

1. An order requiring Enbridge Gas Inc. ("EGI") to provide full and adequate responses to the following interrogatory questions and technical conference questions and undertakings:

    a. Interrogatories I.1.18.HRAI-2, 5, 8, 11, 12, 17, 18, 20, 22, 23, and 24[1]
    b. Technical Conference questions at Tr.4:80-84, 108, 111-2, 116, and 133[2]
    c. Undertakings JT4.16, JT4.17, and JT4.19[3].

2. An order suspending such of the remaining schedule for the proceeding as may be affected, until this motion is heard and a determination made, and in particular suspending the date intervenors and OEB Staff are required to file evidence, as well as the dates for interrogatories and responses on that evidence.

3. Such further and other relief as HRAI may request and the OEB may grant.

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[1] Exhibit I.1.18 Schedules HRAI-2, 5, 8, 11, 12, 17, 18, 20, 22, 23, and 24 [See Appendix A]
[2] Technical Conference Transcript, Day 4, at pages 80-84, 108, 111-2, 116, and 133 [See Appendix B]
[3] [See Appendix C]

THE GROUNDS FOR THE MOTION ARE:

1. EGI filed an application with the OEB under section 36 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15 (Schedule B), seeking approval for changes to the rates that Enbridge Gas charges for natural gas distribution, transportation and storage, beginning January 1, 2024. The OEB is reviewing the application in three phases. This is the second of the three phases. The OEB has assigned Phase 2 matter EB-2024-0111. Phase 1 was EB-2022-0200.

2. Pursuant to Procedural Order #2 dated May 30, 2024, the OEB established an Issues List for Phase 2 that includes the following issue[4]:

> *"27. Has Enbridge Gas demonstrated that Enbridge Sustain's activities are not funded through rates?"*

3. EGI filed evidence with respect to Enbridge Sustain on June 12, 2024.

4. HRAI is an intervenor in this proceeding. Pursuant to Procedural Order #2, intervenors were to request further relevant information by way of interrogatories to EGI. HRAI filed interrogatories on June 19, 2024, and EGI filed its responses on July 8, 2024. The OEB ordered a technical conference for July 22 and 23, 2024, which it later extended to July 24 and 25. The technical conference questions and undertakings that are the subject of this motion were all asked by HRAI on July 25, 2024.

5. Rule 27.03 of the Board's *Rules of Practice and Procedure,* provides that a party may bring a motion seeking direction from the Board if it is not satisfied that a party has provided a "full and adequate response to an interrogatory."[5] The same principle applies to questions asked during a technical conference, and to undertakings given at the technical conference. HRAI brings this motion because EGI has not provided full and adequate responses to certain interrogatories, technical conference questions, and undertakings from the technical conference. The information requested is relevant to the issues to be decided in this proceeding.

6. Issue #27 requires EGI to demonstrate that the regulated utility is not subsidizing its new unregulated business, Enbridge Sustain. All information relating to the costs and revenues of Enbridge

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[4] Decision on Issues List and Procedural Order #2, Schedule A, Issue 27.

[5] Ontario Energy Board, *Rules of Practice and Procedure* (as revised on October 28, 2016) ["*Rules of Practice and Procedure"*], Rule 27.03

Sustain, and all interactions between the unregulated and regulated businesses, are in the possession of EGI.

7. In EBO 179-14/15, EGI made clear to the OEB that it would not and could not continue to operate their HVAC equipment rental business (a similar business to Enbridge Sustain) if EGI was obligated to fully and fairly allocate all costs of that business to the unregulated rather than the regulated activities. The OEB noted the EGI position in their decision[6], and ordered the utility to allocate properly, with the result that EGI spun off the unregulated business to an affiliate, ultimately selling it to what is now Enercare. Union Gas took similar steps with respect to their unregulated business, selling it to an affiliate, and later to Reliance. Enercare and Reliance are both members of HRAI.

8. Only EGI can provide to the OEB the evidence necessary to demonstrate how, if at all, the situation has changed, and how they are now able to operate that unregulated business without a ratepayer subsidy. Issue #27 requires them to provide that evidence.

Information Requests Related to the Enbridge Sustain Business Plan

9. Central to understanding whether the Enbridge Sustain business is being subsidized by ratepayers, or will be in the rate period, is understanding the nature of the unregulated business, and the costs of that business and how they will be funded. The obvious source of that information is the Business Plans developed by EGI in the process of pursuing that unregulated business. From those Business Plans, the OEB will be able to determine what costs are expected (in order to determine if those that are related to or shared with the regulated business are allocated or shared reasonably), and the revenues that are expected to fund those costs. The Business Plans will likely also make clear the risks associated with the new business, how those risks are being managed (including any reliance on the regulated business for that purpose), and the relationships between the unregulated and regulated businesses.

10. The Business Plans may also provide a more complete description of the nature of the unregulated business, so that the OEB doesn't just need to accept as if true the descriptions prepared by EGI for the purposes of being seen by the regulator.

11. The OEB reviews business plans on a regular basis. In large part, those reviews are about ensuring that the evidence presented by a utility is supported by, and consistent with, their internal

[6] EBO-179-14/15, *Decision with Reasons*, March 31, 1999, at p. 26. [See Appendix D]

documents.

12. HRAI asked, in I.1.18.HRAI-5:

> *"Please provide a copy of the initial and current business plans and forecasts for Enbridge Sustain, including without limitation any business plan or forecast approved by the Executive Leadership Team or the Applicant's Board of Directors, whether or not initial or current."*

13. The response is a refusal. HRAI asked again for this information in the technical conference, at Tr.4:108, and it was again refused.

14. EGI declined to answer on the basis that Business Plans are not relevant to Issue #27. In the alternative, they also declined on the basis that *"the information requested is sensitive and confidential and is not information that would be fair or appropriate to share with the industry association for other participants in the same competitive space.*"

15. On the first point, HRAI submits that, without being able to review source documents, the OEB is not in a position to determine if the proposed unregulated business can and does stand on its own, without ratepayer support. Without source documents, the OEB is left with simply taking EGI's word for it. Just saying something – in this case, claiming there is no ratepayer subsidy – does not meet the onus of "demonstrating" that there is no ratepayer subsidy. Claims must have evidentiary support to be accepted by the OEB.

16. Also related to the first point is the applicability of information for the period after 2024. As noted in the discussion of forecasts, below, EGI takes the position that future forecasts are not relevant in general. This fails to recognize the fact that the rate period in this case is 2024-2028, and forecast information for the future period is by definition relevant to rates for that period.

17. EGI also takes the position that there are no "approved" plans for Enbridge Sustain beyond the current year[7]. However, the OEB is well aware, and the witnesses admit, that EGI's practice is to approve only the current year of a plan, but do so in the context of a five year plan (or longer).

18. On the second point, sensitivity of the information, it is not a proper response to an interrogatory to say that the information is confidential or sensitive. The OEB has comprehensive procedures for

[7] Tr4:109-110

dealing with information that should have its disclosure limited[8]. The Commissioners get to see everything that is relevant, as do counsel for parties affected. Public disclosure is constrained in a limited class of cases. Disclosure to persons other than representatives is, in very rare cases, also restricted[9].

19. HRAI therefore submits that the Business Plans of Enbridge Sustain should be filed by EGI as requested.

Information Requests Related to Internal Financial Data

20. In I.1.18.HRAI-8, HRAI requested the "*most recent internal financial statements*" of Enbridge Sustain. In response, EGI said "*Enbridge Sustain does not produce financial statements (balance sheet, income statement, and statement of cash flows) for the stand-alone Enbridge Sustain business.*"

21. Left there, this may simply have been a poor wording in the interrogatory, and the fault of HRAI, not EGI. This was clarified during the technical conference, when the witnesses admitted that a "management financial package" is prepared internally relating to the Enbridge Sustain business[10]. When HRAI made clear this was the information being requested in the interrogatory, EGI took an undertaking – JT4.16 – to respond, but without committing to file the relevant information.

22. A management financial package at EGI would include actual and forecast information on the line of business, including expenses, revenues, assets, liabilities, and cash flows, as well as a commentary on that financial data (likely in presentation format).

23. EGI has declined to provide that information in response to JT4.16. Instead, in its response to JT4.16 it has included only some of the financial information, and has redacted everything related to revenues and to the nature of the business. Related presentations are not included.

24. It is normal practice for the OEB to review internal financial reporting information to support (or in some cases, challenge) the financial reporting prepared by the utility for the purposes of the Application. In this case, if certain parts of the financial package are sensitive, a claim for confidentiality should be made, and parties should be allowed to make submissions on that claim.

Information Requests Related to Budgets and Forecasts

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[8] OEB Rules of Practice and Procedure, s. 10.
[9] The most common example of this is limits on disclosure of collective bargaining strategy to the unions affected. Their counsel still sees the information, but those persons who may be involved in collective bargaining do not.
[10] Tr4:111-112.

25. HRAI requested forecast information for the rate period in interrogatories I.1.18.HRAI 5, 11, 12, 17, 18, 22, 23, and 24.

26. The witnesses admit that they have forecasts for the rate period[11]. Standard Enbridge practice is to require five years of forecasts for any activity, but approval is only given for the current period. Thus, the Applicant claims that they don't have "approved" forecasts for the 2025-2028 period. This is true. Enbridge never "approves" forecasts beyond the current year.

27. The forecast information for 2025-2028 is relevant for several reasons, including:

a. Enbridge Sustain is currently in startup mode, so it is likely to be losing money initially. The previous Enbridge assertion that it cannot make a profit at this business cannot be tested during startup mode. Demonstration that it is a viable business, without a ratepayer subsidy, requires information on the operational trajectory of the business.
b. It has been implied that there is an issue of materiality here, i.e. that this business is too small to have any material impact on rates charged by the regulated business. The growing size of the business over the rate period will demonstrate whether that assumption is correct. A large business, still relying on the regulated business for support, is a relevant issue for the IRM formula (and adjustments or flow-throughs) and other aspects of this proceeding.
c. Despite EGI's claim that it is operating Enbridge Sustain as if it were an affiliate, it is not, as seen from the fact that it provided premises and related costs to Enbridge Sustain free of charge until HRAI started reviewing its costs[12]. While it admitted the mistake, and attempted to correct the problem for 2024, forecasts will tell the OEB whether the planned shift to a real affiliate starting in 2025 will change the allocations materially.

28. Further, the purpose of the planned evidence of HRAI, as accepted by the OEB, is to assess the reasonableness of the costs and revenues of Enbridge Sustain. Since 2024 is not a representative year, the forecasts requested are essential for HRAI's contractor witnesses to carry out that analysis.

29. HRAI therefore submits that this information, and these internal documents, which the Applicant admits are available, should be produced for the Commissioners to see. Indeed, if as EGI claims these

[11] Tr4:109.
[12] I.1.18.HRAI-11.

forecasting documents show that nothing untoward is going on, EGI should be pleased to file them.

Information Requests Related to Canada Infrastructure Bank ("CIB")

30. The $200 million transaction between EGI and CIB is surrounded in some confusion. On the current record, it is not clear who is the borrower, who is providing backstop for that borrowing (i.e. whose credit rating is on the line), how the funds are getting from CIB to Enbridge Sustain to fund projects, and who is paying for all of this.

31. In I.1.18.HRAI-2, HRAI asked for a series of documents relating to this credit facility. This request was repeated in the technical conference[13], and then, for one document (the MOU) in an undertaking, JT4.17.

32. None of that material has been provided.

33. What we know is that CIB announced a $200 credit facility for Enbridge Sustain[14], which in the CIB method of providing credit involves certain steps that are known and published[15].

34. One of those steps is a risk analysis[16], which if filed would tell the OEB who was directly or indirectly on the hook for this $200 million, in the eyes of the lender. EGI claims that they do not have this document, but given that it is standard practice for CIB to provide it to borrowers, EGI should explain who in the Enbridge family received it, if not EGI, and should ensure that they file it.

35. Another document is the Memorandum of Understanding between EGI and CIB, which the witnesses admitted was in fact signed by EGI[17]. EGI now advises that a special purpose entity was created to be the borrower[18], and EGI is not a party to the credit agreement. Therefore, in JT4.17 EGI says that the MOU is no longer relevant because the structure of the deal was changed.

36. What EGI has not explained is how, if a new company has been created, and EGI is no longer a party, the money will get to EGI to fund Enbridge Sustain projects.

13 Tr4:116.
14 I.1.18.HRAI-2, Document E.
15 I.1.18.HRAI-2, Document F.
16 Ibid.
17 Tr.4:115.
18 Tr.4:114.

37. The easiest way to solve this is for EGI to file the MOU, and the credit agreement, along with an explanation as to how the money will flow, and how the EGI liability has been structured. In this way, if the ratepayers are protected the Commissioners will see how that is being done. On the other hand, if the deal structure – currently not disclosed to the OEB – creates risks to the regulated business, the Commissioners will have visibility.

38. As with most of these questions, a key issue is transparency. The OEB generally expects regulated utilities – who have control over all of the information necessary for the OEB to discharge its statutory mandate – to be transparent with the OEB about all transactions that are sufficiently material that they could affect the regulated business. $200 million is big enough to be material. If EGI has protected the ratepayers in their structure, they should tell the regulator precisely how they are doing that. It is simply not OK for EGI to leave the Commissioners without being able to understand how this large transaction works.

39. HRAI therefore submits that the questions asked in I.1.18.HRAI-2, should be answered in full, and all of the documents requested provided.

Information Requests Related to Corporate Cost Allocations (CFCAM)

40. In I.1.18.HRAI-23, HRAI requested the corporate cost allocations to Enbridge Sustain. Because the amounts were small, it was not possible to assess the reasonableness of those costs. As a result, in the technical conference[19], HRAI requested the non-allocated costs in each of those categories, so that the total spend in each category could be determined. By way of example, particularly in a startup year a small amount of legal costs is patently unreasonable, but if there are direct costs in the same category, the total might well be reasonable. We were looking for a full picture.

41. The response to JT4.19 appears to provide only different categories of allocated costs, which is not what was requested. By way of example, if Enbridge Sustain retained counsel directly to advise on the structure of the CIB deal, this would appear not to be included. If Enbridge Sustain's advisors were paid by EGI, or Enbridge Inc., that is not disclosed.

42. HRAI submits that EGI should provide comprehensive disclosure of spending in these categories for each of the years 2024-2028.

[19] Tr4:133

Information Requests Related to Enbridge Sustain Agreements

43. EGI provided a copy of their customer agreement in I.1.18.HRAI-10. In questioning at the technical conference[20], it became clear that the "rental agreement" filed was not in fact compliant with law, nor did it refer to Enbridge Sustain in any way. The witnesses advised that a new agreement was being prepared, and in JT4.13 EGI has filed an updated version in which compliance with the Consumer Protection Act, and other legal requirements, have been included. The "Supplier" in the agreement is also changed from Enbridge Gas Inc. to "Enbridge Gas Inc., operating under the trade name Enbridge Sustain". Both changes are stated to be effective June 10, 2024.

44. The agreement is an equipment rental agreement, not an "energy as a service" agreement. It obligates the customer to make increasing monthly rental payments for equipment to EGI for fifteen years, failing which EGI can unilaterally and remotely shut down their HVAC system. Further, the agreement provides for service throughout, with limits (what used to be called an "Audi card" structure), but requires the customer to use the original dealer for that service for the full fifteen years.

45. This raises the possibility that the reason EGI can engage in this business today, unlike 25 years ago, is that it is relying on an escalating payment financing plan to backload the profitability of the business. While this is more likely of interest to the OEB's Compliance Division than the Commissioners in this proceeding, it could also be a legitimate response to Issue #27, i.e. "we are not relying on ratepayer subsidies; we are relying on customers accepting long term, annually increasing commitments to pay us for equipment and service".

46. To allow the OEB to assess this, HRAI asked for a copy of the updated equipment rental agreement, with representative numbers included for a reasonable sample customer arrangement, but Enbridge refused to provide it.

47. HRAI submits that, in order to assess whether ratepayers are subsidizing Enbridge Sustain, the OEB must have numbers. From the numbers, the OEB will be able to determine whether the viability of Enbridge Sustain is coming at the expense of the ratepayers (a concern of this panel), the customers (a concern of the Compliance Division), or the competitive markets (a concern of the Competition Bureau). Alternatively, of course, EGI can meet its onus by showing that it needs none of those factors to make this a successful business, unlike its previous view. As noted earlier, this would be from the Business Plans.

[20] Tr4:80-84.

48. To a similar end, in the technical conference[21] HRAI asked EGI to provide the Enbridge Sustain agreement with HVAC dealers, who are and will be responsible for all sales and service of Enbridge Sustain products. This was refused as being irrelevant.

49. When an entity (in this case, Enbridge Sustain) has to contract out all of its sales and service responsibilities to another, profit-driven business, and that business is already a competitor, Enbridge must offer a superior compensation package for the sub-contractor. The problem is that it is difficult for Enbridge Sustain to be viable if its costs include all of the costs of its competitors, and more, plus all of its internal costs, all without any ratepayer subsidy.

50. To deal with this paradox, HRAI asked to see the Dealer Agreement[22], since that would show the OEB how the structure of the dealer arrangements was consistent with Enbridge Sustain being viable without a ratepayer subsidy. EGI has refused to file a sample of that agreement, citing irrelevance.

51. HRAI submits that, without understanding how Enbridge Sustain can offer a better deal to dealers than they can get themselves as competitors, the OEB cannot conclude that EGI is not using rates to subsidize Enbridge Sustain.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2024-0111.
2. Such further and other material as counsel may advise and the OEB may permit.

August 6, 2024

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[21] Tr4:108
[22] Tr4:108.

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AND TO: **All Intervenors and OEB Staff**

Appendix A

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[General]

Question(s):

Attached to these interrogatories is a document labelled Document E, and a document labelled Document F. With respect to those documents:

a) Please confirm that Document E is an announcement by Canada Infrastructure Bank (CIB), the Applicant, and Blackstone Energy of an initiative in which CIB will provide $200 million of debt financing to the Applicant for projects of Enbridge Sustain.

b) Please confirm that Document F is the CIB's Unsolicited Proposals Framework (the "Framework"), under which the Applicant sought the CIB credit facility.

c) For each of Documents A through D, please identify where the $200 million credit facility with CIB is disclosed. If it is not disclosed, please explain the failure to disclose.

d) Please provide a true copy of the agreement between the Applicant and CIB relating to this credit facility.

e) Please provide a true copy of the Application to CIB for this credit facility, together with all amendments thereto. Please include all relevant attachments, such as the Business Plan included in the Application. The term "Application" should be interpreted as including both the Initial Submission, step 1 of the Framework, and the Concept Submission and Proposal Evaluation, step 2 of the Framework.

f) Please provide true copies of any risk or feasibility analyses prepared for or by CIB as part of their normal investment process.

g) Please provide a true copy of the Memorandum of Understanding and term sheet for this credit facility, in the form approved by the CIB Board.

h) Please provide copies of any agreements, including any amendments to such agreements (including, without limitation, agreements or amendments set out in correspondence or emails) between the Applicant and the Project Sponsor of this credit facility.

i) Please provide a summary of the funding status of this credit facility, including a list of projects funded, amounts, and any material conditions of funding.

j) Document E notes that the $200 million of CIB funding is part of $300 million in total project investments. Please provide details of the source of the other $100 million of funding.

k) Please describe in detail all steps the Applicant has taken to ensure that the assets funded by ratepayers, and the regulated revenues from ratepayers, are not subject to any claim by CIB for repayment of their credit facility. If this protection is contained in any agreements, please provide copies of those agreements.

l) Please describe in detail how the Applicant will ensure that, when Enbridge Sustain is transferred to an affiliate, the assets of the Applicant funded by ratepayers, and the regulated revenues from ratepayers, will not be subject to any claim by CIB for repayment of their credit facility.

<u>Response:</u>

In general, Enbridge Gas submits that the details of the credit agreement referenced by HRAI are not relevant to Issue #27 which asks, "Has Enbridge Gas demonstrated that Enbridge Sustain's activities are not funded through rates?"

a) This is an announcement of a program between Enbridge Sustain and Canada Infrastructure Bank. However, the credit agreement is with a special purpose entity that was a requirement for the program.

b) The referenced document was not shared by Canada Infrastructure Bank.

c) It was not disclosed as the credit agreement with Canada Infrastructure Bank is with a special purpose entity. Enbridge Gas is not a party to the agreement and none of the funds from Canada Infrastructure Bank flow through Enbridge Gas accounts.

d-l) Enbridge Gas is not a party to the credit agreement and none of the funds from Canada Infrastructure Bank flow through Enbridge Gas accounts.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[General]

Question(s):

Please provide a copy of the initial and current business plans and forecasts for Enbridge Sustain, including without limitation any business plan or forecast approved by the Executive Leadership Team or the Applicant's Board of Directors, whether or not initial or current.

Response:

Enbridge Gas declines to provide a response as the question is not relevant to the issues being considered in Phase 2 of the Rebasing proceeding. Issue #27 from the issues list for this proceeding is set out as "Has Enbridge Gas demonstrated that Enbridge Sustain's activities are not funded through rates?" This issue is clearly related to ratemaking and ensuring that the activities of Enbridge Sustain are not being subsidized by ratepayers. The requested information – business plans and forecasts for Enbridge Sustain – have no bearing on, or relevance to, the question of whether Enbridge Sustain's activities are funded through rates. It is unclear how this information will assist the OEB in making determinations specific to Issue #27.

While in no way agreeing to the relevance of the request, Enbridge Gas also wishes to indicate that the information requested is sensitive and confidential and is not information that would be fair or appropriate to share with the industry association for other participants in the same competitive space.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 2]

Question(s):

Please provide the most recent internal financial statements (balance sheet, income statement, and statement of cash) showing how the assets and expenses referred to are “recorded separately in the accounts of Enbridge Sustain”.

Response:

Enbridge Sustain does not produce financial statements (balance sheet, income statement, and statement of cash flows) for the stand-alone Enbridge Sustain business. Financial statements are only produced for corporate reporting purposes for Enbridge Gas as a whole.

The responses provided at Exhibit I.1.18-HRAI-20 through Exhibit I.1.18-HRAI-24 demonstrate how the assets and expenses of Enbridge Sustain are recorded separately from the regulated business. These assets and expenses (as well as revenues) are reviewed by management to assess the financial performance of Enbridge Sustain.

While responding to the above-mentioned interrogatories, it was identified that a presentation adjustment was required to Phase 2 Exhibit 1, Tab 18, Schedule 1, Table 1, line 1 and line 3 for 2023 Actuals. The restated Table 1 is presented below with the 2024 Estimate added.

Table 1
Enbridge Sustain 2023 and 2024 Operating Costs

Line No.	Particulars ($ millions)	2023 Actuals	2024 Actuals YTD - May 2024	2024 Estimate	Treatment
		(a)	(b)	(c)	(d)
	Cost Types				
1	Direct Costs	5.1	2.0	13.4	Paid directly; do not flow through utility
2	HR Burden	0.7	0.3	2.1	Charged to Enbridge Sustain from regulated utility at weighted average burden rates
3	Indirect Costs	0.3	0.1	0.7	Charged to Enbridge Sustain from regulated utility at fully allocated cost rates
4	Corporate Cost Allocations	0.3	0.1	0.3	Paid directly; do not flow through utility
5	Total	6.4	2.5	16.5	

Note:
(1) Indirect cost allocations are completed on a quarterly basis. 2024 actuals only reflect Q1 allocations.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 3]

Question(s):

Please provide the addresses of the facilities out of which Enbridge Sustain is operating, and plans to operate in the future. If any of those locations are locations owned by the Applicant, please provide complete details of the methodology for allocating the premises, equipment, furniture and other capital costs being used to Enbridge Sustain, and for allocating the operating costs associated with those locations to Enbridge Sustain. Please provide the amounts of all such costs, including a breakdown by type, for each of 2022, 2023, 2024 to date, 2024 forecast, and each of 2025 to 2028 budget.

Response:

Almost all Enbridge Sustain employees are working out of the Victoria Park Centre office in Toronto (VPC). There is one employee in Chatham and another in Ottawa.

The operating costs of these facilities are allocated to Enbridge Sustain through the Central Functions Cost Allocation Methodology (CFCAM) process. A portion of the allocations to Enbridge Gas's unregulated operations pertain to the services that Enbridge Sustain receives from Enbridge's Real Estate and Workplace Services (REWS) in relation to FTE use of facilities.

For a portion of 2022, Enbridge Gas employees that completed work on behalf of Enbridge Sustain tracked and charged their time to Enbridge Sustain within the unregulated LOB at a fully allocated cost (FAC) rate that included compensation to the utility for associated REWS operating and capital costs. When Enbridge Sustain was registered as a line of business within Enbridge Gas in 2022, Enbridge Sustain employees began charging their time directly to unregulated operations and stopped charging their time at FAC rates. The CFCAM process became applicable for operating costs associated with REWS. However, CFCAM did not allocate any significant REWS operating costs to Enbridge Sustain in 2022 because Enbridge Sustain was not established until late in that year. Subsequent to 2022, CFCAM allocated REWS operating costs directly to Enbridge Sustain within the unregulated LOB without ever going through the utility.

Please see response at Exhibit I.1.18-HRAI-23 which provides details of REWS amounts allocated through CFCAM representing operating costs associated with facilities use for 2023 Actuals and 2024 Estimate. The 2024 May YTD allocations for REWS are approximately $9,000. The requested information for 2025, 2026, 2027, and 2028 is not currently available. In any event, Enbridge Gas asserts that the future forecast information is not relevant to Issue #27.

Once Enbridge Sustain employees began having their payroll directly charged to the unregulated LOB in late 2022, time tracking and charging at FAC rates stopped. While CFCAM allocates operating REWS costs, it does not account for capital related REWS costs. As a result, capital costs applicable to Enbridge Sustain's use of Enbridge Gas facilities was not charged to the unregulated LOB after FAC rates stopped being applied. This will be remedied as discussed below.

Going forward, for Enbridge Sustain FTEs who occupy and use utility facilities and other related assets, Enbridge Gas has determined that a market-based estimate is the most appropriate basis for allocation of costs related to Enbridge Sustain FTE use of facilities. The Company has prepared a market-based lease estimate that will be used to enter into a lease agreement with Enbridge Sustain when it becomes an affiliate towards the end of 2024. The estimate is based on the fair value of comparable lease space that indicates a basic rent component (representing the capital cost of the facilities and other related assets) of $16.60/sq.ft. and an additional rent component (representing associated operating costs of operating and maintaining of the facilities) of $16.86/sq.ft. Based on the proposed rentable area (space for an occupancy of 60) of the VPC of 11,543 sq.ft. the estimated annual cost of the lease is approximately $386,273/year.

Based on the above estimate, the Company will recognize a charge in 2024 actuals to Enbridge Sustain of approximately $0.2 million ($386,273 / 60 full occupancy x 31 FTE). For 2023 the estimate is $0.1 million ($386,273 / 60 full occupancy x 19 FTE) based on the same rationale. There was no allocation/charge to Enbridge Sustain in 2022 (estimate less than $50,000) or 2023 actuals for these facilities costs, nor were these costs credited to the utility in either 2022 or 2023 ESM Utility results (note, however, that inclusion of these amounts would not have moved the utility into an earnings sharing position).

itENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 3]

Question(s):

Please identify the amounts of costs relating to Enbridge Sustain that were backed out of the 2024 Utility Test Year O&M Forecast, broken down by the expense categories listed in EB-2022-0200 Written Evidence Tables 4.4.2 - 1 to 12 inclusive. Please provide forecasts of all Enbridge Sustain cost allocations from the Applicant forecast in 2025 through 2028, broken down into the same expense categories.

Response:

There were no Enbridge Sustain related costs in the 2024 Utility Test Year O&M forecast and therefore there is no requirement to back out costs and a breakdown is not applicable. Please see response at Exhibit I.1.18-CME-20, part b). The requested information for 2025, 2026, 2027, and 2028 is not currently available. In any event, Enbridge Gas asserts that the future forecast information is not relevant to Issue #27.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 4]

Question(s):

Please provide a similar breakdown of the forecast number of Enbridge Sustain employees (FTEs and headcount) by position, with explanations of each role within the Enbridge Sustain business, for each of 2025, 2026, 2027, and 2028. For each employee working in whole or in part on the Enbridge Sustain business, please advise the breakdown of their cost between regulated and unregulated activities, and the basis of that breakdown, at the end of each of the forecast years.

Response:

The requested information for 2025, 2026, 2027, and 2028 is not currently available. In any event, Enbridge Gas asserts that the future forecast information is not relevant to Issue #27.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 4]

Question(s):

Please provide the cost allocation documentation for the "documented processes" referred to.

Response:

Enbridge Gas assumes the "documented processes" referenced in this question is pertaining to the third sentence of paragraph 20 on page 4. Please see Phase 2 Exhibit 1, Tab 18, Schedule 1, Attachment 2 for this documentation.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 6]

Question(s):

Please provide a detailed breakdown of the "direct costs for Enbridge Sustain" for each of 2023 Actual, 2024 5+7 Forecast, and 2025, 2026, 2027 and 2028 forecasts. Please provide the costs to the nearest thousand dollars, and with separate breakdowns within at least each of the following categories: marketing, sales, engineering and design, installations, product costs, training, legal, management, accounting, customer care, finance (including cost of capital) and depreciation.

Response:

Enbridge Gas asserts that detailed direct operating cost information is not relevant to Issue #27, however in order to be responsive to the question and for the OEB to appreciate the magnitude of costs being funded directly by Enbridge Sustain, the requested information for 2023 and 2024 is provided below. The requested information for 2025, 2026, 2027, and 2028 is not currently available.

Salary & wages are tracked within one operating department for Enbridge Sustain and are not tracked separately by function (operations, marketing, sales, product management).

Table 1 summarizes the direct costs for Enbridge Sustain for 2023 Actuals and 2024 Estimate.

Table 1
Enbridge Sustain Direct Operating Costs

Line No.	Particulars ($ thousands)	2023 Actuals	2024 Estimate
		(a)	(b)
	Direct Operating Costs		
1	Salaries & Wages	2,133	5,040
2	Contract Services	1,486	5,279
3	Materials & Supplies	139	378
4	Professional Services	961	1,650
5	Other O&M	369	1,072
6		5,089	13,419

Please note while responding to this interrogatory, it was identified that that a presentation adjustment was required to Phase 2 Exhibit 1, Tab 18, Schedule 1, Table 1, Line 1 for 2023 Actuals. The adjusted total value for 2023 Actuals is presented above.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 6]

Question(s):

Please provide a detailed breakdown of the “indirect costs” allocated to Enbridge Sustain” for each of 2023 Actual, 2024 5+7 Forecast, and 2025, 2026, 2027 and 2028 forecasts. Please provide the costs to the nearest thousand dollars, and with separate breakdowns within at least each of the following categories: marketing, sales, engineering and design, installations, product costs, training, legal, management, accounting, customer care, finance (including cost of capital) and depreciation.

Response:

Below is the requested information for 2023 and 2024. The requested information for 2025, 2026, 2027, and 2028 is not currently available. In any event, Enbridge Gas asserts that the future forecast information is not relevant to Issue #27.

Indirect costs are not tracked by function for Enbridge Sustain. Central function resources include groups such as tax, finance and supply chain. Business unit resources include groups such as legal, public affairs and marketing.

Table 1 summarizes the indirect costs allocated to Enbridge Sustain for 2023 Actuals and 2024 Estimate.

Table 1
Enbridge Indirect Operating Costs

Line No.	Particulars ($ thousands)	2023 Actuals	2024 Estimate
		(a)	(b)
	Indirect Operating Costs		
1	Central Function Resources	162	625
2	Business Unit Resources	178	117
3		340	742

Please note while responding to this interrogatory, it was identified that a presentation adjustment was required to Phase 2 Exhibit 1, Tab 18, Schedule 1, Table 1, Line 3 for 2023 Actuals. The adjusted value for 2023 Actuals is presented above.

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 6]

Question(s):

Please provide a detailed breakdown of the "corporate cost allocations" allocated to Enbridge Sustain for each of 2023 Actual, 2024 5+7 Forecast, and 2025, 2026, 2027 and 2028 forecasts. Please provide the costs to the nearest thousand dollars, and with separate breakdowns within at least each of the following categories: marketing, sales, engineering and design, installations, product costs, training, legal, management, accounting, customer care, finance (including cost of capital) and depreciation.

Response:

Enbridge Gas assumes that the question is asking for a breakdown of corporate cost allocations in the format provided in EB-2022-0200, Exhibit 4, Tab 4, Schedule 3, Table 3. Please see Table 1 for the breakdown of 2023 Actuals and 2024 Estimate. The requested information for 2025, 2026, 2027, and 2028 is not currently available. In any event, Enbridge Gas asserts that the future forecast information is not relevant to Issue #27.

Table 1

Line No.	Particulars ($000s)	2023 Actuals	2024 Estimate
		(a)	(b)
1	Aviation	2.0	3.0
2	CDO	6.0	3.0
3	EAWM	2.0	3.0
4	Executive	2.0	2.0
5	Finance	24.0	28.0
6	REWS	24.0	25.0
7	HR	16.0	18.0
8	Legal	13.0	12.0
9	PAC	6.0	5.0
10	S&R	6.0	6.0
11	SCM	11.0	12.0
12	TIS	90.0	112.0
13	Benefits	45.0	34.0
14	Depreciation	22.0	28.0
15	Insurance	0.0	0.0
16	CF Costs	269.0	291.0

ENBRIDGE GAS INC.

Answer to Interrogatory from
Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI)

Interrogatory

Reference:

[Ex. 1/18/1, p. 7]

Question(s):

Please provide a detailed breakdown of the "capital costs" incurred by Enbridge Sustain for each of 2023 Actual, 2024 5+7 Forecast, and 2025, 2026, 2027 and 2028 forecasts. Please provide the costs to the nearest thousand dollars, and with separate breakdowns within at least each of the following categories: marketing, sales, engineering and design, installations, product costs, training, legal, management, accounting, customer care, finance (including cost of capital) and depreciation.

Response:

Below is the requested information for 2023 and 2024. The requested information for 2025, 2026, 2027, and 2028 is not currently available. In any event, Enbridge Gas asserts that the future forecast information is not relevant to Issue #27.

Table 1 summarizes the capital costs incurred by Enbridge Sustain for 2023 Actuals and 2024 Estimate. These costs are tracked and recorded in a completely separate unregulated line of business within Enbridge Gas financial systems with no past or future inclusion in regulated asset accounts and therefore regulated rate base.

Table 1
Enbridge Sustain Capital Expenditures

Line No.	Particulars ($000s)	2023 Actuals	2024 Estimate
1	Total Sustain Capital Expenditures[1]	6,913	23,800

Note:
1) Figures presented include capital costs incurred by Enbridge Sustain across solar, electric vehicle charging, hybrid heating, geothermal and TIS programs.

Appendix B

MR. SHEPHERD: Okay. Well, that is why I asked you what energy as a service was. Because you were very clear that it is buying the energy.

MR. McILWRAITH: In the context of our geothermal product, yes, it is -- you know, that concept of -- it is the way you purchase energy infrastructure as a service.

MR. SHEPHERD: But that is not what this contract is?

MR. McILWRAITH: I would offer that there is a number of service type elements to this where the contract includes a bundle of servicing and maintaining the equipment. So I would say it is more than just a simple lease.

MR. SHEPHERD: Well, it is actually not a lease but -- because you are allowed to increase the rental payments. You couldn't do that in a lease.

MR. McILWRAITH: I would have to take your word on that, yeah.

MR. STEVENS: I disagree with that, Jay.

MR. SHEPHERD: You think? Okay.

MR. STEVENS: I do.

MR. SHEPHERD: All right. I wonder if you could provide me with -- or provide the Board with a copy of this, or I guess the new one, the updated one, including the numbers for a representative project? I am not looking for a particular project. I think that is none of my business.

But what I am trying to get at is what are the ratios between what the customers are paying and what the costs of the equipment is, and escalators and things like that? And there is a bunch of staff in here that looks like they might be problematic, and I am -- and look like Enbridge might be getting an additional return that is unusual. And I just want to see whether that is correct. And this has no numbers in it.

MR. STEVENS: Can you expand maybe, Jay, on how that request fits with the narrow rate-making question that the OEB has asked, or has indicated is in scope for phase 2? I just don't see that in any way engaging on the question of whether there is a ratepayer funding for Enbridge Sustain.

MR. SHEPHERD: Well, sorry, that is not what the issue is.

MR. STEVENS: I am reading from the OEB's decision on the issues list.

MR. SHEPHERD: The whole -- read the whole issue.

MR. STEVENS: I will start by reading the OEB's decision.

MR. SHEPHERD: Well, no. There is an issue. And the issue is has Enbridge demonstrated that there is no ratepayer funding. Right?

MR. STEVENS: The issue reads:

> "Has Enbridge Gas demonstrated that Enbridge Sustain's activities are not funded through rates?"

MR. SHEPHERD: Okay.

MR. STEVENS: And the OEB characterizes that within the decision, three paragraphs earlier in its May 30, 2024 decision on issues list, as a narrow, rate-making question.

MR. SHEPHERD: Yes.

MR. STEVENS: And I am using that as context to ask how the pricing of a sample HVAC equipment contract that Enbridge Sustain might offer to customers is relevant to what the OEB has to determine?

MR. SHEPHERD: Because -- well, I mean, we might as well have this out now, because this is going to come up a number of times in our questions. Number 1, the OEB is very specific: it is up to Enbridge to demonstrate that there is no ratepayer funding. That is what the issue says.

Number 2, we can't determine that without information from Enbridge, including what your revenues and expenses are going to be because Enbridge is on record as saying Enbridge cannot carry out a rental business if it has to allocate all of the costs to that business. So the starting point is you say you can't do it. The Board says prove that you can.

So one of the things is there is a pricing issue here that it may be that it helps your case because it shows that you can have very low initial costs, but increase your rates over time so that you end up getting a reasonable rate of return.

MR. STEVENS: Thank you.

MR. SHEPHERD: That is why I ask the question.

MR. STEVENS: There are lots of things in your response. And I am sure we will come to it in various ways, it sounds like, as we move along today. But as specifically related to the question of the costing of a sample equipment rental contract, we are going to decline to provide that information on the basis of relevance. I am just not in any way convinced that that relates to the question of whether Enbridge Sustain's activities are funded through rates.

MR. SHEPHERD: Okay. I understand, that is a refusal. I mark a big "R" on my page, when I have a refusal; I expect to have lots of them.

So, in this agreement, Enbridge is a supplier. And you have another party or another person who is not a party to this agreement called the dealer. Right?

MR. McILWRAITH: Darren McIlwraith: Yes, that is correct.

MR. SHEPHERD: And the dealer is an HVAC contractor. You don't have any contractors of your own. You don't have any staff that do this themselves. You go out to HVAC contractors and they -- whose job is to install geothermal, for example. And you get them to do this on your behalf. Right?

MR. McILWRAITH: That is correct.

MR. SHEPHERD: And so you then have deals with those people, right, with those companies to represent you in the market, in effect? Is that fair?

MR. McILWRAITH: We have an agreement with HVAC contractors. Yes, that is the case.

MR. SHEPHERD: And, in fact, we had a list in one of the interrogatories. And there is now some more, in fact. Right?

MR. McILWRAITH: Yes. We have made announcements, publicly, about which HVAC contractors are partners of ours for our hybrid heating program.

MR. SHEPHERD: Well, I think there is another one that you haven't even announced yet. A1, right?

MR. McILWRAITH: If we are taking an announcement as a posting on LinkedIn, then I believe that has been posted. Yes.

MR. SHEPHERD: It has been posted? I missed it, yesterday. Okay.

So the dealer goes to the customer, right? You don't go to the customer?

MR. McILWRAITH: That is correct.

MR. SHEPHERD: The dealer arranges with the customer what equipment they want, how much it is going to cost, all that sort of stuff, or what the capital cost of it is and what it is going do for their home, et cetera. They do all the analysis and things like that to make sure it is the right equipment, et cetera. Correct?

MR. McILWRAITH: That is correct.

MR. SHEPHERD: And the dealer typically will go to the customer's home for that. Right?

MR. McILWRAITH: They will do an in-home consultation. Yes, that is true.

MR. SHEPHERD: Okay. And I ask that because I didn't see a 10-day cooling-off period in this contract. And if

MR. McILWRAITH: So I can confirm that we have a dealer agreement with a number of the dealers listed there. I think the one word that I would say does not exist in our arrangement with dealers is the word "exclusive." So there is not the concept of exclusivity in our dealer agreement.

MR. SHEPHERD: Okay. Okay, so I am going to ask you again to undertake to provide the dealer agreement.

MR. STEVENS: And, again, we take the position that that's not relevant to the issue in fronts of the OEB.

MR. SHEPHERD: Okay. Let me move on to -- maybe we will have like 10 minutes of refusals just to get them all out of the way. We asked for the business plan for Enbridge Sustain. This is in 1.18-HRAI-5. And we would still like it, so I am asking you again to please provide the business plans.

MR. STEVENS: And Enbridge maintains its position as set out in the response.

MR. SHEPHERD: Which is you refuse -- that the business plans are not relevant?

MR. STEVENS: Correct.

MR. SHEPHERD: Okay. And we are also asking for the forecast for Enbridge Sustain. And that is in HRAI-5 but also 11, 12, 17, 18, 22, 23, and 24, for forecasts of various components. And so, we are asking for those again for the period that is the rate period in this application.

MR. STEVENS: And Enbridge Gas maintains its position as set out in the responses that these are not relevant. And also points to the comments as to the fact that the

MR. RUTITIS: Financial statements provide much more disclosure information. The components of the financial statements, there is a lot more in there than what management would typically see in a management reporting package. You know, it is all the U.S. GAAP required disclosures. And they are typically just based off actual information, whereas the management financial package would look at variances to budget and variances to forecast.

MR. SHEPHERD: Okay. So, I am going to then -- I take it this is then -- when we said internal financial statements we meant management financial package. And it appears that that was not clear, I apologize. So, can you provide the most recent management financial package for Enbridge Sustain?

MR. STEVENS: Without having seen what is included in the document, Jay, I am not comfortable making that commitment right now. Certainly from the extent of looking at revenues, it's our position that is not relevant at all to the question in front of the Board. In terms of the cost side, we are certainly prepared to take this under advisement and look at what the documents say and produce what we believe is relevant and indicate the reasons why not if we decline to produce.

MR. SHEPHERD: So, what I am going to ask is -- I am not happy with just the cost side. I would like to see the whole package. If you believe that some of it is not relevant then please respond with a redacted version and then we can fight over it before the Board.

MR. STEVENS: Understood. So, to the extent that Enbridge is producing some of this --

MR. SHEPHERD: Yes.

MR. STEVENS: -- you would ask that we provide simply redacted version?

MR. SHEPHERD: Yes. Because I am looking for an internal document. I am not looking for something new made up. I don't mean up "made up" in a lying sense.

MR. STEVENS: I understand what you are asking.

MR. SHEPHERD: I am looking for a source document.

MR. STEVENS: Right.

MR. SHEPHERD: Okay. Thanks.

MR. RICHLER: JT4.16 and we will note that as being taken under advisement.

UNDERTAKING JT4.16: TO PROVIDE THE MANAGEMENT FINANCIAL PACKAGE FOR ENBRIDGE SUSTAIN (UNDER ADVISEMENT)

MR. SHEPHERD: Of course. Can you go to 1.18-HRAI-10, please, and it is at page 6 of 9 of the attachment. And if you go down to number 19, this says the supplier, that is you, that is Enbridge Sustain. Right? Or Enbridge Gas Inc. now. Can sell, transfer, assign or otherwise dispose of its interest in this agreement. Transfer to somebody else. Is it currently -- do you see where it says that?

MR. McILWRAITH: Darren McIlwraith. Yes, I do.

MR. SHEPHERD: And so, that allows you to transfer it to an affiliate for example. Right?

MR. McILWRAITH: Yes.

UNDERSTANDING INITIALLY EXECUTED WITH THE CANADA INFRASTRUCTURE BANK BY ENBRIDGE GAS INC. (UNDER ADVISEMENT)

MR. SHEPHERD: The MOU was followed by a term sheet. Right?

MR. McILWRAITH: I would have to take it -- I would have to have an undertaking to go back and check the exact terminology on the -- whether it was an LOI or an MOU.

MR. SHEPHERD: Okay. And then there is a formal agreement. Now, EGI is not a party to the formal agreement. Right?

MR. McILWRAITH: The credit agreement, EGI is not a party to.

MR. SHEPHERD: Okay. We are going to ask you to undertake to provide that, anyway.

MR. STEVENS: We will not.

MR. SHEPHERD: There is a risk analysis done by CIB that looks at their direct and indirect protections for lending their money. It is part of their standard process, which is published; it is on their website. And that is typically provided to the borrower. And since you are a party to the MOU, presumably it was provided to you. Can we have a copy that, please?.

MR. STEVENS: I don't believe that is relevant. No.

MR. SHEPHERD: What I am concerned with here, Mr. Stevens, is that typically that sort of document used to be called a liquid memo in banking, in fact -- I was a banker once -- that the liquid memo will talk not only about what

MR. SHEPHERD: What would you call it?

MR. RUTITIS: Actually, sorry, we do have direct legal costs as well as -- when employees in the utility provide legal services to Sustain, they charge their time on a fully allocated rate. So there are two buckets there.

MR. SHEPHERD: Well, you also have external contractors that you use for stuff. Right?

MR. RUTITIS: Correct.

MR. SHEPHERD: Okay. So I am going to ask you to undertake to give us a version of this table which includes, beside -- just the 2024; I don't care about 2023. But just for the 2024 numbers, the direct cost associated with that category, if there is one. If there is none, there is none.

MR. STEVENS: Sorry, you are asking for Enbridge Sustain's --

MR. SHEPHERD: Yes.

MR. STEVENS: -- direct costs associated with each of these items as compared to the allocated costs?

MR. SHEPHERD: Yes.

MR. STEVENS: Given that we already have a breakdown that we looked at in a different interrogatory of how Enbridge Sustain's direct costs are broken out, how is this incrementally useful?

MR. SHEPHERD: The only way to tell whether these costs are reasonable costs, or understated or overstated I suppose, is to see what the total spend for Sustain is relative to the size of its business. It is a common-sense

Appendix C

ENBRIDGE GAS INC.

Answer to Undertaking from
Heating Refrigeration and Air Conditioning Institute of Canada (HRAI)

Undertaking:

Tr: 112

To provide the management financial package for Enbridge Sustain (under advisement).

Response:

The management financial package for Enbridge Sustain for May 2024 is provided at Attachment 1. As noted in the cover letter accompanying these undertaking responses, Enbridge Gas has redacted certain information from one page in the attachment related to Enbridge Sustain's revenues, EBITDA, breakdown of capital spend, and changes made to capital forecast. In the Company's view, the redacted items are not relevant or useful to the OEB's consideration of Issue No. 27, and in any event contains sensitive information requiring confidential treatment if filed, which would not be efficient as they provide little probative value to the determination of the issue.

Enbridge Sustain

May 2024 Financial Results

ENBRIDGE®

Enbridge Sustain May YTD Results: Actual vs Forecast

Program ($ 000's)	May Actual YTD	May Forecast YTD	Variance	Comments
[redacted]				
Total O&M	(2,139)	(2,838)	↑ 699	See O&M analysis on slides 3 & 4.
[redacted]				
[redacted]				
Total Capital Spend	5,643	8,463	↓ (2,820)	

Key Messages

- [redacted]
-

Key Metrics - Enbridge Sustain Gross - ($ in Millions) MAY-24

Actual MTD	Budget MTD	AvB MTD
0.5	0.7	0.2

Actual YTD	Budget YTD	AvB YTD
2.1	2.8	0.7

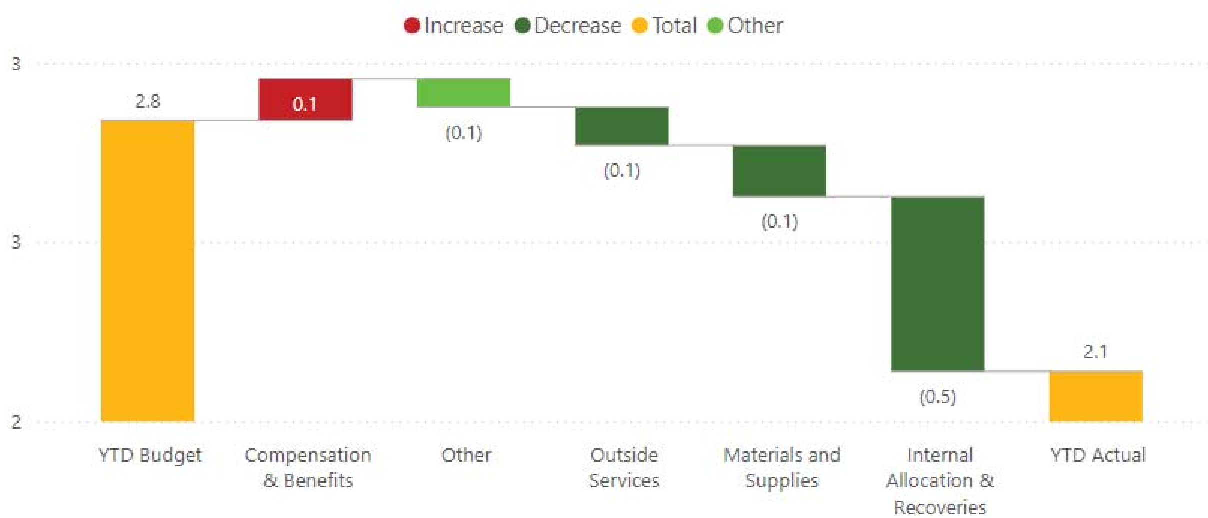
Forecast FY	Budget FY	FvB FY
14.2	14.2	0.0

Actual MTD	Target MTD	AvT MTD
0.5	0.7	0.2

Actual YTD	Target YTD	AvT YTD
2.1	2.8	0.7

Forecast FY	Target FY	FvT FY
14.2	14.2	0.0

YTD Budget to Actual



Comment

$0.7M favourable primarily due to over accrual at 2023 year end and capital labour credit in Jan 2024 for 2023 labour costs. Other less significant variances to budget include lower TIS spend $0.3M and higher Marketing spend $0.2M.

Note:

"Other" represents the combination of all minor variances not included in the top five drivers; whereas, "Other (NC)" specifically refers to the natural category labeled as 'Other' in the data.

Comment

6/18/2024 5:31:24 AM
Last Refreshed Date

VP Report View by Natural Category - Enbridge Sustain Gross - ($ in Millions) MAY-24

ENBRIDGE

VP Report View by Natural Category	Actual YTD	Budget YTD	AvB YTD	Target YTD	AvT YTD	Comment
Compensation & Benefits	1.8	1.6	(0.1) ▼	1.6	(0.1) ▼	
Donations & Memberships	0.0		(0.0) ▼		(0.0) ▼	
Employee Related Services	0.0		(0.0) ▼		(0.0) ▼	
Internal Allocation & Recoveries	(0.3)	0.2	0.5 ▲	0.2	0.5 ▲	Capital credit to TIS project, savings to offset future indirect labour pressures.
Materials and Supplies	0.0	0.1	0.1 ▲	0.1	0.1 ▲	Lower TIS costs.
Other	0.0	0.1	0.1 ▲	0.1	0.1 ▲	
Outside Services	0.5	0.6	0.1 ▲	0.6	0.1 ▲	Over-accrual at year end and lower TIS costs, offset by higher Marketing costs.
Professional and Regulatory Services	0.2	0.2	(0.0) ▼	0.2	(0.0) ▼	
Travel & Accommodation	0.0	0.1	0.0 ▲	0.1	0.0 ▲	
Total VP Group	**2.1**	**2.8**	**0.7** ▲	**2.8**	**0.7** ▲	

Comment

6/18/2024 5:31:24 AM
Last Refreshed Date

Sustain Headcount

Position Title	Name	April	May
Director Operations	Darren McIlwraith	1.0	1.0
Manager Commercial Sales	Rob Kennedy	1.0	1.0
Manager Customer Experience & System	Donna Cheung	1.0	1.0
Supervisor Technical Solutions, Sustain	Derek Hickson	1.0	1.0
Specialist Technical Programs	Marco Spinelli	1.0	1.0
Sr Advisor Customer Experience	Aaron Racioppa	1.0	1.0
Advisor Customer Experience	Christina Ng	1.0	1.0
Sr Advisor Business Development	Dejan Divic	1.0	1.0
Sr Advisor Technical Solutions	Michael Afrousheh	1.0	1.0
Specialist II Business Solutions	Unni Krishnan	1.0	1.0
Manager Operations	Stephanie Pazuki	1.0	1.0
VP Unregulated Business	Mark Irvine	1.0	1.0
Sr Advisor Business Development	Pete Tremblay	1.0	1.0
Specialist II Operations	Bette Farbod	1.0	1.0
Advisor Business Support	Candy Fan	1.0	1.0
Director Sales	Andre Oliveira	1.0	1.0
Director Product	Behdad Banan	1.0	1.0
Director Marketing	Ada Puiu	1.0	1.0
Specialist II Operations	Humaid Qureshi	1.0	1.0
Specialist II Sales Reporting & Analytics	Aloy Sukumar	1.0	1.0
Sr Advisor Business Development	Jame Zaiyouna	1.0	1.0
Sr Advisor, Business Development	Darryl Chow	1.0	1.0
Manager Sustain Programs	Stacy Everett	1.0	1.0
Manager Operations HVAC	Steve Storey	1.0	1.0
Account Specialist	George Hantzis	1.0	1.0
Manager Brand Marketing	Karen Pluthero		1.0
Supervisor Commercial Brand Marketing	Monica Worth		1.0
Specialist II Operations	Denny Hughes	1.0	1.0
Sr Advisor Business Development	Robyn Crosby		1.0
Advisor Technical Sales Solutions	Reaves Christie		1.0
Specialist Residential Market Developm	Corey McBurney	1.0	
Specialist II Operations Process	Christina Murphy		1.0
		27.0	31.0
		27.0	31.0

Key Message

May FTEs in Sustain - 31 FTEs
May FTEs to be transferred in - 0 FTE
May FTEs to be transferred out - 0 FTE
Total May FTEs - 31 FTEs

Budget May FY- 36 FTEs

ENBRIDGE GAS INC.

Answer to Undertaking from
Heating Refrigeration and Air Conditioning Institute of Canada (HRAI)

Undertaking:

Tr: 115

To provide the memorandum of understanding initially executed with the Canada infrastructure bank by Enbridge Gas Inc. (under advisement).

Response:

The financing agreements and arrangements for Enbridge Sustain, where those do not involve Enbridge Gas, are not relevant to the narrow ratemaking question at issue in this Phase 2 proceeding. That is particularly clear here, where the memorandum of understanding that had involved Enbridge Sustain has been replaced by a credit agreement between Canada Infrastructure Bank and a new Enbridge affiliate. No contractual relationship or obligation exists between Canada Infrastructure Bank and Enbridge Gas. As such, Enbridge Gas declines to provide the document.

ENBRIDGE GAS INC.

Answer to Undertaking from
Heating Refrigeration and Air Conditioning Institute of Canada (HRAI)

Undertaking:

Tr: 136

To provide additional column in Table 1 of the attachment of HRAI 23 re legal costs (under advisement)

Response:

In order to be responsive to the question and to show the magnitude of costs incurred by Enbridge Sustain, a breakdown of all costs incurred year to date from Enbridge central functions in 2024 has been provided in Table 1. This includes corporate cost allocations, indirect costs, and direct costs.

A breakdown based on 2024 estimates is not as meaningful because the level of services required by Enbridge Sustain from central functions can fluctuate as business needs and priorities evolve over time.

Table 1
Enbridge Sustain Costs By Central Function - YTD June 2024

Line No.	Particulars ($000s)	Corporate Cost Allocations	Indirect Costs	Direct Costs	Total CF Costs - Enbridge Sustain
		(a)	(b)	(c)	(d) = (a + b +c)
1	Aviation	1.0	0.0	0.0	1.0
2	CDO	2.0	0.0	0.0	2.0
3	EAWM	1.0	0.0	0.0	1.0
4	Executive	1.0	0.0	0.0	1.0
5	Finance	12.0	121.6	0.0	133.6
6	REWS	13.0	0.0	0.0	13.0
7	HR	11.0	21.2	0.0	32.2
8	Legal	5.0	33.9	69.2	108.1
9	PAC	2.0	0.0	0.0	2.0
10	S&R	3.0	0.0	0.0	3.0
11	SCM	6.0	8.4	0.0	14.4
12	TIS	51.0	1.1	331.7	383.9
13	Benefits	22.0	0.0	0.0	22.0
14	Depreciation	13.0	0.0	0.0	13.0
15	Insurance	0.0	0.0	0.0	0.0
16	Total Costs	143.0	186.2	400.9	730.1

Appendix D

E.B.O. 179-14
E.B.O. 179-15

IN THE MATTER OF the Ontario Energy Board Act, R.S.O. 1990, c. O.13;

AND IN THE MATTER OF an Application by The Consumers' Gas Company Ltd. for an order or orders approving rates to be charged for the sale, distribution, transmission and storage of gas for its 1999 fiscal year;

AND IN THE MATTER OF an Application by The Consumers' Gas Company Ltd. for all necessary approvals of transactions related to the transfer of certain customer information systems to an affiliate;

AND IN THE MATTER OF an Application by The Consumers' Gas Company Ltd. for all necessary approvals of transactions related to the transfer of certain businesses and activities to one or more affiliates;

AND IN THE MATTER OF an Application by The Consumers' Gas Company Ltd. for approval of an incentive mechanism in relation to the Operation and Maintenance Expense component of its cost of service, effective during the 2000 through 2002 fiscal years, and an incentive mechanism in relation to Demand Side Management.

BEFORE: H.G. Morrison
Presiding Member

P. Vlahos
Member

DECISION WITH REASONS

March 31, 1999

TABLE OF CONTENTS

1. INTRODUCTION

1.1 THE APPLICATION AND PROCEEDING

1.1.1 The Consumers' Gas Company Ltd. ("Enbridge Consumers Gas" or "the Company") filed an Application with the Ontario Energy Board ("the Board") dated January 8, 1998 ("the Application"), for relief on a number of matters. The details of the application are contained in the Board's Decision with Reasons in E.B.R.O. 497, issued August 30, 1998. The present Proceeding addresses approvals requested by the Company for transactions between itself and an affiliate and for specific regulatory treatment of certain programs.

1.1.2 The procedural framework for this Proceeding was set out in Procedural Order No. 5 issued in October 1998. As a result of this Order, one Proceeding was constituted for the Company's proposed targeted Performance Based Regulation or PBR (E.B.R.O. 497-01) and another for the matters described in this Decision (E.B.O. 179-14 and E.B.O. 179-15).

1.1.3 Procedural Order No. 5 provided for the oral hearing into this matter to commence on December 16, 1998; Procedural Order No. 6 set dates for a technical conference, a settlement conference and the exchange of interrogatories. The Board was advised on December 15, 1998 by the Minister of Energy, Science and Technology that the Government had approved new Undertakings of the Company to be effective March 31, 1999 ("the 1998 Undertakings" or "the new Undertakings"). The 1998 Undertakings superseded the 1994 Undertakings and will be in effect at the time the proposed transactions would take place. While the 1994 Undertakings had required the Board's approval for affiliate transactions and diversification activities of the type proposed, the new Undertakings removed that requirement. Board approval is therefore no longer required for the transfer of ancillary activities to an affiliate, but Board approval is required to retain such activities within the regulated utility.

1.1.4 At the outset of the hearing of the Application on December 16, 1998, the Board requested the Company and intervenors to make submissions on the effect the new Undertakings would have on the Company's Application. Having heard the submissions, the Board requested the Company to consider whether or not it wished to reframe its application in light of the new Undertakings. The Company provided a reframed application on December 18, 1998. This reframed application, as clarified by the Company in its Argument-in-Chief, is set out in detail in the next Chapter.

1.1.5 Having received the reframed application, the Board requested submissions from the Applicant and parties as to the appropriate timetable for continuing the Proceeding and, having received those submissions, the Board issued Procedural Order No. 7 on December 23, 1998. This Procedural Order established a revised issues list and ordered that the oral hearing commence on January 11, 1999. The oral hearing required seven hearing days, concluding on January 25, 1999. The argument phase was completed on March 8, 1999.

1.1.6 Copies of all the evidence, exhibits and argument filed in the Proceeding, together with a verbatim transcript of the hearing, are available for review at the Board's offices. While the Board has considered all of the evidence and submissions presented in this hearing, the Board has chosen to cite these only to the extent necessary to clarify specific issues on which it has made findings.

1.2 THE SETTLEMENT PROPOSAL

1.2.1 A Settlement Conference for E.B.O. 179-14 and E.B.O. 179-15 was held by the parties commencing November 16, 1998 and resulted in the settlement of only one of the issues, the one related to energy use and demand-side management programs. The settlement of this issue, as set out in the Settlement Proposal is described in Appendix A. The final result of the Settlement Proposal was presented to the Board on December 1, 1998. The settlement was accepted by the Board subject to updates, changes necessary as a result of the Board's Decision on unsettled matters, or as a result of unforeseen events.

1.3 PARTIES TO THE PROCEEDING

1.3.1 Thirty-five parties intervened. Below is a list of parties, including the Company, and their representatives who participated actively in the oral hearing by cross-examining or filing argument.

The Consumers' Gas Company Ltd. ("Enbridge Consumers Gas")	Jerry Farrell Fred Cass
Alliance Gas Management Inc. (" Alliance Gas")	Brian Dingwall

Alliance of Manufacturers and Exporters, Canada (“AMEC”)	Beth Symes C. Street
Association of Municipalities of Ontario ("AMO")/ECNG Inc. ("ECNG")	Peter Scully
Coalition for Efficient Energy Distribution (“CEED”)	George Vegh Elizabeth DeMarco
Consumers Association of Canada (“CAC”)	Robert Warren
Energy Probe Foundation ("Energy Probe")	Mark Mattson
Green Energy Coalition (“GEC”)	David Poch
The Heating, Ventilation and Air Conditioning Contractors Coalition Inc. ("HVAC")	Ian Mondrow
Industrial Gas Users Association ("IGUA")	Peter Thompson Bryan Carroll
Ontario Association of Physical Plant Administrators ("OAPPA")	Michael Morrison

Ontario Association of School Board Officials/Metropolitan Toronto Separate School Board (“the Schools”)	Thomas Brett
Ontario Coalition Against Poverty ("OCAP")	Michael Janigan Philippa Lawson
Pollution Probe Foundation ("Pollution Probe")	Murray Klippenstein
Union Energy Inc. (“Union Energy”)	Donald Rogers
Canadian Association of Energy Service Companies (“CAESCO”)	Thomas Brett
Coalition of Eastern Natural Gas Aggregators and Sellers (“CENGAS”)	Richard Perdue

1.3.2 In addition, the Board received three letters requesting observer status from other organizations and individuals, and two letters of comment expressing concerns regarding the Company's request to increase rates.

1.3.3 The Enbridge Consumers Gas’ employees who appeared as witnesses are shown below.

L.A.E. Beattie	Vice-President, Energy Supply and Storage

R.A. Bourke	Manager, Regulatory Accounting
D. Charleson	Manager, Accounting Systems
G. J. Hills	Vice-President, Regulatory and Legal
J.A. Holder	Vice President, Market Development
W. Lomax	Manager, Financial Studies
R. Rackus	General Manager, Central Region
W. B. Taylor	Director, Financial and Economic Studies

1.3.4 In addition, the Company called the following witnesses:

K. McShane	Vice-President and senior consultant of Foster Associates Inc.

1.3.5 HVAC called the following witnesses:

R. Grochmal	Owner, Atlas Air Conditioning Company and Chair - HVAC Coalition
M. Luymes	Manager, Heating, Refrigeration and Air Conditioning Contractors of Canada (“HRAC”), a division of the Heating Refrigeration and Air Conditioning Institute of Canada (“HRAI”)

P. Messenger	President and Owner of Messenger Mechanical Inc. under the trademark of A1 Air Conditioning and Heating

1.3.6 CAC, IGUA, OCAP and HVAC called the following witness:

Dr. J. Bauer	Associate Professor in the Department of Telecommunication, Michigan State University and a Research Associate in the Institute of Public Utilities.

2. THE COMPANY'S PROPOSAL AND PARTIES' VIEWS

2.1 THE ORIGINAL APPLICATION

2.1.1 In its original Application dated January 8, 1998, the Applicant proposed to separate and remove (or unbundle) the following from the existing operations of the regulated utility:

- its Merchandise Sales Program (or Merchandise Business Unit);
- its Heating Parts Replacement Plan or HIP; and
- approximately one half of the service operations currently provided to customers by the regulated utility under its Customer Maintenance Programs and Customer Appliance Repair and Diagnostic Service.

2.1.2 These ancillary services, together with the non-utility Merchandise Finance Program ("MFP") were proposed to be transferred to Consumersfirst Ltd. ("Consumersfirst"), a non-subsidiary affiliate of the Company, on October 1, 1999. The Company's proposal would result in Consumersfirst operating the transferred businesses outside of regulation. The Company proposed that its Natural Gas Vehicle Program ("NGV") and its rental program remain within the regulated utility, although it proposed to wind-down its rental program gradually.

2.1.3 As part of its Application, the Company requested the establishment of an Unbundling Business Activities Deferral Account to record costs incurred in the 1998 and 1999 fiscal years in relation to the transfers proposed. In addition, the Company requested approval of the Board for the ratemaking implications of its proposals relating to the rental program, including approval for the recovery from ratepayers of unrecorded deferred income taxes in relation to the program. This original Application was framed under the 1994 Undertakings.

2.2 THE REFRAMED APPLICATION

2.2.1 As noted in Chapter 1, the Board was advised that the 1998 Undertakings would supersede the 1994 Undertakings. While the 1994 Undertakings had required the Board's approval for affiliate transactions and diversification activities of the type proposed, the new Undertakings removed that requirement, replacing it with the following:

> *Consumers shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.* (Article 2.1)

2.2.2 The reframed Application, under the new Undertakings, as clarified during the hearing, was described by the Applicant in its Argument-in-Chief as follows:

The Company requests that the Board grant the following under Article 2.1 of the 1998 Undertakings:

- *prior approval for the Company to carry on the business activity known as the Rental Program, in a wind-down mode, on and after October 1, 1999* *until the wind-down is completed, including the Rental Service Agreement with Consumersfirst Ltd. during the initial five years; and*

- *prior approval for the Company to carry on the business activity known as the ABC-T Program, in its current format, on and after October 1, 1999 and until the Board determines that the program should be discontinued.*

The Company also requests that the Board approve the following for rate-making purposes:

- *an Unbundling Business Activities Deferral Account in order to record and recover reasonably incurred costs, in the 1998, 1999, and 2000 fiscal years, in relation to the transfer, by the Company to Consumersfirst Ltd., of the assets that comprise, and of copies of the information software that is necessary to operate, the following businesses and activities: merchandise sales, heating parts replacement plan (also known as "HIP"), and certain service activities;*

- *the proposed regulatory treatment of the Rental Program in a wind-down mode, including the following:*
    - *the classification of the program as a core utility activity; and*
    - *the recovery from ratepayers, in due course on a taxes payable or "flow through" basis, of the Company's unrecorded deferred income tax liability in relation to the program as at September 30, 1999 (approximately $168.2 million), to the extent that such liability cannot be recovered from customers of the program; and*

- *the proposed Unbundled Budget for use in connection with the targeted Performance Based Regulation (PBR) plan that is before the Board in the E.B.R.O. 497-01 proceeding.*

2.2.3 The retention of other programs, including NGV, within the utility from March 31,1999 until the end of the fiscal year was requested by letter to the Board dated December 17, 1998. These requests have been approved by the Board in a letter dated March 24, 1999.

2.3 TRANSFERRED OUT PROGRAMS

2.3.1 The Company plans to transfer assets with a net book value of approximately $166.8 million to its affiliate, Consumersfirst, of which $140.7 million are receivables associated with the MFP, and the remaining $26.1 million consists of assets relating to the other programs. To ensure no tax payments are triggered by the transaction, the Company and Consumersfirst would elect under the *Income Tax Act* to transfer the assets, which have been assessed by KPMG as having a fair market value of $168.5 million, at book value. In return for the transfer of the assets, the Company would receive $166.8 million in cash and $1.7 million in preferred shares issued by Consumersfirst. These shares are expected to be redeemed for $1.7 million in cash immediately following the asset transfer.

2.3.2 The Company proposes to continue a management services agreement with Consumersfirst, the fully allocated cost of which is forecast to be $2.4 million annually following the transfer. The Company filed a set of Standards of Business Practice to apply to these activities. These Standards have been preempted subsequently by the Board's draft *Affiliate Relationships Code for Gas Utilities*.

2.3.3 Given that no Board approval is required for these transfers under the new Undertakings, it was not necessary to examine the valuations in detail. Any ratemaking implications will be subject to review in the next main rates case. As noted later in this Decision the Board accepts for removal from the cost of service the amounts identified, as adjusted to reflect the actual amounts at the date of transfer.

2.4 RETENTION OF THE ABC-T PROGRAM

2.4.1 The Company is requesting approval under the new Undertakings to continue the ABC-T Program as an ancillary program within the Utility on the basis of fully allocated costs. The evidence is that this optional billing and collection service provided by the Company to agents, marketers, and brokers is needed in the developing competitive retail natural gas commodity market, and that other alternatives are not yet available. It is the Company's expectation that "the fate of the program would be revisited in another regulatory proceeding before the program would disappear".

2.5 PROPOSED TREATMENT OF THE RENTAL PROGRAM

2.5.1 The Company's rental program currently serves approximately 1.2 million homes and businesses in the Company's franchise area. The Company proposed to wind-down this program, installing no new rental units after October 1, 1999, and replacing no existing rental units at the end of their useful lives. The Company proposed that the rental program would, during the wind-down, cease to be considered an ancillary program and become part of the core utility for regulatory purposes.

Rationale and Proposed Regulatory Treatment

2.5.2 The rental program was operated on a marginal cost basis until the Board's finding in E.B.R.O. 495 required fully allocated costing of the Company's ancillary programs. The Company's proposal to treat this program as part of the core utility would subsume the costs of the program into the utility's cost of service.

2.5.3 In its evidence in E.B.R.O. 497 the Company described the new competitive environment relating to rentals and the difficulties facing the rental program as competitors expand into the business of providing water heaters for sale, and promoting electric water heaters. Essentially, in that Proceeding, the Company requested an extension of the time during which it could operate its rental program on a marginal cost basis. Having not had its request granted, the Company wishes to withdraw from the rental business, and proposes the wind-down as a way to manage the transition.

2.5.4 It was the Company's view that, given the historic benefits it identified with the rental program, its anticipated lack of flexibility to manage revenues and mitigate the impact of premature equipment removals, the loss of economies of scale during the wind-down, and the aim of fostering competition, the rental investment should be treated as any other utility investment through the wind-down. The program would not, under the Company's proposal, be subject to fully allocated costs for regulatory purposes. Until the competitive infrastructure is in place to assure adequate service levels for rental customers, the Company proposes to enter into a five year service agreement with Consumersfirst; at the end of the term of this agreement, the Company states that Consumersfirst would have to compete for the utility business.

2.5.5 It is the Company's view that its wind-down strategy balances the interest of the shareholder in protection of its investment with the interests of customers in increased choice through an orderly transition to competitive markets. Existing customers may remain on the utility rental program until their equipment needs to be replaced, and will be made aware of alternative supply sources. The shareholder would, under the Company's proposal, recover the full costs of winding down the program.

2.6 DEFERRED TAXES

2.6.1 As a result of the Company's use of a "flow through" method of recording taxes relating not only to its regulated utility income but also to the income from the Rental Program, there would be unrecorded deferred taxes in the amount of $168.2 million attributable to rental assets as at the end of fiscal 1999. The Company proposed that ratepayers be responsible for the payment of these deferred taxes. In support of this proposal, the Company cites an analysis of the regulatory treatment of returns on ancillary programs over the past 10 years that indicated a resulting $151 million, on a current dollar basis, benefit to ratepayers over those years, $127.5 million of which is attributable to the rental program. Over the past 20 years, the Company estimated that the rental program had been responsible for approximately $172.5 million in current dollar benefits to ratepayers resulting from the regulatory treatment applied to earnings from it.

2.6.2 As a result of a recent Supreme Court Decision, Revenue Canada has changed the tax treatment of certain expenses associated with rental equipment. Because of this change, the Company was credited with $42 million of tax overpayment. This amount contributed to the total of $168.2 million deferred tax liability noted above. The Company proposed to credit the $42 million to the ratepayers conditional upon the Board accepting the Company's proposed wind-down and deferred tax treatment.

2.7 CONSUMERSFIRST SERVICE AGREEMENT

2.7.1 As noted above, the Company proposes to enter into a five year rental service agreement with Consumersfirst for the latter to provide service to existing rental products primarily consisting of rental water heaters. It is the Company's evidence that its affiliate is the only contractor capable of providing service comparable to that presently provided. At the end of the five year period, other contractors who can demonstrate the capability will be considered to provide this service. The Company contended that this agreement, as opposed to servicing through third parties, will prevent premature stranding of rental assets, because the two companies are commonly owned. The Company also argued that the contract will enable a smooth transition to a competitive market.

2.7.2 Based on a negotiated cost per unit serviced, the Company forecast that it will pay Consumersfirst $17.7 million in fiscal year 2000 to provide the rental equipment service. The Company stated that in its negotiations with Consumersfirst it undertook to ensure that the cost of the agreement would be equivalent to the cost of a Company-managed option using 100% contractor workforce. The Company's evidence indicated that the cost of the rental service agreement on a marginal cost basis is comparable to the cost of a Company-managed alternative.

2.8 STRANDED ASSETS

2.8.1 Assets no longer required for the operation of the core utility once the unbundling process is complete and therefore no longer "used and useful" were estimated at $400,000 after mitigation efforts by the Company. These assets comprise the net cost of telecommunication equipment and infrastructure costs associated with office space reductions. The Company proposed that the stranded costs from these assets be recoverable from ratepayers through depreciation.

2.9 TRANSITION COSTS

2.9.1 The Company identified one-time transition costs of approximately $18.4 million in O&M expenses, and approximately $0.9 million in capital costs. The following table indicates the sources of these costs:

Item	**O&M ($000's)**	**Capital ($000's)**
Customer Communications	900	
System Modifications, Data Extraction	5,000	
Human Resources/Employee Support	4,000	
Office Relocation/Facility Restoration	3,600	900
Consulting & Regulatory Costs	2,100	
Transition Planning	2,800	
	18,400	900
From Prefiled Evidence E.B.R.O. 497-01, E.B.O. 179-14 and 15 Table B/5.3/2		

2.9.2 Costs related to system modifications are claimed to be necessary to ensure appropriate confidentiality of data and continued effective information technology for the core utility. Human resources costs include employee education, relocation, and severance, and the separation of pension and benefit plans for transferred employees. Office relocation and facility restoration expenses involve distributing the utility workforce into facilities owned by the utility, and vacating the leased facilities presently used by the larger bundled operation. Consulting and regulatory costs include costs to obtain independent valuations, tax, legal and accounting opinions and rulings, and the regulatory costs associated with this Application. Transition planning costs are for incremental staff and external consultants to develop and implement transition initiatives.

2.9.3 The Company recommended that, given that the costs associated with unbundling are estimated, a deferral account be set up to capture incremental one-time transition costs so that actual costs related to the planning and implementation of the unbundling proposal become part of the cost of service to be recovered in rates over a three year period from fiscal 2000 to fiscal 2002, inclusive.

2.10 THE UNBUNDLED BUDGET

2.10.1 The Unbundled Budget as presented by the Company is the budget that would have been required for fiscal 1999 had the proposed unbundling of ancillary and service activities been effective on October 1, 1998, representing "the revenue requirement...to operate a core utility, on a stand alone basis (including the Rental Service Agreement), and to provide limited shared services". The Company submitted that the Unbundled Budget demonstrates that the core utility "can deliver annually, on an ongoing basis, some $18.4 million in benefits, or savings, when measured against the revenue requirement of an integrated utility based on the Board-approved budget for fiscal 1999".

2.10.2 It is the Company's position that these savings require not only the removal of the direct costs of the activities proposed to be unbundled, but the incurrence of other management initiatives and efforts which will result in the transition costs noted above.

2.11 PARTIES' VIEWS

2.11.1 The parties, with few exceptions, opposed the Company's proposals in whole or in part. Some noted that the onus was on the Applicant to satisfy the Board that the specific relief it was seeking should be granted, and that the Board could simply turn down the proposal entirely, if that onus was not met. The relief sought was characterized variously as "regulatory overreach", "excessive", and self-serving. Concerns were expressed that the Company was relitigating matters which the Board had clearly determined in previous proceedings, that there were no efficiency gains resulting from its restructuring, and that its proposed contract with its affiliate would distort markets and hinder competition. A number of parties pointed out that the shareholder had chosen to pursue ancillary programs for its own purposes, and must therefore accept the risks of a changing marketplace. Many argued that past benefits were overstated, and some submitted that past outcomes should not, in any case, necessarily determine the fate of the present Application.

2.11.2 There was general support, with one exception, of the Company's proposal to retain ABC-T Service.

2.11.3 With respect to the new Undertakings, parties suggested various tests that might be applied in determining whether business activities other than distribution, transmission and storage of gas should be permitted within the Company, and urged the Board to consider the context of the new legislation, its general purposes, the Board objectives set out in the legislation, the description of the purposes of the new Undertakings and their specific wording, and the general direction of change in the energy industry. Based on Dr. Bauer's testimony, parties urged the Board, at a minimum, to hold ratepayers harmless and apply the test of economic efficiency as a criterion in assessing the Company's requests.

2.11.4 Many parties noted that the Company had provided little in the way of evaluation of alternatives to its proposals. With respect to the deferred taxes, some parties questioned the jurisdiction of the Board to pass through into rates taxes relating to assets of ancillary programs. No party agreed that the "regulatory compact", as articulated by the Company's witness, Ms. McShane, guaranteed recovery of deferred taxes by the shareholder as suggested by the Company. One party suggested that the Board may have been "mistaken" in its past decisions relating to the treatment of taxes, but that it could redeem itself through the proper determination of the present application.

2.11.5 With respect to the proposed services contract with Consumersfirst, there were general concerns that the contract in essence amounted to a transfer of the rental program to the affiliate at no cost, and that in fact the Company would be paying its affiliate to acquire a profitable business as the Company wound down its participation. Evidence provided by witnesses on behalf of HVAC addressed concerns relating to fairness to others in the service industry, and protection of ratepayers from subsidizing an affiliate's entry into the market. Parties recommended that the Board consider these in evaluating the proposal.

2.11.6 A number of parties noted the complexity and difficulty of the issues in the Application. Although there was almost universal agreement that the Company's course should not be agreed to, parties did not generally provide alternative courses for the Board's consideration.

2.11.7 In reply, the Company urged the Board to take a narrower approach to its mandate in relation to competition than that argued for by some parties, noting that the new legislation speaks of the Board's role in facilitating competition in "the sale of natural gas" and in "the generation and sale of electricity". On the other hand, the Company dismissed as "astonishing" any suggestion that the Board does not have the jurisdiction to require ratepayers to pay the deferred tax liabilities. The Company urged the Board to adopt a “just and reasonable” standard in determining the extent to which ratepayers’ and shareholders’ interests should be protected, a standard it submited would be completely consistent with its proposals with respect to the treatment of the ancillary programs, and the deferred taxes.

3. BOARD FINDINGS

3.1 GENERAL

3.1.1 The Company wishes to retain the rental program within the core utility, wind it down, recover the resulting deferred tax liability from the ratepayers (to the extent that it cannot be recovered from the rental customers) and utilize an exclusive five year service agreement with its affiliate to provide service of the rental assets. The Company also requests approval to retain its ABC-T program within the utility. Additional approvals are sought relating to the costs of transferring other activities out of the utility and the resulting "unbundled budget" for use in connection with a proposed PBR Application that is under consideration by this Board in a related proceeding.

3.1.2 Thus summarized, the Company's proposals seem straightforward. As many intervenors have indicated, however, the matters under consideration in this Application are not only complex, but interwoven in complicated ways. In addition, the consequences are potentially momentous, in both policy and financial terms. It is necessary to carefully balance the interests of ratepayers, shareholders, and users of the programs in question, to consider the changing legislative, regulatory and market contexts, and to take into account previous Board findings and directives.

3.1.3 During the hearing the Board requested clarification from the Company of its expectations should the Board deny part or all of the relief requested. In its Argument-in-Chief, the Company responded, asking for "detailed guidance as to the Board's expectations...[to] enable the Company [if necessary] to design an alternative that would meet the Board's expectations and...facilitate the regulatory process." In setting out its findings in the following pages, the Board has been mindful of the effort that has gone into this Application by all involved, and of the need for regulatory efficiency to utilize that effort to move forward. While some intervenors have urged the Board to "just say no", this course appears to the Board to be wasteful. The Board has therefore attempted to craft a solution to address its concerns with the Application as proposed, and to provide the Company with sufficient information and guidance to allow it to make effective decisions about the way in which it will proceed. The Board has also, of course, addressed the separate requests for approval for transactions other than those relating to the rental program and the resulting deferred tax liability.

3.2 THE RENTAL PROGRAM

Retention Within the "Core Utility"

3.2.1 As noted earlier, the 1998 Undertakings changed the nature of the approvals required by this Board in relation to the Company's activities. The relevant paragraph of the Undertakings reads as follows:

> *Consumers shall not, except through an affiliate or affiliates, carry on any business activity other than the transmission, distribution or storage of gas, without the prior approval of the Board.*

3.2.2 The Board has no difficulty in accepting that the rental program is a "business activity" within the meaning of this paragraph, and the Company does not contend, nor does the Board accept, that the program is part of "the transmission, distribution or storage of gas". Had this been the Company's interpretation, it would not have seen the necessity for approval to retain the rental program.

3.2.3 The Board has reviewed the various positions of the Company and intervenors as to the Board's jurisdiction and role under the *Energy Competition Act*, the direction of policy change envisioned by the new legislation, and the extent to which the gas and electricity sectors must be treated identically or symmetrically. The provisions of the legislation relating to the two sectors are not the same, and while the Board accepts the need for a consistent regulatory approach, it is required under the new Undertakings to make determinations which have no equivalent in relation to the electricity utilities. These decisions must be informed by regulatory history and the Board's sense of the regulatory future. In this particular case, the Board finds that under certain circumstances the carrying on of the business activity of equipment rentals by the Company would be appropriate.

3.2.4 The Board is not prepared, however, to approve a proposal to run the rental program as part of the "core utility". The essence of such a proposal is that no separate costing of the program, and hence no assessment of its profitability is possible. Not only would the costs of the program not be assessed on a fully allocated basis, as the Board has previously directed, but there would be no way of assessing them at all. The extent of any cross subsidization by the ratepayers would be unknown, and there would be little incentive for the Company to operate the program as efficiently as possible. The Board notes as well that any stranded assets which might develop in the program would become a ratepayer responsibility.

3.2.5 The Board's finding with respect to retention of the rental program in the core utility is supported by its view of current regulatory policy, which encourages the development of a "pure utility", stripped of non-monopoly services. The Board recognizes that the issue of the rental programs within the electrical utilities is still under consideration. In the event that such programs are to remain in electrical utilities, the Board will need to apply consistent principles to their regulation. While it may not be necessary to follow the same timetable in the gas industry as may be envisioned for the electric utilities, the general principles with respect to costing of such programs should be the same. Retaining the Company's rental program in the core utility does not allow appropriate costing principles to prevail.

3.2.6 The Board would accept the program, for the time being, on a non-utility basis within the Company, with elimination of the program's costs on a fully allocated basis.

<u>The Proposal to Wind Down the Program</u>

3.2.7 The Company has stated that it does not wish to continue the rental program as a going concern, partly because it is unprofitable to do so under fully allocated costs. While the Company provided, in a transcript undertaking response, a "high-level summary" of its analysis of options leading it to conclude that its proposal was optimum, the Board was not provided with detailed information on options and their consequences. It is clear that "a key component" of the wind-down proposal is the proposed five year service agreement with Consumersfirst. It is also clear that in the Company's view the deferred tax implications of the wind-down proposal were preferable to those that would result from other options.

3.2.8 Whatever the Company's motivation in proposing the wind-down of the rental program, the Board is not convinced that it is either necessary, or the best solution in the circumstances. There is no convincing evidence on the record that competition is rapidly eroding the program's remarkably high market penetration. While according to the Company the program was not forecast to return the allowed rate of return for fiscal 1999, this was partly due to the Company's reclassification of certain diagnostic charges which resulted in additional direct costs of $3.1 million for the program, and additional allocated costs of $6.8 million. Reversal of the changes in accounting for diagnostic charges would have resulted in a forecast combined rate of return of 8.7% for the Company's four ancillary programs, most of which is attributable to the rental program. Even when the program does not yield the returns realized by the utility as a whole, it is not losing money, on any cost allocation basis.

3.2.9 The most important consequence of the fate of the rental program is the timing by which the deferred taxes associated with it must be either recorded or paid. The Board discusses this consequence below. While it is not appropriate for the Board to tell the Company what it should do with the rental program, the Board's proposed treatment of the deferred taxes will determine the parameters within which the Company must decide the fate of the program. If the Company does not wish to continue the program as a non-utility program, it does not need Board approval to transfer it to an affiliate or to sell it to a third party.

3.3 DEFERRED TAX LIABILITY

3.3.1 As noted earlier, approximately $168 million in deferred taxes are associated with the rental program, including a tax credit of some $42 million arising from the recent reversal of Revenue Canada's treatment of expenses associated with the installation of rental assets. In the Board's view, whoever is responsible for the payment of the deferred taxes should be entitled to this credit.

3.3.2 The Company has contended that the deferred tax liability is a ratepayer responsibility, arguing that ratepayers have benefitted from the deferral of the taxes through lower rates, and that there has been a cumulative shortfall in earnings flowing to the shareholder over the years as a result of the lower actual returns from the program. Intervenors have presented various reasons why the liability should not fall on ratepayers.

3.3.3 The Company relies heavily on earlier Board decisions and the "regulatory compact" for its contention that the deferred taxes should be recovered in rates. According to the Company, the Board's decisions and the consequential regulatory precedents imply, without question, a commitment ("the Commitment") that these taxes would be recovered in rates when they are due and payable in the future. The trade-off for this Commitment is that gas rates have been minimized for the many years leading up to the time when the future tax liability arrives.

3.3.4 A review of the history of the Board's considerations of the Company's tax methodology will be helpful in assessing the Company's argument in this respect.

History

3.3.5 The flow through or "taxes payable" method of recording taxes is an exception to the standards of the Canadian Institute of Chartered Accountants ("CICA") as expressed in the following excerpt from the current CICA Handbook:

> *...the taxes payable basis would be appropriate ... provided that there is a reasonable expectation that all taxes payable in future years will be:*
> *(a) included in the approved rate or formula for reimbursement* ***and***
> *(b) recoverable from the customer at that time.*

3.3.6 The CICA Handbook, in setting out this exception to the usual rule that "the deferral method of income tax allocation should be used", notes that the exception would apply in very limited circumstances, and uses as an example of those circumstances "a company in the regulated utility field under the jurisdiction of an authority, which allows as an element of cost in setting rates only the amount of taxes currently payable".

3.3.7 The Company has used the flow through basis of recording its taxes for many years. The Board has reviewed the history of the treatment of taxes, as set out in the cases relied upon by the Company, and notes the following:

- In 1961, when the Company asked the Board to approve an amount in rates for deferred taxes relating to "plant expansion and replacement", the Board declined, citing uncertainty as to when or whether the Company would have to actually pay the taxes in question.
- The Company based a 1975 request for "interim rate relief" to collect deferred taxes in part on the improvement that would result in its "cash flow and financing ability", and cited risks which arose from postponing recovery of taxes.
- One of the reasons recovery of deferred taxes in rates was denied by the Board in the past was that adding to rates for the purpose requested was inconsistent with Government price restraint policies in place at the time to deal with high rates of inflation.
- More than ten years ago Board staff argued for the exclusion of the rental program from the utility operation; at the time, the deferred tax situation was not raised, although evidence filed in the present application suggests that a total unrecorded deferred tax liability of almost $250 million existed at that time, a significant portion of which would have related to rental assets.

- In the past five years, the regulatory treatment of the ancillary programs has been examined in each main rates case; the Board ordered the implementation of fully allocated costing for these programs in 1997.

3.3.8 In E.B.R.O. 497, the Company presented evidence that, on the fully allocated costing basis directed by the Board the previous year, the ancillary programs were forecast to produce a revenue deficiency of $21.3 million dollars. The Company requested that the Board not impute any revenues to the programs in the test year, essentially requesting relief from the application of full costing for the test year. Detailed probing during the hearing revealed that much of the forecast deficiency in these programs could be traced to the introduction by the Company of a separate charge for diagnostic services, and a charging to the ancillary programs of direct and allocable costs related to these services. When these costs were excluded, the forecast revenue deficiency for the programs was reduced to $3.7 million.

3.3.9 The Board expressed its concern in the E.B.R.O. 497 Decision that the costs relating to diagnostic services had not been identified previously in the fully allocated costs study which had been presented to the Board in E.B.R.O. 495. The result of this failure was that the true revenue deficiency of the programs in fiscal 1998 was not recognized, and the Company had, in effect, a transition period in which fully allocated costing did not apply to the programs. The Board declined to provide any additional transition period, and directed that full costing continue to be applied. In addition, the Board expressed its concern as to "what *other* costs properly belonging to either ancillary or non-utility activities are still missing in the Company's cost allocation". It now appears that the unrecorded deferred taxes relating to the ancillary programs were another such cost, and a large one.

The Commitment

3.3.10 The Board does not accept the Company's argument that its past decisions imply the Commitment claimed for the following reasons:

- Many of the Board's decisions addressed whether deferred taxes should be collected in rates of the year in question. No distinction was made between the utility in general and its ancillary programs, although it is noteworthy that aspects of the Company's business, such as exploration and development, were treated differently. These decisions were based on circumstances at the time in question, such as the existence of high inflation, the status of the Company's cash flow and financing capabilities, and the extent to which the Board was persuaded that the Company's future was at risk from competition with other forms of energy or a future shortage of natural gas.
- Some of the decisions dealt with the extent to which a return should be allowed on the deferred taxes, not on a change to the tax methodology itself.
- The Company relies in the present Application on the Board's conclusion in 1976. In that Decision, the Board's statement that "...it is not reasonable to expect that the Applicant would be unable to obtain regulatory approval for the collection of deferred taxes in rates when they become payable, or that competition with other forms of energy would prevent the collection in rates due to a loss of customers" was in response to a Company argument that a future shortage of gas or competition with other energy forms might affect the Company's ability to recover the taxes following the crossover point.
- Where the decision requested was for a change in principle from flow through tax accounting to normalized accounting, the Board relied on its earlier decisions, and did not address the principle.

- The “regulatory compact” does not operate in such a way as to prevent the Board from considering new circumstances and changing its approach in response to them.
- The Company argues that the rental program has always been treated as part of the utility. The Board has never set rental rates, and has always required separate reporting for the ancillary programs. Taxes paid on income from the programs were expected to be part of the expenses directly assigned to the programs. While rates were set on the basis of a forecast rate of return from the rental program which took into account the taxes payable, it is not entirely clear to the Board that the CICA guideline applied to the program at all. Certainly once full costing of the rental program was required, it is difficult to see how the CICA guideline applied. The point was never raised before the Board.
- Even if one accepts that earlier Board decisions did not differentiate between taxes relating to ancillary programs and taxes relating to the utility, it is remarkable that the Company did not alert the Board to the deferred tax problem when the question of the costing of the ancillary programs was under consideration. The Company was undoubtedly aware of the unrecorded deferred tax liability related to these programs. It appears to the Board that its existence was an essential piece of information that should have been available to the Board in its review of the regulatory treatment of these programs. Consideration of a different costing treatment for the rental program commenced as early as 1995 (E.B.R.O. 490). Indeed, in E.B.R.O. 497, the Board expressed its concern “as to what other costs properly belonging to either ancillary or non-utility activities are still missing in the Company’s cost allocation”. It is notable that the amount of the liability related to the rental program has increased by approximately $50 million dollars since 1995, a period in which there has been considerable discussion of the characterization of costs relating to this program.

3.3.11 Considering all of the above, it is the Board's view that the deferred taxes associated with the rental program should be the responsibility of the shareholder. In the circumstances, the Board does not need to decide whether it has the jurisdiction to pass these costs directly through to the ratepayer in rates. As noted above, the $42 million credit for tax overpayment should, therefore, be credited to the shareholder.

Ratepayer Savings

3.3.12 It is instructive to consider who would have paid the taxes related to the rental program had they not been deferred. The Company's evidence is that rental rates were set by the market, and were not therefore dependent on the program costs. If one accepts that evidence, it follows that the renters would not have paid any more or less had the taxes not been deferred.

3.3.13 The Board cannot accept the Company's premise that rental rates were in fact set by the market as the Company states. The rental business, while competing to some extent with similar programs run by the electricity utilities, was in some senses a "monopoly business", with an approximately 95% market share in the Company's franchise area. Unfortunately, there is no evidence to suggest what differential existed between rental prices as set by the Company and those that would have been determined by the market. To the extent that prices were set to cover costs of the program, renters would have been responsible for paying the taxes, and would have benefitted from their deferral. The Board can only assume that there was some benefit; it cannot be quantified.

3.3.14 In order to analyze who else would benefit from the deferral, or, in other words, who else would have paid the taxes had they not been deferred, it is useful to accept for the purposes of the analysis that rental prices were set by the market, and thereby exclude possible benefits to renters from the analysis for the moment.

3.3.15 For most of the life of the rental program, its costs have been determined on a marginal basis. If one assumes that the taxes on the income of the rental program were charged to the program *as a direct charge*, and that the tax shelter related to the rental assets was applied directly to those taxes, the treatment of the taxes would have been the same under either marginal or fully allocated costing, since direct charges are attributed to the program under either regime. The deferral of the taxes would have, in any given year, lowered the cost of the program. Who benefitted from that lower cost?

3.3.16 To answer this question, it is necessary to note that the setting of utility rates on a forecast basis has the following results:

- if the forecast rate of return for the rental program was higher than the overall allowed rate of return, utility rates would have been set to reflect the higher return from the program, and ratepayers would have benefitted;
- to the extent that the actual rate of return for the program was higher than that forecast, shareholders would have benefitted; and
- to the extent that the actual rate of return was lower than that forecast, the risk being symmetrical, the shareholder would have absorbed the shortfall.

3.3.17 The Company has provided forecast and actual returns over the last ten years. From these, the following can be established:

- On a forecast basis, between 1989 and 1998 there was a total sufficiency from the program of $50 million.
- There are also some benefits to ratepayers from the reduction of fixed costs through incremental gas sales attributable to the rental program and the improvement in system load factor. Although these benefits would also have arisen if the rental program were owned and operated by a third party, it seems unlikely that the high market penetration the program achieved would have occurred had the utility not operated the program. In addition, it should be noted that rental customers are also ratepayers; almost 95% of ratepayers are also renters. To the extent that renters, who are also ratepayers, have not paid higher rental rates to cover costs of the program, they have benefitted.

3.3.18 It is not, in the Board's view, fair to revisit earlier regulatory treatment which allowed the program to operate on a marginal cost basis and calculate for this period a 'subsidy' to the rental program from the general body of ratepayers. The regulatory regime was what it was. However, even if such consideration were justified, the evidence reveals such 'subsidy' is only a portion of the $50 million sufficiency noted above.

3.3.19 It therefore appears to the Board that utility ratepayers have benefitted from the rental program over the years, and that the shareholder has absorbed some costs. While finding that ratepayers should not be responsible for the deferred tax liability, *per se*, related to the rental program, the Board believes that there should be some recognition of the benefits they have received in the past. The Board therefore would accept the provision of a notional utility account in the amount of $50 million, after tax, to allow the shareholder to use the value of these past ratepayer benefits to pay a portion of the deferred taxes associated with the rental program as they become due. It is up to the Company to determine the future of the program, but whatever that choice, the notional account can be drawn down to pay deferred taxes up to $50 million.

3.3.20 There are a number of options which the Company may consider with respect to the rental program, each with its own consequences for the rate at which the deferred taxes will come due. The options include:

- The Company may choose to continue to operate the program as a non-utility program for the time being. As the taxes become due, they will be accounted for as costs for potential elimination as non-utility expenses, as they are not common costs. It is possible that the deferred tax liability would need to be recorded immediately, even though payment is not immediately required.
- The Company may choose to wind-down the program as a non-utility program. In this case, the necessity to pay the deferred taxes will be accelerated.
- The Company may choose to transfer the assets to an affiliate or sell the program to a third party. In these circumstances, any proceeds from the sale or transfer would be available to address the related tax consequences. To the extent that the Company proposes to utilize any or all of the notional account as well, the Board's approval of the ratemaking consequences would be required. The Company should be aware that, under this option, consideration of 'rate shock' may dictate the degree of amortization of the amount to be reflected in rates going forward.

3.3.21 In any of these cases, the Company may draw on the notional account to pay deferred taxes as they become due. If the Company decides to continue the program, it will have an incentive to run it as efficiently as possible, since it must account for it on a fully costed basis. In any year, the amount used from the account would be recognized in rates, subject to considerations of 'rate shock' as noted above.

3.4 CONSUMERSFIRST CONTRACT

3.4.1 The Company has described its proposed contract with Consumersfirst as a "key component of the Company's proposal to wind-down its Rental Program...." Given the Board's findings above, the Company may decide on a different course for the program, and change its approach to service provision. The Board has determined that the program must operate, if it is to be retained by the Company, on the basis of fully allocated costs. Included in these costs will be whatever charges are paid through contracts for service. If the Company is to contract with its affiliate, it will be required to adhere to the *Affiliate Relationships Code for Gas Utilities*, which is intended to address not only the possibility of cross subsidies, but also potential unfair competition by the affiliate with others in similar markets.

3.5 RETENTION OF ABC-T SERVICE PROGRAM

3.5.1 The Board confirmed the status of the ABC-T service as an ancillary program in E.B.R.O. 495, and accepts that it is a "business activity" within the meaning of the 1998 Undertakings. Under fully allocated costing, costs of the program will not be borne by ratepayers. The Board is prepared to accept the retention of the ABC-T Service Program, noting that the Company may decide in the future that the program is no longer economic, and would then be at liberty to cease to operate it. However, for consistency with the Board's findings in relation to the rental program and for regulatory efficiency, the ABC-T Service Program is accepted as non-utility rather than ancillary. Therefore, the Board's review in future will be limited to the costs removed and would not include matters of pricing or profitability.

3.6 TRANSITION COSTS

3.6.1 Of the $18.4 million O&M and $900,000 capital costs that the Company has identified as transition costs in relation to its application, some are directly related to the transfer of assets to Consumersfirst for which the Board's approval was sought in the original application, some arise from the wind-down of the rental program and the remainder relate to the realization of future savings through the reduction of 173 employee positions. No breakdown of these amounts was provided.

3.6.2 Disposition to the ratepayer of the portion of transition costs relating to the transferred programs would reduce the net transfer value of the transferred assets to below their book value; in the result, ratepayers would not be held harmless by the transfer.

3.6.3 Based on the Board's findings above, the transition costs associated with both the wind-down of the rental program and the reduction in employee positions will be subject to further uncertainty. Until such time as the Company takes action with respect to the alternatives available to it, the Board sees no need for the requested deferral account.

3.7 THE UNBUNDLED BUDGET

3.7.1 The Unbundled Budget presented by the Company was proposed as a basis for the Performance Based Regulation plan that is before the Board in E.B.R.O. 497-01. The Board is prepared to accept the adjustments to the cost of service identified for programs to be transferred to Consumersfirst at the end of this fiscal year, subject to the Company providing the actual amounts for ratemaking purposes. Depending upon the choice(s) the Company makes in response to the Board's findings in the present application, a different Unbundled Budget will result. Other aspects of the base budget for any PBR plan which the Board may approve will be dealt with in the E.B.R.O. 497-01 Decision.

3.7.2 The Board could not determine the extent to which the stranded assets identified by the Company are associated with the proposed treatment of the rental program. To the extent that any such costs are associated with businesses transferred out, they should not be reflected in the cost of service going forward.

3.8 ENERGY USE AND DEMAND-SIDE MANAGEMENT

3.8.1 As noted above, this issue was completely settled in the Settlement Conference. The Settlement Agreement set out certain commitments by the Company to address energy conservation and demand-side management concerns upon approval of its Application. It is the Board's expectation that any proposal brought forward by the Company in response to this Decision will take into account the terms of that Agreement.

4. COST AWARDS

4.1 COST AWARDS

4.1.1 The following parties applied for an award of costs: AMEC, CAC, CEED, Energy Probe, HVAC, IGUA, OAPPA, OCAP, Pollution Probe and the Schools.

4.1.2 In order to expedite the issuance of this Decision, the Board will address cost claims in a supplementary decision which will be issued in due course.

DATED AT Toronto March 31, 1999.

H. G. Morrison
Presiding Member

P. Vlahos
Member

A Portion of E.B.O. 179-14 and 179-15 Settlement Agreement from Exhibit B, Section 8.0 Pages 8 and 9 dated December 1, 1998.

D.3 Impact on Energy Use and Utility DSM Programs (Complete Settlement)

The following parties participated in the discussion of this issue: the Company, AMEC, CAESCO, CAC, CEED, Energy Probe, GEC, HVAC, IGUA, Schools, OCAP, and Pollution Probe.

There is an agreement to settle this issue on the following basis:

- The Company recognizes that its restructuring proposals in the EBO 179-14/15 application will have an impact on the way in which it designs and delivers DSM programs, particularly in the residential sector. Since the inception of DSM in 1995, many of the residential programs and a significant portion of the total results have been associated with the Rental Program.

- In its EBO 177-17 Decision with Reasons, the Board noted its concern that if the cost effectiveness of DSM programs is not maintained, ratepayers will be detrimentally affected. The Company will monitor the impact of completing its restructuring proposals and, as required, take appropriate steps to mitigate any detrimental effects.

- The Company will expand its program approaches and its delivery channels, in a restructured environment, to included a wider array of industry and trade allies. The Company will also broaden its monitoring and evaluation processes in order to track the impact of its programs on a broader market basis. In addition, the Company will file a comprehensive monitoring and evaluation plan with each DSM Plan, which will be developed with input from the DSM consultative process.

- The Company will also take an active role in advocating an increase, to or beyond the level that the Company has achieved in its Rental Program in recent years, in the Ontario Government's minimum standard for the efficiency of gas-fired water heaters.

The following parties agree with the settlement: the Company, AMEC, CAESCO, CAC, Energy Probe, GEC, IGUA, Schools, OCAP and Pollution Probe.

The following parties take no position on the issue: CEED and HVAC.