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BY EMAIL AND RESS

December 3, 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.
2024-2028 Rates Application : EB-2024-0111
Response to Environmental Defence witness proposal

We write in relation to the scheduling for the Phase 2 oral hearing which is set to begin on December 17, 2024.

In an email sent to OEB staff and all parties yesterday, Enbridge Gas provided its witness panels and time estimates. Enbridge Gas also indicated its position as to why Environmental Defence (ED) should lead its evidence on ED's revenue decoupling from customer numbers proposal before the Enbridge Gas witnesses appear on that issue. As indicated in our email:

> *As a preliminary procedural matter, Enbridge Gas asserts that Environmental Defence and its expert CEG should lead their case first for the Revenue Decoupling from Customer Numbers issue. This is a proposal made by ED, based on evidence from ED's expert CEG. It is appropriate that the CEG evidence be presented and tested before questions are asked of an Enbridge Gas witness panel on this proposal. That approach is consistent with the OEB's observations in a 2017 Union Gas leave to construct case (here, at para. 19) where the OEB observed that while the applicant has the burden of persuading the OEB that its project (or, in this case, the rate proposal) should be approved, if intervenors want an alternative approved, then they must ensure that there is sufficient evidence on the record to support their case. Effectively, the intervenor is responsible to lead evidence on its alternative (or, in this case, supplementary) proposal. Taking this a step further, it is appropriate that the utility should be able to test and understand the intervenor's proposal through cross-examination before its own witnesses are called to answer questions about the implications of the intervenor's proposal. The utility should not be in the position of having to proactively guess, and be presumptively cross-examined, on a proposal that is to be presented and tested after the utility witnesses appear. Effectively, the utility witnesses are responding witnesses, and their order of appearance should reflect this.*

At the same time as we filed our email, ED filed a letter setting out their own time estimates.

ED's letter includes two items to which Enbridge Gas wishes to respond.

First, ED proposes that for Issue 7 (revenue decoupling), it would first cross-examine Enbridge Gas's witnesses, and then ED's expert (CEG) would respond to the evidence from Enbridge Gas. This is not proper. As set out above, the revenue decoupling proposal comes from ED. It is their proposal to make. It is not proper for ED to first cross-examine the Enbridge Witnesses on the ED proposal, and then use the information gathered as a pretence to allow CEG to expand upon and enhance their proposal.

Second, ED proposes that its other expert (EFG) will also provide evidence on Issue 7 (revenue decoupling). Enbridge Gas objects. EFG has not filed evidence on the revenue decoupling issue. The EFG expert report filed in this EB-2024-0111 proceeding does not speak to revenue decoupling at all. The report and testimony from Phase 1 that ED wants to have EFG speak about in Phase 2 was not filed in this EB-2024-0111 case, and there was no indication that this was something that should be explored through discovery. As a matter of law, an expert is required to restrict its testimony to evidence that is related to its report.[1] Clearly ED proposes to go well beyond its filed report, by inviting EFG to speak on the revenue decoupling issue.

ED indicates in its letter that EFG would spend 20 to 40 minutes in evidence in chief, summarizing its evidence from Phase 1 of the proceeding that is relevant to the revenue decoupling issue. That is not proper. If there is relevant evidence from Phase 1, then this evidence is already available for ED or other parties to use in their argument on whether revenue decoupling from customer numbers is required. There is no need to spend limited hearing time repeating what is already on the record from Phase 1. On the other hand, if ED is looking to have EFG reframe, expand, clarify, amend, add to, synopsize or do anything other than precisely restating the evidence from Phase 1, then that is not appropriate. Stated plainly, it is not proper or permissible for EFG to be given the opportunity to provide evidence in Phase 2 that deals with issues wholly separate from the report that ED has filed in this proceeding.

Yours truly,

AIRD & BERLIS LLP

David Stevens

C: all parties in EB-2024-0111

[1] See, for example *Marchand v. The Public General Hospital Society of Chatham*, https://www.canlii.org/en/on/onca/doc/2000/2000canlii16946/2000canlii16946.html , para. 38.