Ontario Energy Board | Commission de l'énergie de l'Ontario

BY EMAIL

November 1, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

Re: Ontario Energy Board (OEB) Staff Submission on Integration Capital
Enbridge Gas Inc. Motion to Review and Vary the December 21, 2023 Decision and Order in EB-2022-0200
OEB File Number: EB-2024-0078

Please find attached OEB staff's submission on the Integration Capital issue, pursuant to the Decision on Threshold Question and Procedural Order No. 2 dated October 8, 2024.

Yours truly,

KViraney

Khalil Viraney
Case Manager

Encl.

cc: All parties in EB-2024-0078

ONTARIO ENERGY BOARD

OEB Staff Submission on Integration Capital

Enbridge Gas Inc. Motion to Review and Vary the December 21, 2023 Decision and Order in EB-2022-0200

EB-2024-0078

November 1, 2024

Introduction

In the October 8, 2024 Decision on Threshold Issue and Procedural Order No. 2, the Ontario Energy Board (OEB) found that one of the two issues raised by Enbridge Gas Inc. (Enbridge Gas) in its motion to review – the Integration Capital Issue – meets the threshold test, and invited submissions on the merits of that issue.

Rule 43.03 of the OEB's Rules of Practice and Procedure provide that "The OEB will only cancel, suspend or vary a decision when it is clear that a material change to the decision or order is warranted based on one or more of the grounds set out in Rule 42.01(a)." In this case, the relevant grounds set out in Rule 42.01(a) are that:

> the OEB made a material and clearly identifiable error of fact, law or jurisdiction. For this purpose, (1) disagreement as to the weight that the OEB placed on any particular facts does not amount to an error of fact; and (2) disagreement as to how the OEB exercised its discretion does not amount to an error of law or jurisdiction unless the exercise of discretion involves an extricable error of law.

In the Decision on Threshold Question and Procedural Order No. 2, the review panel noted that Enbridge Gas's concerns "include alleged factual errors that Enbridge Gas claims were material. To be clear, at this threshold stage, the review panel makes no findings on whether in fact the Decision included factual errors, or whether, in the absence of such alleged errors, the outcome on the Integration Capital Issue should have been different. Those are matters that can and should be addressed in a hearing on the merits."

OEB staff submits that the motion should be dismissed, and the OEB's decision to deny the inclusion of undepreciated integration capital costs in 2024 rate base should be confirmed. While OEB staff acknowledges that there were factual errors, they do not go to the heart of the Phase 1 panel's decision. Rather, Enbridge Gas is seeking to re-characterize and rehabilitate evidence that it framed and to depart from the guidance of the MAADs Handbook and the MAADs decision. The Phase 1 panel's reasons were sufficient on this point.

The First Alleged Factual Error

Enbridge Gas alleges that the Phase 1 panel made two factual errors. OEB staff will address each of them in turn.

The first alleged error is that "the OEB erroneously found that the main integration capital expenditures at issue were directed at property consolidation projects that were only needed because of integration…. The property consolidation projects were planned but did not proceed. The main integration capital expenditures were actually directed at

IT projects that were needed regardless of integration."[1] Enbridge Gas points to the following passage in the Phase 1 Decision:

> The OEB agrees that benefits should follow costs, yet the OEB must also consider the impetus for the specific costs incurred. For example, CCC and SEC referenced the GTA East and West facilities at a total cost of $67.3 million submitting that real estate consolidation projects would not have been undertaken in the absence of the amalgamation. CCC and SEC also identified similar integration projects totaling $153.9 million. The ongoing use of those buildings may provide benefits to ratepayers, yet the cost would not have been incurred in the first place in the absence of amalgamation.[2]

Enbridge Gas is correct that the GTA East and West real estate consolidation projects did not proceed. They had been included in Enbridge Gas's original application, but in an evidence update, Enbridge Gas advised that they were being deferred from 2023 to 2026.[3] The "similar integration projects totaling $153.9 million" were likewise projects that Enbridge Gas had planned but not undertaken.[4] In sum, Enbridge Gas is correct that none of the projects cited in that passage were actually included in the undepreciated integration capital costs sought to be added to 2024 rate base.

Enbridge Gas is, however, not correct in its assertion that the Phase 1 panel found that "the main integration capital expenditures at issue were directed" at real estate consolidation projects. Nowhere did the Phase 1 panel say that such projects comprised the "main" portion of the integration capital. Rather, it is clear from the passage above that the projects were used merely as <u>examples</u> of projects that "would not have been incurred in the first place in the absence of amalgamation."

Enbridge Gas argues that "The OEB indicated in the Decision that it agrees that benefits should follow costs but it said that the OEB must consider the 'impetus for the specific costs incurred'. The fair interpretation of the OEB's Decision is that if the costs were driven by amalgamation then the shareholder should pay, but if the costs were driven by system and business needs that exist regardless of integration, then ratepayers should pay."[5] Enbridge Gas goes on to say, "the evidence establishes that the Company's integration capital costs that were actually incurred are costs for projects that would have been required with or without integration. Thus, under the OEB's own analysis, the undepreciated portion of the costs for those projects should be recoverable from ratepayers."[6]

While OEB staff acknowledges that the reference in the Phase 1 Decision to certain real

[1] Enbridge Gas Submission on Threshold Question, para. 10
[2] EB-2022-0200, Decision and Order, December 21, 2023, p. 74 (Motion Record, Tab 2, p. 91)
[3] EB-2022-0200, Oral Hearing Transcript Vol. 14, p. 177 (Motion Record, Tab 3(b), p. 231)
[4] EB-2022-0200, SEC Final Argument, pp. 57-58 (Motion Record, Tab 3(d), pp. 285-286)
[5] Enbridge Gas Submission on Integration Capital Issue, October 18, 2024, para. 57 (footnote omitted)
[6] Ibid., para. 58

estate projects that were not actually proposed to be included in 2024 rate base was a mistake, we do not agree with Enbridge Gas that the mistake fatally undermines the Phase 1 panel's conclusions. In particular, we do not agree that, "Had the OEB focused on the actual integration spending projects that Enbridge Gas undertook (such as IT projects), rather than on projects that were not undertaken (property consolidation), then the OEB would have come to a different conclusion about whether the integration capital amounts should be included in rate base."[7]

In this regard, OEB staff repeats the point we made in our submission on the threshold question. In OEB staff's view, the mistaken reference to the property consolidation projects does not go to the heart of the Phase 1 panel's unanimous decision on the Integration Capital Issue. The central conclusion was that the disallowance of the undepreciated integration capital amounts would be "consistent with the intent of the OEB's decision in the MAADs proceeding."[8] The Phase 1 panel explained that in the MAADs proceeding:

> The OEB granted a deferral rebasing period of five years on the basis that the five years was a reasonable opportunity to recover transition costs. When hearing the MAADs application, the OEB was presented with evidence describing the nature of capital investments and the cost of those investments. After hearing that evidence, the panel clearly turned its mind to the five-year period as a reasonable opportunity to recover those costs during the five years against the savings that would be achieved and retained by the utility.[9]

The MAADs decision was rooted in the OEB's Handbook, which at the time said that "Incremental transaction and integration costs are not generally recoverable through rates."[10]

The reference in the Handbook to "transaction and integration costs" is a clear indication that more than just transaction costs like bankers' and lawyers' fees are contemplated. Indeed as SEC pointed out, the filing requirements attached to the Handbook point to IT systems as an example of incremental integration costs that must be identified by the MAADs applicant.[11]

The Handbook explained that, to address utility concerns about those costs, the consolidated utility would be entitled to a deferred rebasing period: "This deferred rebasing period is intended to enable distributors to fully realize anticipated efficiency gains from the transaction and retain achieved savings for a period of time to help offset

[7] Ibid., para. 59
[8] EB-2022-0200, Decision and Order, December 21, 2023, p. 74 (Motion Record, Tab 2, p. 91)
[9] Ibid.
[10] Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, p. 8 (Motion Record, Tab 5(d), p. 463). After the recent amendments, the Handbook says, "Incremental transaction and transition costs are not generally recoverable through rates."
[11] EB-2022-0200, SEC Final Argument, para. 3.3.12, citing Schedule 2 of the 2016 MAADs Handbook (Motion Record, Tab 3(d), p. 282)

the costs of the transaction."[12] In the MAADs decision, the OEB approved a deferred rebasing period of five years rather than the ten years contemplated in the Handbook, finding that five years would provide the new Enbridge Gas with a reasonable opportunity to recoup its integration costs.[13]

In the MAADs proceeding, the predecessors to Enbridge Gas jointly argued that "Customers will not bear the costs or the risks of the integration, but on and after rebasing, the benefit of the integration savings and synergies that Amalco [Enbridge Gas] is able to realize over the deferred rebasing period will be reflected in rates," and that customers "don't have to pay for the $150 million in capital investment."[14] The position Enbridge Gas now takes in this motion is quite different.

In sum, the Phase 1 panel agreed with those intervenors who argued that allowing Enbridge Gas to recover integration costs beyond the five-year deferred rebasing period would run counter to the MAADs decision and defeat the purpose of the MAADs Handbook.[15] That was reason enough to have denied the request for inclusion of the integration capital in opening rate base. In disallowing the integration capital, the Phase 1 panel was merely following the MAADs decision and the MAADs Handbook, which taken together provided Enbridge Gas with an opportunity to recover its integration costs during the five-year deferral period but not afterwards.

Another problem with Enbridge Gas's motion is that it is rooted in a contradiction. Enbridge Gas is essentially arguing that the integration capital at issue is not really integration capital at all.

It is important to recall that these costs have all been labelled as "integration capital" by Enbridge Gas. They were "identified and managed separately throughout the deferred rebasing term."[16]

According to Enbridge Gas's own definition, "integration costs" are "one-time incremental costs required to deliver value for an opportunity or set of opportunities related to utility integration, and included items such as labour, consulting, and capital expenditures."[17]

In its Phase 1 argument-in-chief, Enbridge Gas advanced the view that "the capital costs <u>are not necessarily 'incremental'</u> (because they were already forecast by the

[12] Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, p. 8 (Motion Record, Tab 5(d), p. 463)
[13] EB-2017-0306/0307, Decision and Order, August 30, 2018, p. 22 (Motion Record, Tab 5(c), p. 411).
[14] EB-2017-0306/0307, Argument-in-Chief, paras. 7-8
[15] OEB staff argued that 50% of the undepreciated integration capital should be included in 2024 rate base.
[16] EB-2022-0200, Exhibit 1, Tab 9, Schedule 1, p. 3 (Motion Record, Tab 3(a) p. 167)
[17] Ibid.

legacy utilities on a standalone basis) and the undepreciated capital costs support ongoing operational benefits to customers."[18] But if the capital costs were not in fact "incremental", then they should not have been characterized by Enbridge Gas as "integration capital". By Enbridge Gas's own definition of "integration capital", only "incremental" amounts are captured.

Similarly, Enbridge Gas argued in Phase 1 (and repeats the argument in this motion) that its undepreciated integration capital costs should be approved as an exception to the "general rule" against recovering integration capital.[19] But if the costs were not incremental – that is, if they would have been incurred even without the amalgamation – then no exception would be required as the general rule would not apply in the first place. Rather, the costs should have been treated by the company as "business as usual" capital expenditures.

This contradiction not only undermines the logic of Enbridge Gas's motion, it also raises a practical difficulty. There is very little evidence on what the predecessor companies to Enbridge Gas would have spent (and when) if they had not amalgamated. To accept Enbridge Gas's argument that the entire amount of undepreciated integration capital must be included in 2024 rate base would require accepting its premise that, as a matter of fact, that entire amount would have been incurred even if the amalgamation had never happened. The evidence simply does not support that.

It is instructive to look at how Enbridge Gas's application described the two largest IT-related programs, which together accounted for 75% of actual integration capital: the Customer Integration System (CIS) and the Asset Work Management System (AWM).[20] Enbridge Gas explained in Exhibit 1 that the CIS project "provided consistent processes and procedures for employees and customers, an enhanced user experience through efficient access to information, and a single integrated system to connect stakeholders across the organization."[21] Exhibit 1 noted that "The CIS in use prior to amalgamation were nearing end of life",[22] but it did not say that the CIS consolidation project would have been necessary even without the amalgamation, or that the legacy CIS systems of Enbridge Gas Distribution and Union Gas had been marked for replacement by 2024.

On the AWS, Exhibit 1 said:

> Enbridge Gas undertook a multi-year, phased project to integrate the asset and work management system (AWS) onto a common platform, Maximo. Phase 1 was completed in July

[18] EB-2022-0200, Argument-in-Chief, p. 87 (Motion Record, Tab 3(c), p. 276) (emphasis added)
[19] Enbridge Gas Submission on Integration Capital Issue, para. 52; Enbridge Gas Argument in Chief (EB-2022-0200), para. 233.
[20] EB-2022-0200, Oral Hearing Transcript Vol. 14, p. 146 (Motion Record, Tab 3(b), p. 200)
[21] EB-2022-0200, Exhibit 1, Tab 9, Schedule 1, p. 9 (Motion Record, Tab 3(a) p. 173)
[22] Ibid., p. 22 (Ibid., p.186)

> 2021 and delivered efficiencies through a common system and processes for planning work, and harmonized policies, processes, and procedures for distribution maintenance operations. The Phase 1 deployment created improved visibility of utility work orders across Enbridge Gas operations, streamlined reporting and decision-making opportunities, and eliminated duplicate systems.[23]

Exhibit 1 did not say in the application that the AWS project would have been necessary even without the amalgamation, or that the legacy AWS systems of Enbridge Gas Distribution and Union Gas had been marked for replacement by 2024. Exhibit 1 did not even say that the legacy AWS were nearing end of life.

Exhibit 1 did posit that including the undepreciated integration capital amounts would be consistent with the principle that benefits follow costs:

> These investments in complex systems have extended depreciation terms due to the life of the asset. These systems provide the foundation upon which business processes and customer experiences are built to deliver safe and reliable services to current and future customers. Considering that this value is credited to customers through rebasing, so too should the costs be charged to customers at that time. The capital investments made will continue to provide value and service to customers and establishing their continued rate base treatment and draw down through depreciation is consistent with how other utility assets are treated, and consistent with how GAAP requires assets to be treated.[24]

But it was not until the oral hearing that Enbridge Gas suggested that at least some of the integration capital costs would have been incurred even without the amalgamation. On the day its integration capital witnesses were called, Enbridge Gas introduced a compendium that included excerpts from a Union Gas Asset Management Plan dated November 2018.[25] A witness explained during direct examination by Enbridge Gas counsel that the CIS and AWS "were in the previous legacy Union Gas's asset plan to be replaced. They were targeted for end-of-life replacement or technology obsolescence at that time".[26] Having been raised at the last minute, this evidence was not properly tested. No intervenors asked any interrogatories about what capital spending would or would not have been required in the absence of amalgamation, presumably because they (reasonably) did not foresee Enbridge Gas's argument-in-chief. The result is that we do not know, for instance:

- How to reasonably allocate the cost of the CIS and AWS projects as between "business as usual" and "incremental for the purpose of integration"
- How close to "end of life" the Union Gas CIS and AWS were at the time of amalgamation
- What if anything Enbridge Gas Distribution would have spent on its CIS and

---

[23] Ibid., pp. 10-11 (Ibid., pp.174-175)
[24] Ibid., p. 24 (Ibid., p.188)
[25] EB-2022-0200, Exhibit K14.2
[26] EB-2022-0200, Oral Hearing Transcript Vol. 14, p. 147 (Motion Record, Tab 3(b), p. 201)

AWS in the absence of amalgamation, and when
- Whether any integration capital projects other than the CIS and AWS would have been undertaken even in the absence of amalgamation

In any application for natural gas rates, the burden of proof is on the applicant.[27] If Enbridge Gas's theory was that the integration capital expenditures are recoverable because they would have been incurred even without the amalgamation, then it was incumbent on Enbridge Gas to lead persuasive evidence supporting that theory. Enbridge Gas had to put its best foot forward in Phase 1.

There is perhaps an argument that some of the costs labelled as "integration capital" could have been labelled instead as business-as-usual capital. But it was Enbridge Gas itself who applied the label, and who framed the application.

Finally, Enbridge Gas makes much of the recent amendments to the MAADs Handbook, in particular this new statement:

> If a utility has capitalized any assets it has classified as part of the utility's "transition" costs (i.e., capitalized costs intended to integrate operations) these will be subject to review, on a case-by-case basis. The nature of the expenditure and whether it would have occurred regardless of the consolidation will be reviewed, in addition to the typical review for need and prudence.[28]

Enbridge Gas argues that "These 'clarifications' are not new OEB policy. They are instead guidance about what is meant by existing OEB policy."[29] Enbridge Gas is right that these amendments were described by the OEB as a "clarification" rather than an "update" or "revision".[30] Still, they were made after the Phase 1 Decision and could not have provided guidance to the parties to the Phase 1 proceeding or to the Phase 1 panel. Indeed the OEB staff report that suggested these clarifications cited the Phase 1 Decision as raising the novel issue of integration capital.[31] Perhaps if the clarifying language had been in the original version of the Handbook, Enbridge Gas might have framed its case differently, and intervenors might have approached their interrogatories and cross-examination differently. That is, perhaps the focus in the proceeding might have been on which integration costs were truly incremental. The fact is, however, the proceeding was framed the way it was. Enbridge Gas did not lead sufficient evidence to show that the integration capital would have been spent even in the absence of

---

[27] *Ontario Energy Board Act, 1998*, s. 36(6)
[28] Handbook to Electricity Distributor and Transmitter Consolidations, June 18, 2024, p. 14 (Motion Record, Tab 5(g), p. 571)
[29] Enbridge Gas Submission on Integration Capital Issue, October 18, 2024, para. 55
[30] EB-2023-0188, OEB Cover Letter re updated MAADs Handbook, June 17, 2024 (Motion Record, Tab 5(f), p. 555)
[31] EB-2023-0188, OEB Staff Discussion Paper, February 8, 2024, p. 35 (Motion Record, Tab 5(e), p. 522): "OEB staff notes that, during the interviews, intervenors highlighted the issue of the inclusion of integration capital costs at rebasing as discussed in the current Enbridge Gas proceeding."

consolidation.

The Second Alleged Factual Error

The second alleged factual error is that the Phase 1 panel mistakenly found that integration savings exceeded costs, when "[i]n fact, the Company's total integration costs exceeded savings by more than $100 million" when O&M is taken into account.[32]

The Phase 1 panel wrote, "Capital expenditures related to integration during the five-year deferred rebasing term were $252 million. Enbridge Gas indicated that it expected to achieve a total of $327.6 million in savings for the 2019 to 2023 period." Enbridge Gas appears to be correct that actual integration capital spending was $189 million (not $252 million), and that on top of that, $280 million in integration O&M spending was incurred.[33]

The Phase 1 panel went on to write:

> The OEB rejects the assertion by Enbridge Gas that there is a windfall gain for customers. In this case, the benefits did follow the costs – Enbridge Gas made capital investments that yielded savings that exceeded the cost of those investments during the deferred rebasing period, savings that it got to keep.
>
> To allow some of that capital investment to now be added to the 2024 rate base, despite the MAADs Decision that concluded that a five-year deferral period would be sufficient to recover the cost of those investments with net savings to Enbridge Gas, which indeed occurred, would amount to a windfall to the utility.[34]

The Phase 1 panel concluded that "The MAADs Decision has worked as intended, and in this case, five years were sufficient for Enbridge Gas to recover all transition and integration-related costs. There is no basis to add any amount of the integration capital investment to the 2024 rate base."[35]

OEB staff acknowledges that this part of the analysis was founded on a mistaken tally of total integration spending. The question is whether correcting the mistake would lead to a different outcome. In OEB staff's view, it would not. As discussed above, the Phase 1 panel's central conclusion was that the disallowance of the undepreciated integration capital amounts would be consistent with the MAADs decision. As we said in our submission on the threshold question, "Even if everything in the Findings section after that point were excised – including the allegedly erroneous references to the property consolidation projects and the net integration savings… – the outcome would still be the

[32] Enbridge Gas Submission on Threshold Question, para. 10; Appendix A to Submissions, para. 84
[33] EB-2022-0200, Exhibit 1, Tab 9, Schedule 1, p. 17 (Motion Record, Tab 3(a) p. 181)
[34] EB-2022-0200, Decision and Order, December 21, 2023, p. 75 (Motion Record, Tab 2, p. 92)
[35] Ibid., pp. 75-76 (Ibid., pp. 92-93)

same."[36]

In OEB staff's view, in evaluating Enbridge Gas's claim for integration capital, it is not necessary to determine whether the MAADs Decision "worked as intended". What matters, rather, is what the MAADs Decision intended. As the Phase 1 panel noted, the MAADs Decision found that a five-year deferred rebasing period would provide Enbridge Gas with "a reasonable opportunity to recover those costs during the five years against the savings that would be achieved and retained by the utility."[37] The MAADs Decision provided no guarantee that net savings would be realized within the five-year deferred rebasing period, or ever.

Indeed, to allow recovery of the undepreciated integration capital would in a sense circumvent the five-year deferred rebasing period approved in the MAADs Decision. All else being equal, the shorter the deferred rebasing period, the higher the undepreciated amounts at the end of the period. For IT projects, which are depreciated faster than pipeline assets, there may be little if any undepreciated expenditure left at the end of a 10-year deferred rebasing period. (In Phase 1, Enbridge Gas's depreciation expert recommended a 10-year depreciation term for CIS.[38]) If the MAADs panel had approved a 10-year deferred rebasing period, as proposed in the MAADs application, there would have been less undepreciated integration capital at the time of rebasing than the $91 million that Enbridge Gas now seeks to recover.

The Alleged Insufficiency of Reasons

Enbridge Gas argues that the Phase 1 panel "failed to meet the expected standard for reasons to be provided supporting a tribunal's decision."[39]

On this point, OEB staff repeats what we argued in our submission on the threshold question.

The Supreme Court has said that "the written reasons given by an administrative body must not be assessed against a standard of perfection."[40] They do not need to "include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred."[41]

The Supreme Court has also warned judges reviewing a tribunal decision not to embark on a "line-by-line treasure hunt for error".[42] A tribunal faced with a request to reconsider

[36] OEB Staff Submission on Threshold Question, p. 6
[37] EB-2022-0200, Decision and Order, December 21, 2023, p. 74 (Motion Record, Tab 2, p. 91)
[38] EB-2022-0200, Exhibit 4, Tab 5, Schedule 1, Attachment 1, p. 37
[39] Enbridge Gas Submission on Integration Capital Issue, October 18, 2024, para. 31
[40] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 91
[41] Ibid.
[42] Ibid., para. 102

its own decision ought to exercise the same restraint. It should – and indeed under the OEB's Rules, the OEB must – concern itself with errors that could have materially changed the decision.

When the reasons on the Integration Capital Issue are read in the context of the Decision as a whole, they provide a reasonable justification for the Phase 1 panel's findings. The OEB explained that denying the costs was consistent with the MAADs decision. That finding was also consistent with the MAADs Handbook. Applying an established policy generally does not require exhaustive reasons; the reasons are found in the policy itself.

OEB staff would add that, while the reasons on the Integration Capital Issue were brief, it must be recalled that this was but one of many unsettled issues. Enbridge Gas says the denial of integration capital had a 2024 revenue requirement impact of approximately $34 million.[43] While not insignificant, that represents only about 0.5% of the total 2024 revenue requirement (inclusive of delivery and gas supply) of over $6 billion.[44]

Moreover, it is appropriate in a motion to review for the review panel to ask not only whether the original panel's reasons were sufficient, but whether there were other reasons that could have supported the decision. In other words, it is appropriate for a review panel to look at the record as a whole, including the evidence and arguments, and confirm a decision even if the original reasons for the decision are not the same reasons the review panel would have written. OEB staff has suggested above that there is a contradiction underlying Enbridge Gas's position: Enbridge Gas essentially argues that the spending in question was not really integration capital at all, even though Enbridge Gas labelled it as such in the application and did not provide sufficient evidence to demonstrate that it would have been incurred even without the amalgamation. Although the Phase 1 panel did not make that point, it is in our submission a reason for dismissing the motion.

Conclusion

OEB staff submits that Enbridge Gas's motion should be dismissed and the decision of the Phase 1 panel on the Integration Capital Issue should be confirmed. The factual errors were not fatal to the decision. To cite the language of the Rule 43.03, it is not "clear that a material change to the decision or order is warranted."

In case the review panel disagrees, we would add a word about potential next steps. Enbridge Gas says, "In the event that there is a finding that the Decision contains

[43] Fresh as Amended Notice of Motion, para. 27, p. 9 (Motion Record, Tab 1, p. 10)
[44] EB-2022-0200, Draft Rate Order, Working Paper, Schedule 12, March 15, 2024

errors, but the review panel is not prepared to substitute a new Decision as requested, then Enbridge Gas requests that that the OEB direct a rehearing of the Integration Capital Issue by a differently constituted panel of the OEB."[45] That is not something that is contemplated under the Rules. Rather, Rule 43.02 specifies that a review panel may "confirm, cancel, suspend or vary the decision or order".[46]

The review panel could substitute its own finding on the Integration Capital Issue for the Phase 1 panel's finding. It could, for instance, vary the Phase 1 Decision by allowing all or a portion of the claimed amounts. In that case, further implementation steps would need to be considered. The typical draft rate order process (where the applicant submits a draft rate order and other parties have the opportunity to comment) may be appropriate. If the review panel were to determine that more evidence is required before making a decision, it could establish a process for gathering it and testing it. But again a review panel cannot direct a rehearing by another panel.

~All of which is respectfully submitted~

[45] Enbridge Gas Submission on Integration Capital Issue, October 18, 2024, para. 67 (emphasis added)
[46] OEB staff acknowledges that in one case, a motion to review by Hydro One Networks Inc., the review panel sent a matter back to the original panel for reconsideration (EB-2017-0336).