

**ONTARIO ENERGY BOARD**

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

**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.

**EB-2024-0111**

**SUBMISSIONS**

**OF**

**THREE FIRES GROUP INC.**

**AND**

**MINOGI CORP.**

**February 18, 2025**

## I. INTRODUCTION

1. We are counsel to Three Fires Group Inc. (“**Three Fires**” or “**TFG**”) and Minogi Corp. (“**Minogi**”) in the matter of the application of Enbridge Gas Inc. (the “**Applicant**”, “**EGI**” or “**Enbridge Gas**”) to the Ontario Energy Board (the “**OEB**” or the “**Board**”) for approval for an order or orders approving or fixing just and reasonable rates for the sale, distribution, transmission, and storage of gas commencing January 1, 2024 (the “**Application**”).
2. Three Fires is an Indigenous business corporation that represents the interests of Chippewas of Kettle and Stony Point First Nation (“**CKSPFN**”). CKSPFN is located in southern Ontario along the shores of Lake Huron, 35 kilometres from Sarnia, Ontario and has 1,000 members who live on-reserve and 900 who live off-reserve.
3. Minogi is an Indigenous business corporation that represents the interests of Mississaugas of Scugog Island First Nation (“**MSIFN**”). The Mississaugas of MSIFN moved into southern Ontario and settled in the areas around Lake Scugog from their former homeland north of Lake Huron around 1700. MSIFN is located on Scugog Island in the Port Perry area of Durham Region, Ontario, and has close to 300 members. Minogi’s key focus areas on behalf of MSIFN are energy transition, clean energy investments, and advancing MSIFN’s rights to lands, waters and resources. MSIFN’s treaty rights area includes generation facilities, transmission lines, electrical distribution systems, and major natural gas mainlines and distribution systems in the Lake Ontario Energy Corridor between the GTA/Pickering and Napanee. MSIFN considers the waters and lakebed of Lake Ontario in this corridor, and south to the U.S. border, to be unceded.
4. Minogi and Three Fires are regular participants in OEB proceedings and related processes, including the Indigenous Working Group (“**IWG**”) that operates in conjunction with Enbridge Gas.

## II. OVERVIEW

5. Minogi and Three Fires’ submissions will focus on the following two issues:

- (a) EGI's Lower-Carbon Energy Program (the "**RNG Proposal**") with its related Indigenous Participation Framework Proposal (the "**Indigenous Framework**") (collectively, the "**RNG Proposal and Indigenous Framework**"), which Minogi and Three Fires support on the basis that it contributes a positive step towards the long-term viability and sustainability of Ontario's energy sector in a way that also supports the objectives of economic reconciliation; and
- (b) Environmental Defence and the Green Energy Coalition's ("**GEC**") proposals relating to revenue decoupling, where Minogi and Three Fires support the alternative proposal to decouple EGI's revenue from its customer counts on an implementation timeline coinciding with EGI's next rebasing application, on the basis that doing so could serve to mitigate the risk of stranded assets as well as improve customer choice in the context of the energy transition, both of which are issues of very high importance to Minogi and Three Fires, as well as the First Nations they represent.

(together, the "**Two Issues**")

- 6. Minogi and Three Fires will demonstrate how the RNG Proposal and Indigenous Framework, as well as a decision to move forward with revenue decoupling, would produce positive implications for the long-term reliability, affordability, accessibility, and sustainability of Ontario's energy sector, with similarly positive implications for the First Nations that Minogi and Three Fires represent.
- 7. Minogi and Three Fires will also demonstrate how their positions on the Two Issues will support the principles and objectives of reconciliation and economic reconciliation by, among other things, improving the ability of Indigenous Peoples to:
  - (a) access energy produced from sources that have less of an impact on the environment and climate change, thereby supporting improved consistency with Indigenous stewardship of their lands and traditional territories;
  - (b) participate in Ontario's energy sector in a more meaningful way, including in the sector's leadership and decision-making processes; and

- (c) share in the energy sector's economic benefits in a way that promotes the objectives of economic reconciliation.
- 8. These matters take on increasing importance now and in the near future, when the energy transition finds itself at a relatively early stage. The best opportunity for Indigenous Peoples to take an active part in the energy transition, and to do so in a way that ensures their rights and interests help to shape Ontario's energy future, is now, when Ontario finds itself at the earliest stages of decision-making, engagement, and consultation and before paths and precedents are set, and interests further entrenched.
- 9. These submissions, as they relate to the RNG Proposal and Indigenous Framework, are organized as follows:
  - (a) EGI's proposal to increase the levels of renewable natural gas ("**RNG**") in its general supply, along with the accompanying Indigenous Framework, are a positive contribution to Ontario's decarbonization efforts;
  - (b) the RNG Proposal and Indigenous Framework will also produce significant economic benefits for Ontario and Ontario businesses, including Indigenous-owned businesses, in a manner consistent with the priorities and objectives of the Ontario Government for Ontario's energy sector, the requirements of other applicable policy requirements, and EGI's own stated objectives for increased collaboration with Indigenous Peoples; and
  - (c) finally, the RNG Proposal and Indigenous Framework are also consistent with the priorities and discussions of the IWG, recognizing that the RNG Proposal and Indigenous Framework serves as one contribution to the goals of reconciliation and Indigenous inclusion, among many others that must take place in the future.
- 10. Minogi and Three Fires will then address Environmental Defence and GEC's proposals relating to revenue decoupling, which they generally support from the perspective that many First Nations customers have the potential to bear the risk of stranded assets in a disproportionate manner, and many First Nations currently suffer from a lack of access

to affordable, reliable, and sustainable energy options, both of which are issues that revenue decoupling could help to address, for the reasons set out herein.

11. On the basis of the above, Minogi and Three Fires will request that the Board:
  - (a) approve the Indigenous Framework<sup>1</sup> as part of any approval of EGI's proposed Lower-Carbon Energy Program; and
  - (b) grant the alternative relief sought by Environmental Defence and GEC of decoupling EGI's revenue from its customer counts on an implementation timeline coinciding with EGI's next rebasing application.
12. Minogi and Three Fires take no position on the question of whether the Board should approve EGI's proposed change to the calculation of the meter reading performance measurements.

### **III. SUBMISSIONS**

#### **A. Minogi and Three Fires Support EGI's RNG Proposal and Indigenous Framework**

13. Minogi and Three Fires consistently seek ways to promote an Ontario energy sector that provides reliable, accessible, affordable, and sustainable energy for all residents of Ontario, including Indigenous Peoples and Indigenous ratepayers.
14. These priorities often leave Minogi and Three Fires critical of EGI's activities, such as in the context of Phase 1 of the current Application where Three Fires expressed serious concerns regarding EGI's insufficient engagement with issues relating to the energy transition and its consequences for Indigenous Peoples. Similarly, Minogi and Three Fires regularly call on EGI to improve company practices in the context of the IWG, where Minogi and Three Fires consistently challenge EGI to do more to advance the interests of EGI's Indigenous customers on issues such as sustainable energy access, environmental protection, Indigenous employment, engaging Indigenous-owned business, and equity participation.

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<sup>1</sup> As set out at paragraphs 80-82 of EGI's Argument-in-Chief and in Exhibit K2.5.

15. It is therefore noteworthy that Minogi and Three Fires endorse EGI's RNG Proposal and Indigenous Framework in this proceeding. While Minogi and Three Fires intend to continue to challenge EGI to improve its practices, where warranted, they also believe it is important to support EGI when the company advances proposals that are consistent with the long-term energy interests of all ratepayers in Ontario, responsive to the challenges and imperatives of the energy transition, and supportive of the objectives of reconciliation.
16. Minogi and Three Fires' submissions in support of the RNG Proposal and Indigenous Framework are set out in the sections immediately below. They are structured as follows:
  - (a) EGI's proposal to increase the amount of RNG in its general supply, along with the accompanying Indigenous Framework, are a positive contribution to Ontario's decarbonization efforts, since RNG represents a cost-effective and market-ready way to reduce emissions;
  - (b) the expert testimony of Environmental Defence's experts underscores the importance of RNG as part of a multifaceted approach to decarbonization;
  - (c) the RNG Proposal and Indigenous Framework will provide significant economic and social benefits for Indigenous and non-Indigenous businesses and communities, including long-term community investments in RNG facilities and technologies, and the resulting economic returns;
  - (d) the RNG Proposal and Indigenous Framework also provide important support for the objectives of economic reconciliation, as well as the stated priorities of the Ontario Government for the energy sector; and
  - (e) finally, the RNG Proposal and Indigenous Framework are also consistent with the priorities and discussions of the IWG, recognizing that they serve as one contribution to the goals of reconciliation and Indigenous inclusion among many others that must take place in the future.

*The Board Has the Mandate and Jurisdiction to Approve the RNG Program and Indigenous Framework*

17. The Board's mandate includes facilitating the maintenance of a financially viable gas industry for the transmission, distribution, and storage of gas.<sup>2</sup> This responsibility includes the approval of just and reasonable rates that balance the interests of consumers and regulated entities while ensuring the long-term sustainability of the natural gas system.<sup>3</sup> In carrying out this mandate as it relates to the supply of gas, the Board must also ensure that EGI's gas supply planning is consistent with and supports achieving Ontario's broader public policy objectives.<sup>4</sup>
18. Indigenous reconciliation is a cornerstone of Ontario's public policy, with the province actively working to integrate reconciliation principles across government initiatives. The Ministry of Indigenous Affairs and First Nations Economic Reconciliation is dedicated to fostering collaboration across ministries on Indigenous policy and programs, with a focus on improving quality of life and expanding economic opportunities for First Nations.
19. Economic reconciliation aligns with broader Ontario government priorities, including the integration of clean energy solutions into the gas network. The Ministry of Energy and Electrification (the "**Ministry**") has explicitly recognized that "an economically viable natural gas network can also support the integration of clean fuels to reduce emissions, including [RNG]."<sup>5</sup>
20. The Ministry has also recognized the critical role of Indigenous participation in shaping Ontario's energy future. In its long-term planning for meeting the province's energy needs over the coming decades, the Ministry affirmed that "Indigenous participation and support for proposed energy projects will continue to be a key feature of future procurement initiatives in Ontario's energy sector."<sup>6</sup> This commitment underscores the

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<sup>2</sup> The Act, s. 2(5.1).

<sup>3</sup> The Act, s. 36(3).

<sup>4</sup> See EB-2019-0219, Report of the Ontario Energy Board, Framework for the Assessment of Distributor Gas Supply Plans, available online: <https://www.oeb.ca/sites/default/files/Report-of-the-Board-Gas-Supply-Plan-Framework-20181025.pdf>, ss. 31 and 3.1.4.

<sup>5</sup> Ontario, "Ontario's Affordable Energy Future: The Pressing Case for More Power", (October 2024), *Ministry of Energy and Electrification*, available online: <https://www.ontario.ca/files/2024-11/energy-ontarios-affordable-energy-future-en-2024-11-07.pdf>, p. 22.

<sup>6</sup> Ontario, "Powering Ontario's Growth Ontario's Plan for a Clean Energy Future", (July 2023), available online: <https://www.ontario.ca/files/2023-07/energy-powering-ontarios-growth-report-en-2023-07-07.pdf>, p. 61.

province's recognition that Indigenous economic reconciliation and energy sector inclusion are fundamental to sustainable development and energy security.

21. Given the Board's mandate to approve just and reasonable rates, maintain a financially viable gas industry, and ensure that gas supply planning aligns with public policy objectives, it has the jurisdiction to consider and approve the RNG Proposal and Indigenous Framework. Ontario's public policy explicitly prioritizes Indigenous participation in the energy sector and economic reconciliation, and the Ministry of Energy has affirmed that Indigenous support and participation will remain central to future energy procurement. Approving the proposal would be a reasonable exercise of the Board's authority in furtherance of these statutory and policy objectives.

*The RNG Proposal and Indigenous Framework Support Ontario's Decarbonization Objectives*

22. The context of the energy transition has featured prominently at all stages of this Application. As Three Fires noted in its Phase 1 written submissions:

There is a general consensus in these proceedings that efforts across the globe to decarbonize will mean massive transformation for Ontario and worldwide. EGI acknowledges that Ontario has committed to reduce GHG emissions by 30% below 2005 levels by 2030 and the provincial government is currently developing climate policy and programs to meet this target.<sup>7</sup>

23. EGI emphasizes the demands of the energy transition in its Phase 2 materials, once again acknowledging the ambition of Ontario's Greenhouse Gas ("**GHG**") reduction objectives, as well as the fact that EGI's proposed RNG procurement could provide a significant contribution towards Ontario's broader reduction objectives:

Government at all levels as well as customers are focused on reducing GHG emissions and transitioning to a lower-carbon economy. Specifically, the Ontario government has committed to reducing emissions by 30 percent below 2005 levels by 2030, as outlined in the Made-in-Ontario Environment Plan, which is aiming to reduce emissions by 18 Mt of CO<sub>2</sub> by 2030. Enbridge Gas's lower-carbon energy proposal is aligned with the spirit of this public policy as it would reduce emissions by over 0.5 Mt of CO<sub>2</sub> by 2029 (assuming two percent of the gas supply commodity portfolio is purchased as RNG). This proposal therefore achieves approximately three percent of the reduction goals in the Made-in-Ontario Environment Plan.<sup>8</sup>

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<sup>7</sup> EGI, Phase 1 Application, 1.2.1, para 42.

<sup>8</sup> EGI, Phase 2 Application, 4.2.7, para 44.



(Citations omitted)

24. In the context of Ontario's decarbonization goals, EGI's proposal to procure increased amounts of RNG represents a positive contribution to the massive effort involved. Energy systems across the world have recognized an urgent need for the complementary and multifaceted approaches that will be necessary to reach desired outcomes. The Canada Energy Regulator ("**CER**"), for example, recognized this in its recent report *Canada's Energy Future 2023*, when it anticipated a central role for low-carbon fuels as part of Canada's pathway to net-zero:

Canada's energy system is complex and diverse, and how we produce and use energy in [a] net-zero world will be dramatically different than it is today. As you'll read in this report, there are some key components in this dramatically different world:

- Electricity becomes the cornerstone of the net-zero energy system. Devices that we use every day that use fossil fuels are replaced by technologies that use electricity. By 2050, technologies like electric vehicles and heat pumps become commonplace.
- **Low-carbon fuels like hydrogen and biofuels enable the energy system's path to net-zero**, while carbon-capture, utilization, and storage (CCUS) helps to reduce emissions in many industries and the power generation sector.
- In a future with ambitious global climate action, global demand for fossil fuels falls steeply, reducing oil and natural gas prices and Canadian production of those commodities.<sup>9</sup>

(Emphasis added.)

25. The RNG Proposal and Indigenous Framework therefore represents an early and important contribution towards the introduction of the low-carbon fuels integral to Ontario's pathway to a net-zero future. It establishes an important early precedent for other significant actors to follow, in addition to helping to create the market conditions necessary to provide the supply of low-carbon fuels that Ontario will need, as further detailed below.

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<sup>9</sup> Canada Energy Regulator, *Canada's Energy Future 2023*, p. 2, <https://www.cer-rec.gc.ca/en/data-analysis/canada-energy-future/2023/canada-energy-futures-2023.pdf>. See also EGI, Phase 2 Application, 4.2.7, para 6.

26. The RNG Proposal and Indigenous Framework also offers immediate environmental and decarbonization benefits for EGI's ratepayers, as well as residents of Ontario more broadly. EGI is correct to assert that RNG offers GHG-reduction opportunities as compared with the natural gas that it replaces. EGI is similarly correct when it asserts that RNG represents a market-ready and cost-effective mechanism to reduce GHG emissions.<sup>10</sup>
27. Minogi and Three Fires, on behalf of the First Nations they represent, place high priority on these GHG-reduction efforts, both in the short and the long-term. They strongly believe that the increasingly urgent crisis of climate change means that Ontario must make use of all available opportunities to accelerate decarbonization efforts in a way that puts the province on a path to net zero.
28. The increased use of RNG is an important contribution in these decarbonization efforts, recognizing that it is far from the only measure that Ontario (or even Enbridge Gas) must undertake for the province to successfully face the challenges of the energy transition and address climate change more generally.

*The Expert Testimony of Mr. Neme and Dr. Hill Underscores the Importance of RNG in Ontario's Decarbonization Efforts*

29. The basic position that EGI should increase the proportion of RNG in its general gas supply was unchallenged in the expert evidence provided in this proceeding.
30. In fact, RNG's essential role in Ontario's efforts to decarbonize was underscored by the evidence and testimony of Environmental Defence's experts, Chris Neme and Dr. David Hill, who agree that EGI should procure increased volumes of RNG as part of efforts to decarbonize the gas system (subject to other points of disagreement).
31. Mr. Neme and Dr. Hill's report includes a section entitled "Acknowledge RNG as a Complementary and Supporting Role". They have articulated their general position in these proceedings using the same or very similar language, stating that RNG can play a "supporting role" or that it "can be expected to play a modest contributing role in decarbonizing the gas system", even if they believe EGI should procure RNG in

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<sup>10</sup> EGI, Phase 2 Application, 4.2.7, para 24 and 43.

quantities amounting to 1% of total supply, as opposed to the 2% the EGI has proposed.<sup>11</sup>

32. Mr. Neme's testimony under cross-examination reinforced his position that RNG should be considered "one tool in the toolkit" towards decarbonization, alongside other efforts and subject to his reservations concerning quantities:

Mr. Daube: So RNG is one tool in the toolkit if employed correctly. Is that right?

Mr. Neme: Yes, if employed correctly and in reasonable balance with the other tools in the toolkit, given the relative costs.<sup>12</sup>

33. Under cross-examination, Mr. Neme and Dr. Hill also confirmed that their recommendation to increase RNG procurement is consistent with accepted views on reasonable decarbonization pathways:

Mr. Neme: ... [E]ven though we believe, given all of the studies that have been done, that RNG is not going to be the primary answer, most studies suggest that it needs to be part of the answer. And so, while it is more expensive than some of the other solutions to reducing greenhouse-gas emissions, if it needs to be part of the answer, then getting started on that part of the answer is a good thing.

The point we try to raise in our evidence about this is just let's be careful about the relative emphasis on RNG compared to other things that might be a lot less expensive.<sup>13</sup>

34. Mr. Neme and Dr. Hill also made clear their expectation that RNG will continue to have a significant role over the medium and long-term, similar to the findings of the CER set out above:

MR. NEME: And maybe, if I can provide some additional context: You know, if you look at the decarbonization studies for gas systems that are out there, of buildings, different scenarios have different answers. But generally speaking, I think they suggest that, by 2050, RNG in the gas system that is fully decarbonized probably has, you know, like a 10 to 20 percent role to play.<sup>14</sup>

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<sup>11</sup> Exhibit M1, Expert Report of Chris Neme and David Hill, Ph.D. dated August 12, 2024. See in particular pages 14, 18, 20. See also Transcript Volume 3, page 103.

<sup>12</sup> Transcript Volume 3, page 104.

<sup>13</sup> Transcript Volume 3, page 89. See also pages 96-97

<sup>14</sup> Transcript Volume 3, page 102. Dr. Hill clarified that the predicted percentages should be understood in the context of a likely decline in overall gas volumes.

35. Given their support for increased RNG procurement, it is important to examine the rationale behind Mr. Neme and Dr. Hill's recommendation to reduce procurement levels to 1% of total gas supply, as compared with EGI's proposed 2%.
36. Mr. Neme and Dr. Hill's recommended lower target is heavily premised on the expectation that, at an uncertain date in the future, the resulting unused funds will be redirected to other decarbonization initiatives, which is a premise that may or may not prove to be true.
37. More specifically, Mr. Neme and Dr. Hill confirmed under cross-examination that their recommended reduction of RNG procurement to 1% of EGI's gas supply is "intimately connected" to their recommendation to redirect funds to (or preserve available funds for) other future measures in support of decarbonization, meaning that their recommendation is not a savings measure for ratepayers, but more a reflection of the weighting they would give to the initial stages of a multipronged decarbonization approach.<sup>15</sup>
38. In circumstances where Mr. Neme and Dr. Hill's proposed alternatives remain highly uncertain, and where an aggressive, multifaceted approach to decarbonization is needed to address the urgency of climate change, Minogi and Three Fires support EGI's higher proposed procurement target of 2%.

*The RNG Proposal and Indigenous Framework Offer Economic and Social Benefits for Indigenous and Non-Indigenous Businesses and Communities Alike*

39. In addition to the decarbonization benefits that RNG will provide, stimulating the production of RNG projects in Ontario, and concurrent investments in this part of Ontario's economy, will also produce important economic and social benefits for local businesses and communities, and Indigenous investors.
40. Minogi and Three Fires agree with the general position asserted by Enbridge Gas that developing RNG projects in Ontario would likely result in extensive environmental, social and economic benefits.<sup>16</sup> Among other things, Minogi and Three Fires agree with EGI's assertions that economic benefits would lead to:

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<sup>15</sup> Transcript Volume 3, page 108-110.

<sup>16</sup> See, for example, Exhibit I.4.2-ED-49, Question E. See also Transcript Volume 3, page 2.

- (a) job creation, including jobs in construction, engineering, operations, and maintenance;
- (b) local energy production, as well as a related increase in energy security;
- (c) economic growth, including growth in related industries;
- (d) profit for local governments and private businesses through the sale of RNG and byproducts.<sup>17</sup>

41. To the extent that Indigenous businesses and communities are actively involved in the development of RNG in Ontario, it is reasonable to expect that they will experience similar benefits. The cross-examination testimony of Mr. Neme and Dr. Hill was unchallenged in this area and confirmed the following expectations relating to the benefits of Indigenous involvement in RNG production:

- (a) the benefit of ownership and return on investment;
- (b) jobs associated with the development of the project, as well as ongoing jobs associated with the operation of the project;
- (c) cash inflow into local communities, with positive rippling effects through the local economy; and
- (d) increased opportunities for Indigenous leadership and participation in Ontario's energy sector.<sup>18</sup>

42. Generating these benefits for Indigenous businesses and communities would represent a significant improvement on the status quo. At present, EGI does not procure RNG from any Indigenous-owned supplier,<sup>19</sup> and Minogi and Three Fires are unaware of any current significant Indigenous activity in the development or sale of RNG in Ontario.

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<sup>17</sup> Exhibit I.4.2-ED-49, Question E on page 3 of 4.

<sup>18</sup> Transcript Volume 3, page 106-107. See also M1-TFG/MC-3, Question B.

<sup>19</sup> Transcript Volume 3, page 3; Exhibit I.4.2-TFG/M-8, Question B.

43. Ontario is already consulting on the important role for natural gas and integrating RNG in Ontario's energy system and economy.<sup>20</sup> For Indigenous communities, participation in RNG projects presents opportunities for economic development, energy sovereignty, and community empowerment. By engaging in the RNG projects, Indigenous communities can generate revenue, create employment opportunities, and develop local capacity in the energy sector while maintaining strong environmental protection aligned with their cultural values.<sup>21</sup> Indigenous communities that host natural gas distribution systems would more easily be able to take advantage of RNG as a clean fuel alternative to natural gas.

*The RNG Proposal and Indigenous Framework Support Economic Reconciliation and Are Consistent with Ontario Government Policy and Other Applicable Priorities*

44. Three Fires and Minogi's support for EGI's RNG Proposal is contingent on the approval of the Indigenous Framework, since the framework ensures that EGI's proposed procurement will take place in a manner that promotes Indigenous ownership and participation in Ontario's energy sector, consistent with the express priorities of the Ontario Government and the requirements and objectives of economic reconciliation.<sup>22</sup>
45. Among other benefits, EGI, Three Fires and Minogi each believe that the Indigenous Framework, if approved, will improve Indigenous access to jobs and training in Ontario's energy sector, as well as produce long-term, sustainable benefits for Indigenous communities. EGI's position on these points was confirmed under cross-examination in the following exchange:

MR. DAUBE: Okay. So, here is the question: Do you agree that the Indigenous discount could help to support the objective of ensuring Indigenous access to jobs and training in the energy sector?

MS. WHITWAM: Yes, we do.

MR. DAUBE: And do you also agree that it could also help Indigenous communities to gain long-term, sustainable benefits from the development of RNG in Ontario?

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<sup>20</sup> [ERO 019-9501](#).

<sup>21</sup> See Indigenous Climate Hub, "Renewable Energy Projects In Indigenous Communities: Balancing Tradition And Innovation", (October 2024), available online: [https://indigenousclimatehub.ca/2024/10/renewable-energy-projects-in-indigenous-communities-balancing-tradition-and-innovation/?utm\\_source=chatgpt.com](https://indigenousclimatehub.ca/2024/10/renewable-energy-projects-in-indigenous-communities-balancing-tradition-and-innovation/?utm_source=chatgpt.com).

<sup>22</sup> Transcript Volume 3, page 4-9.

MS. WHITWAM: Yes.<sup>23</sup>

46. Enbridge Gas presented the Indigenous Framework in its opening statement to the Phase 2 oral hearing.<sup>24</sup> The proposed framework followed the nearly unanimous agreement<sup>25</sup> from the Phase 2 settlement conference that, to the extent EGI's proposals relating to RNG were approved, this proceeding should consider the question of how such approval can support the advancement of economic reconciliation with First Nations. The relevant settlement language was:

... the Parties, except for Energy Probe which takes no position, do agree that if procurement of low-carbon energy (or RNG) is approved, then any approval relating to Enbridge Gas's proposals regarding RNG procurement should include consideration of how any such approved program or initiative can contribute to advancing economic reconciliation with First Nations, which could potentially include procurement targets for First Nation-owned businesses in Ontario and/or discount pricing advantages for bids from First Nation-owned businesses as potential measures to help stimulate related First Nations business activity.<sup>26</sup>

47. The proposed Indigenous Framework adopts the structure that this settlement language anticipated. In particular, it employs the basic structure of procurement targets and discount pricing advantages for bids from First Nation-owned businesses. The sole modification from the type of structure that the settlement anticipated is that the Indigenous Framework would be available to Indigenous-owned businesses, as opposed to only First Nation-owned businesses.
48. As proposed, the key elements of the Indigenous Framework are the following, with full details set out in Exhibit K2.5:

- (a) 10% discount advantage for RNG bids submitted by Indigenous-owned businesses;<sup>27</sup>

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<sup>23</sup> Transcript Volume 3, page 8.

<sup>24</sup> Exhibit K2.5, page 5-6.

<sup>25</sup> All parties were in agreement, except for Energy Probe, which took no position.

<sup>26</sup> Exhibit K2.5, page 4.

<sup>27</sup> "Indigenous-owned business" is defined as any corporation, partnership, JV, etc., that includes Indigenous ownership or equivalent participation of 25% or more.

- (b) A “5% Indigenous Target”, meaning that the Indigenous Discount Advantage will apply until such time as the 5% Indigenous Target is achieved (or until the program’s end); and
  - (c) A requirement for EGI to report on the status of its progress towards the 5% Indigenous Target as part of its annual gas supply plan update.
49. These core elements operate together to provide an effective stimulus for Indigenous activity in the development and sale of RNG in Ontario. In particular, Minogi and Three Fires expect that both the discount and the target will provide important incentives for Indigenous businesses to increase their levels of activity in RNG development, in circumstances where there is virtually no such participation at present. The requirement for EGI to provide regular reports on the status of its progress will provide an effective accountability mechanism, in addition to generating information that could be helpful towards advancing economic reconciliation in the context of future endeavours in Ontario’s energy sector.
50. The structure of the Indigenous Framework received unchallenged expert support in this proceeding. Under cross-examination, Environmental Defence’s two experts, Mr. Neme and Dr. Hill, confirmed their general endorsement, assuming a policy goal of encouraging Indigenous participation in Ontario’s energy sector:

MR. DAUBE: Okay. So you are aware of the 10 percent discount advantage for Indigenous projects?

DR. HILL: Yes.

MR. DAUBE: And you are aware of the 5 percent Indigenous target?

DR. HILL: Yes.

MR. DAUBE: Now, assuming a policy goal of encouraging Indigenous participation in Ontario's energy sector, is that general framework consistent with the types of mechanisms that you were suggesting for consideration in your answer C [to M1-TFG/MC-3]?

DR. HILL: Yes, as a mechanism. Yes.<sup>28</sup>

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<sup>28</sup> Transcript Volume 3, page 108. See also M1-TFG/MC-3, Questions C and E.



51. The structure of the Indigenous Framework is also aligned with broader trends observed across the energy sector, both in Ontario and nationally. Various procurement processes, such as the IESO's LT-1 and LT-2 procurement, have established similar incentive mechanisms, awarding higher scores or financial advantages to proponents with meaningful Indigenous equity participation. This approach is also reflected in other jurisdictions and procurement processes, such as IESO's FIT contracts and BC Hydro's recent clean energy procurement process, where structured incentives encourage Indigenous ownership and long-term economic participation.<sup>29</sup> These precedents, as more fully detailed in Ginoogaming First Nation's submissions, demonstrate that the Indigenous Framework is consistent with established industry practices and evolving expectations for economic reconciliation in energy infrastructure development.
52. Among its other positive attributes, the Indigenous Framework helps to advance the priorities of the Ontario Government, which were most recently articulated in the document Ontario's Affordable Energy Future: The Pressing Case for More Power ("OAEF").<sup>30</sup> Most notably, the Indigenous Framework helps to address the priorities set out in the OAEF's introductory paragraphs, which emphasize the need for Indigenous leadership and participation in Ontario's energy sector:

**Ontario cannot afford to repeat the same mistakes as past governments and must move forward with energy planning that considers all sources of energy to meet our growing energy needs.**

This is a complex undertaking that will require [a] comprehensive view of how all energy sources are used across the economy. The pace of change has accelerated, and this is likely to continue as Ontario becomes home to new technologies and growing industries. Ontario must also plan for localized needs in certain communities and regions, changing the way power must flow across the province.

**To meet this challenge, Ontario needs planning and regulatory frameworks that support building infrastructure and resources quickly and cost-effectively, and in a way that continues to promote Indigenous leadership and participation in energy projects....<sup>31</sup>**

(Emphasis added.)

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<sup>29</sup> See also Ginoogaming First Nation's more extensive submissions at paras 12-20.

<sup>30</sup> Exhibit K3.1, pages 12-24.

<sup>31</sup> Exhibit K3.1, page 17. See also Transcript Volume 3, page 3.

53. The Indigenous Framework also advances the specific priorities set out in the OAEF's section of the report entitled "Indigenous Leadership and Participation". The section notes that Indigenous communities "see immediate and lasting economic benefits that come from their participation in energy projects, including revenue, business opportunity, job creation and skills development."<sup>32</sup> It lists the following priorities, among others, to strengthen Indigenous leadership and participation in Ontario's energy sector:

- (a) Early and **meaningful engagement** and consultation with Indigenous communities **on energy planning and major energy projects** is critical to building out our energy system;
- (b) **Continued capacity funding and support for Indigenous ownership and participation in energy projects is needed**, through programs like the provincial Aboriginal Loan Guarantee Program and the recently expanded IESO Indigenous Energy Support Program;
- (c) **Energy procurements need to incorporate the value of Indigenous leadership and participation by building on existing incentives** and engagement requirements; and
- (d) **Indigenous representation is critical** to ensuring there are Indigenous voices at the table on provincial energy matters.<sup>33</sup>

(Emphasis added.)

54. Significantly, the Indigenous Framework would also help to advance the priorities of economic reconciliation with Indigenous Peoples, understanding the concept by employing the same definition as the one adopted by Ontario's Electrification and Energy Transition Panel:

Simply defined, economic reconciliation can be understood as the inclusion of Indigenous people, communities, and business in all aspects of economic activity. As outlined in the Truth and Reconciliation Commission of Canada (the "**TRC**") Final Report, all reconciliation efforts require the following overarching principles

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<sup>32</sup> Exhibit K3.1, page 22. See also Transcript Volume 3, page 3-4.

<sup>33</sup> Exhibit K3.1, page 22. See also Transcript Volume 3, page 3-4.

of trust building, joint leadership, accountability, transparency and a substantial investment of resources.<sup>34</sup>

55. Relatedly, the Indigenous Framework is responsive to the TRC's Call to Action #92, which calls upon Canada's corporate sector to, among other things, improve Indigenous access to jobs, training, and the long-term sustainable benefits of economic development:

**92. We call upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:**

i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior and informed consent of Indigenous peoples before proceeding with economic development projects.

ii. **Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.**<sup>35</sup>

(Emphasis added.)

56. Finally, the Indigenous Framework would represent a positive step in support of EGI's own publicly-stated corporate commitments. Enbridge Inc's 2022 Indigenous Reconciliation Action Plan, which is applicable to Enbridge Gas,<sup>36</sup> sets out a pillar on economic inclusion and partnerships, which includes the following commitments:

- (a) To devise and formalize financial partnership processes that encourage strategies to provide opportunities for Indigenous economic participation;
- (b) To advance opportunities for Indigenous businesses to participate in Enbridge's supply chain; and

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<sup>34</sup> Exhibit K3.1, page 29. See also Transcript Volume 3, page 4-5, and Exhibit K3.1, page 27.

<sup>35</sup> Exhibit K3.1, page 46. See also Transcript Volume 3, page 5-7. EGI's applicable corporate, public-facing documents express a recognition of both the TRC and the United Nations Declaration on the Rights of Indigenous Peoples. See Exhibit K3.1, page 35, 50, 55, and 72, as well as Transcript Volume 3, page 5-8.

<sup>36</sup> Transcript Volume 3, page 8.

- (c) To establish Indigenous spend targets as they relate to Indigenous procurement.<sup>37</sup>

57. EGI believes (and Minogi and Three Fires agree) that the Indigenous Framework will help EGI to make progress in relation to its corporate objectives:

MR. DAUBE: And my general question is: Whether you agree with that, the Indigenous participation framework proposal is consistent with these objectives?

MS. WHITWAM: Yes, we believe it is.

MR. DAUBE: And may help Enbridge to advance them; right?

MS. WHITWAM: Yes.<sup>38</sup>

*The RNG Proposal and Indigenous Framework Is Consistent with the Goals and Discussions of the IWG*

58. Finally, the RNG Proposal and Framework are consistent with the priorities and discussions of the IWG, which has consistently identified initiatives that support increased levels of Indigenous economic partnership in areas like RNG development as a priority objective.

59. The IWG was created in Phase 1 of the current proceeding with the following purpose, as summarized by the Board:

The purpose of the working group is to provide information, receive feedback and engage in discussion about matters of interest to the IWG in relation to Enbridge Gas rates and services.<sup>39</sup>

60. All current Indigenous members of the IWG are intervenors in this proceeding, with the exception of Chippewas of the Thames First Nation ("**COTTFN**"), which has been advised by Minogi and Three Fires of the RNG Proposal and Indigenous Framework, provided an opportunity to review these submissions and the positions Minogi and Three Fires has taken in these submissions, and the relevant timelines in the event COTTFN wished to express its views to the Board.

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<sup>37</sup> Exhibit K3.1, page 72. See also Transcript Volume 3, page 8-9.

<sup>38</sup> Transcript Volume 3, page 10.

<sup>39</sup> Exhibit K3.1, page 90. See also Transcript Volume 3, page 10.

61. From the outset, the IWG identified measures to advance economic reconciliation as among the members' priority areas of focus. In particular, the IWG's constituting document identified as an initial area of focus: "Opportunities for economic partnership that may result from the energy transition on such matters as the development of renewable natural gas".<sup>40</sup>
62. In the regular meetings since the IWG's creation, Indigenous representatives at the IWG have continued to raise the themes of reconciliation and economic reconciliation as priorities for the First Nations they represent.<sup>41</sup> This has resulted in regular discussions of more specific items such as Indigenous procurement, employment, and economic participation, including in the area of the development of RNG:

MR. DAUBE: So, my question is: Is it fair to say that themes of reconciliation and economic reconciliation have continued to be priorities that have been raised by Indigenous representatives and discussed with the Indigenous Working Group?

MS. WHITWAM: Yes, they have.

MR. DAUBE: And there have been regular discussion on items such as Indigenous procurement, employment and general Indigenous economic participation?

MS. WHITWAM: Yes, regular discussion.

MR. DAUBE: And just to put the finer point on it, do you agree that these discussions have included and continuing interest on the part of First Nations representative in renewable natural gas and the potential for Indigenous participation in its development?

MS. WHITWAM: Yes, I agree.<sup>42</sup>

63. Given the alignment between the Indigenous Framework and the consistently expressed priority of the IWG members to promote Indigenous economic participation in Ontario's energy sector, and RNG specifically, Minogi and Three Fires believe that the Indigenous members of the IWG will agree that the Indigenous Framework, as a structure and in the supports for Indigenous business that it offers, represents a positive step forward in support of economic reconciliation, recognizing that some may advocate for higher levels

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<sup>40</sup> Exhibit K3.1, page 95 and 97. See also Transcript Volume 3, page 10.

<sup>41</sup> Transcript Volume 3, page 10.

<sup>42</sup> Transcript Volume 3, page 10-11.

of ambition through higher Indigenous procurement targets and deeper discount advantages.

*Concluding Remarks Regarding the RNG Proposal and Indigenous Framework*

64. The RNG Proposal and Indigenous Framework represent important progress for both decarbonization and economic reconciliation, but it bears emphasizing that it would only be a preliminary and partial step. By providing a discount advantage and target, the Indigenous Framework addresses structural disadvantages faced by Indigenous-owned producers and ensures they can meaningfully participate in and benefit from the RNG market, advancing Ontario's commitments to economic reconciliation and inclusive growth in the energy sector.
65. Much more remains to be done. Three Fires and Minogi will continue to advance the position that Ontario's energy sector, including Enbridge Gas, must do much more to advance decarbonization efforts, as well as Indigenous participation and leadership, in a manner consistent with economic reconciliation and the Ontario Government's stated priorities.
66. Nevertheless, Minogi and Three Fires believe that the Indigenous Framework, in particular, represents important progress in support of economic reconciliation and increased Indigenous participation and leadership in Ontario's energy sector, recognizing that it is only one measure among many that must be undertaken. The RNG Proposal and Indigenous Framework together would constitute important measures in support of Indigenous Peoples, their communities and business, consistent with an approach that delivers long-term and sustainable benefits for the people of Ontario more broadly.

**B. Revenue Decoupling**

67. Minogi and Three Fires have reviewed the submissions of Environmental Defence and GEC on the issue of Incentive Ratemaking Mechanisms and in particular the parties' proposal for revenue decoupling (the "**Revenue Decoupling Proposal**").<sup>43</sup>

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<sup>43</sup> Submissions of Environmental Defence and the Green Energy Coalition, dated January 27, 2025.

68. Minogi and Three Fires support the alternative relief sought by Environmental Defence and GEC, being the proposal to decouple EGI's revenue from its customer counts on an implementation timeline coinciding with EGI's next rebasing application.<sup>44</sup>
69. Minogi and Three Fires offer the following comments in support of their position. These comments focus on their view that the Revenue Decoupling Proposal could serve to mitigate the risk of stranded assets as well as improve customer choice in the context of the energy transition, both of which are issues of very high importance to Minogi and Three Fires, as well as the First Nations they represent.<sup>45</sup>
70. Minogi and Three Fires have consistently expressed the concern, both in the current proceeding and in the context of the IWG, that the risk of stranded assets that EGI faces could produce especially negative consequences for Indigenous customers, if the risk is not appropriately managed and mitigated.
71. EGI's own experts have acknowledged the extent of the risk of stranded assets and the related risk of a company "death spiral" in which an imprudently bloated gas network finds itself confronted by a shrinking customer base incapable of shouldering rapidly escalating costs. In Phase 1 to this proceeding, EGI's expert Concentric explained the risk of a death spiral for gas utilities like EGI as follows:

#### **"Death Spiral" Risks**

Over the long-term, gas distribution utilities such as Enbridge Gas face the risk that they will lose customers and lead to electrification and other energy sources. However, gas distribution utilities must continue investing in the short-term to maintain the safe and reliable provision of utility service. **Together, those two factors mean it is possible that gas distribution utilities face what has been termed a "death spiral" whereby an increasing amount of cost must be recovered from a continually shrinking customer base.** In a death spiral scenario, the resulting rate increases provide incentives to customers to leave the gas system, creating a negative feedback loop of rate increases and customer departures....

**A future "death spiral" is far from certain, and we anticipate that the Company will work proactively to avoid such an outcome. However, it is possible.** In 2020, residential customers accounted for approximately 57% of the Company's revenues but just 32% of its sales volumes. If a meaningful portion of

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<sup>44</sup> Submissions of Environmental Defence and the Green Energy Coalition, dated January 27, 2025, page 16.

<sup>45</sup> See also Phase 1, GFN submissions at paras 20-29.

these customers switch to non-gas heating sources, whether due to technological advancements, environmental concerns, or policy mandates, costs will increase for the Company's remaining customers. Such a scenario could potentially spark a so-called "death spiral."<sup>46</sup>

(Emphasis added.)

72. EGI faces this risk even in less extreme scenarios. For example, EGI's expert Concentric has recognized the risk "that large scale retirement of assets may be required in the periods between now and 2050."<sup>47</sup>
73. Both phases to this proceeding have heard from experts who have testified that First Nation customers have the potential to bear the risk of stranded assets in a disproportionate manner, to the extent they lack the means or the options to exit an EGI gas network in rapid decline.<sup>48</sup>
74. In Phase 2, that evidence was provided by Mr. McDonnell, who testified that revenue decoupling could help to mitigate the stranded asset risk that Indigenous customers disproportionately face:

... [Revenue decoupling] is just one of many tools that can be utilized to better balance risk. And, when we say "risk," I am referring to the prospect of potentially stranded asset risks into the future as one risk to be concerned about. I would suggest that longer term stranded asset risk does have the potential to be borne in a disproportionate manner by lower income customers as well as First Nations customers, given the characteristics that you have described to me and accepting those.<sup>49</sup>

75. Minogi and Three Fires support the Revenue Decoupling Proposal as an effective way to reduce EGI's incentive to unwisely or imprudently support expansion in a way that exacerbates the risk of system bloat and the long-term risk of stranded assets, already acknowledged as a significant risk by their own experts.
76. Minogi and Three Fires also wish to underscore the very reasonable point that Environmental Defence and GEC make in their submissions regarding the likelihood that

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<sup>46</sup> Exhibit 5, Tab 3, Schedule 1, Attachment 1, page 53-54.

<sup>47</sup> Exhibit 4, Tab 5, Schedule 1, Attachment 1, section 3.2.3.

<sup>48</sup> See Phase 1, Transcript, Volume 6 (20 July 2023) at 110:24-112:13; and Phase 1, GFN submissions, at paras 20-29

<sup>49</sup> Transcript Volume 1, page 200.



EGI is likely to advocate for revenue decoupling in the near future, if and when their customer counts start to decline, as their own records will soon occur:

Eventually, customer counts will start declining. Enbridge expects that to occur in 2034. At that point, Enbridge will almost certainly advocate to decouple revenue from customer counts as that would be necessary “to keep the company whole.” If we will have revenue decoupling at that point, we might as well adopt it now while there is an opportunity to return some of the incremental distribution margin back to customers.<sup>50</sup>

77. Minogi and Three Fires are also persuaded by the arguments of Environmental Defence and GEC that the Revenue Decoupling Proposal would improve customer choice, which is a high priority for Minogi and Three Fires as part of their efforts to promote more sustainable energy options for the communities they represent.
78. Ensuring that EGI has incentives in place that are consistent with Ontario’s decarbonization goals will be a crucial factor in determining the success (or lack thereof) in achieving those goals. The ability for EGI to support or make room for sustainable energy alternatives like electrified heat pumps or geothermal networks is compromised for as long as one of EGI’s overriding motivations is to increase gas connections.
79. Proper incentives are also crucial in support of long-term energy affordability and access for First Nations in general. In addition to the potential cost impacts resulting from the risk of stranded asset risks described above, a failure on the part of EGI to support a full range of energy options means that more remote First Nation communities are far less likely to obtain access to technologies like heat pumps and geothermal networks, even as such technologies become more widely viable. An overriding imperative of gas system expansion runs directly counter to the advancement of the full range of affordable, reliable and sustainable energy options that those communities require and deserve.

#### **IV. RELIEF REQUESTED**

80. Therefore, Three Fires and Minogi respectfully request that the Board:

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<sup>50</sup> Submissions of Environmental Defence and the Green Energy Coalition, dated January 27, 2025, page 13.

- (a) Approve the Indigenous Framework<sup>51</sup> as part of any approval of EGI's RNG Proposal; and
- (b) Grant the alternative relief sought by Environmental Defence and GEC of decoupling EGI's revenue from its customer counts on an implementation timeline coinciding with EGI's next rebasing application.

## **V. COSTS**

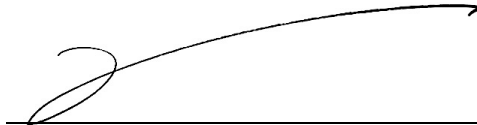
81. Three Fires and Minogi respectfully submit that they have participated responsibly in this proceeding with a view to maximizing their assistance to the Board, and therefore request that the Board order reimbursement of their reasonably incurred costs.

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<sup>51</sup> As set out at paragraphs 80-82 of EGI's Argument-in-Chief and in Exhibit K2.5.

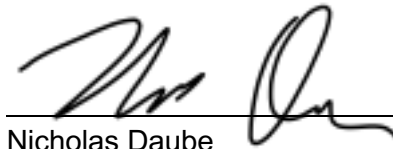
ALL OF WHICH IS RESPECTFULLY  
SUBMITTED THIS

18<sup>th</sup> day of February, 2025



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