

BY EMAIL AND RESS

February 19, 2025

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

Dear Ms. Marconi:

**Re: EB-2024-0125 Enbridge Gas 2023 Deferral & Variance Account Disposition
OEB Decision on Settlement Proposal and Procedural Order No. 2
Request from all parties for reconsideration**

On January 28, 2025, the OEB issued its Decision on Settlement Proposal and Procedural Order No. 2 (the Decision). In the Decision, the OEB declined to approve the Settlement Proposal, pointing to several concerns. In the Procedural Order, the OEB made provision for continuation of the settlement conference to allow the parties the opportunity to consider amending the Settlement Proposal for the OEB's consideration.

On February 4, 2025, the parties met to discuss the Decision and next steps. This letter is the result of the discussions.

This letter is written on behalf of all parties to the Settlement Proposal, and represents the view of all parties, including Enbridge Gas. Parties are aware that the information and discussion resulting in the Settlement Proposal may not have been clearly transparent to the Panel and have resulted in Panel questions noted in the Decision. All elements of the Settlement Proposal are directly related to the application as filed. As set out in this letter, the parties are requesting that the OEB reconsider its Decision on the Settlement Proposal.

Enbridge Gas presented the Fugitive Emissions Measurement Plan for the OEB's consideration in this 2023 Deferrals Application, as contemplated by OEB-approved Phase 1 Settlement Proposal. The parties acknowledge that the settlement of the Fugitive Emissions Measurement Plan item presumed that the OEB would accept the planned course of action. The parties acknowledge the OEB's comments that the approval of the Phase 1 Settlement Agreement did not in any way obligate the OEB to approve the Fugitive Emissions Measurement Plan. We further acknowledge that the OEB is mandated to consider whether a Settlement Proposal and spending contemplated within a Settlement Proposal are in the public interest and result in just and reasonable rates.

With that context, the parties want to convey their collective view that the Settlement Proposal represents a fair, balanced solution to the various issues engaged by Enbridge Gas's Application

and evidentiary filing. Overall, the settlement is a carefully crafted package of settled items, involving compromises on a number of different items. The Settlement Proposal takes into account that different parties have different priorities and areas of focus. In total, all parties are supportive of the package of settled items, even where they might have different perspectives on particular items. It is for these reasons that the Settlement Proposal was presented as a package. And it is for these reasons that the parties are asking the OEB to reconsider the Settlement Proposal as a first step, rather than immediately engaging in a re-negotiation.

The OEB frequently schedules a “presentation day” for settlement proposals, to allow the parties the opportunity to explain the agreement and to answer the OEB’s questions and concerns. While we in no way suggest that the OEB is bound to accept any Settlement Proposal presented, we had understood that where the OEB has serious concerns about a Settlement Proposal these would be raised with the parties before rendering a decision.

Based on the OEB’s comments in the Decision, and a further review of the Settlement Proposal, we can understand that the rationale supporting the settlement may not have been apparent. The following is the parties’ response to the issues raised in the OEB Decision. We have organized the submissions below using the same headings as used by the OEB in the Decision.

Scope of the Settlement Proposal

The Decision indicates that the scope of the Settlement Proposal appears to exceed the requests for approval set out in Enbridge Gas’s application, in the area of the Fugitive Emissions Measurement Plan. With respect, the parties do not agree.

The parties believe that there is fair linkage between the application and evidence and the Settlement Proposal.

The Settlement Proposal touches only on items that were addressed in Enbridge Gas’s application and prefiled evidence – earnings sharing calculations, deferral and variance account clearances and reporting, the Indigenous Working Group budget and Enbridge Gas’s Fugitive Emissions Measurement Plan.

In the Rebasing Phase 1 Settlement Proposal, the OEB approved the settlement of the UFG issue which included the commitment by Enbridge Gas to prepare and file an investigation plan for fugitive emissions for determination by the OEB in the 2023 Deferrals Application.¹ The fugitive emissions plan was to include consideration of top-down measurement.

Enbridge Gas filed evidence from its expert Highwood Emissions Management Inc. about a proposed Fugitive Emissions Measurement Plan. Enbridge Gas proposed a pilot project, consistent with the evidence, to evaluate whether to proceed with broader fugitive emissions measurement activities.² As explained in evidence, there is no immediate plan to proceed with implementation of the full system-wide Fugitive Emissions Measurement Plan activities until the pilot project work is completed.

The Settlement Proposal adds to the scope of the pilot project, and to related reporting, but all of this can be linked to the evidence provided and the general nature of the Fugitive Emissions

¹ EB-2022-0200 Partial Settlement Proposal, Exhibit O1, Tab 1, Schedule 1, July 12, 2023, p. 37.

² Exhibit D, paragraphs 120-128.

Measurement Plan. The parties submit that it is not uncommon, and not improper, for a settlement to address items raised in an application, but in a creative and different way from what was proposed by the applicant. It is one of the reasons the OEB's settlement process has been so successful.

We believe that all interested parties had the opportunity to be part of this proceeding, and would have known or been able to know the scope of the case. As required by the OEB's Letter of Direction, all parties who were part of Enbridge Gas's Rebasing Case (Phase 1) were provided with a copy of the application and evidence and given the opportunity to intervene. The evidence set out the Fugitive Emissions Measurement Plan and the proposal to begin with initial pilot project work (comprised of mobile ground (vehicle) emissions measurement technology and the development of Company-specific emission factors)³. While the Settlement Proposal also includes an agreement that Enbridge Gas would develop a plan for a pilot to explore the use of top-down emission measurements, there was no agreement for incremental funding beyond the capped deferral account for further action. Enbridge Gas agreed to provide the plan, including costs and benefits, in a future application so that it could be assessed.

The parties also agree that the Notice of Hearing was sufficient. The Notice of Hearing states as follows: "Other customers, including businesses, may also be affected. It is important to review the application carefully to determine whether you may be affected by the proposed changes." A Fugitive Emissions Measurement Plan, including a pilot, and an associated deferral account were explicitly proposed and detailed in the application. Notices provide only a high-level summary and do not need to itemize each potential outcome in a case.

Enbridge Gas's Approved IRM Framework

The parties acknowledge that it's unusual for a proceeding dealing with outcomes from one incentive rate period (2023) to have implications for the next incentive rate period (2025 and beyond). However, the parties do not believe that this is improper here.

The OEB-approved Phase 1 Rebasing Settlement Proposal specifically contemplated that the Fugitive Emissions Measurement Plan would be presented in this 2023 Deferrals Application. The (unstated) reason for that timing was that the 2023 Deferrals Application was the first available adjudicated Enbridge Gas filing expected for the time after Enbridge Gas had developed the Fugitive Emissions Measurement Plan and would be an appropriate forum for this purpose in light of the UFG issues in this proceeding.

The parties believed (and continue to believe) that the OEB's approval the Phase 1 Settlement Proposal was a fair signal that the OEB would allow for the Fugitive Emissions Measurement Plan to be presented and reviewed in this case, even though the nature of the case was otherwise generally focused on 2023. None of the parties intended for this to be a "back door" to add new projects not otherwise contemplated with the 2024-2028 IRM term. Instead, consideration of this item within the 2023 Deferrals Application was intended to be a convenient forum to conclude an issue already raised within the Rebasing proceeding.

The parties agree that DVA proceedings can be completed efficiently. However, they are not entirely mechanistic and are much less mechanistic than cases such as annual IRM proceedings

³ Exhibit D, Tab 1, page 64

or Federal Carbon Pricing Program proceedings. The prudence of hundreds of millions of dollars in costs is at issue. The most efficient way to address DVA proceedings is to strive for compromises and settlement, as the parties have done here.

Fugitive Emissions Measurement Plan

The parties acknowledge that fugitive emissions are but one component of UFG and that the estimated cost to ratepayers of gas lost to known fugitive emissions was relatively modest in 2023 (\$4.5 million).⁴ However, some parties believe that a proportion of “unexplained” UFG may also be a result of fugitive emissions. Each year, a large proportion of UFG is “unexplained”, in the sense that it has not been attributed to a known cause such as timing or measurement issues.⁵ For context, the total cost of UFG (both “explained” and “unexplained”) in 2023 was over \$40 million.⁶ All the parties agreed to a Fugitive Emissions Investigation Plan that may provide for more accurate measurement data, which may in turn contribute to a better understanding of how fugitive emissions could impact the volume of unexplained UFG.

The parties acknowledge the OEB’s several stated concerns about embarking on the Fugitive Emissions Measurement Plan in 2025. However, the parties are not proposing implementation of the full Plan in 2025. For example, the parties agreed on a pilot project to conduct further review. It is that pilot project that is core of what is being presented for consideration, which was set out in Enbridge’s initial application. While there is not unanimity among the parties as to the scale of any fugitive emissions issues, and as to what further steps to reduce fugitive emissions would be prudent, the parties do agree that there could be benefit from understanding how fugitive emissions measurement can be improved. That is an aim of the pilot project. As part of the overall settlement of all issues in this case, the parties have accepted that this approach, including a \$2.6 million funding limit is appropriate. The parties include representatives of the customer groups who will be paying for the costs.

Incremental funding to implement the Fugitive Emissions Measurement Plan would require OEB review and approval.

New Deferral Accounts

The OEB questions whether a new deferral account is appropriate, given the \$2.6 million spending limit.

The Settlement Proposal reflects a significantly more limited deferral account than Enbridge Gas had requested as part of its Application, which involved no limit on costs that could be record, its duration, and had much broader language on the type of expenditures that were eligible.⁷ The Settlement Proposal limits the eligible amount at \$2.6 million, limits the duration of the account until the end of 2025⁸, and narrows the scope from all expenditures related to implementing the Fugitive Emissions Investigation Plan to only those related to the pilot project. The agreed limits

⁴ Exhibit I.ED-10 (The OEB decision states \$4.3 million. It is not clear where that figure is sourced from.)

⁵ Exhibit I.STAFF-7, p. 7.

⁶ Exhibit I.ED-4.

⁷ Exhibit D, Tab 1, Attachment 2

⁸ See note below referencing that Enbridge Gas will need more time than the end of 2025, given the timing of this process.

are a compromise that on the one hand sets a cost ceiling to protect ratepayers and on the other hand recognizes that Enbridge Gas is not otherwise funded for this pilot project.

In response, the parties submit that the creation of a new deferral account was a fair request in the case, and that the \$2.6 million threshold is appropriate.

As stated at the outset, this Settlement Proposal reflects a package of agreements, including compromises and concessions by certain parties. The inclusion of the new deferral account, and associated deferral account is an important part of that calculus.

The parties recognize that the cost limit for the proposed new deferral account is below the new \$3 million materiality threshold for establishing new deferral and variance accounts during Enbridge Gas's 2024-2028 IRM term. However, this Settlement Proposal was reached before the settlement in Rebasing Phase 2 was completed, and as a result the parties did not know, at the time, that there would be a \$3 million materiality threshold for new accounts.

Furthermore, the issue of the interaction between the two Settlement Proposals on this very issue was raised during the Presentation Day of the Rebasing Phase 2 Settlement Proposal.⁹ In response to a question from the OEB panel hearing that matter, Enbridge Gas confirmed that this was simply a result of the timing of respective settlements and that the intent was that the \$3 million materiality threshold was not meant to apply to the Settlement Proposal in this DVA proceeding. No party to the Rebasing Phase 2 Settlement Proposal disagreed with Enbridge Gas's response to the panel's question which reflected the view of the signatories.

Settled Issues 2c, 3g and 3r – Interim Disposition

It is reasonable for the Settlement Proposal to provide interim disposition of the 2023 UFG amounts. The OEB previously approved the interim disposition of the 2021 and 2022 UFG amounts in recent proceedings.¹⁰

Considerations in settlement review decisions

The Decision does recognize the OEB's commitments to the settlement conference process as part of its objectives of improving regulatory efficiency. While there is no doubt the OEB can reject a Settlement Proposal, the parties believe it is important that the threshold for doing so be sufficiently high. This is for several reasons:

- The setting of just and reasonable rates rarely leads to a single correct answer, but a range of reasonable outcomes.
- Settlements should be encouraged not just because they promote regulatory efficiency, and reduce regulatory costs, but also because they allow for creative solutions to reconcile diverse interests.

⁹ EB-2024-0111, Motion Hearing and Settlement Proposal Presentation Day (November 18, 2024), Transcript, p.77-79

¹⁰ Exhibit I.ED-1.

- The OEB can be confident that settlements have been negotiated and condoned by multiple intervenors seeking to protect the diverse interests of ratepayers.
- The OEB can take comfort where OEB staff reviews and endorses a Settlement Proposal as being in the public interest, as was the case here.
- Applicants and intervenors take risks in presenting a settlement because a settlement involves disclosing to the OEB the concessions that they are willing to make. Applicants and intervenors may be reluctant to enter into settlements if there is an increased likelihood that they will need to advocate for issues before the OEB in a contested hearing after disclosing the concessions that they were willing to make on those issues.

Next Steps

Based on the information set out in this letter, the parties request that the OEB reconsider its Decision. In the event that the OEB makes a determination that it will accept the Settlement Proposal, then (as noted in Enbridge Gas's January 9, 2025 letter) there will likely have to be some modest changes to the Settlement Proposal to reflect updated timing to implement the commitments related to the Fugitive Emissions Measurement Plan. This would include timing of activities, reporting and cost incurrence and recovery. The parties have not discussed specific updated wording given the content of the Decision.

If, after reviewing this letter, the OEB believes it is unable to accept the Settlement Proposal, then the parties respectfully request an opportunity to respond to any continuing questions or concerns. In the alternative, the parties respectfully request the opportunity to reconvene the settlement conference. This would be done as soon as possible.

Please let us know if you have questions.

Yours truly,

AIRD & BERLIS LLP



David Stevens

C: all parties in EB-2024-0125