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BY EMAIL and RESS

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July 29, 2024
Our File: EB20240078

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0078 – Enbridge Gas Inc. Motion to Review – SEC Threshold Submissions

We are counsel to the School Energy Coalition ("SEC"). Enclosed, please find SEC's submissions on the Threshold Test.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)

EB-2024-0078

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 an Application by Enbridge Gas Inc., pursuant to section 36(1) of the *Ontario Energy Board Act, 1998,* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2024

AND IN THE MATTER OF the OEB's Decision and Order dated December 21, 2023.

AND IN THE MATTER OF Rule 8 and 40, 42 and 43 of the *Rules of Practice and Procedure* of the Ontario Energy Board.

SUBMISSIONS OF THE SCHOOL ENERGY COALITION (THRESHOLD TEST)

A. Overview

1. Enbridge Gas Inc. ("Enbridge") filed an application with the Ontario Energy Board ("OEB") pursuant to section 36 of the *Ontario Energy Board Act*, seeking approval for rates for the sale, distribution, transmission, and storage of gas for the period of 2024 to 2028 (EB-2022-0200). After an 18-day oral hearing, and detailed final arguments from all parties on the unsettled issues as part of Phase 1 of the proceeding, the OEB issued its Decision and Order on December 21, 2023 ("Phase 1 Decision").[1]

2. Enbridge filed a motion, which was subsequently amended, to review and vary aspects of the OEB's Phase 1 Decision regarding determinations with respect to certain depreciation asset lives and the inclusion of integration capital in the rate base. The amendment had removed several substantial issues from the motion, including cost of capital, capital budget, and the customer connection policy.

3. Pursuant to the *Notice of Hearing and Procedural Order No. 1*, as directed by the OEB, these are the School Energy Coalition's ("SEC") submissions on the threshold question (also often referred

[1] *Decision and Order* (EB-2022-0200), December 21, 2023 ["Phase 1 Decision"]

to as the threshold test).

4. Enbridge's motion to review and vary should be dismissed, as it does not meet the threshold test. The alleged errors are nothing more than a mix of, a) disagreements with the hearing panel's exercise of its discretion, b) arguments that the hearing panel rejected, and c) alleged errors which, even if corrected, would not materially, if at all, impact the hearing panel's decision. None of them are a basis for the OEB to consider the motion on the merits.

5. Further, Enbridge's approach to the OEB's direction is unhelpful. By filing draft submissions on the merits of the motions, and simply referring to them in its threshold submissions to outline alleged errors, Enbridge has confused the difference between the threshold issue and the substantive arguments. In effect, it has rejected the OEB's purposeful delineation of the threshold step.

B. Background

Depreciation and Asset Lives

6. Enbridge sought approval of harmonized depreciation expenses based on a proposed depreciation methodology and asset lives, which together resulted in their proposed depreciation rates. As part of that methodology, Enbridge proposed, supported by expert evidence from Concentric Energy Advisors ("Concentric"), the use of the Equal Life Group ("ELG") procedure to replace the Average Life Group (ALG) procedure that has been used by legacy Enbridge Gas Distribution, and the Generation Arrangement procedure that has been used by legacy Union Gas.[2] Enbridge also proposed, supported by the evidence from Concentric, harmonization and updates to the existing asset life parameters for various asset accounts.[3]

7. Both OEB Staff and the Industrial Gas Users Association ("IGUA") filed expert evidence criticizing the work of Concentric, and Enbridge's proposal. InterGroup (on behalf of OEB Staff) and Emrydia (on behalf of IGUA) both recommended the use of the ALG procedure, and the use of several different asset life parameters.[4]

8. In the Phase 1 Decision, the OEB approved the continuation of the ALG procedure already in use by the predecessor Enbridge Gas Distribution ("EGD"). Faced with a lack of evidence on the impacts of the energy transition risk on depreciation, the OEB elected not to change to a new

[2] Phase 1 Decision, p.80

[3] Phase 1 Decision, p.83

[4] Phase 1 Decision, p.80-81

methodology without a proper analysis. A new methodology may be appropriate once Enbridge has assessed the energy transition risk on its depreciation policy. It ordered Enbridge to do so, and maintained a close to status quo situation until that time.

9. The OEB was clear that the risk of stranded or underutilized assets "needs to be addressed in the utility's depreciation policy."[5] The problem for the OEB was that, while "Enbridge Gas has identified a risk of stranded asset costs due to the energy transition," in its judgment it had "not assessed that risk, including whether to address it in its depreciation policy proposal."[6]

10. The hearing panel commented that while ELG resulted in some "acceleration in the recovery of the depreciation expense, the OEB does not accept the assertion that this proposal was responsive to the risk of stranded asset costs, since Enbridge Gas has not provided any meaningful assessment of that risk in its application."[7] The OEB was "persuaded by the testimony of the InterGroup and Emrydia witnesses that neither the ELG nor ALG procedures were designed to address the energy transition risk."[8]

11. As a result, the OEB found that Enbridge "needs to carry out a proper assessment of risk and determine the extent to which that risk should be addressed in its depreciation policy", and, until that occurred, it was not the time to change to a new methodology.[9] It ordered Enbridge to file, at its next rebasing application, a report examining options to ensure its depreciation policy addresses the risk of stranded asset costs appropriately.[10]

12. In light of the lack of proper assessment, the OEB determined that now was not the time to move to a new depreciation procedure, and that as ALG was the only available legacy methodology that could be used for the amalgamated utility, it should be adopted.[11]

13. With respect to its recommended appropriate asset lives, the evidence was that, with the exception of some general comments in its report[12], Concentric did not discuss at all how it considered

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[5] Phase 1 Decision, p.83

[6] Phase 1 Decision, p.83

[7] Phase 1 Decision, p.83

[8] Phase 1 Decision, p.83

[9] Phase 1 Decision, p.83

[10] Phase 1 Decision, p.92, 140

[11] Phase 1 Decision, p.82-83

[12] EB-2022-200 Exhibit 4, Tab 5, Schedule 1, Attachment 1

the energy transition. At the oral hearing, for the first time, Concentric claimed that it had considered the energy transition in determining its recommended asset lives[13], but admitted it did not do so for all asset accounts[14]. When asked, it could not explain the specifics of how it considered that factor.[15]

14. Not surprisingly, the OEB found that it was not clear how Concentric considered the energy transition, and therefore the issue should be addressed as part of the OEB's ordered risk assessment.[16] On that basis, it was unspringing that it preferred the analysis of InterGroup and Emrydia, and approved their recommendations with respect to appropriate asset lives.[17]

Integration Capital

15. Enbridge's application was its first rebasing application since the 2018 amalgamation of legacy EGD and Union Gas ("UG") into Enbridge Gas Inc., and the first since 2013.[18] As part of its proposed 2024 opening rate base, Enbridge sought to include $119M of undepreciated capital costs related to $189M of integration-related in-service additions that it incurred during the deferred rebasing period.[19]

16. In the Phase 1 Decision, the OEB disallowed the addition of the undepreciated integration capital in the rate base. It found that to do so would be inconsistent with the intent of the OEB's decision in the MAADs proceeding ("MAADs Decision")[20], where it granted the deferred rebasing period. The OEB noted in the MAADs Decision that "five years provides a reasonable opportunity for the applicants to recover their transition costs."[21] The OEB, in this proceeding, recognized that the MAADs panel was presented with evidence describing the nature of the capital investments and their costs, and "clearly turned its mind to the five-year period as a reasonable opportunity to recover those costs during the five years against the savings that would be achieved and retained by the utility."[22]

17. The OEB agreed with Enbridge that benefits should follow costs but stated that "[i]n this case, the benefits did follow the costs – Enbridge Gas made capital investments that yielded savings that

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[13] EB-2022-0200 Tr.17, p.48
[14] EB-2022-0200 Tr.17, p.116
[15] EB-2022-0200 Tr.17, p.116
[16] Phase 1 Decision, p.86, 140
[17] Phase 1 Decision, p.86
[18] Phase 1 Decision, p.69
[19] Phase 1 Decision, p.71
[20] *Decision and Order* (EB-2017-0306/307), August 30, 2018
[21] Phase 1 Decision, p.74, citing *Decision and Order* (EB-2017-0306/307), August 30, 2018 p.22
[22] Phase 1 Decision, p.74

exceeded the cost of those investments during the deferred rebasing period, savings that it got to keep."[23] Rejecting Enbridge's argument, the OEB found that to allow the undepreciated capital costs to be included in the 2024 rate base despite the deferred rebasing period "would amount to a windfall to the utility."[24]

18. Ultimately, as part of the rate order process, the OEB agreed to reduce the $119M to $91M based on Enbridge's submission as the amount had only been estimated. In doing so, the OEB registered its surprise with the company, and said that "[t]his does not instill confidence in the accuracy of Enbridge Gas's evidence and oral testimony."[25]

C. Threshold Question

19. Pursuant to Rule 43.01 of the *Rules of Practice and Procedure*, the OEB can "consider a threshold question of whether the motion [to review] raises relevant issues material enough to warrant a review of the decision or order on the merits."[26]

20. The threshold question, or test, was first articulated in the *Motion to Review Natural Gas Electricity Interface Review* ("NGEIR") Decision, where the OEB commented that it is meant to determine whether there is "enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended."[27] The purpose was further clarified in 2021, when the OEB made a number of amendments to Rule 43.01. The OEB stated that the threshold test "is meant to be a tool that the OEB can use to assess motions to review at the outset… with a view to ensuring that only motions that have a proper basis will proceed to a review on the merits."[28]

21. While the considerations listed in Rule 43.01(a) are not exhaustive, in order for the threshold test to be met, the alleged errors must be errors, and not disagreements regarding the weight the OEB applied "or how it exercised its discretion".[29] They also must be errors that "could reasonably be

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[23] Phase 1 Decision, p.75

[24] Phase 1 Decision, p.75

[25] *Interim Rate Order* (EB-2022-2020), April 11, 2024, p.5

[26] *Rules of Practice and Procedure*, Rule 43.01

[27] *Decision with Reasons* (EB-2006-0322/338/340, May 22, 2007, p.18

[28] OEB Letter, Re: Proposed Amendments to Rules 40-43 of the Rules of Practice and Procedure Regarding Motions to Review: Invitation to Comment (EB-2021-0154), May 13, 2021, p.3

[29] *Rules of Practice and Procedure*, Rule 43.01(a)

expected to result in a material change to the decision",[30] and the moving party's interests must be sufficiently materially harmed "to warrant a full review on its merits".[31]

22. A motion to review is "not an opportunity for a party to reargue the case", [32] and a finding should not be set aside "unless there is no evidence to support the decision and [it] is clearly wrong."[33]

23. In considering the threshold test, the OEB should also bear in mind, that even if the OEB agrees to hear the motion on its merits, deference should be provided to the original panel. As with any rate-setting decision, a hearing panel is required to exercise judgment and balance various competing considerations.

D. Threshold Test Has Not Been Met

Adequacy of Reasons

24. Enbridge's arguments regarding the adequacy of the Phase 1 Decision reasons should be rejected at the threshold stage.[34]

25. While the OEB must grapple with the key issues, it is not required to "respond to every argument or line of possible analysis" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion."[35] As the Supreme Court has said, to "impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice."[36]

26. The Phase 1 Decision was required to address more than two dozen fully or partially settled issues[37], with each issue often requiring several determinations. If the OEB were required in its decision to provide a detailed explanation of why it accepted or rejected every single argument on every sub-issue, the OEB's 145-page decision would have been five times as long, and taken double the time to

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[30] *Rules of Practice and Procedure*, Rule 43.01(d)

[31] *Rules of Practice and Procedure*, Rule 43.01(e)

[32] *Decision with Reasons* (EB-2006-0322/338/340, May 22, 2007, p.18; See also *Grey Highlands (Municipality) v. Plateau Wind Inc*., 2012 ONSC 1001, para. 7

[33] *Decision and Order* (EB-2009-0063), August 10, 2010, para. 35

[34] EB-2024-0078 Enbridge Gas Inc. Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.32-36

[35] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para.128; citing *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, para. 16, 25

[36] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, p.128

[37] Phase 1 Decision

release. In the context of the higher threshold required in a court proceeding, the Ontario Court of Appeal has cautioned that any review must be "read in the context of the record."[38]

27. The reasons as they relate to the appropriate asset lives and incremental capital are more than sufficient to meet any required legal standard, especially when read, as required, in the context of the EB-2022-0200 record.[39]

Depreciation - Asset Lives

28. Enbridge alleges that the OEB erred in lengthening the average useful life of seven asset classes, on the basis that doing so was inconsistent with the Phase 1 Decision's concern about the risk of stranded assets.[40]

29. The evidence was that, while Concentric may have considered energy transition in making its recommended asset lives, the specifics of how that was done were not included in its report. As Ms. Nori put it, "[w]e did not include in the account-by-account description a discussion of energy transition...we included that discussion at the beginning of the report."[41]

30. What Ms. Nori was referring to was a general discussion at the beginning of the Concentric report discussing decarbonization.[42] Absolutely nowhere in its report did Concentric discuss how it actually considered energy transition risk in determining survivor curves, and therefore average asset lives—not at the specific account level, or at a higher methodological level.

31. The best evidence that Enbridge is able to point to is a discussion about a single account at the oral hearing (475.21), where Concentric's Ms. Nori, testified that when selecting between two different average useful lives used by legacy Union and EGD, they were "reacting to the energy transition factors and we put more weighting on the lower end of those two."[43] But then right after, when asked if that was done for all the accounts, Ms. Nori said, "No. There are certainly accounts that we even lengthened the lives."[44]

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[38] *Bruno v. Dacosta,* 2020 ONCA 602, para. 23

[39] *Bruno v. Dacosta,* 2020 ONCA 602, para. 23

[40] Enbridge Gas Inc., Submission on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.37-63

[41] EB-2022-0200 Tr.17, p.48

[42] EB-2022-0200 Exhibit 4, Tab 5, Schedule 1, Attachment 1, p.118

[43] EB-2022-0200 Tr.17, p.116; EB-2024-0078 Enbridge Gas Inc. Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.45-47

[44] EB-2022-0200 Tr.17, p.116

32. When Ms. Norri was asked if there was any "rigor involved in your application of these transition factors" and "how did you decide what to put on the factor," she responded that they had detailed conversations with Enbridge about energy transition, but "[b]eyond that, I don't know that we had a specific percentage that we placed 25 percent on energy transition or anything of that sort."[45]

33. In short, after hearing the Concentric evidence, neither the Commissioners nor anyone else would have been able to assess how the energy transition impacted the Concentric recommendation. There was no analysis, and no evidentiary basis, except a vague claim that they considered it.

34. That is why the OEB found that "while Enbridge Gas submitted that the recommendations made by Concentric included consideration of the energy transition, it is not clear what impact that had on Concentric's recommendations."[46] Tellingly, in submissions on this motion, Enbridge still cannot articulate *specifically* how Concentric considered the energy transition.

35. Enbridge simply disagrees with how the OEB weighed the evidence, but "a disagreement regarding the weight the OEB attached to certain facts does not amount to an error of fact."[47]

36. Regardless, it is not clear that any of this mattered to the ultimate decision the OEB made with respect to asset lives. The OEB's decision on depreciation broadly, and asset lives specifically, is that Enbridge had not undertaken a proper assessment of risk to determine the extent to which that risk should be addressed in its overall depreciation policy—a finding that Enbridge does not challenge in its motion to review. Until Enbridge undertakes such an assessment, which was ordered to be done for its next rebasing application, the OEB was going to set depreciation methodology and the asset lives, using a more traditional approach. A wholesale change in methodology would be premature in the absence of an analysis of one of the most material risks currently facing Enbridge.

37. This is an entirely appropriate exercise of the OEB's discretion, and thus is not a basis for a motion to review.[48] In that context, it made perfect sense that the OEB would prefer the analysis provided by InterGroup and Emrydia, whose analysis also did not include energy transition considerations.[49]

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[45] EB-2022-0200 Tr.17, p.116

[46] Phase 1 Decision, p.86

[47] *Rules of Practice and Procedure*, Rule 43.01(e)

[48] *Rules of Practice and Procedure*, Rule 43.01

[49] Phase 1 Decision, p.86

38. None of the findings are inconsistent with the broader findings regarding the energy transition risk. Quite the opposite. The OEB recognized that, to properly address the issue in the context of depreciation policy, Enbridge must do more than abstractly consider energy transition risk, but must conduct a proper assessment.

39. Enbridge further argues that, as a result of the Phase 1 Decision regarding asset lives, it now faces a "substantially increased risk of stranded assets."[50] However, this argument does not allege an error, rather, it is Enbridge's view on the impact of the decision. SEC disagrees with Enbridge's view, but regardless, this is not a ground for a motion to review. Even if relevant at all, this issue pertains to the appropriate equity thickness (which was increased from 36% to 38%), an issue that Enbridge explicitly withdrew from its motion to review.[51]

Integration Capital

40. Enbridge makes a number of arguments challenging the Phase 1 Decision rejecting the inclusion of integration capital costs in the 2024 opening rate base. Not only is Enbridge wrong, but as it admits[52], these are simply the same arguments regarding the interpretation of the MAADs Decision and MAADs Handbook, which were considered and rejected by the OEB.

41. The company further tries to confuse the issue by overstating the reliance in the Phase 1 Decision on certain references or calculations made by the OEB that it says are in error. Even accepting that there are these minor errors, even if corrected, they would not change the outcome.

42. Enbridge says that the OEB made a factual error in the context of its assessment of the integration projects. It points to the OEB's reference to an *example* where the OEB cited SEC and CCC regarding certain real estate consolidation projects that would not have occurred in the absence of amalgamation.[53]

43. Enbridge is correct that those references in the SEC Final Argument were to projects that were not part of the $119M undepreciated costs, albeit as a result of the Capital Update, which delayed those

[50] Enbridge Gas Inc., Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para. 60

[51] Fresh as Amended Motion to Review and Variance, p.11-12

[52] Enbridge Gas Inc., Submissions on the Threshold Question, Appendix A,(Draft) Submissions on Motion to Review and Vary, para.68

[53] Enbridge Gas Inc., Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para. 79

until after 2023.[54] Enbridge argues that most of the integration capital costs at issue were for IT projects where ratepayers will continue to benefit, and so it would be unfair to have its shareholders pay for those costs.[55] It claims those IT projects would have had to be undertaken at some point regardless of amalgamation.

44. However, Enbridge's own evidence, confirmed at the oral hearing, that it was all "capital expenditures required to integrate EGD and Union onto common systems, processes, and facilities."[56] Furthermore, there is little substantive difference between integration capital IT or real estate projects in that, absent the amalgamation, at some point costs would have had to be spent to upgrade real estate assets, if not construct new facilities, as was being proposed.[57] The point the OEB was trying to make is that they would not have specifically been incurred, at least at that time, if not for the amalgamation.

45. Regardless, none of the alleged factual errors undermines the OEB's core findings that, a) it approved a five-year deferred rebasing period for Enbridge, on the basis that it would provide a reasonable opportunity to recover their integration costs, and b) as it had recovered those costs already, it would be a "windfall" to the company if it was then allowed to recover those costs from ratepayers again.[58] The evidence and Phase 1 Decision finding is that the company not only had a reasonable opportunity to recover those costs, but did so, and then some.

46. Enbridge takes issue with the OEB's calculation of the net savings after integration.[59] The Phase 1 Decision compared Enbridge's forecast direct OM&A savings to what appears to be the original forecast of capital costs (which was, in fact, higher than the updated costs that make up the $119M of undepreciated costs at issue). Enbridge appears to suggest that the total integration costs are

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[54] EB-2022-0200 Tr.14, p.145

[55] It should be noted that Enbridge took the position for the first time at the oral hearing that certain integration capital projects would have been necessary regardless of the amalgamation.

[56] EB-2022-0200 Exhibit 2, Tab 5, Schedule 3, p.18; EB-2022-0200 Tr.14, p.150-151, 180

[57] Enbridge evidence, that *some* of the integration capital IT projects would have been required regardless of the amalgamation, was raised for the first time during the oral hearing as part of the relevent witness panel's examination in chief (EB-2022-2000, Tr.14, p.147, see also Tr.14, p.187). As SEC notes in its Final Argument, by that stage it was impossible to determine which projects would have still had to be undertaken, as well as their scope and timing. It was clear from a cursory review of the list of projects (EB-2022-0200, Exhibit 1, Tab 9, Schedule, 1, Attachment 1), that many would not have had to be completed in absence of the amalgamation or within the time frame required by the merger. (EB-2022-0200, SEC Final Argument, para. 3.3.18)

[58] Phase 1 Decision, p.74-75

[59] EB-2024-0078 Enbridge Gas Inc. Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.83

higher than the savings. Even accepting that the OEB's calculation is incorrect, Enbridge's approach is also wrong and inconsistent with the MAADs framework.

47. The undisputed evidence, confirmed by Enbridge's own witness Ms. Ferguson, was that by the end of 2022 (which was the last year of actuals available during the hearing in the summer of 2023), the company had earned $231M above its ROE (net of integration costs), which was more than the $119M in the depreciation integration capital costs it was seeking to add to the 2024 rate base.[60] Ms. Ferguson agreed that Enbridge would still earn above its OEB-approved ROE, if the OEB said it could not put the $119M of integration costs into the rate base.[61] In fact, the amount of overearnings could have been even higher considering the $119M amount used during the oral hearing was reduced to $91M as part of the Rate Order process.[62]

48. The benefit that Enbridge received by way of the deferred rebasing period was not just the direct O&M savings as a result of the merger. Enbridge also did not have to rebase for an additional five years, which allowed it to keep all the savings that it would otherwise have had to pass on to customers if it had rebased in 2019. 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."[63]

49. The OEB was entirely correct to find that after Enbridge was granted the deferred rebasing period based on a set of 'rules' that allowed it to benefit while having to bear all the integration costs, it would be unfair if it was allowed to pass on those significant integration costs to customers after it has reaped those benefits.

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[60] EB-2022-0200 Tr.14, p.170:

> MR. RUBENSTEIN: And that $231 million of overearnings above the OEB-approved amount is still more than the $119 million in the undepreciated integration capital costs you are seeking to add to rate base in 2024. Correct?
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> MS. FERGUSON: Correct

[61] EB-2022-0200 Tr.14, p.170:

> MR. RUBENSTEIN: So the company would still earn above the OEB approved amount if the OEB said that those costs could not be put into rate base. Correct?
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> MS. FERGUSON: Correct.

[62] *Interim Rate Order* (EB-2022-2020), April 11, 2024, p.5

[63] *Decision and Order* (EB-2017-0306/307), August 30, 2018, p.23

50. Enbridge claims that, by not allowing it to recover the undepreciated costs for integration capital, the OEB is acting contrary to the requirement to set just and reasonable rates, as it would not have the ability to recover its cost to serve.[64] That argument is backwards. The evidence was that Enbridge was forecast to earn in excess of its cost to serve during the deferred rebasing period, even excluding recovery of any integration capital costs.[65]

51. Additionally, Enbridge's relies on the new language included in the updated MAADs Handbook, issued almost six months after the Phase 1 Decision.[66] That language is legally irrelevant. Not only does it not bind the OEB panel as a legal matter, but how could the Commissioners have considered policy guidance that had yet to exist? Regardless, the new language is entirely consistent with the Phase 1 Decision.

52. The updated MAADs Handbook comments that, with respect to integration capital, 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."[emphasis added][67]

53. This is exactly what the Phase 1 Decision did. It correctly found that the MAADs Decision explicitly recognized that there was an expectation that these costs would be recovered through consolidating savings when "presented with evidence describing the nature of capital investments and the cost of those investments... the panel clearly turned its mind to the five-year period as a reasonable opportunity to recover those costs during the five years against the savings that would be achieved and retained by the utility."[68]

54. Enbridge also takes issue with the OEB's comment that the company could have depreciated the integration capital assets more quickly to minimize the undepreciated costs at rebasing.[69] SEC submits that nothing turns on the OEB's observations, as it would not impact the ultimate decision. In

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[64] Enbridge Gas Inc., Submission on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.30

[65] EB-2022-0200 Tr.14, p.170:

[66] EB-2024-0078 Enbridge Gas Inc. Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.71-73

[67] Handbook to Electricity Distributor and Transmitter Consolidations (Revised July 11, 2024)

[68] Phase 1 Decision, p.74

[69] EB-2024-0078 Enbridge Gas Inc. Submissions on the Threshold Question, Appendix A, (Draft) Submissions on Motion to Review and Vary, para.85-87

either scenario, accelerated vs. normal depreciation, the broader principle - that Enbridge gets to keep the benefits of the deferred rebasing period but then cannot pass on the costs incurred - remains.

E. Relief

55. SEC submits the OEB should dismiss the motion to review as not meeting the threshold test. The motion does not raise relevent issues material enough to warrant a review of the decision on the merits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Mark Rubenstein
Counsel for the School Energy Coalition