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Enbridge Gas Inc.
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January 10, 2025

**VIA RESS AND EMAIL**

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (Enbridge Gas)**
**Ontario Energy Board (OEB) File No.: EB-2024-0193**
**2022 Demand Side Management (DSM) Deferral and Variance Account**
**Disposition Application – Reply Submission**

In accordance with the OEB's Procedural Order No. 1, dated October 18, 2024, please find the reply submission of Enbridge Gas enclosed.

If you have any questions, please contact the undersigned.

Sincerely,

Justin Egan

Justin Egan
Technical Manager, Regulatory Applications

cc.: D. O'Leary (Aird & Berlis)
EB-2024-0193 Intervenor

**EB-2024-0193**

**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., for an Order or Orders approving the balances and clearance of certain non-commodity 2022 Demand Side Management Deferral and Variance Accounts into rates, within the next available QRAM.

# REPLY SUBMISSION OF ENBRIDGE GAS INC.

January 10, 2025

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## Overview

1. In accordance with the OEB's Procedural Order No. 1 dated October 18, 2024, this is the Reply Submission of Enbridge Gas Inc. ("**Enbridge Gas**" or the "**Company**").

2. In its Application filed August 30, 2024 ("**Application**"), Enbridge Gas requested the OEB's approval for the clearance and disposition through to rates of the amounts set out in Tables 1 and 2[1] below:

Table 1

2022 DSM Deferral and Variance Account Balances - EGD Rate Zone

| Account | 2022 |
|---|---|
| DSM Variance Account | $3,157,694 |
| DSM Incentive Deferral Account | $5,236,372 |
| LRAM Variance Account | $34,771 |
| Total Balance | $8,428,837 |

Table 2

2022 DSM Deferral and Variance Account Balances - Union Rate Zones

| Account | 2022 |
|---|---|
| DSM Variance Account | ($14,314,891) |
| DSM Incentive Deferral Account | $0 |
| LRAM Variance Account[5] | $722,953 |
| Total Balance | ($13,591,939) |

3. The Application further seeks approval from the OEB to include an additional $60,000,000 as an interim deferral disposition to offset a portion of the overspent amounts related to Enbridge Gas's Home Efficiency Rebate Plus ("**HER+**") offering in 2024. This amount was set out in table 3[2] of the pre-filed evidence which is repeated below:

[1] Application, Exhibit A, Tab 2, Schedule 1, p.3.
[2] Application, Exhibit A, Tab 2, Schedule 1, p.3.

Table 3

2024 Portion of HER+ Program Overspend - EGI Rate Zones

| Account | 2024 |
|---|---|
| DSM Variance Account[6] | $60,000,000 |
| The $60,000,000 is spend related to the residential customer classes | |

4. Interrogatories were asked only by OEB Staff. The Company responded to these on November 22, 2024.

**OEB Staff Submissions**

5. OEB Staff filed their submissions on the Application on December 5, 2024. OEB Staff stated:

> "OEB Staff submits that the proposed DSMVA, DSMIDA and LRAMVA balances have been calculated consistent with the OEB's 2015–2020 DSM Guidelines and the EC's 2022 Annual Verification report."[3]

6. OEB Staff further stated:

> "OEB Staff also submits that the proposed allocation and disposition methodologies are appropriate and support the common disposition methodology proposed for the EGD and Union Gas rates zones. The allocation and disposition methodologies proposed in this proceeding are consistent with those approved by the OEB in the last DSM DVA proceeding."[4]

7. In respect of the proposal by Enbridge Gas to dispose, on an interim basis, of $60 million (excluding interest) related to the HER+ offering in 2024, OEB Staff stated:

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[3] OEB Staff Submission, December 5, 2024 ("**OEB Staff Submission**"), p.4.
[4] OEB Staff Submission, p.5.

> "OEB Staff submits that Enbridge Gas's requested interim disposition of HER+ amounts is reasonable. Although final program details and accounting of actual spending are not yet available, the details provided by Enbridge Gas in its application and interrogatory responses have given OEB Staff a reasonable level of certainty that Enbridge Gas has incurred significantly greater costs than approved 2024 DSM budget amounts. Based on this expected overspend, OEB Staff agrees with Enbridge Gas that it is reasonable to dispose of a portion of the 2024 HER+ amounts on an interim basis to help mitigate the rate impact of the full 2024 program cost. Further, interim disposition of this $60M will save ratepayers an estimated $3M in interest charges which would otherwise be accrued while this balance was outstanding.[5] OEB Staff submits that, if the OEB approves this request, the decision should be clear that approval of the requested $60 million of 2024 HER+ amounts is strictly on an interim basis, with a full prudence review of all spending related to the HER+ offer to take place as part of a future DSM DVA proceeding".[6]

Accordingly, OEB Staff support the relief sought by the Company in this proceeding.

**SEC's Submissions**

8. SEC filed its submission on December 12, 2024. SEC stated that:

> "SEC has reviewed the Application in detail, and supports both the amounts being cleared, and the proposed method of disposition. This includes support for the interim clearance of $60 million for the anticipated Greener Homes overspend, subject to our comments below."[7]

9. With this, it should be noted that there is no opposition to the OEB granting the relief sought by the Company in this Application. SEC, however, did reference several other matters which are dealt with below under separate subheadings.

*(i) Covering Letter to the Application Correction*

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[5] Application Exhibit D, Tab 1, Schedule 1, p.2.
[6] OEB Staff Submission, p.6.
[7] SEC Submission, December 12, 2024 ("**SEC Submission**"), p.1.

10. SEC questioned whether there was a minor inconsistency in the Application in respect of the one-time billing adjustment for the Union South rate M1 for a typical residential customer. SEC noted that Exhibit C, Tab 3, Schedule 1 at page 1 and Exhibit C, Tab 3, Schedule 1 at Appendix 1, line 3 indicate that the billing adjustment for the Union South rate M1 is a charge to customers of $0.51. This pre-filed evidence was filed correctly. It appears there was a typo in the cover letter, at page 2, which was attached to the Application, as it incorrectly indicated that the Union South rate M1 was receiving a refund. Exhibit C, Tab 3, Schedule 1 at page 1 and Exhibit C, Tab 3, Schedule 1 at Appendix 1, line 3 are correct as filed. The Company is filing contemporaneously with this Submission a revised covering letter.

*(ii) DNV's Engagement as the Evaluation Contractor*

11. At page 2 of its submission, SEC states that it has confidence in the Evaluation Contractor, DNV, and believes that their opinion is fair and independent and that it was supported by the EAC. SEC notes that the approach introduced by the OEB several years ago has worked well, "largely because of the excellent work by DNV"[8]. Notwithstanding this, SEC raises concerns about the fact that other members of DNV, people that were not involved in the Evaluation Contractors work, have undertaken work for Enbridge Gas related to the Company's hydrogen projects. SEC submits that this fact should have been disclosed in the Application despite admitting that: "as we understand it, there is no overlap in

[8] SEC Submission, p.2.

personnel between the independent audit work and the hydrogen work, and it does not change our confidence in DNV as the Evaluation Contractor"[9].

12. It should be recalled that DNV was in fact engaged by OEB Staff. Enbridge Gas assumes that for the purposes of engaging DNV, OEB Staff almost certainly inquired as to whether DNV believed that it was in a position of conflict and that, if any real or apparent conflict existed, OEB Staff would have brought this to the attention of the EAC and Commissioners.

13. It is the view of Enbridge Gas that there was no real or apparent conflict of interest and that there was, therefore, no obligation on DNV, Enbridge Gas, nor OEB Staff to advise the OEB and parties that, in addition to its engagement as the Evaluation Contractor, DNV was engaged by Enbridge Gas for other totally unrelated purposes. In Ontario, there is a limited roster of qualified and experienced consultants, many of which offer services in a variety of areas that are required by Enbridge Gas (and the OEB and OEB Staff) to support gas distribution services and regulatory applications. SEC has so much as admitted in its submission that there was no conflict of interest and that it has complete confidence in the work of DNV. The obligation to identify conflicts of interest is already well known, what SEC proposes is therefore unnecessary.

*(iii) SEC's Collateral Attack on the OEB's 2023 – 2025 DSM Decision*[10]

[9] SEC Submission, p.2.
[10] Decision and Order dated November 15, 2022, EB-2021-0002 (**"Decision"**).

14. More troubling is SEC's characterization of its collateral attacks on the Decision as matters that should be raised as part of a prudence review in a future clearance proceeding which will consider the interim disposition of the 2024 HER+ overspend and the balance of the overspend. Enbridge Gas submits that such collateral attacks should be recognized as such and be clearly rejected by the OEB.

15. As noted above, the Company is seeking approval for the disposition through to rates of $60 million as part of this Application. The justification for this requested approval is found at Exhibit D in the pre-filed evidence. As noted in evidence, the purpose of this interim deferral disposition is to smooth the rate impacts over two years of a large balance which would otherwise have had a large rate impact if cleared in the normal course in the clearance Application for 2024. The forecast for the 2024 residential DSM program spend is expected to be approximately $120 million over the OEB budget in 2024. As noted in the pre-filed evidence at Table 1,[11] the HER+ 2024 forecast rebate spend is estimated at approximately $198 million. This compares to the OEB approved program budget for the entire residential program of $78.8 million.[12]

16. The overspend is the result of Enbridge Gas entering into a Contribution Agreement with NRCan which provided for a jointly funded NRCan/DSM residential whole-home offering. This jointly funded NRCan/DSM residential offering (i.e. the HER+ offering) was specifically approved by the OEB in its Decision.

17. The Company notes that the OEB anticipated the possibility that the HER+ offering could prove to be extremely successful and gave explicit approval to Enbridge Gas in the

[11] Application, Exhibit D, Tab 1, Schedule 1, p.3.
[12] Application, Exhibit D, Tab 1, Schedule 1.

Decision to support the HER+ offering beyond the normal 15% additional funding permitted under the DSM Framework. The Decision specifically states:

> "However, should participation be greater than anticipated, either due to more overall participants or average participant incentives being greater than forecast, Enbridge Gas is approved to access funding in excess of the DSM variance account overspend provision that allows for an incremental 15% of a program budget to be spent during the year should Enbridge Gas have met 100% of its performance scorecard metric on an unverified basis.[13]
>
> And:
>
> All spending above the approved budget will still require sufficient supporting evidence to be filed as part of future DSM deferral and variance account clearance applications."[14]

18. It is important to note that the OEB also approved measures and incentive levels for the Company which were materially different from those proposed by Enbridge Gas in the Application. Schedule B to the Decision lists all of the measures included in the NRCan Canada Greener Homes Grant ("**CGHG**") program and the associated NRCan incentive levels. The Schedule further identifies the measures and incentive levels proposed by Enbridge Gas in its Application. Schedule B then goes on to direct those measures which the Company should include in the HER+ offering and the incentive levels for each. Notably, in respect of space and water heating heat pumps as well as air sealing and window and door measures, the Company had not proposed that these measures be included in the Whole Home Offering, which was included in the Application. Further, for several measures, such as attic insulation, the incentives the Company were directed to offer were lower than originally proposed by the Company. By approving these measures when they were not part of the Application, it means that no TRC analysis of the impact

[13] EB-2021-0002, Decision and Order, November 16, 2022, p.31.
[14] EB-2021-0002, Decision and Order, November 16, 2022, p.31.

on the cost effectiveness of the as approved offering and on the residential program as a whole was filed in evidence. Enbridge Gas operated the HER+ offering with the measures and incentives to which it was directed by the OEB. It is incomprehensible that SEC would now suggest that a prudence review would consider the cost effectiveness following an OEB directive. This is not an issue for a prudence review, it is simply a collateral attack on the OEB directive. The HER+ offering proved to be extremely successful, and the Company experienced unanticipated high levels of participation in the first year of the program. As noted in the pre-filed evidence, as of February 2024, funding for the CGHG had become fully committed and the CGHG and HER+ offering was closed to new applicants. Both NRCan and Enbridge Gas, remain committed to existing accepted participants subject to the completion of program eligibility requirements.[15]

19. With the closure of the HER+ offering and the inability to accept further requests for participation, the Company specifically identified at Intervenor meetings held on March 26, 2024, June 27, 2024 (and subsequent Stakeholder consultatives)[16] its proposal for a HER+ replacement program for the balance of 2024 and 2025 and the interim disposition proposed in this Application in respect of the HER+ overspend. Enbridge Gas notes that SEC attended and participated in applicable consultative sessions and expressed no concerns about the overspend, the proposed replacement program, nor the interim disposition.

20. Importantly, the Company specifically referenced these matters in its letter to the OEB dated April 22, 2024, wherein it requested:

[15] Application, Exhibit D, Tab 1, Schedule 1, p.2.
[16] EB-2024-0198 Pre-Filed evidence, Exhibit C, Tab 1, Schedule 5, Attachment 4, p.2 of 5.

> … to ensure continued comprehensive residential whole-home DSM programming for 2024 and 2025 in light of the changes to the CGHG and HER+ offering, Enbridge Gas is requesting the OEB's confirmation that its approval of residential whole-home DSM programming within its Decision and Order for the Company's 2022-2027 DSM Plan Application (EB-2021-0200) ("OEB Decision") extends to a replacement offering as described below[17] (emphasis added).

21. The Company then went on in the letter to describe the replacement program offering in some detail. The design of the replacement offering, which would continue through 2025, considered learnings gained from delivering HER+ and from the evolving market. In addition, the replacement offering's design sought to both maintain a positive customer experience and improve the offering's cost-effectiveness relative to the HER+ offering's cost-effectiveness, which was the result of the HER+ program design approved / directed by the OEB in its November 22, 2022 DSM Decision. Importantly, the April 22, 2024 letter to the OEB noted that the establishment of the replacement program would be consistent with and supportive of the Company's discussions with the IESO in respect of establishing a one-window offering for residential consumers in Ontario, something for which there is broad support[18] including, most recently, specific direction from the Ministry of Energy and Electrification.[19]

22. Recognizing the level of HER+ overspend that had already been committed to in 2024, Enbridge Gas proposed in the April 22, 2024 letter that:

> …as a result of Enbridge Gas requiring access to funding in excess of the DSMVA 15% overspend provision for the HER+ offering for 2024 (as described in the section below) and the requirement that spending for the HER offering does not exceed the DSMVA 15% maximum overspend provision, the Company will not have access to incremental funding that can be used for incentive payments for

[17] EB-2021-0002, Enbridge Gas Letter to the OEB dated April 22. 2024, p.1.
[18] Ibid, p.3.
[19] Ontario Ministry of Energy and Electrification, Minister's Directive, November 7, 2024, p.4.

> HER offering participants in 2024 and will therefore begin incentive payments as of January 2025. Enbridge Gas expects that most HER offering participants would not be impacted by a January 2025 start for incentive payments as the steps required to be eligible for incentive payments (i.e., the completion of a pre-audit, measure installation, and a post-audit) can take several months following the launch of the HER offering. Regardless, Enbridge Gas will advise potential HER offering participants of the January 2025 start for incentive payments[20].

23. In the same letter the Company asked for:

> Timely confirmation by the OEB that its approval of residential whole-home DSM programming within the OEB Decision extends to a replacement offering for 2024 and 2025 as described above is of critical importance, as not only are customers currently without access to residential whole-home DSM programming, but industry partners (such as service organizations and energy auditors) are experiencing decreasing program-related activities.

24. Mr. Brian Hewson, Vice President, Consumer Protection & Industry Performance at the OEB, responded by a letter dated June 10, 2024[21]. In this letter, Mr. Hewson noted that Pollution Probe and Environmental Defence filed letters in response to Enbridge Gas's letter that supported the continuation of programming to enable customer participation and avoid lost opportunities. SEC did not file a response to the Enbridge Gas letter. In fact, no party filed any response to the April 22, 2024 Enbridge Gas letter to the OEB expressing any concern or opposition to the proposed approach for the balance of 2024 and 2025 being the continuation of a very similar replacement offering but with materially reduced incentive levels. In his letter, Mr. Hewson expressed the view of OEB Staff as follows:

> "OEB Staff is of the view that Enbridge Gas' proposed HER offering, as described in its letter of April 22, 2024, is consistent with the

[20] EB-2021-0002, Enbridge Gas Letter to the OEB dated April 22. 2024, p.4.
[21] Letter to Enbridge Gas from Mr. Brian Hewson, Vice President, Consumer Protection & Industry Performance at the OEB, dated June 10, 2024.

> OEB's DSM Decision and that no further approval is needed for Enbridge Gas to proceed with the HER offering.
>
> OEB Staff understands the reasons for Enbridge Gas' proposed approach to defer incentive payments to customers participating in the HER offering throughout the remainder of 2024 until January 2025 and is of the view that it is consistent with the DSM Decision".

25. Before turning to SEC's submissions more specifically, it should be noted that SEC had the opportunity to seek a review or to commence an appeal following the release of the Decision. It did not. It also had an opportunity to provide input during and after the Intervenor consultative sessions. It did not. SEC also had the opportunity to respond to the Company's April 22, 2024 letter to the OEB and state its views on the matters it now misdescribes as prudence review issues. SEC remained silent both in response to the Company's letter to the OEB and Mr. Hewson's letter of June 10, 2024, in which the Company's interpretation of the Decision in respect of the HER+ and its replacement program offering were confirmed. This silence speaks to the *bona fides* of SEC submissions. If such matters had been raised by SEC earlier, it is quite probable that other parties would have sought intervenor status in this proceeding and that the OEB's decision denying intervenor status to two parties would not have been issued given that what SEC proposes puts the HER+ replacement offering at risk of not continuing.

26. It is submitted that the matters raised in the SEC Submission go far beyond the anticipated prudence review that will likely occur during the 2024 DSM deferral and variance account clearance proceeding in respect of the HER+ overspend. SEC believes that such an application should: "include consideration of the absolute amount of the overspend, both as it relates to the original annual budgets, and the original multi-year budget[22]". SEC gives an example of what it has in mind stating: "So, for example, in the prudence review

[22] SEC Submission, p.2.

it may be relevant that the total spend was within the forecast limit for the multi-year plan, or not”[23]. SEC’s justification for this is clearly stated: "SEC does not believe that the OEB intended Enbridge to be able to spend, without any limit at all, on this program “[24].

27. There is in fact no “original multi-year budget” approved by the OEB in the Decision. This is pure fiction on SEC’s part. It may have wanted a 2023-2025 term budget, but no such budget exists. The OEB should confirm this and clearly state that a future prudence review will not entertain such a notion.

28. SEC goes further. It states that: “The OEB and parties may also wish to consider the spend on replacement programs during the period where the overspend was initially planned to be spent, since this reflects an additional cost to ratepayers to pursue this category of savings within the same time period”[25]. Stated differently, SEC is looking for confirmation in this Application that parties will be permitted to argue that the Decision which approved Residential programs for the 2023-2025 term contains some predetermined spending limit that, presumably, if exceeded, puts recovery of the spending at risk. It appears that SEC also wishes the OEB to confirm in this Application that whether all or any part of the 2025 expenditures on the HER+ replacement offering should be recoverable is a live issue in a future clearance proceeding.

29. Enbridge Gas submits that these are not questions that relate to the prudence of the HER+ overspend, they simply amount to a collateral attack on the Decision. SEC did not point to any language in the Decision which support its submissions, undoubtedly because there is none, but the fact that the threat of arguing for disallowance is veiled in the pretense of

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[23] Ibid, p 3.
[24] SEC Submission p.2.
[25] Ibid, p.3.

being part of prudence review does not change the nature of what is being proposed, namely, an attempt to do a collateral end run around the Decision.

30. Enbridge Gas is working diligently towards finalizing a collaboration agreement with the IESO in respect of the One Window offering. Enbridge Gas's ability to collaborate is wholly dependent upon the Company having certainty that it has the budget approved in the Decision for the HER+ replacement offering and the ability to increase spending by up to 15% as permitted under the DSM Framework. If the OEB permits this budget to be challenged at a future clearance proceeding putting recovery of the amounts spent at risk, Enbridge Gas will need to reconsider its support for the HER+ replacement offering and possibly its participation in the One Window program.

31. The fact is that the success of the HER+ offering is such that the Company has already spent more on the HER+ offering than the aggregate of the approved budgets for the Whole Home program offering over the 2023 – 2025 term (leaving aside the ability to exceed the 15% DSMVA ceiling also approved by the OEB). If this aggregate total, as SEC suggests, becomes a ceiling which will be considered as part of a prudence review of expenditures on the HER+ replacement offering in 2025, Enbridge Gas will consider terminating the HER+ replacement program. While this will of course negatively affect the One Window program, without an unequivocal confirmation from the OEB in this proceeding that the Company's interpretation of the Decision in respect of the HER+ offering and its replacement is as it has stated, and as confirmed by Mr. Hewson's letter, Enbridge Gas reserves the right to discontinue the HER+ replacement offering. It is simply

not willing to put at risk the recovery of tens of millions of dollars of incentives paid to residential ratepayers.[26]

32. Enbridge Gas respectfully asks the OEB for a clear acknowledgement in its decision in this proceeding that the budget approved by the Decision in respect of the 2025 HER+ replacement offering is not an issue that the OEB will entertain in a future clearance proceeding. It is appropriate to address SEC's submissions in the OEB's decision in this proceeding because it is asking the OEB to make SEC's ability to pursue collateral attacks in a future clearance application a precondition to the OEB's approval in this proceeding of the proposed interim disposition. In other words, SEC is requesting that the OEB approve the interim disposition subject to SEC's right to pursue a collateral attack on the Decision in a future clearance proceeding. This needs to be clearly rejected at this time.

All of which is respectfully submitted this 10th day of January, 2025.

**Dennis M. O'Leary**
**Aird & Berlis LLP**
**Counsel to Enbridge Gas**

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[26] The Decision at Schedule A approves a budget for 2025 for the Residential Whole Home program of $68.7M.