

BY EMAIL AND RESS

December 5, 2024

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 December 4th letter**

We write in response to Environmental Defence's December 4th letter relating to its witness proposal and other items. We repeat our prior submissions on this topic from our December 3rd letter, but wish to briefly respond to several items.

Burden of proof and order of examinations

This is not an ordinary scenario. All parties have agreed upon a 2025-2028 rate framework for Enbridge Gas. ED proposes adding an additional mechanism on top of that rate mechanism. The fact that the revenue decoupling proposal is supplementary is clear from the wording of the Settlement Proposal, which states that "nothing in the settlement of any issues precludes an OEB decision that would operate in conjunction with this IRM framework, to decouple revenue from customer numbers" (underline added for emphasis).¹

Enbridge Gas does not agree with the ED proposal. Enbridge Gas submits that where an intervenor is making a supplementary proposal, then that intervenor should have the obligation to explain and provide evidence in support, and then allow the applicant to respond. In this case that will be effected by having the evidence and examination of ED's expert CEG precede the Enbridge Gas witnesses who are responding on this topic.

Enbridge Gas further submits that it is premature to establish who bears the burden of proof. The Company notes, though, that it is absurd to take the position that an applicant must establish that an alternate or supplementary proposal should be rejected or else the proposal is approved. This turns the notion of onus completely on its head. Surely the party advancing the alternative or supplementary proposal bears at least some onus.

Also on this question of onus, Enbridge Gas notes that the references from OEB filing requirements noted by ED do not say that the applicant bears any onus to prove (or disprove) alternative proposals. As set out in the language quoted in footnote #2 to ED's letter, the applicant has the onus to make "its case" and to demonstrate that "its rate ... proposals are just and

¹ Settlement Proposal, Exhibit N1, Tab 1, Schedule 1, issue 1, page 15.

reasonable". Revenue decoupling is not Enbridge Gas's rate proposal. Contrary to ED's submission, this is not the same as a "deviation" from the applicant's proposal (the examples of "deviations" given by ED are less capital, a revised planning approach or changes to IRM parameters) This is a completely new element to be appended onto Enbridge Gas's OEB-approved IRM. Enbridge Gas submits that the new ED revenue decoupling proposal is not part of the applicant's case/proposal to make. Further, even if there was any onus on Enbridge Gas to disprove such a proposal (which the Company says is a mis-placement of onus), that cannot fairly be expected until sufficient details are led by ED/CEG to permit the applicant to understand and test how it could work.

Mr. Neme's Phase 1 evidence

The OEB's Procedural Order No. 1 in Phase 2 stated that parties may "refer" to evidence from Phase 1. Enbridge Gas acknowledges and accepts that direction. Presumably this was done for the sake of efficiency. It avoids having to reintroduce the same evidence in Phase 2.

We agree that ED is at liberty to refer to and rely on Mr. Neme's evidence from Phase 1. All of Mr. Neme's evidence, including from the oral hearing, is available on the Phase 1 record to be relied upon in submissions/argument in Phase 2.

ED is proposing to do something very different. ED proposes to have Mr. Neme appear and give fresh additional evidence, apparently based on the report that he filed in Phase 1. ED says that Mr. Neme would now need 20 to 40 minutes for direct testimony. That is not appropriate and should not be permitted. It goes well beyond the OEB's permission in Procedural Order No. 1 for parties to be allowed to "refer to any evidence filed in Phase 1". ED is setting itself up to proffer new evidence, separate and apart and well beyond the "evidence filed in Phase 1". If it were otherwise, then ED would not have any need for additional testimony from Mr. Neme.

We dispute ED's statement that the rules of evidence related to expert reports are inapplicable for the OEB. No precedent or basis is provided for that statement. We repeat that the relevant legal principles related to expert evidence direct that an expert should confine their testimony to matters covered by their report. The EFG report in Phase 2 deals with RNG, not stranded assets or revenue decoupling. Even EFG's Phase 1 report makes no mention of revenue decoupling from customer numbers. Effectively, ED is now seeking to have their expert who filed Phase 2 evidence on the RNG issue expand their testimony to cover a totally different issue.

When ED filed its letter on June 11th seeking to file expert evidence from EFG for Phase 2, ED made no mention whatsoever of repeating or relying upon the EFG expert report from Phase 1. The OEB did not consider or approve any such request. It is only now, on the eve of the hearing, that ED looks to add a second expert to its revenue decoupling issue, and to effectively re-litigate issues that were exhaustively canvassed in Phase 1, with a full record and subsequent OEB Decision with Reasons.

For all these reasons, Enbridge Gas again submits that Mr. Neme should not be permitted to provide testimony about matters that go beyond Exhibit M1, the EFG report filed in Phase 2. It is entirely permissible for ED and others to refer to Mr. Neme's evidence and testimony from Phase 1, but not to elicit new testimony in Phase 2 based on Mr. Neme's Phase 1 report.

Response to ED Motion Question #3

ED requests that Enbridge Gas provide a revised response to question #3, setting out the incremental costs for customer connections not covered by base rates.

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Enbridge Gas does not agree with the premise in ED's letter that there is a substantial "windfall" accruing to the Company from adding new customers. That being said, Enbridge Gas will endeavour to provide an additional response to ED Motion Question #3, addressing the question of what costs are incremental to what is already included in the approved rates. This will take some time to consider and prepare. Enbridge Gas aims to file the additional response by the end of next week (December 13th).

Yours truly,

AIRD & BERLIS LLP



David Stevens

C: all parties in EB-2024-0111