Haris Ginis
Technical Manager
Regulatory Applications
Regulatory Affairs

tel 416 495 5827
cell 416 319 8684
haris.ginis@enbridge.com
EGIRegulatoryProceedings@enbridge.com

Enbridge Gas Inc.
500 Consumers Road
North York, Ontario
M2J 1P8

VIA EMAIL and RESS

March 10, 2026

Ritchie Murray
Acting Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ritchie Murray:

Re: Enbridge Gas Inc. ("Enbridge Gas" or the "Company")
Ontario Energy Board ("OEB") File No. EB-2025-0333
Motion to Review Decision on Integrated Resource Planning ("IRP") Pilot Project
Reply Submission on Threshold Question

Pursuant to the OEB's Procedural Order No. 1 dated February 6, 2026 in the above-noted proceeding, enclosed please find Enbridge Gas's reply submission on the Threshold Question.

If you have any questions, please contact the undersigned.

Sincerely,

Haris Ginis

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Technical Manager, Regulatory Applications

cc: David Stevens (Aird & Berlis LLP, Enbridge Gas Counsel)
Patrick Copeland (Aird & Berlis LLP, Enbridge Gas Counsel)
Michael Millar (OEB Counsel)
Alexander Di Ilio (OEB Staff)
Intervenors (EB-2025-0333)

EB-2025-0333

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF the OEB's EB-2022-0335 Decision and Order dated March 27, 2025.

AND IN THE MATTER OF Rules 8 and 40, 42 and 43 of the *Rules of Practice and Procedur*e of the Ontario Energy Board

ENBRIDGE GAS INC.

Motion to Review and Vary OEB's March 27, 2025 Decision in Enbridge Gas Inc.'s IRP Pilot Project Application

Reply Submission of Enbridge Gas Inc. on the Threshold Question Under Rule 43

March 10, 2026

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

David Stevens
Email: dstevens@airdberlis.com

Patrick Copeland
Email: pcopeland@airdberlis.com

Tel: (416) 863-1500

A. Introduction

1. On December 22, 2025, Enbridge Gas Inc. ("**Enbridge Gas**" or the "**Company**") filed a Notice of Motion (the "**Notice of Motion**") to Review the OEB's Decision and Order in the EB-2022-0335 IRP Pilot Project Application issued on March 27, 2025 (the "**Decision**"). Enbridge Gas repeats and relies on the Notice of Motion. Unless otherwise noted, defined terms used herein have the same meaning ascribed to them in the Notice of Motion.

2. On February 6, 2026, the OEB issued Procedural Order No. 1 ("**PO #1**") regarding the Company's Motion to Review (the "**Motion**"), establishing a written process to address the threshold question under Rule 43 of the Rules of Practice and Procedure (the "**Rules**") prior to any consideration of the merits.

3. Pursuant to PO #1, all ten intervenors, plus OEB Staff, were provided an opportunity to file submissions responding to the threshold question. Ultimately, only four submissions were filed from Building Owners and Managers Association, Greater Toronto ("**BOMA**"), Environmental Defence Canada Inc. ("**ED**"), Pollution Probe ("**PP**"), and the School Energy Coalition ("**SEC**").

4. Other than SEC, all of the intervenors who filed submissions argue that Enbridge Gas's Motion does not raise relevant issues material enough to warrant a review on the merits and should therefore be dismissed at this threshold stage. SEC, by contrast, concedes that the Rule 43 threshold is met, but it urges the OEB to pre-limit the scope of any merits review by excluding certain grounds raised by the Company at this stage.

5. Enbridge Gas files these Reply Submissions in accordance with PO #1.

B. Overview of the Company's Position

6. The threshold question before the OEB is limited and specific: whether Enbridge Gas's Motion to Review raises relevant issues material enough to warrant a review on the merits, not whether the Decision should ultimately be upheld or varied.[1]

7. The intervenor submissions largely bypass the threshold inquiry altogether. Instead of addressing whether the Review Motion raises issues material enough to warrant review, they generally focus on defending the Decision on the merits, often by reference to policy

[1] PO#1 at page 2.

considerations, regulatory preferences, or concerns about the review process itself. Those submissions largely assume the correctness of the Decision and seek to justify it, rather than grappling with the preliminary and limited question before the OEB at this stage. That approach conflates the threshold inquiry with a merits determination and does not respond to the test set out in Rule 43.

8. For the reasons set out below, and as set out in the Notice of Motion, Enbridge Gas submits that the Motion should proceed to a review on the merits.

C. The Test for Motions to Review

9. The review motion process seeks to balance the need to screen out non-material criticisms with the need to preserve meaningful review of decisions where potentially material errors are alleged. In particular:

   (a) Rule 42.01 requires a moving party to identify permissible grounds for review, including a material and clearly identifiable error of fact, law, or jurisdiction, and to explain why the motion should pass the threshold described in Rule 43.01.[2]

   (b) Rule 43 establishes a two-stage inquiry: (i) a discretionary threshold assessment of whether the motion raises relevant issues material enough to warrant review; and if that threshold is met (ii) a hearing on the merits.[3] The threshold inquiry does not require the Review Panel to determine whether the alleged errors will ultimately be proven, but only whether they could reasonably be expected to result in a material change to the decision under review if they are ultimately proven after a hearing on the merits. The considerations listed in Rule 43.01 are expressly non-exhaustive and must be applied in a manner that gives effect to the purpose of the review mechanism.

10. Where a review motion raises potentially material concerns, the threshold stage is not the forum to decide whether the alleged errors are in fact established or whether the outcome

[2] *Rules of Practice and Procedure*, Rule 42.01.
[3] *Rules of Practice and Procedure*, Rule 43.01.

would ultimately differ; those are matters "that can and should be addressed in a hearing on the merits".[4]

11. Accordingly, attempts to justify an allegedly flawed decision by re-characterizing its reasoning, supplementing its rationale, or explaining how the same outcome could have been reached through different analysis, necessarily stray into the merits. Where such explanations are required to sustain a decision, that fact itself underscores that the underlying issues warrant a substantive review.

12. Given this framework, the intervenor submissions largely miss the mark, either by contesting the Motion on the merits or by invoking considerations that are extraneous to Rule 43's limited inquiry. The Company's specific replies to the intervenors are set out below.

D. Reply to Intervenor Submissions

The IRP Framework Review Does Not Negate the Need for a Review

13. Various intervenors argue that the OEB's consultation and review of its IRP framework in EB-2025-0125 (the "**IRP Framework Review**") is better suited to address the issues raised by Enbridge Gas in this Motion.

14. ED asserts, for example, that any "lasting impacts" will be determined in the IRP Framework Review, such that the Motion does not raise material issues warranting review.[5] PP similarly argues that enabling IRP funding for gas-fired technologies is more appropriately aligned with the IRP Framework Review.[6] This reliance on the IRP Framework Review is misplaced. While conceding that the Review Issues should nevertheless proceed to a hearing on the merits, SEC alleges that Enbridge Gas is "wasting the time of the OEB" because the Review Issues "are being fully considered in the IRP Framework Review".[7]

[4] EB-2024-0078, Decision and Order on Threshold Question and Procedural Order No. 2, October 8, 2024, p. 7.
[5] ED Submission on the Threshold Question, February 27, 2026, pp. 1 and 3.
[6] PP Submission on the Threshold Question, February 27, 2026, pp. 3 – 4.
[7] SEC Submission on the Threshold Question, February 27, 2026, p. 1.

15. There is nothing currently within the IRP Framework Review that expressly touches on any (let alone each) of the Review Issues.[8] For example, the OEB Staff Discussion Paper that supports the IRP Framework Review makes no mention of any role or non-role for gas-fired technologies as IRPAs. Moreover, there is no current indication as to what the OEB itself views as being specifically in and out of scope for the IRP Framework Review. There is accordingly no reason to presently believe that the Review Issues will be directly addressed within the context of the IRP Framework Review.

16. Even if, however, any or all of the Review Issues are ultimately considered in the IRP Framework Review, any analysis of those issues will be inevitably influenced, and potentially tainted, by the Decision. For example, the conclusions made in the Decision may function as a default starting point, even if parties nominally argue in this Motion that these questions remain open. That is the type of *ad hoc* evolution that can distort a framework proceeding meant to establish consistent policy on a complete record.

17. The intervenors' arguments fail to meaningfully account for the fact that the Decision has prospectively excluded advanced gas technologies from all other IRP projects as a matter of principle untethered to the particular circumstances of the underlying SLH IRP Pilot Project. As set out in the Notice of Motion, the Decision improperly narrows permissible IRPAs and favors electrification in a way that extends beyond the issues and evidence in the underlying application.[9] That overreach is precisely what gives rise to the Review Issues and underscores why a review should be permitted at this threshold stage before those conclusions are allowed to shape future proceedings.

18. In short, if the IRP Framework Review is irrelevant to the Review Issues, then it cannot justify denying review of a Decision that has immediate and binding consequences. If, on the other hand, the IRP Framework Review will ultimately engage those issues, then allowing the Decision to stand unreviewed risks distorting the IRP Framework Review process from the outset. Either way, the Motion raises issues that warrant consideration on their merits and should not be screened out at the threshold stage simply given the existence of the IRP Framework Review.

[8] See, for instance, OEB Staff Discussion paper "Integrated Resource Planning Framework Review" dated October 2025 in the IRP Framework Review.
[9] See for example the Notice of Motion, para. 17.

The Practical Effects of the Decision Should Not be Ignored

19. ED argues that OEB decisions are not binding as a matter of administrative law and that the SLH IRP Pilot Project involves relatively modest costs that will ultimately be borne by ratepayers rather than Enbridge Gas shareholders. Neither proposition withstands scrutiny.

20. While prior administrative decisions are not binding in a legal sense, it is not an error for decision-makers to consider past decisions in rendering their decisions.[10] In fact, as recently confirmed by the Divisional Court in a proceeding involving ED, administrative decision-makers "must" be concerned with general consistency amongst various proceedings.[11]

21. Regardless of any legal considerations, however, the practical reality is that participants in any adjudicative context will inevitably rely on whatever authorities to which they have access to inform, and advocate for, their respective positions. The OEB will similarly look to prior decisions when analysing any particular issue before it. The Decision itself is demonstrative of how this routinely works in practice.

22. Various prior OEB decisions are explicitly referenced in the Decision to ground its conclusions, including those relating to the Review Issues. For example, the Decision states that denying IRP pilot projects that include incentives for gas equipment is "consistent with" the decision in EB-2021-0002 (a matter wherein both of the Commissioners in the underlying application were also Commissioners).[12] Notably, all of the prior OEB decisions referenced in the Decision were decided by one, or both, of the Commissioners who adjudicated the underlying application.[13]

23. It is of course not inherently problematic for Commissioners to reference past proceedings they previously adjudicated. This is to be expected and, as noted above, a general level

[10] *Environmental Defence Canada Inc. v. Ontario Energy Board* 2026 ONSC 1002 at para. 69.
[11] *Ibid*.
[12] The Decision, pp. 4 – 5.
[13] In addition to EB-2021-0002, Commissioner Zlahtic was the Presiding Commissioner in EB-2020-0293, referenced on pages 9 and 10 of the Decision. Both Commissioner Zlahtic and Commissioner Moran decided (i) EB-2022-0200, referenced on page 10 of the Decision and (ii) EB-2024-0111 (where Commissioner Moran acted as the Presiding Commissioner), referenced on pages 10 and 11 of the Decision.

of consistency is required across an administrative tribunal's decisions. Nevertheless, to argue, as ED does, that any flaws in the Decision are immaterial because its conclusions are not legally binding ignores how parties litigate proceedings before the OEB, and how Commissioners ultimately adjudicate them. Failing to correct, or even review, flawed decisions risks entrenching, and allowing an evolution of, flaws that could have otherwise been corrected. This can have a corrosive effect that ultimately undermines the OEB's core public interest mandate.

24. As alluded to above, these risks implicate the IRP Framework Review. When a pilot decision appears to "resolve" (even implicitly) an issue that a framework review is convened to examine, the consultation process risks becoming an exercise in rationalizing an already signalled conclusion, rather than a development of a policy based on full submissions and evidence. This potential harm is exacerbated by the fact that the Decision's conclusions on the Review Issues went beyond the matters that were to be adjudicated in the underlying application, were not supported by the evidence, and were made without the parties having had an opportunity to make submissions.[14]

25. Focussing narrowly on the dollar amounts associated with the SLH IRP Pilot Project understates the nature of the Review Issues. The Decision does more than allocate funding in a single project. Instead, the Decision forecloses an entire category of potential IRP measures and directs Enbridge Gas to reallocate resources accordingly. Those directions shape the design, scope, and learning objectives of current and future pilots, with consequences that extend well beyond the immediate budget lines at issue.

26. Materiality under Rule 43 should not be viewed as being confined to immediate financial impacts. Where a decision constrains regulatory flexibility, predetermines outcomes in future proceedings, and eliminates opportunities for evidence-based learning, the resulting effects are inherently material. Given all this, foreclosing a review at this preliminary stage risks improperly embedding these consequences into the regulatory framework moving forward.

[14] See, for example, the Notice of Motion, para. 17.

Alleged Delays and Inefficiencies Do Not Answer the Threshold Question

27. Multiple intervenors urge the OEB to decline a substantive review because the IRP pilot is overdue and further process may cause delay. For example, BOMA argues that the pilot is "already years behind," that proceeding with the Motion will "create uncertainties and further delays," and that the pilot should proceed "as approved with no further delay."[15] PP similarly argues that the pilots were ordered years ago and questions whether it makes sense to "further delay" implementation given the broader framework work underway.[16]

28. As a preliminary point, it is important to stress that Enbridge Gas has sought a stay of the Decision only in respect of the Review Issues, rather than the IRP pilot project as a whole.[17] The pilot project has not been delayed as a result of the review motion process. All offerings aside from the advanced gas technology measures at issue in the Review Motion are currently being implemented, including electrification measures at the limited participation levels proposed by Enbridge Gas in the application.

29. In any event, Rule 43.01 is not a delay balancing exercise. Treating delay as dispositive could effectively immunize decisions from review, including those that have material operational impact or (as set out above) implicit precedential consequences. Rule 43 is intended to ensure that potentially material errors are not left unexamined. Prioritizing expediency risks leaving flawed decisions untouched which, as set out earlier, carries with it numerous downstream consequences.

30. ED[18] and BOMA[19] argue that the Decision was correct because electrification measures are more cost-effective. Leaving aside the substantive inaccuracy of these claims, and that cost considerations may be relevant to the consideration of IRP measures generally, this Motion does not ask the Review Panel to resolve whether electrification measures are

[15] BOMA Submission on the Threshold Question, February 27, 2026, p. 2.
[16] PP Submission on the Threshold Question, February 27, 2026, pp. 2 – 3.
[17] Notice of Motion, paras. 27 – 30. Paragraph 30 specifically states:

> The requested stay will not impact the implementation of the other aspects of the SLH IRP Pilot Project. Enbridge Gas is taking active steps to implement the SLH IRP Pilot Project while this Review Motion is being considered, except for the directed reallocation of the portion of the $1.5 million in the denied advanced gas technology funding to electrification measures or the implementation of thermal energy storage under the condition in the Decision that precludes natural gas.

[18] ED Submission on the Threshold Question, February 27, 2026, p. 2.
[19] BOMA Submission on the Threshold Question, February 27, 2026, p. 2.

more or less cost effective than gas-based measures. This Motion does not turn on a disagreement over comparative cost-effectiveness.

31. The Decision is not framed solely as a cost comparison. The Decision, among other things, expresses an equivocal rule that, for example, "the OEB will not approve" IRP pilots with gas equipment incentives, and then gives that rule operative effect by denying funding for hybrid heating/gas heat pumps and directing budget reallocation to electrification measures.

32. The intervenors' focus on urgency, and alleged inefficiencies, does not engage with the threshold question. The Motion challenges specific, binding directions that Enbridge Gas alleges were improperly made which, if corrected, could materially change the Decision. This is precisely the inquiry Rule 43 requires the Review Panel to undertake.

The Review Should Not be Reduced in Scope

33. SEC is the only intervenor that ultimately supports answering the threshold question in the affirmative. SEC acknowledges that each of the Review Issues ought to be heard on their merits. In doing so, however, SEC seeks to pre-limit the merits review by excluding certain grounds. SEC urges the OEB to limit the scope on the merits (treating some grounds as potential errors and others as not requiring review) and proposes additional findings about what should be stayed and how the pilot should be timed.[20]

34. SEC's approach is not only procedurally premature under Rule 43 but it would also require an artificial dissection of the Decision that is unworkable. The Decision's conclusions are intertwined across policy framing, scope, evidence, and the resulting operative directions.

35. Rule 43 contemplates a sequence: determine whether the motion passes the threshold; if it does, the Review Panel hears the motion on the merits. Pre-emptively striking grounds at the threshold stage effectively adjudicates merits without the merits process contemplated by the Rules.

[20] See, for example, SEC Submission on the Threshold Question, February 27, 2026, pp. 4 – 5.

36. The underlying assumptions, reasoning, precedents and assertions in the Decision that culminated in the Review Issues are not separable silos. The Decision's definitive rejection of gas equipment incentives is justified through its articulation of IRP and DSM purposes and the view that incentives "continue the need for gas infrastructure and utilization of gas." This framing is then used to directly support the directions being challenged.

37. In other words, the "policy framing" and "evidence" and "scope" issues are not separable in the Decision. Rather, they are the logical chain leading to the operative directions Enbridge Gas now challenges.

38. The Decision does not compartmentalize its reasoning in the manner SEC suggests. Its policy framing, evidentiary conclusions, and operative directions form an integrated chain of reasoning. Artificially severing that chain at the threshold stage would distort the review process and risk leaving material errors unexamined. If the Motion meets the Rule 43 threshold (as SEC itself accepts) then the appropriate course is to allow all of the Review Issues to be addressed together on their merits, which necessarily includes all of the grounds that led to those issues. Parties can argue that some grounds should be disregarded, but that is a matter for a hearing on the merits of the Review Issues, and not at this threshold stage.

Conclusion

39. For these reasons, Enbridge Gas submits that the intervenor submissions either (i) do not engage the Rule 43 threshold inquiry, or (ii) advance merits-based defences that cannot defeat threshold review. The Motion raises relevant issues that, if proven, could reasonably be expected to result in a material change to the Decision.

40. Accordingly, Enbridge Gas respectfully requests that the OEB determine that this Review Motion has passed the threshold question and that each of the Review Issues should be considered on their merits by a different panel of Commissioners from the Commissioners who issued the Decision.

All of which is respectfully submitted this March 10, 2026.

David Stevens
Aird & Berlis LLP
Counsel to Enbridge Gas

Patrick Copeland
Aird & Berlis LLP
Counsel to Enbridge Gas