Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2024-0078

ENBRIDGE GAS INC.

Motion to Review and Vary the December 21, 2023 Decision and Order in EB-2022-0200

BEFORE: **Anthony Zlahtic**
Presiding Commissioner

Robert Dodds
Commissioner

Michael Janigan
Commissioner

April 15, 2025

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1 DECISION AND ORDER OF COMMISSIONERS ZLAHTIC AND JANIGAN

1.1 OVERVIEW

This is a Decision and Order of Commissioners Zlahtic and Janigan. A dissenting opinion by Commissioner Dodds follows.

In this motion, Enbridge Gas Inc. (Enbridge Gas) asks the Ontario Energy Board (OEB) to review and vary two aspects of the December 21, 2023 Decision and Order in Enbridge Gas's 2024 Phase 1 cost of service application:[1]

1. The lengthening of the Average Useful Life of seven asset classes for depreciation purposes (the Asset Lives Issue); and

2. The denial of the inclusion of undepreciated capital costs for integration capital in 2024 rate base (the Integration Capital Issue).

The OEB invited written submissions on the threshold question of whether to hear the motion on the merits. In a Decision and Procedural Order No. 2 issued on October 8, 2024, the OEB determined that the motion meets the threshold on the Integration Capital Issue but not on the Asset Lives Issue. The OEB decided to hear the Integration Capital Issue on its merits and accordingly scheduled written arguments.

Having considered the arguments of Enbridge Gas, intervenors and OEB staff, the review panel denies the motion for the reasons that follow.

1.2 CONTEXT AND PROCESS

The OEB issued its Phase 1 Decision on December 21, 2023. Enbridge Gas filed a Notice of Motion on January 29, 2024, seeking review and variance of five aspects of the Decision. In an Amended Notice of Motion filed on May 29, 2024. Enbridge Gas limited the request for review and variance to two issues: the Asset Lives Issues and the Integration Capital Issue.

In the Notice of Hearing and Procedural Order No. 1, the OEB invited written submissions on the threshold question. All intervenors in EB-2022-0200 were deemed to be intervenors in the motion to review. In a Decision and Procedural Order No. 2

[1] EB-2022-0200

issued on October 8, 2024, the OEB determined that the motion meets the threshold on the Integration Capital Issue but not on the Asset Lives Issue.

The OEB invited written submissions on the merits of the Integration Capital Issue, but also left open the possibility of an oral hearing. In Procedural Order No. 3 dated November 8, 2024, the OEB cancelled the tentative oral hearing date and directed Enbridge Gas to file a written reply submission.

1.3 INTEGRATION CAPITAL

In the Phase 1 Application, Enbridge Gas indicated that it spent $189 million on integration capital projects during the deferred rebasing term. Enbridge Gas requested that the net book value of $119 million ($189 million less depreciation) be included in the opening 2024 rate base.

In its Decision, the OEB disallowed the addition of the net integration capital in the amount of $119 million to rate base. The OEB found that Enbridge Gas's request was inconsistent with the intent of the OEB's decision in the proceeding in which it approved the merger of Enbridge Gas Distribution Inc. (Enbridge Gas Distribution) and Union Gas Limited (Union Gas) (the MAADs decision).[2]

In the draft rate order, Enbridge Gas noted that the $119 million was an estimate of the net book value of the integration assets. Enbridge Gas clarified that the noted amount ($119 million) did not represent the forecast net book value embedded in opening rate base because it was not possible to isolate the net book values of individual assets under group depreciation. The majority of the integration assets were classified as computer software and Enbridge Gas indicated that the computer software plant accounts had large accumulated depreciation balances. Consequently, Enbridge Gas noted that only $91 million of net book value related to integration assets was remaining to be written off. Enbridge Gas explained that the difference of $28 million ($119 million minus $91 million) represented depreciation expense that had already been recognized during the deferred rebasing period. Accordingly, in the final rate order, the OEB approved a reduction of $91 million to the 2024 rate base in relation to integration capital in place of the $119 million discussed in its Decision.

Enbridge Gas argued that the OEB's Decision on the Integration Capital Issue improperly interprets the evidence presented and relies on that improper interpretation

[2] Decision and Order, EB-2022-0200, December 21, 2023, pp. 73-75.

to deny future recovery of the costs. Enbridge Gas identified two specific errors with the Phase 1 determination on the Integration Capital Issue:

i. Enbridge Gas argued that the OEB erroneously found that the main integration capital expenditures at issue were directed at property consolidation projects that were only needed because of the amalgamation. The OEB cited this as justification for why the Company and not ratepayers should absorb remaining costs. Accordingly, Enbridge Gas submitted that the OEB's finding was incorrect. Enbridge Gas clarified that the property consolidation projects were planned but did not proceed and the integration costs at issue do not include any amounts for property consolidation projects. Enbridge Gas explained that the main integration capital expenditures were information technology ("IT") projects that were needed regardless of the amalgamation.

ii. The Phase 1 Decision found that Enbridge Gas had integration savings that exceeded costs and therefore it was fair to have the company absorb the remaining costs. Enbridge Gas disputed this and noted that the company's total integration costs, when operations and management (O&M) as well as capital costs are taken into account,[3] in fact exceeded savings by more than $100 million. Ratepayers are receiving the full ongoing benefit of integration savings achieved during the deferred rebasing term (more than $85 million per year) in the new 2024 rates and it was unfair according to Enbridge Gas for the shareholder to absorb the entire integration capital costs. Enbridge Gas submitted that if it is required to absorb the integration costs, it would result in a windfall for ratepayers.

Under the OEB's MAADs policies and under the OEB's "beneficiary pays" and "benefits follow costs" principles, Enbridge Gas argued that it is proper that ratepayers pay for the remaining costs of the integration capital investments.[4]

Enbridge Gas also argued that the Phase 1 panel provided insufficient reasons for disallowing the integration capital. Enbridge Gas pointed out that the findings on this issue were only two pages long, and submitted that the panel "failed to provide reasons for its interpretation of OEB policies, failed to address material evidence or arguments

[3] Enbridge Gas argued that "the OEB's Decision did not take account of the Company's O&M costs associated with amalgamation over the deferred rebasing term, all of which ($280 million in total) were absorbed by Enbridge Gas without any supplementary recovery in rates: Argument in Chief, para. 43 (emphasis in original).
[4] Enbridge Gas Motion Submission October 18, 2024, p. 3 s. 5.

adduced by Enbridge Gas and made findings without adequately explaining the evidentiary foundation and chain of reasoning in support of those findings."

Accordingly, Enbridge Gas requested that the OEB vary the Decision in relation to the Integration Capital Issue by approving the inclusion of the net integration capital costs in 2024 rate base, which would be a net amount of $91 million.

Position of OEB Staff and Intervenors

OEB staff and intervenors that made submissions on the Integration Capital Issue argued that the Phase 1 Decision should not be varied and the motion should be dismissed.

The Vulnerable Energy Consumers Coalition (VECC) submitted that the arguments of Enbridge Gas are without merit, repetitive and provide no new information or persuasive analysis to refute the OEB's findings in the Phase 1 Decision. The Canadian Manufacturers and Exporters (CME) submitted that the Phase 1 Decision on the Integration Capital Issue was based on the available evidence and used a rational chain of analysis to reach its conclusion.

Intervenors and OEB staff agreed that the GTA East and West real estate consolidation projects that were referred to in the Phase 1 Decision as examples of integration capital did not proceed. Although they agreed with Enbridge Gas that these property consolidation projects were not included in the undepreciated integration capital costs sought to be added to 2024 rate base, they submitted that reference to these project in the Phase 1 Decision did not in any way alter the rationale that was being applied to deny the inclusion of integration capital to rate base.

Intervenors and OEB staff submitted that the property consolidation projects were used merely as examples of projects that would not have been incurred in the first place in the absence of amalgamation. VECC argued that the OEB may have erred in citing the example but this has no bearing on the principle it was applying.

The School Energy Coalition (SEC) and CME argued that it was the amalgamation of Enbridge Gas Distribution and Union Gas that was the driver of IT spending during the deferred rebasing period. CME submitted that ratepayers were denied the benefit of continuing with the existing IT infrastructure and not having to pay additional capital costs because of the shareholder's desire to amalgamate. CME believed that the Phase 1 Decision was fair and recognized that it would not be appropriate for ratepayers to pay for projects caused by the amalgamation. Pollution Probe argued that ratepayers are

being asked to not only pay for all the IT costs that they did before the merger, but also additional costs related to the merger integration.

SEC and OEB staff further noted that Enbridge Gas's argument that some of the integration capital IT projects would have been required absent the merger was first introduced at the oral hearing and not referred to in the pre-filed evidence, interrogatory responses or at the technical conference making it impossible at that stage of the proceeding to determine which IT spending would have proceeded absent amalgamation. This raises a practical difficulty according to OEB staff as there is very little evidence on what the predecessor companies to Enbridge Gas would have spent (and when) if they had not amalgamated. OEB staff submitted that the evidence does not support Enbridge Gas's argument that the entire amount of undepreciated integration capital must be included in 2024 rate base without knowing more about what projects were completed and confirming that these projects would have been required absent amalgamation.

OEB staff argued that the burden of proof is on the applicant.[5] If Enbridge Gas's theory was that the integration capital expenditures are recoverable because they would have been incurred even without the amalgamation, then it was incumbent on Enbridge Gas according to OEB staff to lead persuasive evidence supporting that theory.

With regard to Enbridge Gas's claim that integration costs exceeded savings by more than $100 million, SEC argued that, even if the OEB's calculation on savings was incorrect, Enbridge Gas's calculation was also wrong and inconsistent with the MAADs Framework and the MAADs Decision.[6] SEC explained that the benefit that Enbridge Gas received through the deferred rebasing period was not just the direct O&M savings from the merger but also included the savings since its last rebasing for an additional five years.

Pollution Probe suggested that Enbridge Gas's view on achieved savings was counter to its rebasing evidence that the merger delivered on what Enbridge Gas claimed in the MAADs application.[7] Pollution Probe submitted that it was irrational for Enbridge Gas to claim that it delivered on all the expectations from the merger, but it has residual net costs that should be recovered at rebasing.

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[5] *Ontario Energy Board Act, 1998*, s. 36(6).
[6] Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016 (the MAADs Framework) EB-2017-0306 / 0307, Decision on Amalgamation of Enbridge Gas Distribution and Union Gas Limited, August 30, 2018 (the MAADs Decision).
[7] EB-2017-0306/0307 – Application for Approval to Amalgamate Enbridge Gas Distribution and Union Gas Limited.

CME and SEC claimed that Enbridge Gas had earned $231 million above its allowed return on equity which was more than the $91 million that it was seeking to add to the 2024 rate base. SEC submitted that the OEB was correct in finding that it would be unfair to allow the company to pass the significant integration costs to customers after it had reaped the benefits of amalgamation during the deferred rebasing term.

Additionally, CME and SEC maintained that Enbridge Gas's reliance on new language regarding recovery of integration spending, included in the updated MAADs Handbook,[8] issued six months after the Phase 1 Decision, was misplaced. SEC argued that the language in the document was not legally relevant and does not legally bind the OEB panel. Furthermore, the Phase 1 OEB panel could not have considered policy guidance that did not exist at that time.

SEC rejected Enbridge Gas's assertion that the Phase 1 hearing panel failed to apply the "benefits follow the costs" principle. SEC submitted that Enbridge Gas was essentially re-arguing its case and the OEB had already rejected the same argument in the Phase 1 Decision.

CME noted that in the context of amalgamation, the OEB apportions the benefits of amalgamation between the utility and the ratepayers, and this is determined through the length of the deferred rebasing period. The MAADs Decision granted Enbridge Gas a deferred rebasing period of five years and noted that five years was a reasonable opportunity to recover transition costs.[9] CME argued that Enbridge Gas received benefits through the deferred rebasing period and was given an appropriate opportunity to recover transaction and integration costs.

VECC argued that there is no widely accepted rate making principle nor any jurisprudence that instills a "benefit follows cost" principle: "Repetitively stating that "benefits follow costs' does not make it some form of inviolate regulatory principle." VECC submitted that Enbridge Gas believes that it is entitled to rate recovery for costs incurred in pursuit of the amalgamation of the two former gas utilities. VECC noted that the OEB in Phase 1 agreed that the utility was entitled to recover integration costs during the five-year deferred rebasing period.

Lastly, OEB staff and SEC disagreed with Enbridge Gas's argument that the Phase 1 Decision did not meet the requirements for providing adequate reasons. OEB staff and SEC referenced several cases where the courts have noted that adequacy of reasons is

[8] EB-2023-0188, Evaluation of Policy on Utility Consolidations, OEB Staff Discussion Paper, February 8, 2024, pp. 36-39.
[9] EB-2017-0306/0307, Decision and Order, August 30, 2018, p.22.

not based on the length of the number of pages used and a tribunal does not need to respond to every argument or line of possible analysis.

OEB staff stated that the Supreme Court has warned judges reviewing a tribunal decision not to embark on a "line-by-line treasure hunt for error".[10] A tribunal faced with a request to reconsider its own decision ought to exercise the same restraint. It should – and indeed under the OEB's Rules, the OEB must – concern itself with errors that could have materially changed the decision.

OEB staff argued that when the reasons on the Integration Capital Issue are read in the context of the Decision as a whole, they provide a reasonable justification for the Phase 1 panel's findings. The OEB explained that denying the costs was consistent with the MAADs Decision and the MAADs Handbook. OEB staff maintained that applying an established policy generally does not require exhaustive reasons; the reasons are found in the policy itself.

OEB staff and SEC further observed that the Phase 1 Decision was required to address more than two dozen issues with some issues requiring multiple determinations. If the OEB was required to provide detailed reasons on each and every argument and on every sub-issue, SEC submitted that the process would become inefficient, and the decision would have been significantly delayed.

Enbridge Gas Reply

In reply, Enbridge Gas claimed that there was no debate that the panel of the Phase 1 Decision made factual errors regarding the Integration Capital Issue. Enbridge Gas submitted that the factual errors were material and when corrected would result in the undepreciated capital integration costs being included in rate base.

Enbridge Gas noted that the OEB's MAADs policies have stated that integration spending is generally not recoverable in rates, which confirms that the specific circumstances must be considered before determining whether the general approach applies. Enbridge Gas submitted that the Phase 1 panel made an error by looking at the wrong spending, fo]cusing on property consolidation projects that did not actually proceed.

Enbridge Gas disagreed with intervenors that it was revealed much later in the proceeding that integration capital spending would have been required regardless of amalgamation. Enbridge Gas noted that it presented further evidence at the oral hearing

[10] Ibid., paragraph 102.

to support its position and this evidence was available to be tested through cross-examination. Enbridge Gas argued that it is unfair for parties to argue that evidence presented at the oral hearing is “too late”. Enbridge Gas stated that witnesses were available for questioning by intervenors, OEB staff and the Commissioners at the oral hearing.

Enbridge Gas noted that its evidence in the 2024 rates proceeding and other proceedings demonstrated that major integration capital projects such as the Customer Information System (CIS) and the Asset and Work Management System (AWS) were required regardless of amalgamation. The company further noted that it filed excerpts in the rates proceeding from Union Gas asset management plans predatingamalgamation, showing that the replacement of the CIS systems and the predecessor to AWS were near-term requirements as of 2019. Enbridge Gas argued that even if one of the systems was replaced slightly before it needed replacement, it does not imply that the entire investment is the shareholder’s obligation. This would result in a windfall for ratepayers according to Enbridge Gas. Enbridge Gas submitted that it would be unfair if it was required to credit all sustainable efficiencies to ratepayers at rebasing and also shoulder the full future cost for necessary IT systems required to serve customers.

Enbridge Gas further argued that in the MAADs Decision, the OEB had disregarded the general rule that amalgamating utilities could pick their own deferred rebasing term of up to 10 years and instead required Enbridge Gas to rebase after only five years. Enbridge Gas noted that it spent approximately $189 million as integration capital of which $91 million is the remaining undepreciated amount in 2024. If Enbridge Gas would have rebased after 10 years, the undepreciated amount would have been $15 million and this would be consistent with the company’s position in the MAADs proceeding that virtually all of the integration capital spending would be recovered during the 10-year deferred rebasing term. Given that the OEB approved only a five-year deferred rebasing term, Enbridge Gas maintained that there are remaining undepreciated integration capital costs for pillar IT systems that are appropriately included in rate base to be recovered from ratepayers.

Enbridge Gas submitted that the argument that since Enbridge Gas over-earned during the deferred rebasing term, it is appropriate for Enbridge Gas to absorb any undepreciated integration costs, is misguided. Enbridge Gas submitted that there are several reasons for a company to earn more than the allowed ROE apart from integration. The company further noted that its actual results show that its earnings over the five-year deferred rebasing term are virtually identical to allowed ROE and any overearning amount is not sufficient to pay for the undepreciated integration capital costs.

Enbridge Gas also reiterated its position that the level of detail set out in the Phase 1 Decision on the Integration Capital Issue was not sufficient. Enbridge Gas argued that a write-off of $91 million is highly material and the revenue requirement impact of $34 million that is at issue is five times higher than the Z-factor eligibility in the 2024-2028 rate period. Enbridge Gas also disputed the position of SEC and OEB staff that determining a number of issues in any way reduces the obligation of the deciding panel to provide less details for such a material issue.

Findings

The review panel denies the motion on its merits. The review panel is not persuaded that the Phase 1 panel made material errors of fact or law and does not accept that the decision failed to properly apply the OEB's own policies. The review panel has reviewed the Phase 1 panel's findings and the Phase 1 record, including evidence and submissions together with the submissions made in this motion proceeding. This review has provided additional support for the Phase 1 panel's findings to disallow the inclusion of $91 million of undepreciated integration capital in 2024 rate base.

The foundation for the review panel's Decision comes first from the OEB's Rules of Practice and Procedure which establishes both the test and the onus for a motion to review. As SEC notes in its submission that in this motion:

> Enbridge has the burden of demonstrating not only that the Hearing Panel made factual or legal errors, but also that, in the absence of such errors, the outcome would have been different. Rule 42.01(a)(i) is clear that "a disagreement as to the weight that the OEB placed on any particular facts does not amount to an error of fact," and "a disagreement as to how the OEB exercised its discretion does not amount to an error of law or jurisdiction unless the exercise of discretion involves an extricable error of law." [11]

Enbridge Gas in its submission acknowledges pursuant to Rule 42.01(a) of the OEB's Rules of Practice and Procedure that it has the onus to establish the error and to demonstrate that the alleged error is material and would, if corrected, vary the outcome of the decision.[12] The review panel finds that Enbridge Gas has failed to do so and will address each of Enbridge Gas's assertions that were submitted to support its requested relief.

[11] EB-2024-0078, SEC submission on Merits, paragraph 9.
[12] EB-2024-0078, Enbridge Gas submission on Merits, paragraph 8.

(i) Real Estate Consolidation Projects

Enbridge Gas submitted that the Phase 1 Decision erred by referring to certain real estate consolidation projects that were ultimately slated to be undertaken beyond the 2019 to 2023 deferred rebasing period as integration capital expenditures. The review panel does not accept that the reference cited constitutes an error that warrants an overturning of the decision.

The review panel agrees with OEB staff's submission that:

- While Enbridge Gas is correct the GTA East and West real estate consolidation projects were deferred from 2023 to 2026,[13] Enbridge Gas is not correct in its assertion that the Phase 1 panel found that the "main integration capital expenditures at issue were directed at real estate consolidation projects".[14]

- The real estate consolidation projects were used merely as examples of projects that "would not have been incurred in the first place in the absence of amalgamation."[15]

As well, even if the review panel agreed with Enbridge Gas's assertion of a mistaken time frame for the real estate consolidation projects, it does not agree that such an error would undermine the panel's conclusions or result in a different outcome. This conclusion is based on the review panel's finding set out later in this Decision that the Phase 1 panel's conclusions were in accordance with an appropriate implementation of the provisions of the preceding MAADs Decision and the guidance then provided by the MAADs Handbook. Thus, the substitution of the largely IT related integration projects with the real estate consolidation projects would not have altered the findings.

(ii) Integration Capital and Amalgamation Costs and Benefits

Enbridge Gas requests that the OEB review and vary the Phase 1 panel's Decision on the basis that the Phase 1 panel erred in concluding that amalgamation savings exceeded costs. Enbridge Gas calculated its total costs classified as integration-related during the deferred rebasing period to be $439 million, exceeding the $327.6 million of integration savings by more than $110 million.[16]

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[13] EB-2022-0200, Oral Hearing Transcript Vol. 14, p. 177 (Motion Record, Tab 3(b), p. 231).
[14] EB-2024-0078, OEB staff submission on Merits, p. 2.
[15] Ibid, p. 2 (citing the Phase 1 Decision at p. 74).
[16] EB-2024-0078, Enbridge Gas Submission on Threshold Question, paragraph 10; Appendix A to Submissions, paragraph 84.

The review panel acknowledges that the Phase 1 panel did not sufficiently address the incremental O&M spending of $280.3 million. The review panel's view is that correcting that oversight would not lead to a different outcome as urged by Enbridge Gas.

The review panel agrees with OEB staff's submission that the Phase 1 panel's central conclusion to disallow Enbridge Gas's recovery of $91 million of undepreciated capital cost amounts is consistent with the MAADs Decision. As noted by the Phase 1 panel the MAADs Decision found that a five-year deferred rebasing period would provide Enbridge Gas with a "reasonable opportunity to recover those costs during the five years against the savings that would be achieved and retained by the utility".[17] The review panel agrees with OEB staff that the MAADs Decision provided no guarantee that net savings would be realized with the five-year deferred rebasing period.[18]

As well, as SEC submitted, the benefits of amalgamation may be derived from more than the direct savings attributed to amalgamation costs:

> The benefit that Enbridge received through the deferred rebasing period was not just the direct O&M savings from the merger, but the ability to keep all the annual savings it had achieved since its last rebasing for an additional five years. If it had rebased in 2019 as originally scheduled, it would have had to pass those savings on to customers. As the MAADs Decision stated when approving the five-year deferred rebasing period, "[d]uring the last rate-setting frameworks, both Union Gas and Enbridge Gas earned more than the OEB-approved return, as evidenced by the earnings sharing mechanisms for both utilities." By deferring rebasing, "[c]ustomers will not benefit from any efficiency gains from this previous period until the end of the rebasing period."[19]

The revised MAADs Handbook cited by Enbridge Gas in support of its Motion for Review also provides that "the OEB will determine whether it is appropriate to include the remaining book value of these capitalized costs in the opening test year rate base or whether there was an expectation that these costs be recovered through the consolidation savings."[20] The review panel is of the view that this required determination for a rebasing panel was not a new concept expressed by the revised MAADs Handbook and was an expected task carried out in the Phase 1 Decision.

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[17] EB-2022-0200, Decision and Order, December 21, 2023, p. 74.
[18] EB-2024-0078, OEB staff Submission on Merits, p. 9.
[19] EB-2024-0078, SEC Submission on Merits, paragraph 20.
[20] Handbook to Electricity Distributor and Transmitter Consolidations (Revised July 11, 2024), p.14. SEC also drew attention to the revised Handbook in its Final Argument.

In reviewing the MAADs Decision, the review panel also does not find a clear intent of the provisions therein to limit the ambit of the identification of integration savings to specific capital expenditures and disallow the recognition of overearnings when considering the composition and disposition of the remaining integration capital savings. The review panel accepts that the Phase 1 panel was within its discretion to find that the deferred rebasing period was designed so that transition costs should be met by both earnings and savings by the merged entity.

(iii) Integration Capital Costs Absent Amalgamation

Enbridge Gas's argument addresses $91 million of undepreciated costs that it claims the legacy utilities would have incurred absent amalgamation. Accordingly, Enbridge Gas maintains that the Phase 1 panel erred in declining to include that amount as it should be eligible to be added to 2024 rate base for cost recovery commencing in 2024 rates and over the remaining depreciable life. This argument rests on an evidentiary foundation that, at best, could be described as having been developed by Enbridge Gas in an unfortunate way. As noted by OEB staff in its submission, a compendium list of Union Gas asset management plan list of projects was presented as an exhibit for the first time at the oral Phase 1 hearing to buttress Enbridge Gas's position. Due to the lateness of its presentation, it could not receive the ordinary expected examination.

In reviewing the record that was before the Phase 1 panel, the review panel agrees with OEB staff that there is no compelling basis to reasonably allocate the cost of the CIS and AWS projects as between "business as usual" and incremental for the purpose of integration.[21] In particular, Enbridge Gas's claim that its evidence was "uncontroverted" has not been established.[22] The exhibit referenced in the proceeding included a table that listed integration projects totaling a net book value of $119 million with accompanying project descriptions that do not enable a clear distinction between integration projects that would have been spent absent amalgamation and those that were necessitated by amalgamation.[23]

Further evidentiary confusion was created by Enbridge Gas's own definition of "integration costs" as "one-time incremental costs related to utility integration."[24]

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[21] Ibid p. 6, OEB staff also correctly notes that the evidentiary record provided no information as to how close to end of life the Union Gas CIS and AWS were at the time of amalgamation, what amount would Enbridge Gas have spent on its CIS and AWS absent amalgamation and whether any integration capital projects other than CIS and AWS would have been undertaken in the absence of amalgamation.
[22] EB-2024-0078, Enbridge Gas motion reply submission, paragraph 8.
[23] Updated 2023-07-06, EB-2022-0200, Exhibit 1, Tab 9, Schedule 1, Attachment 1.
[24] EB-2022-0200, Exhibit 1, Tab 9, Schedule 1, p. 3.

Enbridge Gas in its Phase 1 argument-in-chief advanced the view that "capital costs are not necessarily 'incremental' (because they were already forecast by the legacy utilities on a standalone basis)."[25] As noted by OEB staff, it is at a minimum perplexing that capital costs that were considered not incremental were still characterized by Enbridge Gas as integration capital.[26]

Enbridge Gas's assertion that the Phase 1 Decision did not respect existing policy is also not supported by a match-up of the history of the MAADs policy with the regulatory events at issue.

The review panel concurs with OEB staff's submission concerning the threshold question for this motion to review:

> In sum, that the Phase 1 panel agreed with those intervenors who argued that allowing Enbridge Gas to recover integration costs beyond the five-year deferred rebasing period would run counter to the MAADs decision and defeat the purpose of the MAADs Handbook. There was no factual or legal error in that conclusion. It is reason enough to have denied the request for inclusion of the integration capital in opening rate base.[27]

CME and other parties have also noted that the MAADs Handbook then in effect provided that "incremental and integration costs are not generally recoverable in rates".[28] The subsequent paragraph provided that utilities are allowed to defer rebasing for up to 10 years to grant them the opportunity to realize on anticipated gains and retain achieved savings for a period of time to "offset the costs of the transaction". As CME noted:

> The apportionment of benefits between the utility and ratepayers is therefore determined through the length of the deferred rebasing period. The longer the deferred rebasing period, the greater savings are granted to the utility, and less to ratepayers. The shorter the rebasing period, the more benefits are granted to ratepayers. The MAADs Handbook only provides that the Board should give the utility the "opportunity" to keep savings to offset the costs of the transaction. It is not required to guarantee that the utility will recover them.[29]

[25] EB-2024-0078, OEB staff Submission on Merits, p. 4.
[26] Ontario Energy Board, Handbook to Electricity and Distributor and Transmitter Consolidations, January 19, 2016, p. 8.
[27] OEB staff Submission on the Threshold question, p. 6.
[28] Ibid at p. 8.
[29] EB-2024-0078, CME Submission on Merits, pp. 7-8.

As the Phase 1 Decision notes:

> In the MAADs proceeding, Enbridge Gas requested a deferred rebasing period of ten years. The OEB in its decision granted a deferred rebasing term of five years and noted that "five years provides a reasonable opportunity for the applicants to recover their transition costs. The OEB stated that the policy of permitting a deferred rebasing period of up to ten years was adopted to incent the consolidation of electricity distributors.[30]

SEC notes that the updated MAADs Handbook (updated six months after the Phase 1 Decision was issued) provided that with respect to integration capital the OEB will determine whether it is appropriate to include the remaining book value of the capitalized costs in opening test year rate base or whether there was an expectation that these costs be recovered through the consolidation savings.[31]

It would seem apparent that Enbridge Gas's position that the Phase 1 Decision ran counter to OEB policy is not sustainable and appears to represent more a request for a policy change rather than adherence to the previous OEB policy and interpretation.

Enbridge Gas was fully aware of the MAADs decision that provided for a 5-year deferred rebasing period and the MAADs policy in effect that noted that "Incremental transaction and integration costs are not generally recoverable through rates".[32] Knowing that, the onus was on Enbridge Gas to present a compelling, clear and organized case to attempt to establish a conclusion of differentiation. The review panel finds that Enbridge Gas did not meet that onus in the Phase 1 proceeding.[33]

iv) Insufficient Reasons for Decision

Enbridge Gas alleged that the Phase 1 panel's two-page findings section failed to meet the standard for reasons that must be provided supporting a tribunal's decision, including its interpretation of OEB policies. The review panel notes that the Phase 1 Decision reviewed the findings of the earlier MAADs Decision associated with the five-year rates deferral period, the expectations associated with recovery of integration costs within that period and the explanation of the disallowance of the $119 million therein. The Decision provided a detailed summary of the submissions of Enbridge Gas, OEB

[30] EB-2022-0200, Phase 1 Decision p. 74.
[31] Revised MAADs Handbook p. 14.
[32] Handbook to Electricity Distributor and Transmitter Consolidations, January 19, 2016, p. 8.
[33] Enbridge Gas's submission was also not enhanced by the necessity of its revision to the quantum of undepreciated integration capital in issue to arrive at the $91 million figure in the Interim Rate Order that occurred after the Phase 1 decision was rendered.

staff and intervenors on the relevant issues. Enbridge Gas's assertion that the brevity of the reasons provokes a need for setting aside the Phase 1 Decision cannot be accepted as valid.

The review panel also takes note of OEB staff's submissions touching upon the judicial review of the appropriate adjudication concerning insufficient reasoning:

> "The Supreme Court has said that 'the written reasons given by an administrative body must not be assessed against a standard of perfection.'"[34]

In the same decision, judges were cautioned that in the review of a tribunal decision judges should not embark on a "line-by-line treasure hunt for error."[35] In this proceeding, the OEB also agrees with OEB staff that,

> "A tribunal faced with a request to reconsider its own decision ought to exercise the same restraint. It should – and indeed under the OEB's Rules, the OEB must – concern itself with errors that could have materially changed the decision."[36]

In this case, the review panel is of the view that further elaboration of the reasons for the Decision was not required and certainly the length of the reasons provided does not render the Decision reversible as a result.

(v) Just and Reasonable Rates

Enbridge Gas maintains that the result of the Phase 1 decision was unfair and not in keeping with the requirement to provide just and reasonable rates, repeating the maxim that benefits should follow costs. In assessing fairness, the results of the Phase 1 Decision must be considered. As the review panel has found the Phase 1 Decision did not stray from the provisions of the MAAD Decision and the MAADs Handbook. Enbridge Gas has not shown that adherence to the results that follow from those provisions constitutes unfairness that is contrary to the OEB's statutory objectives.

The review panel concludes that the Phase 1 Decision did produce just and reasonable rates with respect to the determination of the regulatory treatment of integration savings.

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[34] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2009 SCC 65, para. 91.
[35] Ibid at paragraph 102.
[36] Ibid, p 9-10. Also note the Ontario Divisional Court's observation in Bryczkowski v. Dennison Associates, 2017 ONSC 6384, para 17, that "[a]dequacy of reasons is not based on the length of the reasons or the number of pages used."

In doing so, the Phase 1 Decision was consistent with the preceding MAADs Decision that followed the provisions of the MAADs Handbook.

1.4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The motion is denied.
2. Cost eligible intervenors shall file their cost claims with the OEB and forward them to Enbridge Gas on or before **April 23, 2025**.
3. Enbridge Gas shall file with the OEB and forward to the intervenors any objections to the claimed costs by **April 30, 2025**.
4. Intervenors shall file with the OEB and forward to Enbridge Gas any responses to any objections for cost claims by **May 6, 2025**.
5. Enbridge Gas shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto **April 15, 2025**

ONTARIO ENERGY BOARD

Nancy Marconi

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Date: 2025.04.15 09:55:37 -04'00'

Nancy Marconi
Registrar

2 DISSENT (COMMISSIONER DODDS)

I have reviewed the findings of my two colleagues on this review panel. With respect, I do not agree that Enbridge Gas's motion should be denied. In accordance with Rule 43.02 of the Rules of Practice and Procedure, which specifies that a review panel may "confirm, cancel, suspend or vary the decision or order", I would vary the Phase 1 panel decision on the Integration Capital Issue and allow $45.5 million of the claimed $91 million to be included in 2024 rate base.

Enbridge Gas argued that the first factual error is that "the OEB erroneously found that the main integration capital expenditures at issue were directed at property consolidation projects that were only needed because of integration…." The property consolidation projects were planned but did not proceed.

I agree with the key finding in the Phase 1 Decision and Order that Enbridge Gas should not be permitted to recover costs that were only incurred because of the amalgamation. As the Phase 1 panel said, "the OEB must also consider the impetus for the specific costs incurred." Therefore, it is imperative to examine the nature of the Integration Capital spending to determine if it should be included in rate base or absorbed by the shareholders.

Enbridge Gas is correct that the GTA East and West real estate consolidation projects did not proceed and that none of the projects cited in that passage were included in the undepreciated integration capital costs sought to be added to 2024 rate base. I agree with OEB staff that the projects were used merely as examples of projects that "would not have been incurred in the first place in the absence of amalgamation." However, OEB staff presented a selective view of the Enbridge Gas evidence about the major integration capital projects, focusing only on the pre-filed evidence. This is only part of the full picture. Enbridge Gas presented further evidence of the nature of integration capital spending at the oral hearing to support its position and this evidence was available to be tested through cross-examination. The fact that it was not tested supports Enbridge Gas's position that this evidence is generally uncontroverted and therefore can be used, along with other evidence on the record, to support the conclusion that some or all of the Integration Capital is eligible to be included in rates.

OEB staff submitted that the evidence does not support Enbridge Gas's argument that the entire amount of undepreciated integration capital must be included in 2024 rate base without knowing more about what projects were completed and confirming that these projects would have been required absent amalgamation. I interpret this to infer that some of the Integration Capital could be included.

I find that Enbridge Gas's evidence, considered in its entirety, shows that many of the major integration capital projects were required regardless of amalgamation and were/are focused on IT projects that are pillar systems required for billing and work management. These investments benefit ratepayers now and will continue to benefit ratepayers past the deferred rebasing term.

The major portion of the total cost of the claimed integration Capital comprises CIS Integration and Asset and Work Management Systems (AWS). I agree with OEB staff that in examining the work descriptions and costs for these projects there are some unknowns, for instance:

- How to reasonably allocate the cost of the CIS and AWS projects as between "business as usual" and "incremental for the purpose of integration"How close to "end of life" the Union Gas CIS and AWS were at the time of amalgamation
- What if anything Enbridge Gas Distribution would have spent on its CIS and AWS in the absence of amalgamation, and when
- Whether any integration capital projects other than the CIS and AWS would have been undertaken even in the absence of amalgamation.

OEB staff submitted that there is perhaps an argument that some of the costs labelled as "integration capital" could have been labelled instead as "business-as-usual" capital and went on to say it was Enbridge Gas itself who applied the labels, and who framed the application. Although I agree that Enbridge Gas could have done a better job in characterizing the claimed integration capital projects, I do not feel it is either appropriate or fair to hold an applicant to all the labelling in an application – one of the purposes of a rate hearing is to examine and discover any such mis-labelling and in most cases, reduce the amount of capital spending allowed into rate base. In this proceeding that same principle applies even if it results in an increase of capital allowed into rate base.

As OEB staff acknowledged in its submission in the Phase 1 hearing, "Enbridge Gas customers have received sustained benefits from integration capital that was incurred during the deferred rebasing period."

I find that the evidence in Phase 1 shows that integration capital spending would have happened even in the absence of the merger but because of the paucity of details it was difficult to determine how much of the $91 million should be included in rate base.

In summary, in the absence of better evidence and considering that, in my opinion, much of the integration capital would have been required regardless of amalgamation, I

find it fairest to allow 50% of the Integration Capital, or $45.5 million to be included in the 2024 rate base.