

January 16, 2023

**BY EMAIL AND FILED VIA RESS**

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

Dear Ms. Marconi:

**Re: Enbridge Gas Inc. (“Enbridge Gas”)  
EB-2022-0200 – 2024 Rates Application  
Submissions on Issues List**

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We act as counsel to Enbridge Gas in this matter.

Pursuant to Procedural Order No. 1, these are the Enbridge Gas submissions on the Issues List.

As explained in the OEB staff letter sent on Friday, January 13<sup>th</sup>, through the Issues Day process almost all parties in this proceeding have reached agreement on almost all items in the Issues List. OEB staff’s letter attached an updated proposed version of the Issues List, reflecting the changes made at the Issues Day and subsequent discussions. As can be seen, there are only a modest number of changes from what the OEB included in the Draft Issues List in Procedural Order No. 1. Where there are changes proposed, and these are not self-explanatory, the footnotes in the proposed version of the Issues List provided by OEB staff explains the proposals jointly made by all parties.

There are two “disputed” issues. Both of the disputed issues (#46 and #47) are found in the “Storage” section of the Phase 2 issues.

- 46) Should the cap on cost-based storage service for in-franchise customers established in the NGEIR decision remain at 199.4 PJ?
- 47) Is the *[procurement process for]* purchase of storage service at market-based rates by Enbridge Gas from Enbridge Gas for in-franchise customers appropriate?

On each of these issues, Enbridge Gas takes a different position from intervenors. Enbridge Gas submits that Issue 46 should not be included in the Issues List, and that the scope of Issue 47 should be narrowed to address only the procurement process for the purchase of market based storage by Enbridge Gas. The Company’s brief submissions are set out below.

**Issue #46 – Cap of Cost-Based Storage**

Issue #46 asks whether the cap on cost-based storage service for in-franchise customers established in the NGEIR decision should remain at 199.4 PJ. Enbridge Gas submits that this is

a question that has already been addressed and answered by the OEB, and it is not appropriate or necessary to revisit it in this case.

In the November 2006 NGEIR Decision, the OEB decided that “there should be a cap on the amount of Union’s existing storage space that is reserved for in-franchise customers at cost-based rates”.<sup>1</sup> The OEB “determined that Union should be required to reserve 100 PJ (approximately 95 Bcf) of space at cost-based rates for in-franchise customers.”<sup>2</sup> This was stated to be “the capacity that Union must ensure is available to in-franchise customers if they need it”.<sup>3</sup>

The combination of the 99.4 PJ of cost-based storage from the Enbridge Gas Distribution rate zone that existed at the time of the NGEIR decision<sup>4</sup> and the 100 PJ of cost-based storage from the Union rate zone reserved for ratepayers through the NGEIR Decision results in the current 199.4 PJ of cost-based storage available to Enbridge Gas customers.<sup>5</sup>

Following the NGEIR Decision, there were multiple Motions to Review filed with the OEB. In a Motions Decision issued in May 2007, a Review Panel of the OEB determined that the moving parties had met the test for review in relation to the decision to cap the amount of storage available at cost-based rates for in-franchise customers of Union at 100 PJ. The OEB Review Panel noted that:

*The NGEIR panel is silent on the outcome if in-franchise customers require more than the 100 PJ of storage per year. Although the NGEIR panel is clear that it does not expect this circumstance to occur for many years, the decision nevertheless appears to raise the possibility that in-franchise customers may, at some point, be subject to unregulated prices.*<sup>6</sup>

The OEB Review Panel then indicated that the NGEIR Panel should have addressed the following questions:

- (a) *If the cap of 100 PJ of storage for in-franchise Union customers remain in place in perpetuity, what is the basis for forbearance (under Section 29) of required storage above 100 PJ for in-franchise customers?*
- (b) *If the cap of 100 PJ of storage for in-franchise Union customers does not remain in place in perpetuity, what mechanism should the Board use to monitor the likelihood of the cap being exceeded?*

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<sup>1</sup> EB-2005-0551 Natural Gas Electricity Interface Review (NGEIR) Decision with Reasons, November 7, 2006, at page 82.

<sup>2</sup> NGEIR Decision, at page 83.

<sup>3</sup> *Ibid.*

<sup>4</sup> NGEIR Decision, at page 11.

<sup>5</sup> See Utility Storage Capacity evidence filed in this case at Exhibit 4, Tab 2, Schedule 5, para. 4.

<sup>6</sup> EB-2006-0322/0338/0340 Motions to Review the Natural Gas Electricity Interface Review Decision, Decision with Reasons, May 22, 2007 (NGEIR Review Motion), at page 48.

(c) *If the cap of 100 PJ of storage for in-franchise Union customers is likely to be exceeded, what, if any, remedy is available to in-franchise customers?*<sup>7</sup>

Implementing the findings of the Review Panel, the NGEIR Panel heard the NGEIR Review Motions, and issued the NGEIR Review Decision in July 2007. In that Decision, the OEB made clear that “the purpose of the 100 PJ cap is to establish a permanent allocation between utility and non-utility storage.” (underline added).<sup>8</sup>

The OEB then addressed the question of whether some “remedy” is required in the event that Union in-franchise customers require more than 100 PJ of storage. That is the question that is asked by Issue #46 of the Issues List. As can be seen in the following passage from the NGEIR Review Decision, the question has been directly answered – no “remedy”, or adjustment to the cap, is required.

*No “remedy” is required. Once the 100 PJ limit is exceeded, incremental in-franchise storage requirements will be met through purchases by Union in the open market, a market the Board has determined is competitive. The all-in cost for in-franchise consumers for storage services will be a blend of historical costs for 100 PJ and competitive market prices for the balance. As in markets for any good or service, those market prices will depend on market conditions at the time Union acquires the extra storage. The Board expects that parties will scrutinize how Union acquires services to meet the needs of its in-franchise customers, and the Board will determine just and reasonable rates. In short, competitive prices will be available to in-franchise customers and the regulatory oversight will remain in place to ensure that Union passes on those prices.*<sup>9</sup>

The implication of the NGEIR Decision and the NGEIR Review Decision is that the amount of cost-based storage available for Enbridge Gas customers has been fixed on a permanent basis. This determination was made after an 11 month generic proceeding convened by the OEB and involving 40 parties, which was followed by fully contested and comprehensive review motions and an unsuccessful petition to the Lieutenant Governor in Council for review.

The NGEIR Decision found that “... any new storage which is developed by the utilities will be included as part of the competitive market. The utilities will bear the risk of these investments, not ratepayers.”<sup>10</sup> One reason for this finding was to stimulate the development of additional storage capacity. On this topic, the OEB indicated that “[t]he Board does not believe that the best way to stimulate development of storage assets and services is to order utilities to develop these resources. The Board’s preferred approach is to use market mechanisms where possible, and

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<sup>7</sup> NGEIR Review Motion, at pages 48-49.

<sup>8</sup> EB-2006-0322/0340 A Review of Certain Parts of the Natural Gas Electricity Interface Review (EB-2005-0551) Decision Of November 7, 2006 and Conducted Pursuant To The Board’s Review Decision of May 22, 2007, Decision with Reasons, July 30, 2007 (NGEIR Review Decision), at page 7.

<sup>9</sup> NGEIR Review Decision, at page 9.

<sup>10</sup> NGEIR Review Decision, at page 70.

under forbearance, the Board concludes, the utilities will have an incentive to develop assets and services”.<sup>11</sup>

Enbridge Gas and its predecessor utilities have relied on the findings from the NGEIR Decision and the NGEIR Review Decision for many years as they have developed new storage for the benefit of the market. It would not be fair or reasonable to re-open the previous “permanent” determination of how much cost-based storage is available.

Enbridge Gas expects that some parties may indicate that the OEB has already re-opened this issue in its recent Dawn to Corunna Leave to Construct Decision. In that Decision, the OEB stated as follows:

*The OEB is of the view that the concerns raised by Pollution Probe and Energy Probe regarding the need for an examination of the overall integration of storage assets between the legacy storage of Enbridge Gas Distribution and Union Gas Limited is best addressed in the upcoming Enbridge Gas rebasing proceeding.*

*The rebasing proceeding will address the appropriate allocation of storage and storage related costs to each of the regulated business and the unregulated business and, if Enbridge Gas seeks to put the Project into rate base, the extent to which the recovery of the cost of the Project from ratepayers is appropriate.<sup>12</sup>*

Enbridge Gas has reviewed the submissions made by parties in the Dawn to Corunna LTC proceeding, and finds no reference from any party asserting that the NGEIR Decision should be re-visited and the amount of cost-based storage available to customers should be increased. Therefore, Enbridge Gas does not believe that it is fair to read the Dawn to Corunna LTC Decision as re-opening this issue.

#### Issue #47 – Purchase of Market-Priced Storage

Issue #47 as framed by the OEB in Procedural Order No. 1 asks whether the purchase of storage service at market-based rates by Enbridge Gas from Enbridge Gas for in-franchise customers is appropriate. Enbridge Gas submits that this issue should be narrowed. Enbridge Gas proposes that the more appropriate question to ask is whether the procurement process through which Enbridge Gas might acquire market-based storage from itself is appropriate.

Enbridge Gas’s storage requirements for its in-franchise customers exceed the amount of cost-based storage that is available. Therefore, Enbridge Gas must obtain some storage from the market to serve its customers. Enbridge Gas submits that it will not be in the best interest of its ratepayers to preclude the option of purchasing market-priced storage from itself. Ratepayers are best served by having the utility have full latitude to consider all available options to determine the most appropriate solutions. At the same time, ratepayers and the OEB will want to be assured that Enbridge Gas is acting in the best interests of ratepayers and not improperly favouring its

<sup>11</sup> NGEIR Decision, at page 50.

<sup>12</sup> EB-2022-0086 Decision and Order, November 3, 2022, at page 9.

own interests. That is noted in the paragraph from the NGEIR Review Decision reproduced on page 3 of these submissions.

Taking these considerations in to account, Enbridge Gas proposes that Issue 47 be re-stated, so that it asks whether the procurement process used by Enbridge Gas to obtain market-priced storage is appropriate.

Other Issues

The OEB staff submission questions the inclusion of proposed Issue 59, which asks whether the OEB Commissioners should make a recommendation to the OEB's Chief Executive Officer to review certain SQR measures in the GDAR. In response, Enbridge Gas simply notes that the request described in proposed Issue 59 is included in the Application<sup>13</sup> and prefiled evidence in this case.<sup>14</sup>

Additionally, an individual intervenor (AnnaMaria Valastro) has suggested an additional issue be added asking whether the data and methodologies used by Enbridge Gas is/are "satisfactory or acceptable in quality or quantity of informational input". Enbridge Gas does not believe that an additional issue is needed. Questions about quality or sufficiency of data and methodologies can be pursued as appropriate under the issues already included in the Draft Issues List.

Yours truly,

AIRD & BERLIS LLP



David Stevens  
DS/

cc: All parties registered in EB-2022-0200

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<sup>13</sup> Exhibit 1, Tab 1, Schedule 2, at paragraph 13.

<sup>14</sup> Exhibit 1, Tab 7, Schedule 1.