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November 19, 2024

BY EMAIL AND FILED VIA RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: Enbridge Gas Inc. ("Enbridge Gas")
EB-2024-0078 – Motion to Review and Vary (the "Motion")
Reply Submissions of Enbridge Gas on the Integration Capital Issue

We represent Enbridge Gas.

As directed in the OEB's Decision on Threshold Question and Procedural Order No. 2, attached are the Reply Submissions of Enbridge Gas on the merits of the Integration Capital Issue.

Please let us know if you have any questions.

Yours truly,

AIRD & BERLIS LLP

David Stevens

c: Ian Richler, counsel to OEB
all parties in EB-2022-0200 / EB-2024-0078

EB-2024-0078

ONTARIO ENERGY BOARD

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

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

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

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

ENBRIDGE GAS INC.
REPLY SUBMISSIONS

Motion to Review and Vary OEB's December 21, 2023 Decision in Phase 1 of Enbridge Gas Inc.'s Rebasing Application

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November 19, 2024

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OVERVIEW

1. On October 18, 2024, Enbridge Gas filed Argument in Chief setting out why the OEB should vary the Decision on the Integration Capital Issue, and direct that Enbridge Gas be permitted to include the undepreciated costs labeled as integration capital in rate base.[1]

2. Five parties[2] (referred to herein as the Respondents) filed submissions in response to Enbridge Gas's Argument in Chief. This Reply Argument sets out Enbridge Gas's response. Enbridge Gas will not repeat its Argument in Chief, but continues to rely on the positions and argument already submitted. Enbridge Gas will not attempt to respond to every item noted. However, the Company's silence in respect of any particular point should not be interpreted as, nor is it in fact, acceptance or agreement by Enbridge Gas with any such point.

3. There is no debate that the OEB Commissioners made factual errors in the Decision on the Integration Capital Issue. The debate is over whether correcting these errors would result in a different outcome.

4. Enbridge Gas submits that these factual errors are material, and when corrected will result in a determination that the undepreciated capital costs for IT projects supporting ongoing operations should be recoverable and included in rate base.

5. Enbridge Gas therefore requests that the OEB vary the Decision in relation to the Integration Capital Issue by approving the inclusion of the undepreciated integration capital costs in 2024 rate base, which would be a net amount of $91 million. This is the proper amount that will directly flow from correcting the undisputed errors contained in the Decision.

THE INTERVENOR POSITIONS

6. Each of the five Respondents argue that the OEB's Decision on Integration Capital should be confirmed. The main thrust of their position is that the errors in the OEB's Decision on the Integration Capital Issue do not go to the heart of the key determination. They further argue that the Decision is consistent with the MAADs Decision, and that even if there are departures from the OEB's MAADs Policy, that is within the OEB's discretion.

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[1] Enbridge Gas will use the defined terms from its Argument in Chief in this Reply Argument.
[2] OEB Staff (OEB staff), Canadian Manufacturers and Exporters (CME), Pollution Probe (PP), School Energy Coalition (SEC), and Vulnerable Energy Consumers Coalition (VECC).

7. Enbridge Gas does not agree with the Respondents' positions, as explained below. Conspicuously absent from the Respondents' submissions (other than a footnote in the OEB staff submissions) is that there is no reference to the fact that several parties at the original hearing supported either the complete or at least partial recovery of the integration capital costs.[3] OEB staff, who now strongly support the OEB's Decision, initially argued that it was appropriate for Enbridge Gas to include 50% of the integration capital costs in rate base.[4]

THE REVIEW MOTION STANDARD AND AVAILABLE REMEDIES

8. Rule 42.01(a) of the OEB's *Rules of Practice and Procedure* contemplates that a review motion may be granted where the OEB made a material and clearly identifiable error of fact, law or jurisdiction. Enbridge Gas acknowledges its onus to establish the error and to demonstrate that the alleged error is material and would vary the outcome of the decision.[5]

9. The Respondents argue that deference should be afforded to the OEB's original Decision[6] and that a standard of reasonableness should be applied when reviewing the Decision.[7]

10. Enbridge Gas states that the test to be applied is simple – are the alleged errors actual errors, and if those errors are proven can that reasonably be expected to result in a material change to the decision being challenged?[8]

11. Under Rules 40 and 43, it is clear that on a review motion, the OEB has the power to vary, suspend or cancel the decision at issue.

12. There is no specific guidance in the OEB's Rules about the ambit of these powers. In particular, there is no guidance about what the OEB can do when it decides to cancel the decision at issue. While it is clear that the OEB can issue an amended decision through the Review Motion process, it is less clear what the OEB can and should do where it identifies a

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[3] Parties supporting or not opposing full recovery were APPrO and Energy Probe. Parties supporting or not opposing partial recovery were OEB staff, LPMA, QMA and PP. See summary in Enbridge Gas Reply Argument in EB-2020-0200, pages 70-71, Motion Record, Tab 2(e).
[4] OEB staff Submission from EB-2022-0200, pages 56-57 – see https://www.rds.oeb.ca/CMWebDrawer/Record/814564/File/document.
[5] Rules 42.01(a) and 43.01(d), Motion Record, Tab 4; see NGEIR Review Motion, pages 17-18, Motion Record, Tab 5(a).
[6] SEC Submission, page 3.
[7] CME Submission, page 5.
[8] See Rule 43.01, as well as the OEB's Decision on Threshold Issue and Procedural Order No. 2, October 8, 2024, page 7.

material error in the challenged decision but requires more information before issuing an amended decision.

13. OEB staff argues that the OEB is not authorized to order a new hearing by a different panel of Commissioners but acknowledges that the Review Panel could set out its own procedures to gather more information.[9]

14. Enbridge Gas submits that the OEB staff position is unduly restrictive.

15. First, as OEB staff acknowledges, the OEB itself has previously issued a decision on a review motion that identified an error in the challenged decision and returned the matter to the original hearing panel.[10] This confirms that a decision on a review motion can add context and direction as to what happens after the challenged decision is suspended or cancelled.

16. Second, and more generally, the OEB has the express authority to control its own processes. Rule 2.02 indicates that "*[w]here procedures are not provided for in these Rules, the OEB may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it*."

17. In Enbridge Gas's submission, if the OEB determines in this Review Motion that the Decision on the Integration Capital Issue includes material errors but the Review Panel lacks sufficient information to vary the Decision, then it is open to the Review Panel to make any order it deems appropriate to allow for an appropriate process to arrive at a new Decision.

THE FACTUAL ERRORS IN THE DECISION

18. In Argument in Chief, Enbridge Gas explained at length the two factual errors in the Decision.

19. The Respondents' submissions focus less on whether these are actually errors (as they are generally conceded to be errors), and more on whether those errors are material and would result in a different decision if corrected.

[9] OEB staff Submission, page 11.
[10] OEB staff Submission, page 11, citing the EB-2017-0336 Hydro One decision.

20. A review of the nature and content of each of the errors confirms that they are in fact errors, and if corrected would reasonably be expected to result in a material change in the Decision on the Integration Capital Issue.

A. Error about the nature of the integration capital costs

21. As explained in Argument in Chief, the OEB's Decision on the Integration Capital Issue is quite short and is premised on only a small number of findings.

22. A key finding was that Enbridge Gas should not recover costs that would not have been incurred in the absence of amalgamation. On this point, the OEB recognized that it's important to look at the nature of the integration capital spending to determine if it should be included in rate base or absorbed.

23. Enbridge Gas agrees that looking at the nature of the actual integration capital projects is fundamentally important. The OEB's MAADs Policies have said that integration spending is "generally" not recoverable, which confirms that the specific circumstances must be considered before determining whether the "general" approach applies. That this is the proper framework for consideration is clearly established in the recent "clarifications" to the OEB's MAADs Handbook which confirms that "*[i]f 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."* [11]

24. The OEB's error is that it looked at the wrong spending when conducting this analysis. The OEB focused on property consolidation projects that did not actually proceed. The OEB referenced that this type of spending totaled over $210 million[12], which would be the vast majority of the total $252 million of integration capital spending that the OEB assumed to have been incurred by Enbridge Gas.[13]

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[11] MAADs Handbook (updated), June 18, 2024, page 14, Motion Record, Tab 5(g).
[12] Decision, page 74, Motion Record, Tab 2. At that page, the OEB referenced the GTA East and West facilities ($67.3 million) and similar integration projects totaling $153.9 million.
[13] Decision, page 75, Motion Record, Tab 2.

25. Therefore, whether expressly stated or not, the OEB clearly was of the view that most of the integration capital spending related to property consolidation projects.[14] That view is incorrect.

26. OEB staff submit that the evidence provided by Enbridge Gas is insufficient to support a finding that the integration capital spending would have been required regardless of amalgamation.[15] OEB staff present a selective view of the Enbridge Gas evidence about the major integration capital projects, focusing only on the pre-filed evidence. That is only part of the full picture. Enbridge Gas presented further evidence at the hearing to support its position. This evidence was available to be tested through cross-examination.

27. As stated many times in the Respondents' submissions on this Motion (in the context of the adequacy of the reasons), the Phase 1 Rebasing case was a massive case with a lot of large issues at play.[16] In that context, it's not unreasonable that the evidence continued to develop up to and including the oral hearing. That is a main purpose of an oral hearing. It is unfair to suggest that evidence presented at the oral hearing is "too late", or that it should be disregarded.

28. Enbridge Gas's evidence, considered in its entirety, clearly shows that each of the major integration capital projects was required regardless of amalgamation. The clear evidence is that Enbridge Gas's actual integration capital spending was focused on IT projects that are pillar systems required for billing and work management. These investments benefit ratepayers now and will continue to benefit ratepayers for many years to come.

29. The Company's evidence on this point was initially set out in narrative form and in a detailed table setting out the nature of each of the integration capital projects.[17] It is clear from the evidence that the vast majority of the spending relates to IT projects for the Customer Information System (CIS) and the Asset and Work Management System (AWS). The evidence shows that the four top projects of this nature totaled around $120 million of the total $170 million in direct capital expenditures classified as integration capital.[18]

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[14] Cf. OEB staff Submission, page 2; and VECC Submission, page 7.
[15] OEB staff Submission, page 5.
[16] See, for example, OEB staff Submission, page 10; and SEC Submission, page 10.
[17] Exhibit 1, Tab 9, Schedule 1, including Attachment 1, Motion Record, Tab 3(a).
[18] See Exhibit 1, Tab 9, Schedule 1, Attachment 1, lines 1, 2, 3 and 25, Motion Record, Tab 3(a). A large portion of the $18.6 million in overheads would also relate to these top 4 IT projects.

30. Enbridge Gas expanded on its prefiled evidence within its evidence in chief at the oral hearing.[19]

31. For both the CIS upgrades and the AWS replacement, Enbridge Gas made it clear that these systems were nearing their end of life.[20] The Company filed excerpts from Union Gas asset plans that predated amalgamation, showing that the replacement of the CIS systems and the predecessor to AWS were near-term requirements as of 2019.[21] Those documents, which were created many years ago, provide objective and reliable evidence that amalgamation did not drive the replacement of these pillar systems.

32. There is accordingly ample evidence to support a finding that the actual integration capital projects addressed needs that existed prior to, and separate from, amalgamation. The projects had already been identified in the Union Gas asset plan before amalgamation. Completing the projects on a combined basis across both legacy utilities after amalgamation extended the life of the systems and was completed for a lower cost than had been forecast for Union Gas as a standalone utility.[22]

33. Obviously, CIS and AWS are fundamental to the operation of a gas distributor. Because it is inarguable that a utility cannot operate without these systems, costs associated with them ought to be recovered in rates. Where the systems become out-of-date, they will have to be replaced or updated. It is entirely fair and consistent with the OEB's approach for all utilities that ratepayers would pay for the associated costs. Even if this was to take place slightly before one of the legacy systems would otherwise have been replaced or updated, it does not follow that this makes the entire investment the obligation of the shareholder. That would result in a windfall for ratepayers. In that scenario, Enbridge Gas will have credited all sustainable efficiencies to ratepayers at rebasing ($86 million of sustained savings), while also shouldering the full future cost for necessary IT systems required to serve customers. There is a clear unfairness in that outcome.

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[19] 14Tr.145-149, Motion Record, Tab 3(b).
[20] Exhibit 1, Tab 9, Schedule 1, page 22, Motion Record, Tab 3(a); See also 14Tr.147-148, Motion Record, Tab 3(b) - direct testimony of Ms Lindley.
[21] See EB-2022-0200, Exhibit K14.2, Compendium for Direct Examination of Enbridge Gas witness panel, Tabs 2, 3 and 4 – see https://www.rds.oeb.ca/CMWebDrawer/Record/807084/File/document.
[22] 14Tr.147-148, Motion Record, Tab 3(b) - direct testimony of Ms Lindley.

34. The rates approved as a result (without recovery of the undepreciated integration capital costs) are not just and reasonable. Pursuant to section 36 of the *OEB Act*, the OEB has an obligation to set rates that are just and reasonable. The term "just and reasonable" is a legal standard established and repeatedly confirmed by the Supreme Court of Canada for nearly one century. In *Ontario (Energy Board) v. Ontario Power Generation*[23], Justice Rothstein explained that this standard requires that the service provider recover its reasonable costs of service and earn a reasonable rate of return.

35. The Respondents also complain that the Company's position that the integration capital spending was required regardless of amalgamation was a late-breaking theory from Enbridge Gas and was not sufficiently tested.[24] This simply is not true.

36. Since 2021, Enbridge Gas has been pointing to the nature of the integration capital projects and the fact that they address needs that are unrelated to amalgamation.

37. In the 2020 Deferral and Variance Account Clearance Application (EB-2021-0149), there was an issue about whether the Tax Variance Deferral Account (TVDA) balance related to amalgamation/integration capital additions should be cleared to ratepayers. The question there was whether the projects were eligible for rate base inclusion at the end of the deferred rebasing term. If the projects were to be added to rate base, then the accelerated CCA tax benefit associated with the projects would be credited to ratepayers (benefits follow costs). The OEB noted Enbridge Gas's position (which is consistent with the position taken now) that the projects were required regardless of amalgamation but that a review of the nature of the amalgamation/integration projects would be completed in the rebasing case in order to determine whether the projects were eligible for rate base treatment.[25]

38. In the prefiled evidence for the Integration Capital Issue in the rebasing case, Enbridge Gas reiterated the fact that the investments in "pillar applications" (such as CIS and AWS) were required and would address systems nearing their end-of-life. The Company explained how executing these projects on a combined basis across the amalgamated utility saved money.[26]

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[23] *Ontario (Energy Board) v. Ontario Power Generation*, 2015 SCC 44, Motion Record, Tab 9(a).
[24] OEB staff Submission, page 6; and SEC Submission, page 4.
[25] EB-2021-0149 Decision and Order, January 27, 2022, page 10 – see https://www.rds.oeb.ca/CMWebDrawer/Record/738818/File/document.
[26] Exhibit 1, Tab 9, Schedule 1, pages 21-22, Motion Record, Tab 3(a).

39. In its evidence in chief at the oral hearing of the rebasing case, Enbridge Gas's witnesses further explained how the integration capital investments were to address needs that existed independent of amalgamation.[27] The witnesses were then available to be questioned by intervenors, OEB staff and the Commissioners. While OEB staff now complains that the Company's evidence is insufficient, they did not ask even a single question of the Company's witnesses at the hearing of this matter. The choice not to cross examine Company witnesses was revealing and now supports the Company's position that this evidence is generally uncontroverted.

40. OEB staff effectively blame Enbridge Gas for the debates that have now arisen, suggesting that the Company should not have classified the IT-related pillar application expenses as integration capital if these projects related to needs that existed regardless of amalgamation.[28] This line of argument is misguided and unfair. Enbridge Gas acted responsibly by using a broad definition for "integration capital", to refer to a range of projects that were completed over the entire amalgamated utility during the deferred rebasing term. The Company did this with the expectation that there could and would be exceptions to the "general" rule that integration costs are borne by the shareholder.

41. The OEB Commissioners who wrote the Phase 1 Decision seem to have ignored the fact that there will be exceptions to a "general" rule, or to have decided that this means that there would be almost no exceptions. That is particularly concerning where the OEB had previously decided to disregard their general rule that amalgamating utilities could pick their own deferred rebasing term of up to ten years[29], and instead required Enbridge Gas to rebase after only five years. In general, and also in this specific context, Enbridge Gas submits that it is unreasonable and unfair to subject the Company to an overly strict interpretation of the MAADs Handbook guidance (as it existed in 2023) about recovery of integration costs. Enbridge Gas was the first large distributor who returned to the OEB for rebasing after a MAADs transaction. The wording and intent of the MAADs Handbook on this topic had not been previously considered, particularly in relation to recoverability of integration capital costs. Very soon after the OEB's Decision was issued, the OEB released an updated version of the MAADs Handbook, setting out the very relevant "clarifications" about what should be

[27] 14 Tr. 145-149, Motion Record, Tab 3(b).
[28] OEB staff Submission, page 5; and SEC Submission, page 4.
[29] See 2016 Handbook to Electricity Distributor and Transmitter Consolidations, page 12.

considered when looking at the treatment of integration capital costs. Those clarifications make clear that consideration of the nature and driver of the costs is a central consideration.

42. OEB staff makes much of Enbridge Gas's statement that the integration capital costs are "incremental" and takes this to mean that the costs must be net-new as compared to costs that would have been incurred without amalgamation.[30] That places an unreasonably precise interpretation on the words that Enbridge Gas used in evidence. The intent of this phrasing, at least in relation to integration capital spending, is to indicate that the costs are separately identifiable.

43. As summarized above, the evidence is consistent and clear that the integration capital costs addressed needs that existed regardless of amalgamation, and that the costs incurred were actually lower than would have been the case with the separate replacement of end-of-life IT systems for each of the legacy utilities.

44. Some Respondents argue that ultimately it does not matter that the OEB made an error in its review of the nature of the integration capital costs because that does not impact the OEB's key finding that disallowance of the integration capital costs is consistent with the MAADs Decision.[31] These Respondents say that the MAADs Decision indicated that Enbridge Gas would have a reasonable opportunity to recoup its integration costs over a five year deferred rebasing term, and then argue that the expectation was met.

45. This is a circular argument.

46. If one accepts Enbridge Gas's position that the particular integration capital expenses at issue now are properly characterized as recoverable, then these would not be costs that Enbridge Gas would have had to "recoup" over the deferred rebasing term. Said differently, under a proper interpretation of the OEB's MAADs Policies the remaining balance for this type of "integration" costs was always going to be the responsibility of ratepayers after the deferred rebasing term. Accepting that to be the case, one must conclude that it clearly <u>does</u> matter that that OEB erred in its review of the nature of the integration costs at issue.

[30] OEB staff Submission, pages 4-5.
[31] OEB staff Submission, pages 3-4; CME Submission, page 11; and SEC Submission, page 9.

47. In support of their positions that Enbridge Gas had a reasonable opportunity to recover its costs, OEB staff and CME point to submissions from Enbridge Gas in the MAADs proceeding that the Company would spend $150 million on integration capital that would not be recovered from ratepayers.[32]

48. An important point of clarification is needed here.

49. Enbridge Gas's position in the MAADs case relied on the assumption that Enbridge Gas would receive a 10 year deferred rebasing term, as provided in the MAADs Handbook. Over 10 years, there would be substantially more depreciation of integration capital expenses than during a 5 year term.

50. Had the OEB approved a 10 year deferred rebasing term, then the issues raised in this Review Motion would be very different. Enbridge Gas spent around $189 million that it classified as integration capital over the deferred rebasing term. At the end of the term, the remaining undepreciated amount to be included in rate base is only $91 million (less than half of the total). This number would be much lower after a further 5 years – likely in the range of $15 million.[33] That is consistent with the Company's expectation in its submissions in the MAADs case that all or virtually all of the integration capital spending would be recovered during the 10 year deferred rebasing term.

51. Given that the OEB only approved a 5 year deferred rebasing term, there are remaining undepreciated integration capital costs for pillar IT systems that are appropriately included in rate base and recovered from ratepayers over the remaining asset lives. As explained in Argument in Chief, this is consistent with the OEB's MAADs Policies. It is also broadly consistent with the position taken by OEB staff in the first instance, when OEB staff conceded that Enbridge Gas only had the benefit of half of the deferred rebasing term that had been requested and therefore should be permitted to include half of remaining undepreciated integration capital costs in rate base.[34]

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[32] OEB staff Submission, page 4; and CME Submission, pages 9-10.
[33] OEB staff comes to a similar conclusion in its Submission, noting that there would be very little undepreciated integration capital expense after 10 years – OEB staff Submission, page 9.
[34] OEB staff Submission from EB-2022-0200, page 57– see https://www.rds.oeb.ca/CMWebDrawer/Record/814564/File/document.

52. To be clear, though, an outcome where Enbridge Gas must absorb 50% of the undepreciated capital costs is not a proper outcome. As explained in the Company's Reply Argument in the Phase 1 case[35], customers are receiving 100% of the sustainable efficiency savings on a go-forward basis. Enbridge Gas did not retain 50% of the savings and should not have to absorb 50% of the remaining costs. Customers are getting 100% of the benefit from the pillar IT system investments. It is appropriate that 100% of the undepreciated costs be included in rate base.

B. Error about the magnitude of integration savings

53. The OEB found that the disallowance of the integration capital costs is fair because Enbridge Gas spent less on integration activities than its retained savings over the deferred rebasing term. This is cited as proof that the MAADs Decision operated as intended.

54. As explained in Argument in Chief, the problem here is that the OEB did not look at the full set of facts before reaching its conclusion.[36] The actual integration costs (inclusive of O&M costs) far exceed the savings retained by Enbridge Gas.

55. On the OEB's own reasoning, this supports Enbridge Gas's position that it is appropriate to recover the undepreciated integration capital costs in rates. Where $91 million in undepreciated integration capital costs are written off and not recovered, then Enbridge Gas has clearly not had the opportunity to recover all of its costs during the deferred rebasing term.

56. Some Respondents argue that Enbridge Gas over-earned (compared to allowed ROE) during the deferred rebasing term and therefore there is no harm.[37]

57. This position is misguided.

58. First, there are a multitude of reasons why the Company might earn more than allowed ROE. Integration is only one such reason. The OEB included an earnings sharing mechanism in the deferred rebasing ratemaking model to ensure that any substantial overearning would be

[35] Enbridge Gas Reply Argument in EB-2020-0200, page 80, Motion Record, Tab 2(e).
[36] Argument in Chief, paras. 41-43.
[37] CME Submissions, pages 13-14; SEC Submission, page 6; and VECC Submission, pages 4-5.

shared with ratepayers. In no year were Enbridge Gas's earnings high enough to warrant earnings sharing.

59. Second, the Company's actual results show that its earnings over the five year deferred rebasing term are virtually identical to allowed ROE. When the actual results from 2023 are taken into account, the average achieved ROE was only 0.05% higher than OEB-approved ROE for the 2019 to 2022 term.[38] That is certainly nowhere near an overearnings amount that would pay for the undepreciated integration capital costs.

60. If the OEB were to correct its findings here, there could easily be a material change in the Decision on the Integration Capital Issue. A key point of justification cited by the OEB would have been reversed. This would lend further support for why it's appropriate in all the circumstances to look at the nature of the actual integration capital expenses, leading to a determination that these costs are recoverable.

ADDITIONAL SUBMISSIONS

61. There are several additional items raised in the Submissions of Respondents to which the Company wishes to respond.

62. First, Enbridge Gas disputes the Respondents' position that mis-alignment with OEB policy in an OEB decision is a matter of discretion not subject to review.[39] As stated in Argument in Chief, a failure by the OEB to properly apply its own policies to the facts of a case is akin to a legal error.[40] The OEB should not only be expected (and required) to properly interpret the facts presented, but it should also be expected to follow and apply its own policies to those facts, especially where the policies in question are as fundamental as the OEB's guiding principles that are engaged in this motion. The importance and predictive power of having OEB policies in the first place is lost if OEB Commissioners are free to ignore or mis-apply such policies as they choose on a case-by-case basis.

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[38] The actual ROE for 2019 to 2022 is set out at EB-2022-0200, Exhibit I.5.3-IGUA-30 (https://www.rds.oeb.ca/CMWebDrawer/Record/782910/File/document) and the actual ROE for 2023 is set out at EB-2024-0125, Exhibit I.SEC-1 (https://www.rds.oeb.ca/CMWebDrawer/Record/864251/File/document) .
[39] See, for example, SEC Submission, page 7.
[40] Argument in Chief, para. 62.

63. As explained in Argument in Chief, the OEB's Decision on the Integration Capital Issue fails to properly apply (or to apply at all) the OEB's "benefits follow costs" and "beneficiary pays" principles. The Decision further fails to properly reflect the intent of the MAADs Policies, as set out in the MAADs Handbook. Had these principles been properly applied at the first instance, a different decision would have resulted.

64. Second, Enbridge Gas disputes that the level of detail set out in the Decision on the Integration Capital Issue is sufficient.[41] In particular, Enbridge Gas disagrees with the comment from OEB staff that this level of detail is appropriate when considering the relatively small impact of this issue.[42]

65. Objectively speaking, any issue that has the impact of requiring a write-off of $91 million is highly material. Indeed, from a revenue requirement perspective, the $34 million that is at issue is around five times higher than the materiality threshold that has been agreed upon for Z-factor eligibility in the 2024-2028 rate period.[43] The fact that the OEB was determining other issues in the same decision does not support supplying less details for this very material issue.

66. Finally, Enbridge Gas disputes VECC's claim that the Company has benefitted from the CCA tax benefit for the IT integration capital projects, and therefore should be required to bear the future cost.[44] That is factually incorrect. As set out in the OEB's Decision in the 2020 Deferral and Variance Account Clearance Application, all of the CCA tax benefits for the integration capital projects were recorded in the TVDA. These benefits will be credited to the party who pays for the projects. Therefore, should the OEB vary its Decision on the Integration Capital Issue and allow Enbridge Gas to include the undepreciated costs in rate base, then the full associated CCA benefits (totaling $6.8 million plus interest[45]) will be credited to ratepayers.

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[41] OEB staff Submission, pages 9-10; SEC Submission, page 10; and VECC Submission, pages 3-4.
[42] OEB staff Submission, page 10.
[43] EB-2024-0111 Settlement Proposal, Exhibit N1, Tab 1, Schedule 1, page 15 – see https://www.rds.oeb.ca/CMWebDrawer/Record/870501/File/document.
[44] VECC Submission, page 5.
[45] See EB-2022-0200 Argument in Chief, page 254, and associated references, Motion Record, Tab 3(c).

REMEDIES AND RELIEF SOUGHT

67. The errors set out above demonstrate that the OEB's Decision on the Integration Capital Issue is incorrect, and improperly relies on errors of fact and the misapplication of OEB policies.

68. It is fair to conclude that had the original panel of Commissioners properly considered the evidence and properly applied OEB policy, and written adequate and sufficient reasons, then the outcome of the Integration Capital Issue would have been different.

69. Enbridge Gas submits therefore that the panel considering this Review Motion should vary the Decision and permit Enbridge Gas to include the full $91 million in undepreciated integration capital costs in rate base. The reasoning in the original Decision supports this outcome once the factual errors are corrected. The evidentiary record of the underlying proceeding also supports this outcome.

70. In the event that there is a finding that the Decision contains errors, but the Review Panel is not prepared to substitute a new decision as requested, then Enbridge Gas submits that a number of options are available, taking the OEB's broad powers to control its own processes into account:

    i. One option is to vary the Decision on Integration Capital such that some but not all of the integration capital is approved to be included in rate base. That is the approach advocated by several parties at the original hearing.

    ii. Another option is for this Review Panel to create a process to obtain whatever additional information or submissions as are needed to arrive at a varied decision. OEB staff appear to endorse this approach as a possibility.

    iii. A third option is for the Review Panel to direct a rehearing or further examination of the Integration Capital Issue by either the original hearing panel or a differently constituted panel of the OEB.

All of which is respectfully submitted this 19th day of November, 2024.

David Stevens, Aird & Berlis LLP
Counsel to Enbridge Gas