



By EMAIL

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Our File: 20250333

Ontario Energy Board
2300 Yonge Street
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Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2025-0333 – IRP Second Motion to Review – Threshold Question

We are counsel for the School Energy Coalition (“SEC”). Pursuant to Procedural Order #1 in this matter, this letter constitutes SEC’s submissions on the Threshold Question.

The Question

On December 22, 2025, Enbridge Gas Inc. (“EGI”) filed a motion to review and vary the Decision of the OEB in EB-2022-0335 (the “Decision”), listing seven reasons that the Decision was in error.

In PO#1, the OEB has invited Parties to file submissions on the following question:

“Does the notice of motion to review filed by Enbridge Gas raise relevant issues material enough to warrant a review of the Decision on the merits, in accordance with Rule 43 of the OEB’s Rules of Practice and Procedure (Threshold Question).”

SEC believes that EGI is wasting the time of the OEB and the Parties with this motion, as the issues EGI seeks to raise are being fully considered in the IRP Framework Review. The reasons provided by the OEB in its December 11, 2025 decision on the first Motion to Review EB-2022-0335 continue to apply in this case.

This is accentuated by the fact that the Southern Lake Huron Pilot Project (the “Pilot”) is not actually designed to defer or displace any facilities investments, as IRP is intended to do. It is a theoretical exercise to learn about techniques to reduce geo-focused peak demand. As such, it was (as applied for) already not consistent with the IRP Framework, and was designed with

learning in mind. Continuing to debate the terms of the Pilot (which already consumed an inordinate amount of the time in the IRP Working Group) is of little value.

That having been said, EGI has in fact invoked its right to seek a review. On the basis of OEB rules and precedent, SEC believes that the threshold question should be answered in the affirmative, i.e. EGI has raised issues that are both relevant and material, and call into question the correctness of the Decision. Although the exercise is not productive, and SEC's view is that the Decision will in the end be confirmed, in our view EGI is entitled to have those questions determined on the merits.

Our analysis is set forth below.

Errors in the Decision

EGI has alleged seven errors in the Decision. We will deal with each of them in turn.

1. The Decision goes beyond the issues in the SLH IRP Pilot Project proceeding.

Any proceeding in which a utility proposes a project or plan that requires the spending of ratepayer funds includes, by its very nature, a review of the components of the project or plan. The OEB regularly orders changes to a project or plan as a condition of approval. Thus, the components of the Pilot were at all times at issue in the proceeding.

Related to this, EGI complains that the Decision purports to make changes to the IRP Framework, and says that is forbidden. Given that EGI was proposing a Pilot that did not comply with the IRP Framework, this is not a serious complaint, and the OEB should reject it.

However, EGI goes on to say "*It was neither appropriate nor within the scope of this proceeding to conclude that natural gas end-use equipment cannot be used to defer or avoid natural gas facility projects.*" On the question of appropriateness (but not scope), SEC believes that EGI has raised a potential error in the Decision. While SEC will argue on the merits that the Decision should stand on this point, one can legitimately ask whether, if better natural gas equipment can indeed defer facilities, it should be considered as part of IRP.

2. The Decision is not supported by the evidence.

There are reasonable questions as to whether the evidence in the proceeding was sufficient to conclude that better natural gas equipment cannot (as opposed to should not) be used to defer facilities. While this question is more appropriately dealt with in the IRP Framework Review, SEC believes that EGI has raised a potential error in the Decision.

3. The Decision is procedurally unfair.

EGI was at all times aware that Parties would be challenging the use of natural gas technologies in this IRP project. It was debated at length in the IRP Working Group, and the views of the environmental groups were clear and public. The proceeding would have been unfair if EGI did not know the case that was being brought by other Parties on this point. That was not true. EGI was not at any point caught by surprise.

This is therefore, in our view, not a potential error in the Decision.

4. The Decision exceeds the OEB's jurisdiction.

On this point, EGI is entirely incorrect. Every action by the OEB relating to electricity or natural gas projects or pricing has the collateral effect of providing an advantage or disadvantage to one energy source or another. Sometimes this benefits gas, and sometimes it benefits electricity. This not something that can be avoided. The price and terms of each energy source affects its competitiveness vis-a-vis any other energy source.

In this regard, we note that EGI has made similar arguments in EB-2025-0295 (2027-2030 DSM Plan) seeking to constrain the OEB's jurisdiction to consider the non-financial impacts of its decisions. In considering this ground of the motion, we urge the Commissioners to focus on the wide-ranging implications of tying the OEB's hands in the manner EGI proposes. EGI would force the OEB to be a slave to numbers and spreadsheets, rather than to exercise common sense and judgment in looking at the implications of the matters before it. This is wrong.

EGI also appears to believe that the term "facilitate rational expansion of transmission and distribution systems" in the Act amounts to a requirement to promote more natural gas use, i.e. emphasizing the word "expansion". IRP emphasizes the word "rational" in that phrase. The whole point of IRP is to reduce facilities expansion. If the jurisdiction argument of EGI is accepted, there is no place for IRP.

This is therefore, in our view, not a potential error in the Decision.

5. The Decision is inconsistent with Ontario energy policy.

This is another area in which EGI is completely wrong.

EGI seeks to take the phrase "*in accordance with the policies of the Government of Ontario*" in Section 2#5 of the Act, where it applies specifically to conservation and energy efficiency programs, and import it into Section 2#3, which deals with rational expansion of the system. This is an obvious error of statutory interpretation.

If one item in an enumerated list has a proviso attached to it, as is the case with #5, but the same proviso is not included in other items in the list, such as #3, the legal presumption is that this was intentional, and therefore the proviso does not apply where it is not included.

IRP is about ensuring that investments in utilities are needed and "rational". The fact that DSM is one of the tools used in IRP is a secondary issue. EGI is seeking to get the OEB to find that it is obligated in considering facilities decisions to comply with Ontario government energy policy. That is not what the law says, and it does not apply to IRP.

That is not to say that the OEB should ignore government policy. Far from it. The OEB is a creature of the Ontario government, and generally should not be acting in opposition to government policies. However, it is a big step to take that principle and propose that any government policy must be given the same impact as wording in a statute. The government has the power to cause a policy to become a binding and enforceable legal requirement through a statute or regulation. If it elects not to do so, the OEB should not unilaterally elevate the impact of a policy to that of a law.

This is therefore, in our view, not a potential error in the Decision.

6. The Decision does not align with the IRP Framework Review.

EGI submits that it is no longer sensible to go back to the IRP Working Group for a second pilot project, given that the IRP Framework is being comprehensively reviewed.

While this is not an error in the Decision, in the normal sense of the word, it is a legitimate ground for review of that direction in the Decision (i.e. a subsequent event). SEC agrees that a second pilot should await the IRP Framework Review.

EGI also, in this heading, argues that including electrification in the Decision is contrary to the IRP Framework Review. SEC notes that the amended Pilot application by EGI included electrification measures¹. The Decision directed a change in the budget for those measures, but did not make any further changes to the IRP Framework. The fact that the IRP Framework Review is going to look at whether electrification should be included does not change the fact that EGI proposed including electrification, and that inclusion will in fact provide learnings that may be helpful in future IRP plans.

Therefore, in our view inclusion of electrification is not a potential error in the Decision.

7. The Decision conflicts with the intent of IRP.

EGI argues that the Decision is unduly influenced by the environmental impacts of natural gas use, as opposed to focusing on economic alternatives to facilities spending.

SEC does not read the Decision in the same way. On the other hand, we understand why EGI would have that perception, and consider it legitimate to have that aspect of the Decision reviewed.

Conclusion

Based on the above analysis, SEC submits that the threshold question should be answered in the affirmative, and the matter considered on the merits.

SEC also urges the OEB to make two further findings at this stage in the motion to review:

- A determination that the scope of the review on the merits is limited to the items above where there are questions as to the errors in the Decision. Specifically, the OEB should determine that:
 - The appropriateness of removing gas technologies from the Pilot, and the evidence on which that finding was made, as set forth in grounds 1 and 2 from EGI, is a potential error that should be considered on the merits, but not whether it was included in the issues list.
 - The alleged errors in grounds 3, 4, and 5, and the inclusion of electrification under ground 6, are not errors in the Decision that need to be reviewed on the merits.

¹ EB-2022-0335, Exhibit A, Tab 3, Schedule 1, Page 11

- The direction to develop a second pilot in conjunction with the IRP Working Group should be stayed pending the conclusion of the IRP Framework Review.
- The question of whether the Commissioners were unduly influenced by environmental impacts as set out in ground 7 is a potential error that should be considered on the merits.
- A determination that the implementation of the Pilot should be delayed until the later of the decision on this motion to review, and the completion of the IRP Framework Review.

All of which is respectfully submitted.

Yours very truly,

Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Brian McKay, SEC (by email)
Interested Parties (by email)