

Sent by Email

June 19, 2024

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, ON M4P 1E4  
Attention: Registrar

Dear Ms. Marconi:

**Re: EB-2023-0062 – 2021 Demand Side Management Deferral and Variance Account Disposition Application by Enbridge Gas Inc. – SBUA Cost Claim**

We are counsel to the Small Business Utility Alliance (SBUA). Pursuant to the decision and order issued last May 7, 2024, please find enclosed SBUA's cost claim in this proceeding. We note the following:

- a. On June 9, 2023, OEB approved SBUA as an intervenor and decided that SBUA was eligible for costs.
- b. The questions posed by SBUA to Enbridge Gas Inc. regarding its application, as well as the answers given by the company, provided important information on the impacts of the 2021 program in different areas based on the eTools Validation Study results. Likewise, SBUA requested and supported the decision of the Evaluation Contractor to verify the calculations provided by Enbridge Gas Inc. regarding the shareholder incentive, which resulted in a reduction of it.
- c. In that sense, SBUA's participation also allowed the rectification of different verification elements and calculations previously performed by Enbridge Gas based on the eTools validation study, as highlighted by the OEB in its final decision.<sup>1</sup>
- d. SBUA (i) participated responsibly in the process, (ii) contributed to a better understanding of (1) the 2021 Natural Gas Demand-Side Management Annual Verification Report prepared by the Evaluation Contractor, DNV, (2) the Evaluation, Monitoring, and Verification (EM&V) plan prepared by the Evaluation Advisory Committee, (3) the Custom Commercial Offering by Enbridge Gas Inc., and (4) the Commercial & Industrial Direct Install Offering by Enbridge

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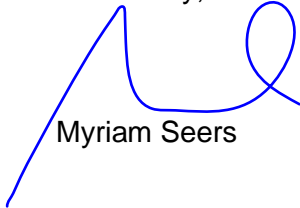
<sup>1</sup> Page 11: “The OEB also notes that the points made by SEC, SBUA and OEB staff regarding various elements of verification and calculations by Enbridge Gas have been addressed by the updated calculations based on the eTools Validation Study”

Gas Inc., and how these last two were addressed to small customers, (iii) complied with the Board's orders, and rules, codes, guidelines, and filing requirements, and (iv) made reasonable efforts to ensure that its participation in the process was not unduly repetitive. In that regard, we respectfully submit that the costs claimed should be reimbursed in full.

Attached are the following documents:

- a. Invoice issued by E&E Law Corp to SBUA
- b. Invoice issued by Agora International Law PC to SBUA
- c. Agora International Law PC's time dockets
- d. E&E Law Corp's time dockets
- e. Myriam Seers' *curriculum vitae*
- f. Sebastian Melo's *curriculum vitae*
- g. James Birkelund's *curriculum vitae*

Yours truly,



Myriam Seers

cc. All parties in EB-2023-0062

**E&E Law Corp.**  
James M. Birkelund  
Attorney

E: james@birkelundlaw.com  
T: 415.602.6223; F: 415.789.4556  
Mailing Address: 2355 State St., Ste. 101  
Salem, OR 97301

May 15, 2024

To: Small Business Utility Alliance  
Re: Legal Account for *EB-2023-0062 – 2021 Demand Side Management Deferral and Variance Account Disposition Application by Enbridge Gas Inc.*

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STATEMENT OF ATTORNEY SERVICES RENDERED AND EXPENSES

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Attached below please find attorney hours and expenses incurred from 5/16/23 to 5/10/24:

	Description	Amount
<b>Attorney hours:</b>	3.0 hours Rate of \$330/hour based on Ontario Energy Board rates	\$990.00
<b>Expenses:</b>	None	-
<b>Total:</b>		<b>\$990.00</b>

Detailed time records are included and as provided to the Ontario Energy Board in our cost submission.

Very truly yours,



James M. Birkelund

By email

June 18, 2024

**Small Business Utility Alliance (SBUA)**

c/o Britt Marra, Project Manager  
 24 Valifor Pl.  
 Toronto, ON M4J 4Z7  
 Canada  
[brittmarra@gmail.com](mailto:brittmarra@gmail.com)

Payment Terms: Upon Receipt

**RE: EB-2023-0062 – 2021 Demand Side Management Deferral and Variance Account Disposition Application by Enbridge Gas Inc.**

<b>Time Docket</b>			
<b>Myriam Seers</b>			
Date	Matter	Subtotal	Hourly Rate
June 30, 2023	Reviewing application; reviewing other interveners' and Staff interrogatories; revising draft interrogatories	2.8	\$ 290
August 9, 2023	Drafting and revising submissions	0.3	
Subtotal		3.1	\$ 899.00
<b>Sebastian Melo</b>			
Date	Matter	Time (Hours)	Hourly Rate
May 19, 2023	Communications with SBUA in connection with Enbridge Gas' application, as well as analyzing and reviewing the application, and drafting of the request for intervention	0.9	\$ 170
June 1, 2023	Analyzing and reviewing Enbridge Gas' application to draft SBUA's interrogatories	3.7	

June 9, 2023	Analyzing and reviewing Procedural Order No. 1, as well as communications with SBUA in connection with the OEB's decision	0.6	
June 30, 2023	Final review of SBUA's interrogatories, as well as filing the interrogatories	0.3	
August 4, 2023	Analyzing and reviewing documents filed by other intervenors; analyzing and reviewing submissions filed by OEB's staff; drafting SBUA's submission and filing it; communications with SBUA in connection with the submission to be filed	3.5	
August 23, 2023	Analyzing and reviewing the response filed by Enbridge Gas Inc. and procedural steps to be followed	0.3	
May 7, 2024	Analyzing and reviewing the decision issued by the OEB, as well as communications with SBUA in connection with the application made by Enbridge Gas Inc. and the decision issued by the OEB	0.5	
Subtotal		9.8	\$ 1,657.5
<b>Total</b>			<b>\$ 2,556.5</b>

Subtotal	CAD 2,556.5
HST (13%)	CAD 332.3
<b>Total</b>	<b>CAD 2,888.8</b>

## PAYMENT DETAILS

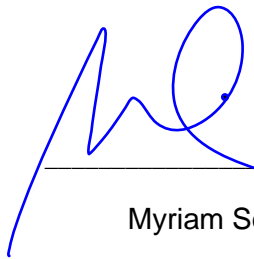
By wire transfer  
**Agora International Law Professional Corporation**  
 2 Grange Place  
 Toronto, Ontario M5T 1Z5 Canada

# AGORA

Agora International Law PC  
Bay Adelaide Centre West  
333 Bay Street, suite 900  
Toronto, ON M5H 2R2  
Canada

Myriam Seers  
[mseers@agora.law](mailto:mseers@agora.law)  
+1 416 886 7154

We remain at your disposal should you have any questions.



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Myriam Seers

<b>Time Docket</b>				
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May 7, 2024	Analyzing and reviewing the decision issued by the OEB, as well as communications with SBUA in connection with the application made by Enbridge Gas Inc. and the decision issued by the OEB	0.5		
Subtotal		9.8		\$ 1,657.50
<b>Total</b>				<b>\$ 2,556.50</b>

**Time Docket for James Birkelund: EB-2023-0062**  
**Application for the disposition of 2021 Demand Side Management Deferral and Variance Accounts**

**Issue Identification**

- 1 Review Application and Evidence
- 2 Discovery
- 3 Issue List
- 4 Intervenor Evidence
- 5 Stmt Conference / ADR
- 6 Oral Hearing
- 7 Submissions
- 8 Other Attendance
- 10 Communications
- 11 Motions
- 12 Confidentiality
- 13 Decision
- 14 Rate Order

<b>Date</b>	<b>Descriptions</b>	<b>Total</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>
5/16/2023	Initial rev and analysis of Application.	0.5	0.5													
5/16/2023	Consult w client re intervention.	0.5										0.5				
5/19/2023	Edits to SBUA intervention ltr request.	0.25							0.25							
5/19/2023	Confer w counsel re the same.	0.25										0.25				
6/20/2023	Review PO#1.	0.25														
6/30/2023	Confer w counsel re SBUA interrogatories.	0.25		0.25												
8/9/2023	Rev SBUA submission and argument; consult with client re the same.	0.5							0.25			0.25				
5/10/2024	Rev final decision and confer w client re the same.	0.5										0.25				0.25
	<b>Totals:</b>	<b>3</b>	<b>0.5</b>	<b>0.25</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.5</b>	<b>0</b>	<b>0</b>	<b>1.25</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.25</b>



## **Myriam Seers**

Myriam is Agora's founding partner. Before that, she spent most of her career in major Canadian business law firms McMillan and Torys.

She specializes in investment treaty arbitration and international commercial arbitration, with a particular focus on disputes arising from the mining, electricity (including renewable energy), oil & gas and transportation sectors. She has experience with disputes involving projects all over the world, with a particular emphasis on Latin America. She also appears before Canadian courts in proceedings to set aside or enforce foreign arbitral awards.

Myriam is based in Toronto, Canada, a global center for the mining industry. Throughout her career, she has worked on cases involving mining projects at all phases of their life cycle, from early-stage exploration to development-stage projects to operating mines, in jurisdictions as varied as Ecuador, Mexico, Costa Rica, Côte d'Ivoire, Madagascar and the Kyrgyz Republic. She has extensive experience helping clients navigate the wide variety of roadblocks that can stall or stop a mining project over the course of its life, and in fearlessly advocating on clients' behalf in an investment treaty arbitration or other dispute resolution forum when those roadblocks cannot be overcome.

Myriam also has substantial experience with disputes involving renewable energy projects, including offshore wind, onshore wind, hydroelectric and solar projects.

Myriam is ranked as a "Future Leader" by the global publication "Who's Who Legal: Arbitration" (which states that she is "truly excellent" and has "a remarkable reputation for her work on large, complex international arbitration proceedings") and "Up and Coming" by Chambers Global and Chambers Canada: Dispute Resolution (which states that she is "extremely bright and dynamic" and "attracts praise for her ability to understand and manage very complicated situations"). She works in English, French, Spanish, Portuguese and Italian.

In addition to her counsel practice, Myriam sits as an arbitrator and is part of Arbitration Place's NextGen roster of arbitrators. She has been appointed arbitrator by the International Court of Arbitration of the ICC.

Myriam is the Chair of the ICC Canada Arbitration Committee, the Regional Editor for common law jurisdictions of the Delos Guide to Arbitration Places and a frequent guest lecturer on investment treaty arbitration at Osgoode Hall Law School and McGill University.

## **Sebastian Melo**

Sebastián is an associate in Agora. His practice focuses on foreign investment protection law and international arbitration. He has experience advising Canadian companies with mining and other types of projects in Latin America and elsewhere with respect to foreign investment protections and representing them in investor-state arbitrations, including before the International Centre for the Settlement of Investment Disputes (ICSID).

He has more than six years of experience representing different international companies before international and domestic (Colombian) arbitral tribunals. Since 2019, he has been on the Arbitral Tribunal Secretaries Roster of Bogotá's Chamber of Commerce Arbitration and Conciliation Center and has acted as arbitral tribunal secretary in more than ten cases.

He is a lawyer admitted to practice in Colombia, has postgraduate studies in commercial law, completed a specialized course for Arbitral Tribunal Secretaries, and is currently pursuing studies in Global Business Management.

Before joining the firm, Sebastián was an associate at a Colombian firm where he focused his practice on commercial litigation in different jurisdictions and sectors, especially in the mining and energy sector. In 2016, he was a semifinalist in the Inter-American Human Rights Competition at the American University – Washington College of Law.

# James Matthew Birkelund

Tel: (415) 602-6223; james@birkelundlaw.com

## PROFILE

Energy and environmental attorney with over 22 years of legal experience. Extensive practice advocating before regulatory commissions and administrative bodies, litigating in civil courts, and representing clients on utility and energy matters.

## EDUCATION

**UNIVERSITY OF MICHIGAN LAW SCHOOL**, Ann Arbor, Michigan  
Juris Doctor, 1996-1999

**UNIVERSITY OF MICHIGAN, SCHOOL OF NATURAL RESOURCES**, Ann Arbor, Michigan  
Master of Science, Resource Policy, 1995-1999

**COLGATE UNIVERSITY**, Hamilton, New York  
Bachelor of Arts, *magna cum laude*, in Geology and Economics, 1989-1993

## LEGAL EXPERIENCE AND SELECT ENGAGEMENTS

**E&E LAW CORP**, Portland, Oregon

**PREVIOUSLY BIRKELUND LAW**, San Francisco, California

*Attorney*, 2009-present

- Public interest attorney focused on energy and environmental matters.
- Represent intervenors and other parties on matters before Regulatory Utility Commissions, including in California, Colorado, South Dakota, Washington D.C., Oregon, Washington, and Ontario, Canada.
- Extensive energy experience advocating on general rate cases; distributed energy resource cases, including transportation electrification, demand response, energy storage, microgrids, and net energy metering; telecommunication dockets; bill debt relief cases; and wildfire issues.
- Nonprofit clients have included: Small Business Utility Advocates, Sierra Club, California State Parks Foundation, Wetlands Defense Fund, Plastic Pollution Coalition, Climate Change Law Foundation, and Women's Earth Alliance.

### Sample Projects

- Advised solar industry client on protecting solar incentives by intervening before Colorado PUC.
- Represented client in providing energy efficiency products to third parties that qualify for loan programs with Southern California Edison.
- Negotiated hydropower agreements with Irrigation District in California, including provisions related to utility connections and net energy metering.
- Provided counsel for Indian Tribe on pipeline-related approvals before PUC in South Dakota.
- Drafted solar photovoltaic agreements with terms for utility connections and rebate programs.
- Advised utility on compliance with new and revised utility laws and regulations.
- Represented client on matters related to Tehachapi Renewable Transmission Project and Certificate of Public Convenience and Necessity at California PUC.
- Negotiated terms of "Hardship Efficiency Program" on behalf of utility to educate low-income households on energy efficiency.
- Advised utility on new initiative to procure and sell tradable renewable energy certificates.
- Evaluated and submitted administrative comments on proposed 500-megawatt hydroelectric dam project in Southern California.
- Established working group with nonprofit groups to evaluate renewable energy plans, including solar proposals in central desert of California.
- Analyzed and advised public officials on San Diego Gas & Electric's Sunrise Powerlink project before the California PUC.
- Analyzed and commented on U.S. Department of Energy proposals for nationwide transmission corridors for up to 500kV.

# James Matthew Birkelund

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(CONTINUED)

**SAN FRANCISCO SUPERIOR COURT**, San Francisco, California  
*Pro Tem Judge*, 2012-present

**CLEANTECH LAW PARTNERS**, San Francisco, California  
*Attorney Advisor to Utilities Practice Group*, 2010-present

- Counsel to full-service law firm specializing in renewable energy including utilities matters.

**ELECTRICITY UTILITY (SYNERGY)**, Perth, Australia  
*In-House Counsel*, 2008

- Counsel to Western Australia's largest energy utility with over \$1.5 billion in annual revenue.
- Formulated company environmental policies and positions; advised upper management on regulatory compliance; negotiated, reviewed, and drafted commercial agreements.
- Negotiated with *Office of Energy* and administrative agencies regarding compliance with energy market rules; drafted internal legal opinions; led training sessions for energy traders.

## **Alternative Energy Projects**

- Provided legal and business advice to launch the sale of tradable Renewable Energy Certificates (RECs) as a new product; drafted and negotiated contract provisions regarding the same.
- Analyzed and formulated company position on Australia's new emissions trading scheme and submitted comments to the *Department of Climate Change*.
- Advised and drafted legal terms for a \$60-million contract to sell RECs and energy to the *Public Transport Authority* and a \$20-million contract to sell alternative energy to *Murdoch University*.

**NATURAL RESOURCES DEFENSE COUNCIL**, Los Angeles, California  
*Senior Project Attorney*, 2004-2008

- Environmental lawyer for prominent nonprofit organization (*see* [www.nrdc.org](http://www.nrdc.org)).
- Duties included litigating, negotiating with resource agencies, pursuing administrative actions, testifying at public hearings, coordinating legislative campaigns, and lobbying public officials.

## **Sample Projects**

- Presented winning testimony at the largest ever administrative hearing before the California Coastal Commission (over 3,500 people) to protect the state park at *San Onofre State Beach*.
- Won federal court decision under Endangered Species Act and National Environmental Protection Act to enforce nuclear cleanup at *Santa Susana Field Laboratory*.
- Litigated to protect *Colonel Allensworth State Historic Park*, one of California's leading landmarks honouring African-American history, from dairy farm air and water pollution.

**MORRISON & FOERSTER LLP**, San Francisco, California  
*Attorney Associate*, 2000-2002

- Advised clients on environmental litigation, permitting and compliance matters, and land-use planning.
- Analyzed environmental laws and regulations; negotiated with governmental agencies, including air quality districts, California DOJ, federal EPA, Attorneys General, and City Attorneys.

## **Sample Projects**

- Responded to citizen challenges to Operating Permits and Authorities to Construct under the Clean Air Act, Title V.
- Represented corporations with permitting and compliance under the Clean Air Act and Clean Water Act, including responding to notices of violations, negotiating with Air Districts.
- Advised *San Francisco Airport* on environmental impacts of new runways, including under Clean Water Act, Endangered Species Act, Clean Air Act, and National Environmental Policy Act.

# James Matthew Birkelund

(CONTINUED)

## TEACHING AND OTHER VOLUNTEERING

**EXECUTIVE COMMITTEE, CALIFORNIA LAWYERS ASSOCIATION**, San Francisco, California  
*Environmental Executive Committee, Member, 2017-2020 (appointed term), Advisor, 2021-present*

**CLIMATE CHANGE LAW FOUNDATION**, San Francisco, California  
*Board of Directors, 2012-present*

**SMALL BUSINESS UTILITY ADVOCATES**, San Francisco, California  
*Board of Directors, 2012-2022*

**HASTINGS COLLEGE OF LAW**, San Francisco, California  
*Adjunct Professor, 2010-2014 (fall semesters)*

**SIERRA CLUB, Bay Chapter**, San Francisco, California  
*Legal Committee Member, 2010-2019*

**LOS ANGELES COUNTY BAR ASSOCIATION**, Los Angeles, California  
*Member of Environmental Executive Committee, 2007-2008*

**VENICE NEIGHBORHOOD COMMUNITY COUNCIL**, Venice, California  
*Board Member, 2007-2008*

Elected as public official to represent the over 30,000 citizens of Venice. Attended council meetings and voted on community issues.

## RECENT CONFERENCES

*Panel Moderator, Diversity, Equity, Inclusion and Justice before the California Public Utilities Commission*, California Lawyers Association's Yosemite Environmental Law Conference, CA, Oct. 20, 2021. Speakers include CPUC Commissioner Darcie L. Houck.

*Conference Organizer, Courts as Change Agents for Environmental Law Enforcement*, California Lawyers Association Virtual Conference, May 8, 2020.

*Conference Organizer, The Race to a Carbon Free Grid in California: California Lawyers Association 2019 Energy Law Conference*, Oakland, CA, Mar. 28, 2019.

*Panel Moderator, Common Law Lawsuits by Municipalities in the Name of Climate Change*, Yosemite Environmental Law Conference, Fish Camp, CA, Oct. 20, 2018.

*Panel Moderator, Sea Level Rise and the Law*, California Lawyer's Association Conference, San Francisco, CA, Aug. 20, 2018.

*Panel Moderator, Novel Claims to Tackle Climate Change and Air Pollution*, Private Enforcement Conference – Challenges in the Trump Era, Oakland, CA, May 4, 2018.

## BAR ADMISSIONS:

State of California (#206328)

U.S. Court of Appeals, Ninth Circuit

U.S. District Courts, Northern, Eastern, and Southern Districts of California