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July 19, 2019

**BY RESS, EMAIL AND COURIER**

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Inc. ("Enbridge Gas")**
**EB-2018-0331 - 2016-2018 Cap and Trade Deferral & Variance Account Disposition – Reply Argument (Public)**

In accordance with the Ontario Energy Board's ("OEB" or "Board") Decision and Procedural Order No. 4, enclosed please find the Reply Argument from Enbridge Gas in the above noted proceeding.

The submission has been filed through the Board's RESS and will be available on the Enbridge Gas website at: www.enbridgegas.com/ratecase and at www.uniongas.com/about-us/company-overview/regulatory.

If you have any questions with respect to this submission please contact me at 519-436-4558.

Yours truly,

[original signed by]

Adam Stiers
Technical Manager, Regulatory Applications

c.c.: Dennis O'Leary (Aird & Berlis)
All Intervenors (EB-2018-0331)

Filed: 2019-07-19
EB-2018-0331

# ONTARIO ENERGY BOARD

# Application for Disposition of Cap and Trade-Related Deferral and Variance Accounts for 2016-2018

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## ENBRIDGE GAS INC.

## PUBLIC REPLY SUBMISSION

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## INTRODUCTION

1. In accordance with the Ontario Energy Board's ("**Board**") Decision and Procedural Order No. 4 dated April 25, 2019, this is the Public Reply Submission of Enbridge Gas Inc. ("**Enbridge Gas**") to the submissions made by various parties to this proceeding:[1]

    - Ontario Energy Board Staff ("**Board Staff**");
    - Association of Power Producers of Ontario ("**APPrO**");
    - Building Owners and Managers Association ("**BOMA**");
    - Consumers Council of Canada ("**CCC**");
    - Canadian Manufacturers and Exporters ("**CME**");
    - London Property Management Association ("**LPMA**");
    - Schools Energy Coalition ("**SEC**"); and
    - Vulnerable Energy Consumers Coalition ("**VECC**").

2. Enbridge Gas is requesting approval for and clearance to rates of the balances in the 2016-2018 Cap and Trade deferral and variance accounts including 2018 post-Cap and Trade revocation costs incurred. The balances, in accordance with the Cap and Trade Framework,[2] have been recorded in the following accounts:

- Greenhouse Gas Emissions Impact Deferral Account ("**GGEIDA**");[3]
- Greenhouse Gas Emissions Compliance Obligation – Customer-Related ("**GGECO – Customer-Related**") Variance Account;[4] and

[1] Enbridge Gas notes that the Industrial Gas Users Association ("IGUA") deferred to other ratepayer groups in respect of submissions on administrative costs.
[2] EB-2015-0363, Report of the Board: Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities, September 26, 2016 ("**Framework**").
[3] Enbridge Gas Distribution Accounts No. 179.326/179.327/179.328 and Union Gas Account No. 179-152.

- Greenhouse Gas Emissions Compliance Obligation – Facility-Related ("**GGECO – Facility-Related**") Variance Account.[5]

3. While more will be stated on the subject later in this submission, the fact is that all Cap and Trade-related activities undertaken by Enbridge Gas Distribution ("**EGD**") and Union Gas ("**Union**") (together the "**Gas Utilities**") occurred prior to the Board approving the amalgamation of the Gas Utilities on August 30, 2018 and prior to the amalgamation actually taking effect on January 1, 2019. As a result, Enbridge Gas is seeking approval to recover the balances in the above accounts maintained by each of EGD and Union from applicable ratepayers in the EGD rate zone and Union rate zones.[6]

4. Importantly, no party expressed any concern with the mathematics of the amounts recorded and the resulting balances in the subject deferral and variance accounts. Board Staff specifically note that they have not identified any issues with the GGECO variance accounts,[7] as these costs are the differences between Enbridge Gas' actual costs incurred from the execution of its compliance strategy and the amounts recovered in Board approved rates in 2017 and 2018.[8] The GGECO variance accounts recorded the vast majority of the Cap and Trade-related costs incurred by the Gas Utilities.

[4] Enbridge Gas Distribution Accounts No. 179.827/179.828 and Union Gas Account No. 179-154.
[5] Enbridge Gas Distribution Accounts No. 179.847/179.848 and Union Gas Account No. 179-155.
[6] The Union rate zones include the Union North rate zone and the Union South rate zone.
[7] The GGECO variance accounts refer to the GGECO-Customer-Related and GGECO-Facility-Related variance accounts.
[8] Board Staff Public Submission, June 21, 2019, Page 4.

5. Several parties made submissions in respect of some of the administrative costs recorded in the Union rate zone GGEIDA, particularly Union's salary and wage costs. Some parties made other submissions in respect of the treatment of all or portions of the amounts recorded in the GGEIDA accounts. Enbridge Gas responds to these submissions under the various subheadings below.

6. However, Enbridge Gas believes it is first important to address the nature of this review proceeding given the historical development of the Framework and the detailed review and approval by the Board of the 2017 Compliance Plans filed by the Gas Utilities.

7. This Public Reply Submission should be read, by Board Staff and the Board, together with the Strictly Confidential Reply Submission of Enbridge Gas to the strictly confidential submission made by Board Staff dated June 21, 2019. The two Enbridge Gas submissions jointly stand for approval by the Board and an Order clearing through to rates the balances in the applicable Cap and Trade deferral and variance accounts maintained by the Gas Utilities.

**ISSUE 1: STANDARD OF REVIEW**

8. Enbridge Gas acknowledges that the Board stated in its Notice and Procedural Order No. 1 dated December 7, 2018, that it is proceeding with a prudence review of the Gas Utilities' Cap and Trade-Related deferral and variance account balances. Enbridge Gas further acknowledges that the Framework itself indicated that the Board would undertake a review of the balances recorded in the various deferral and variance accounts at a future proceeding.

9. This being said, both the Framework and long standing and accepted rate making principles lead to the conclusion that the Board never intended a review of the balances in the applicable Cap and Trade-related deferral and variance accounts to be a complete reconsideration and review of all aspects of the Framework or the Cap and Trade program activities undertaken by the Gas Utilities. A substantial amount of time and expense was devoted by the Board, Board Staff, the Gas Utilities and intervenors initially to the development of the Framework and then the preparation, filing and review of the 2017 Compliance Plans. The Gas Utilities participated in lengthy oral hearings and the Board issued a Decision determining that the Gas Utilities' 2017 Compliance Plans were reasonable on September 21, 2017 ("**2017 Compliance Plan Decision**").[9] As discussed later in this submission, the Gas Utilities logically relied upon the Board's 2017 Compliance Plan Decision to guide the development of their 2018 Compliance Plans. For the Framework and the 2017 Compliance Plan Decision to have any value and meaning, this review proceeding should apply a standard of review to the Cap and Trade compliance plan activities of the Gas Utilities that considers whether the evidence demonstrates that these activities were consistent with the compliance plans deemed by the Board as being reasonable, and if so, to require that any challenge to prudence by intervenors be made on reasonable grounds.

[9] EB-2016-0296/0300/0330, Public and Strictly Confidential Decisions and Orders of the Board, September 21, 2017.

10. It is noteworthy that none of the submissions made by the parties suggest that the Gas Utilities did not materially comply with the compliance plans which the Board determined to be reasonable. Instead, several parties attempt to use hindsight, namely the cancellation of the Cap and Trade Program by the Province of Ontario, as a basis to deny the recovery of a portion of the administrative costs incurred. The Board and the Courts have previously ruled that the use of hindsight in such circumstances is inappropriate. This was clearly confirmed by the Ontario Court of Appeal in 2006 in its *Enbridge v. The Ontario Energy Board* decision referenced further below.

11. Enbridge Gas submits that it would be grossly unfair and inconsistent with established regulatory practice for the costs incurred by the Gas Utilities undertaking Cap and Trade compliance plan activities in accordance with the Framework and the compliance plans approved by the Board to be viewed with the benefit of hindsight and the knowledge now that the Cap and Trade regime in Ontario was cancelled. EGD in its Reply Argument in the 2017 Compliance Plan proceeding submitted that a presumption of prudence should be applied by the Board when it is asked for approval and clearance of the amounts recorded in the Cap and Trade deferral and variance accounts.[10] Similarly, Union in its Reply Argument in the 2017 Compliance Plan proceeding submitted that it would be inappropriate for the Board to approve the reasonability of a Utility's compliance plan and then subsequently disallow costs resulting from the prudent execution

[10] EB-2016-0300, Public Reply Argument, June 2, 2017, Pages 13 and 14.

of that same compliance plan on the basis of hindsight in a subsequent proceeding.[11] The submissions made by the Gas Utilities at that time remain relevant and appropriate at this time.

12. Enbridge Gas submits that the Board should apply the prudent investment test, the elements of which test are helpfully articulated by the Ontario Court of Appeal in *Enbridge v. The Ontario Energy Board*. Briefly, the Court of Appeal endorsed the following specific formulation of the test:

- Decisions made by the utilities' management should generally be **presumed to be prudent** unless challenged on reasonable grounds.
- To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.
- **Hindsight should not be used in determining prudence**, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of prudence.
- Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at that time.[12] (emphasis added)

[11] EB-2016-0296, Public Reply Argument, June 2, 2017, Page 5.
[12] *Enbridge v. The Ontario Energy Board*, [2006] OJ No. 1355 (QL) at paragraphs 10 and 23. Enbridge Gas notes that the Supreme Court of Canada in its September 25, 2015 decision in *the Ontario Energy*

13. Enbridge Gas believes some historical context is appropriate. It should be recalled that the Framework provided instructions and filing guidelines to the Gas Utilities in respect of their preparation and filing of their Cap and Trade compliance plans. In this regard, the Framework specifically provides as follows at page 15:

> "In order to undertake its assessment effectively, the OEB will require robust and detailed information in support of a Utility Request for recovery of costs associated with their compliance activities. This section [of the Framework] identifies the details of the assessment process the OEB will undertake when it considers a Utility's Compliance Plans, as well as specific information requirements that will inform the OEB's review." (emphasis added)

14. The Framework then goes on to identify the specific factors the Board would consider in determining whether the cost consequence of a Utilities' compliance plan is cost-effective, optimized and reasonable. These include:

- Whether a Utility has engaged in strategic decision-making and risk mitigation resulting in a compliance plan that is as cost-effective as possible;
- Whether a Utility has selected GHG abatement activities and investments that, to the extent possible, align with other broad investment requirements and priorities of the Utility in order to extract the maximum value from the activity or investment; and

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*Board v. Ontario Power Generation* [2015] 3SCR 147 stated at paragraph 152 that: "The prudent investment test, or prudence review, is a valid and widely accepted tool that regulators may use when assessing whether payments to a utility would be just and reasonable. While there exist different articulations of prudence review, Enbridge presents one express statement of how a regulatory board might structure its review to assess the prudence of utility expenditures at the time they were incurred or committed".

- Whether the compliance plan is sufficiently flexible to adapt to variability and volume, changes in market prices, market dynamics and other sources of risk thereby providing for greater rate predictability as well as mitigating the risk to customers of changes in the Cap and Trade market.[13]

15. The Board then went on to state in the Framework that inherent in its review of the cost-effectiveness and reasonableness is an assessment of whether a compliance plan reflects optimized decision-making.[14]

16. At page 23 of the Framework, the Board states that its assessment of the cost-effectiveness and reasonableness of a compliance plan will include a consideration of metrics and cost information to be provided by the Utilities. The Board then further provided at page 24 that the metrics and cost information will allow it to assess whether the Utilities have considered a diversity of compliance options and their costs, whether the Utilities have selected investments in GHG abatement activities that are cost-effective and extract the maximum value.

17. Turning to cost information specifically, the Board states at page 25 of the Framework that:

> "Cost information about the compliance options the Utilities propose to use to meet their obligations will allow the OEB to assess a Utilities approach to developing Compliance Plans in a way that is cost effective and reasonable and protective of the interest of customers. The kind of information the OEB will need to obtain in order to undertake this assessment include descriptions of the cost of each compliance option, administrative costs and financing costs".

[13] Framework, Page 21.
[14] Framework, Page 21.

18. Enbridge Gas notes that this is precisely the information that was provided to the Board and which was the subject of the Board's review of the 2017 and 2018 Compliance Plans filed by the Gas Utilities.

19. The Gas Utilities followed the Framework and filed both public and strictly confidential evidence which included, as an example, forecast administrative costs for 2017. These forecasts were then the subject of interrogatories, an oral hearing with cross-examination of witnesses by stakeholder groups and final argument.

20. In the 2017 Compliance Plan Decision, the Board notes that its Decision and Order addresses the public portion of the Compliance Plans dealing with: cost consequences; forecasts; performance metrics; longer term investments; new business activity; greenhouse gas abatement activity; monitoring and reporting; customer outreach; deferral and variance accounts; as well as cost recovery and implementation.[15] The Board then summarized its findings at page 3 of the 2017 Compliance Plan Decision as follows:

> "The OEB approves the Gas Utilities' Customer-Related Obligation, and Facility-Related Obligation cost consequences as submitted, including the updated rates table provided by NRG. The OEB finds that the administrative costs proposed by each of the Gas Utilities are consistent with the expectations established in the Cap and Trade Framework".

21. The Board then went on to order the Gas Utilities to file draft rate orders confirming the rate schedules reflecting the 2017 Compliance Plan Decision.

[15] 2017 Compliance Plan Decision, Page 2.

22. What certain parties are in effect now asking the Board to accept in this proceeding is that all of this historical work should be disregarded and no value should be given to the fact that the evidence confirms that the Gas Utilities materially complied with their compliance plans which the Board, after a lengthy proceeding, determined to be reasonable.

23. Enbridge Gas submits that in circumstances where: (1) the administrative cost forecasts were reviewed in detail and were determined by the Board to be consistent with the Framework; and (2) the evidence shows, as it does in this proceeding, that the administrative costs actually incurred are less than the original forecasts, the Board should deem the costs actually incurred as being prudently incurred unless intervenors can demonstrate that such costs were not prudently incurred. Absent compelling evidence to the contrary and without the use of hindsight, the amounts should be fully recoverable. In this proceeding, there is no evidence that any of the administrative costs incurred were not prudently incurred.

24. This argument now turns to the several specific issues raised by parties.

## ISSUE 2: ADMINISTRATIVE COSTS IN DIFFERENT RATE ZONES ARE NOT DIRECTLY COMPARABLE

*(A) Discussion*

25. Some parties opportunistically directly compare the amounts recorded by the Gas Utilities for certain administrative functions and take the position that if one utility has recorded costs higher than the other utility, then the difference should be deemed unreasonable and recovery of the difference denied. Such a position fails to recognize the fact that the Gas Utilities:

(a) placed a different emphasis initially on abatement opportunities, longer-term investments, new business activities and offset credit programs; and

(b) were operating under different Incentive Rate Mechanisms ("**IRM**"), meaning that in some instances, certain costs were already included in rates and only the incremental costs have been recorded whereas in other instances, none of the costs were anticipated and therefore all of the costs are fully incremental and should be recoverable.

This makes a direct comparison of the salaries and wages recorded by the Gas Utilities wholly inappropriate.

26. Before reviewing with greater specificity the reasons for the differences in costs recorded, some context is appropriate.

27. As noted in Board Staff's discussion paper on the Cap and Trade Regulatory Framework for the Natural Gas Utilities dated May 25, 2016, based upon its research, administrative and outreach costs incurred by California Utilities for

Cap and Trade activities ranged from 0.1% to 2.7% of total compliance costs.[16] It is noteworthy that the Board specifically relied upon this research for the purposes of its 2017 Compliance Plan Decision.[17] Both the forecast and actual administrative costs provided and incurred by the Gas Utilities in respect of their respective 2017 and 2018 compliance plans are within this range.[18] This comparison supports a determination that the administrative costs actually incurred are reasonable. Board Staff's research also shows that it is not uncommon for gas utilities to incur different amounts of administrative costs. There is no "right" amount. Administrative costs will depend on the circumstances of the specific gas utility, hence the wide range of such costs in California.

28. Following an oral hearing and a detailed review of the 2017 Compliance Plans filed by the Gas Utilities, the Board found that the administrative costs proposed by each to be consistent with the expectations established in the Cap and Trade Framework.[19] The Board went on to approve the 2017 Compliance Plans of the Gas Utilities and expressed no concerns or reservations about their respective forecasts for administrative costs.

29. It is noteworthy that in respect of the two years where forecasts were provided for administrative costs (2017 and 2018), both Gas Utilities actually incurred

[16] EB-2015-0363, OEB Staff Discussion Paper, May 25, 2016, Page 30.
[17] The Board noted at page 31 of the 2017 Compliance Plan Decision that based on research conducted on experience in other jurisdictions, it did not expect administrative costs to be sufficiently material to change the allocation methodology for administrative costs.
[18] Exhibit I.BOMA.3; STRICTLY CONFIDENTIAL Exhibit I.BOMA.3.
[19] 2017 Compliance Plan Decision, Page 3.

administrative costs less than forecast. This is true despite neither Utility including in their original forecast any amount for OEB costs in 2017.[20]

30. We now review the specific administrative cost issues identified in the submissions of various parties.

*(B) Salaries and Wages*

31. The Gas Utilities were asked to explain the variance in the recorded salary and wage cost actuals for the years 2016 through 2018 in several interrogatories. The responses are found at Board Staff 6 and SEC 2.[21] These responses make it very clear why the difference in incremental staffing costs recorded by the Gas Utilities occurred.

32. The responses noted that the Gas Utilities incurred separate incremental staffing requirements as a result of the Ontario Government's expeditious implementation of Ontario's Cap and Trade program. Each utility independently assessed the program and in turn identified the number of staff necessary to successfully implement the program and sustain its operations.[22]

33. It should therefore not come as any surprise that the salary and wage costs incurred by each of the Gas Utilities are not identical. This is most evident in the different emphasis placed on longer-term investments, new business activities, abatement opportunities and the emerging offset credit market. As noted in the

[20] Exhibit B, Tab 1, Page 8, Table 6 and Page 13.
[21] Exhibit I.STAFF.6; Exhibit I.SEC.2 (updated).
[22] Exhibit I.SEC.2 (updated) Attachment Page 3.

interrogatory response to Board Staff 6, Union recognized that abatement opportunities would need to be thoroughly investigated, vetted and tested for feasibility before a specific proposal would be brought forward, and that this process would take time. Union also recognized that while offset credits would provide a lower cost compliance option than allowance purchases, in order to be engaged in the development of offset protocols and to begin research on existing protocols and projects in other jurisdictions, additional staffing resources would be required.[23]

34. Based on the importance that the Board placed on longer-term investments, new business activities, abatement opportunities and offset credit markets as set out in the Framework and Board Decision,[24] Union included 5.5 Full Time Equivalents ("FTE") in its 2017 and 2018 Compliance Plans that were dedicated to making meaningful contributions to Union's Compliance Plans in 2019 and beyond.[25]

35. By contrast, EGD's investigation into longer-term investments, new business activities, abatement opportunities and emerging offset credit market opportunities leveraged existing internal resources. EGD forecasted one additional role for offset project development, which it intended to grow to two in

[23] Exhibit I.STAFF.6, Page 4.
[24] 2017 Compliance Plan Decision, Page 27.
[25] Exhibit.I.STAFF.6, Page 4.

2018, but due to the slow development of the offset credit market, EGD did not fill these roles.[26]

36. While EGD's incremental staffing resources included some new dedicated staff to support implementation of Cap and Trade, existing EGD staff provided support to the Cap and Trade functions, in addition to the roles that those same staff members played in other areas of EGD's operations. Given that these additional staff members were partly performing roles that were contemplated at the time that EGD's custom IRM model was approved, their costs are included in the custom IRM model.[27] While Enbridge Gas is therefore not seeking recovery of these costs through the EGD GGEIDA, it must be recognized that the FTE figures presented in evidence by EGD during its 2017 and 2018 Compliance Plan proceedings did not reflect all of the staffing resources supporting its Cap and Trade compliance activities. Rather, the evidence and figures presented for FTEs were only those incremental to staffing resources already included in rates.

37. Union however was operating under a different IRM model (40% of inflation price cap), and therefore appropriately treated all eligible Cap and Trade resources as incremental.[28]

38. The fact is that some of the salaries and wages of EGD's staff were already being recovered under its Custom IRM and were therefore not recorded as a Cap and Trade program administrative cost. Board Staff acknowledge this in their

[26] Exhibit.I.STAFF.6, Page 5.
[27] Exhibit I.SEC. 2 (updated) Attachment, Page 3.
[28] Exhibit I.SEC. 2 (updated) Attachment, Page 3; Exhibit.I.STAFF.6, Pages 6-7.

public submission at pages 5 and 6 as does CME at page 4 of its submission. To then compare what is in effect only part of EGD's salaries and wages as reflected in its administrative costs to Union's salary and wages which were incremental to its price cap IRM is wholly inappropriate.

39. Recognizing the weakness of directly comparing the amounts recorded in the GGEIDA, BOMA suggests that the Board should look at how "generous" capital projects are treated under Union's Price Cap IRM.[29] This is not an appropriate comparison as the treatment of capital projects has nothing to do with how O&M expenditures like salaries and wages are treated. Regardless of your view, rightly or wrongly, that one element of the Union IRM formula is working as anticipated, (in BOMA's case, the treatment of capital projects is an issue) this view should not have any bearing on the recovery of totally unrelated salary and wage costs.

40. BOMA further argues for denial in part of Union's salary and wage costs on the basis that it engaged too many individuals in the long term planning of abatement projects. Inconsistently, BOMA acknowledges that this is a "legitimate activity in the compliance plan".[30] More inconsistently, during the 2018 Compliance Plan proceeding, BOMA strongly supported increasing abatement activities by the Gas Utilities.[31] This change of position can only be explained by the use of

[29] BOMA Submission, June 20, 2019, Page 3.
[30] BOMA Submission, June 20, 2019, Page 4.
[31] EB-2017-0224, BOMA Submission, May 31, 2018, states: "…a program of conservation abatement, a significant annual increase of conservation programs will, over time, all else being equal, reduce greenhouse gas emissions by larger and larger amounts …" (Page 5) To the $2.00 per month per

hindsight and BOMA's knowledge now that the Cap and Trade program was cancelled.

41. Several parties appear to fail to acknowledge that abatement initiatives and offset credit programs were both specifically contemplated in the Framework. The Board specifically stated on page 26 of the Framework that it considers longer-term planning to be a prudent and reasonable activity that the Utilities should consider. As such, the OEB **expects** that a Utilities' Compliance Plan will reflect long term planning for GHG abatement **beyond a single year or a single compliance period.**[32] (emphasis added) It should be recalled that the first Cap and Trade compliance period was 4 years (2017 to 2021) and thus the Gas Utilities' compliance plans and staffing resources reflected this fact.

42. As noted in evidence,[33] one important reason for the difference in GGEIDA recorded salaries and wages between the Gas Utilities is the fact that Union began working on longer-term investments, new business activities, abatement, and offset credit opportunities earlier. Board Staff at page 6 of its submission accepts that this was one of the justifiable reasons for why Union would have a higher salary and wage claim than EGD noting that "Union was ramping up to develop its in-house expertise (e.g. Union's facility abatement study)". Board

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residential customer limitation set out by the Board in the Framework BOMA states: "..nowhere do the cap trade guidelines say that the utilities cannot propose additional conservation measures or enhanced funding for existing measures as part of their compliance plans." (Page 7)

[32] Framework, Pages 26 and 27.

[33] Exhibit I.STAFF.6.

Staff also accept that a further justifiable reason for the difference is that the Cap and Trade regime "was a nascent market".[34]

43. It is clear that other stakeholders are similarly using the benefit of hindsight to suggest that Union should have taken "a more measured approach" to expanding its efforts regarding the Cap and Trade program.[35] CME looks at the salaries and wages incurred by EGD and suggests that this would have been the more prudent course. This necessarily requires the use of hindsight and the knowledge that the Cap and Trade program was terminated. Certainly the opposite could have been the case. For example, if either the previous Government was re-elected or the current Government decided against terminating the Cap and Trade program, using hindsight, certain parties would have argued that Union undertook the more prudent course by ramping up its abatement and new business measure activities as it did.

44. While Enbridge Gas submits that the use of hindsight is inherent in all of those submissions which are critical of Union's approach, it is most obvious from the submission of the LPMA which states that "given the termination of the Cap and Trade program, LPMA submits that ratepayers have not received any value for money associated with these longer-term investments explored by Union".[36] LPMA is clearly using hindsight for the purposes of arguing that the costs incurred by Union were not prudent.

[34] Board Staff Public Submission, June 21, 2019, Page 6.
[35] CME Submission, June 21, 2019, Page 4.
[36] LPMA Submission, June 21, 2019, Page 7.

45. The fact is that the Gas Utilities expeditiously developed separate compliance plans emphasizing a different portfolio of abatement, new business and offset credit initiatives in order to satisfy their compliance obligations. That there is a difference should not be surprising given this and the different IRM's under which both were operating. Enbridge Gas submits that it would be unfair to now be critical of this approach simply because, in hindsight, we know that the Ontario Cap and Trade program has been terminated.

46. As well, it should be recalled that GHG abatement initiatives were the subject of a great deal of time and effort at each of the two compliance plan oral hearings. Numerous stakeholders advocated for and supported the Gas Utilities greatly expanding their abatement and offset credit activities (and the additional administrative costs that would necessarily have been incurred therewith) beyond those proposed in the compliance plans.[37] Indeed, it is important to recall that Board Staff, Environmental Defence and VECC all argued in favour of the Board imposing a penalty on each of EGD and Union in respect of their 2018 Compliance Plans for what they submitted were inadequate funds being directed towards abatement activities.[38] Inconsistent with this earlier position, Board Staff and others are now arguing for Union to be penalized for undertaking too much in the area of abatement initiatives, offset programs and new business activities. Again, the only explanation for this change in position is the knowledge now that the Cap and Trade program has been terminated.

[37] 2017 Compliance Plan Decision, Page 26.
[38] EB-2017-0224, Board Staff Argument, Pages 4 and 26; EB-2017-0224, Environmental Defence Argument, Page 18; EB-2017-0224, VECC Argument, Page 9.

47. As well, it should be recalled that the Board reviewed and made findings about the greenhouse gas abatement activities included in each of the Gas Utilities' plans. The Board specifically found that the approaches by each of the Gas Utilities to longer term investments, new business activities and abatement strategies as outlined in their respective 2017 Compliance Plans were reasonable and appropriate.[39] The Board added that the Gas Utilities are encouraged to give further consideration to these options for inclusion in future compliance plans.[40] In other words, the Board was signalling to the Gas Utilities and all stakeholders that it expected greater abatement activities in the future, not less. It was on this basis that the Gas Utilities designed and filed their 2018 Compliance Plans with the OEB less than two months following the issuance of the 2017 Compliance Plan Decision, as required by the Framework.

**ISSUE 3: EGD AND UNION COULD NOT HAVE RATIONALIZED SOONER**

48. Several parties suggest that as a result of the merger of Enbridge Inc. and Spectra Energy Corp., which was completed on February 27, 2017,[41] a rationalization of the Cap and Trade teams at each of EGD and Union should have been undertaken sooner than what ultimately occurred.

49. There are four clear and compelling reasons why the position of intervenors on this issue is wrong. First, a review of the chronology of events makes it clear that rationalization could not have proceeded any quicker than it has. Second, there

[39] 2017 Compliance Plan Decision, Page 27.
[40] 2017 Compliance Plan Decision, Page 27.
[41] EB-2017-0306, Board Decision and Order, August 30, 2018, Page 3.

were legal impediments to the combining of the Cap and Trade teams. Third, the amalgamation of two large gas utilities must necessarily be undertaken in a thoughtful and organized fashion to ensure that operations are continued in a safe and reliable manner; proceeding to rationalize with haste would only put service quality and safety at risk. Finally, as the staffing resources required to comply with the *Federal Greenhouse Gas Pollution Pricing Act* ("**GGPPA**") are considerably less than under the Cap and Trade regime, the current staffing resources employed by Enbridge Gas in respect of the GGPPA are not illustrative of the staffing resources that would have been required if Ontario's Cap and Trade regime continued.

50. While the parent companies of each of EGD and Union merged effective February 27, 2017, both EGD and Union continued to operate as independent gas distributors and unique legal entities. It was recognized that if a decision was made to amalgamate the Gas Utilities, Board approval would be required.

51. On November 2, 2017, the Gas Utilities jointly filed an Application with the Board under Section 43(1) of the *Ontario Energy Board Act, 1998* (the "***Act***") for approval for the amalgamation of the two Utilities into a single company. On November 23, 2017, the Gas Utilities filed a further Application under Section 36 of the *Act* for approval of a rate setting mechanism for the proposed amalgamated entity effective January 1, 2019. The Board decided to combine the amalgamation and rate setting applications into one proceeding.

52. The two applications underwent a thorough review by the Board and were the subject of numerous written interrogatories, a technical conference, the filing of intervenor evidence and an oral hearing in May 2018. Final Reply Argument was filed on June 29, 2018. The Board issued its Decision and Order approving the amalgamation and a five year rebasing deferral period and rate setting mechanism on August 30, 2018.[42]

53. By the date of the Board's approval on August 30, 2018, the Gas Utilities had appropriately and independently participated in the development of the Board's Cap and Trade Framework which was issued at the end of September 2016.[43] Each of the Gas Utilities had prepared independent Cap and Trade compliance plans which were filed on November 15, 2016 seeking approval to recover through rates the costs arising from the two Compliance Plans for the period January 1 to December 31, 2017. Following a lengthy proceeding including an oral hearing, with both public and strictly confidential segments, the Board issued its Decision in respect of the 2017 Compliance Plans on September 21, 2017.[44] There is no suggestion in the 2017 Compliance Plan Decision, that any of the forecast administrative costs of the Gas Utilities for their Cap and Trade compliance plan activities should be influenced by the Enbridge Inc. merger with Spectra Energy Corp. earlier in 2017. To the contrary, the Board found that the administrative costs forecast by each of the Gas Utilities to meet their 2017 Cap

[42] EB-2017-0306/0307, Decision and Order, August 30, 2018, Page 9.
[43] Framework.
[44] 2017 Compliance Plan Decision.

and Trade compliance obligations were consistent with the expectations established in the Framework.[45]

54. Similarly, by November 9, 2017, the Gas Utilities had appropriately and independently filed their 2018 Compliance Plans as required by the Framework.[46] Both of these applications were then the subject of substantial interventions by stakeholders and Board Staff including a comprehensive discovery (interrogatory) process, intervenor pre-filed evidence, a technical conference and an oral hearing commencing April 23, 2018.[47] The Gas Utilities filed their final Reply Argument on June 14, 2018. As of this date, each of the Cap and Trade teams at the Gas Utilities were independently developing and implementing 2018 procurement plans and strategies.

55. On July 3, 2018, the Government of Ontario filed Regulation 386/18, *Prohibition Against the Purchase, Sale and Other dealings with Emission Allowances and Credits* (the "**Revocation Regulation**"). The Revocation Regulation, made under the *Climate Change Act* revoked Ontario's Cap and Trade Program and prohibited registered entities regulated previously under the Cap and Trade Program, including the Gas Utilities, from dealing in emission allowances effective July 3, 2018.[48]

[45] 2017 Compliance Plan Decision, Page 16.
[46] EB-2017-0224/0255, Procedural Order No. 1, December 28, 2017, Page 2.
[47] EB-2017-0224/0255, Procedural Order No. 3, February 26, 2018, Page 3.
[48] O. Reg. 386/18 under the *Climate Change Act.*

56. Accordingly, the Government of Ontario ended Ontario's Cap and Trade program approximately two months before the Board approved the amalgamation of the Gas Utilities. What this of course means is that virtually all of the administrative costs incurred by the Gas Utilities undertaking their compliance plan activities took place before the Board approved the amalgamation of the Gas Utilities. To suggest that the Gas Utilities should have commenced the combination of their Cap and Trade teams before Board approval for amalgamation was received is in Enbridge Gas' view, presumptuous and inappropriate.

57. It is also important to recall that prior to the merger of Enbridge Inc. and Spectra Energy Corp., under the *Climate Change Act* and Regulations the Gas Utilities were legally obligated to separately participate in the Ontario only auctions in 2017, and were prohibited from disclosing their procurement plans and strategies.

58. Similarly, after the merger of Enbridge Inc. and Spectra Energy Corp., the requirement for the Gas Utilities to continue to operate as separate registered participants was specifically referenced under an amendment to the *Cap and Trade Program,*[49] which specified that for 2017 the Gas Utilities were to operate as if they were not related entities for purposes of satisfying their respective compliance obligations. This also meant that the disclosure prohibitions remained in effect for the remainder of 2017.

[49] O. Reg. 56/17 amendments to the *Cap and Trade Program* made February 27, 2017.

59. The Board issued its 2017 Compliance Plan Decision on September 21, 2017 and the Gas Utilities were required by the Board to file their 2018 Compliance Plans by November 9, 2017. Collaboration by the Gas Utilities' Cap and Trade teams to develop a joint 2018 Compliance Plan would have necessarily required the disclosure of the details of their respective and ongoing 2017 compliance instrument procurement plans and strategies. This would have been a clear violation of the confidentiality provisions of the *Climate Change Act* and Regulations as set out above.

60. All of this stands in support of the conclusion that it was unreasonable and inappropriate for the Gas Utilities to be expected to combine their Cap and Trade teams prior to January 1, 2018 given that both remained under legislative limitations on the disclosure of procurement plans and strategies up until this date. To suggest otherwise, as several intervenors are implying, would have exposed the Gas Utilities to allegations of non-compliance with the *Climate Change Act* and possible sanctions and penalties. As set out in the response to Board Staff interrogatories, the Gas Utilities collaborated on Cap and Trade-related matters from 2016 to 2018 wherever appropriate, including the proposed approach to development of abatement projects through a common abatement construct (and initiative funnel) and the sharing of a single membership to a carbon market news service.[50]

[50] Exhibit I.Staff.6c.

61. As a practical matter, no amalgamation of two large organizations can nor should occur virtually overnight. Continuing to provide safe and reliable gas distribution and other services to virtually all of Ontario's natural gas customers was necessarily the priority. The integration of the various departments and staffing resources and the rationalization of the same after approval was received from the Board on August 30, 2018 and after Enbridge Inc. decided to proceed with the amalgamation required careful planning and thought.

62. Of course, prior to the amalgamation becoming effective January 1, 2019, the Government of Ontario cancelled the Cap and Trade program in Ontario, as of early July 2018. The rationalization and amalgamation of the Gas Utilities would therefore need to look at the staffing resources required to comply with the GGPPA. Had the Cap and Trade Program not been cancelled, the Gas Utilities would have prepared combined compliance plans for 2019 and beyond. This is demonstrated by the fact that the Gas Utilities filed a single application for the Federal Carbon Pricing Program on January 11, 2019.

63. In Q1 2018, in the midst of managing the Board's review of and executing their respective 2018 Compliance Plans, the Gas Utilities commenced discussions regarding the combination of certain aspects of their 2019 Compliance Plans and Cap and Trade-related activities. With rising political uncertainty ahead of Ontario's provincial election process, specifically the threat of program cancellation, these discussions were put on-hold in Q2 2018. However, following Cap and Trade program cancellation these discussions commenced again and

shifted in focus to the GGPPA, facilitating a smoother transition and culminating in the efficiencies realised by combining GGPPA-related teams effective January 1, 2019.[51]

64. Enbridge Gas further notes that as compliance with the GGPPA does not require the formulation of strategic purchasing and bidding strategies and participating in multi-jurisdictional auctions, the staffing resources required under the GGPPA by Enbridge Gas are materially less than the staffing resources that would have been required if the Cap and Trade regime in Ontario continued. This is important because the current staffing resources at Enbridge Gas are not indicative of the staffing resources that the amalgamated utility would have required if the Cap and Trade regime continued. Stated differently, the staffing resources required for compliance with the GGPPA is not a barometer of the staffing resources required under Cap and Trade.

65. Enbridge Gas submits that the rationalization of the Gas Utilities proceeded in a timely and appropriate fashion. The rationalization could not and should not have occurred differently. There are and were no administrative cost savings in respect of the Cap and Trade program activities of the Gas Utilities which could have been generated as a result of the merger of the respective parent companies or subsequent amalgamation of the Gas Utilities.

[51] Exhibit I.Staff.4.

**ISSUE 4: Z-FACTOR RULES ARE NOT RELEVANT**

66. Several intervenors submit that all or a portion of the balances in the Gas Utilities' respective GGEIDA accounts for the years 2016 to 2018 should be subjected to the rules applicable to Z-Factors and recovery denied because a materiality threshold has not been exceeded. Before turning to the obvious reasons why this submission is plainly wrong, it is first important to identify that there is no common position taken by parties. The disparate positions taken by intervenors stands for the proposition that even they are uncertain about what they are asking the Board to accept as being the applicable rule.

67. Importantly, OEB Staff do not submit that Z-Factor rules apply. If there truly was an applicable settlement agreement and/or decision by the Board which confirmed that Z-Factor rules applied to the GGEIDA, OEB Staff would undoubtedly have pointed this out. If this was missed, it is a significant omission. Board Staff made no such omission because there is no applicable decision of the Board that applies Z-Factor treatment to GGEIDA balances.

68. In contrast, APPrO, SEC, and VECC all argue that the materiality threshold only applies to the Union GGEIDA.[52] CCC on the other hand argues that while the EGD administrative costs for 2016 and 2018 do not meet EGD's materiality threshold for Z-Factors of $1.5 million (as set out in EB-2012-0459) CCC understands that the GGEIDA was established in that same proceeding without

[52] APPrO submission, June 21, 2019, Page 6; SEC submission, June 21, 2019, Page 3; VECC submission, June 21, 2019, Page 1.

an explicit materiality threshold.[53] LPMA argues that both the EGD and Union GGEIDA accounts should be treated as Z-Factors and that the only administrative costs recoverable by either Gas Utility is the $2.315 million in administrative costs incurred by EGD in 2017.[54] That stakeholders cannot agree on whether Z-Factor treatment applies to either or both of the Gas Utilities is telling and undermines their position.

69. The Board has at no time indicated that any portion of the Cap and Trade Program costs incurred by any gas utility should be the subject of Z-Factor treatment. Consistent with this, no utility has attempted to show that the amounts recorded in the GGEIDA meet the criteria for Z-Factors. This is because the Board has specifically ruled on several occasions about the type of costs and manner in which such costs will be recovered.

70. As part of EGD's 2016 rate adjustment proceeding (EB-2015-0114), EGD sought approval for the establishment of the GGEIDA. EGD's pre-filed evidence noted that the Board had previously approved the GGEIDA in its Custom IRM Rates Application (EB-2012-0459) but since that time, the Government of Ontario had moved forward with the implementation of a Cap and Trade program. The evidence indicated that EGD anticipated that it would be recording costs in the 2016 GGEIDA and anticipated bringing those amounts forward for clearance in a future proceeding or rolling them into the 2017 GGEIDA.[55] By its Decision and

[53] CCC submission, June 24, 2019, Page 4.
[54] LPMA submission, June 21, 2019, Pages 5 and 6.
[55] EB-2015-0114, Exhibit D2, Tab 1, Schedule 1, Pages 14 and 15.

Interim Rate Order dated December 10, 2015, the Settlement Agreement reached by the parties to this proceeding was approved together with the Accounting Order for the 2016 GGEIDA. There is nothing included in the Board's Decision and Interim Rate Order or in the Accounting Order which indicates that the 2016 GGEIDA would be the subject of any materiality threshold.[56]

71. Union applied for an Accounting Order approving the GGEIDA in EB-2015-0367. By a Decision dated April 7, 2016, the Board approved the establishment of the GGEIDA and the specific Accounting Order which was appended to this Decision as Appendix A. There is nothing in this Decision or Accounting Order which refers to any materiality threshold.[57]

72. Moving forward in time, the Board specifically dealt with administrative cost recovery issues in the Framework in Section 6 at page 30 which states:

> "The OEB has determined that **administrative costs relating to the implementation and ongoing operation of the Cap and Trade Program will be allocated and recovered from all customers** in the same manner as existing administrative costs. While the exact quantum of the administrative cost is not known at this time, based on research conducted on experience in other jurisdictions, the OEB does not expect these costs to be sufficiently material to justify changing the allocation methodology.
>
> **Most stakeholders supported the proposal** in the Discussion Paper **that administrative costs should be recovered from all customers**". (emphasis added).

73. The above passage makes it clear that the Board expected administrative costs would be allocated and recovered from all customers. There is no reference to Z-Factor treatment anywhere in the Framework. What certain parties are now

[56] EB-2015-0114, Decision and Interim Rate Order, December 10, 2015, Pages 4 and 14 of the draft Accounting Order.
[57] A copy of the Board Approved Accounting Orders is filed at Exhibit.I.SEC.1.

proposing is in fact contrary to the Framework and the clear determinations made by the Board.

74. This “Z-Factor” argument also fails to recognize that the Board specifically dealt with the several deferral and variance accounts including the GGEIDA as part of its review of the 2017 Compliance Plans filed by the Gas Utilities. In its 2017 Compliance Plan Decision, the Board noted at page 33 that both EGD and Union already track administrative costs in an existing GGEIDA (as noted above). Importantly, there is no suggestion in the 2017 Compliance Plan Decision that the GGEIDAs would be subject to a materiality threshold.

75. Applying Z-Factor rules to all or some of the GGEIDA balances is also factually unsupportable and patently unfair. The fact is that the administrative costs incurred by EGD and Union are only one sub-set of their overall Cap and Trade compliance obligation costs. No party attempted to explain why only administrative costs should be segregated from the Cap and Trade compliance plans for “special treatment”. As an example, it would be most unfair for rate payers to reap the benefit of the Gas Utilities engaging outside expert consultants to help minimize the overall cost of procuring compliance instruments, undertaking abatement initiatives and/or considering offset credit programs yet deny the Gas Utilities the ability to recover the costs of engaging the outside experts in the first place. The two are inextricably linked.

76. Administrative costs include the additional bad debt incurred by the Gas Utilities arising out of the increase to customer bills as a result of the Gas Utilities

meeting their statutorily mandated Cap and Trade obligations. Incremental bad debt is wholly related to the forecast customer-related and facility-related compliance obligation costs which were added to rates. It makes no sense to treat bad debt costs differently than the costs included in rates which caused the bad debt in the first place.

77. In Summary, the Board has clearly ruled that administrative costs are to be tracked in the GGEIDA and recovered from all customers. The Board has at no time ever suggested that such costs should be subject to meeting Z-Factor criteria and thresholds.

**ISSUE 5: POST CAP AND TRADE ADMINISTRATIVE COSTS SHOULD BE DEALT WITH IN THIS PROCEEDING**

78. BOMA alone argues that the Board should not approve the recovery of the administrative expenses incurred by Enbridge Gas in relation to the GGPPA in 2018 in this proceeding. For unexplained reasons, BOMA believes that approving post-Cap and Trade revocation 2018 administrative costs at this time will make the review of future costs more difficult. Enbridge Gas submits that splitting the recovery of administrative costs incurred in the 2018 calendar year only adds unnecessary administrative burden and complexity.

79. It should be recalled that the Board required the Gas Utilities to request the disposition of any projected net credit amounts in the aggregate balance of their Cap and Trade-related deferral and variance accounts as at September 30, 2018

with their October 2018 Quarterly Rate Adjustment ("**QRAM**") Applications.[58] As of this date, some post-revocation costs had been incurred and recorded in the GGEIDAs as directed by the Board. The Board then approved the QRAM Applications filed by the Gas Utilities.

80. Accordingly, the Board has both addressed and dealt with, at least in part, 2018 GGEIDA costs including post-revocation costs. As well, it should be noted that the Board indicated its intention to deal with the account balances in the GGEIDA for 2018 in Procedural Order No. 1 where it directed the Gas Utilities to file supplemental evidence of the actual 2018 GGEIDA balances.[59]

81. In this proceeding, the pre-filed evidence shows that the Gas Utilities incurred incremental administrative costs of $624,000 in respect of the Federal Government's GGPPA.[60] No intervenor has argued that these costs were not necessary or that the amounts are excessive.

82. Given the above, post-revocation GGPPA costs are "live" in this proceeding. Enbridge Gas submits that they should therefore be dealt with at this time and that deferring recovery would be of benefit to no party. Rather, deferring recovery will result in the accrual of incremental interest amounts until such time that Enbridge Gas files an application to clear these costs in the future.

[58] EB-2018-0249/0253/0261, Board Letter, August 30, 2018.
[59] EB-2018-0331, Notice and Procedural Order No. 1, December 7, 2018, Page 3.
[60] EGD: Exhibit B, Tab 1, Page 17, Table 11; Union: Exhibit B, Tab 2, Page 19, Table 12.

**ISSUE 6: ALLOCATION OF UNION RATE ZONES ADMINISTRATIVE COSTS TO EGD RATE ZONE**

83. LPMA submits, in effect, that because Union appears to have directed greater staffing resources at abatement initiatives, new business activities and/or offset credit programs which could in the future be a benefit to all of the customers of Enbridge Gas, some or all of the difference in the salaries and wages recorded by the Gas Utilities in 2017 and 2018 should be allocated to EGD rate zone customers.[61] Enbridge Gas does not support this proposal for several reasons. First, Union's planning was specific to and intended for customers in its rate zones. There is no evidence that such work would be of benefit to EGD rate zone customers (for example an EGD rate zone large volume customer). Second, the work was undertaken at the time by Union staff for the purposes of reducing greenhouse gas emissions or generating offset credits with the goal of reducing the costs of compliance under Ontario's Cap and Trade regime. There is no evidence that this work will directly benefit ratepayers under the GGPPA in the future.

84. Finally, LPMA neglects to note that the difference in the incremental staffing resources identified in the evidence between the Gas Utilities is to a large extent the result of the fact that EGD relied upon existing staffing resources the cost of which were embedded in its Custom IRM. This is not the case with Union. Accordingly, Enbridge Gas does not believe any portion of the salary and wage differentials should be allocated to the EGD rate zone.

[61] LPMA Submission, June 21, 2019, Pages 6 and 7.

**CONCLUSION AND RELIEF SOUGHT**

85. Importantly, no party has pointed to evidence (or argued) that either of the Gas Utilities did not materially comply with their approved 2017 Compliance Plans. While the 2018 Compliance Plans were not ultimately the subject of a final decision by the Board, the 2018 Compliance Plans were in all material respects based upon and similar to the 2017 Compliance Plans approved by the Board. The evidence confirms that the Gas Utilities undertook Cap and Trade compliance plan activities in 2018 in accordance with the as filed 2018 Compliance Plans.

86. Both Gas Utilities remained under a legal obligation to meet their Cap and Trade compliance obligations until the newly elected Government of Ontario revoked the *Climate Change Act* and Regulations. Both remained obligated to follow the compliance plans filed with the Board and to comply with the Framework. The fact that the Province of Ontario cancelled the Cap and Trade regime in mid-2018 cannot be used in hindsight to criticize the compliance activities of the Gas Utilities up until that point.

87. The Gas Utilities remained under statutorily imposed obligations to proceed to develop their own separate compliance instrument procurement plans and strategies, which they were prohibited from disclosing to each other. These limitations continued through 2017, during which the Gas Utilities' 2018 Cap and Trade Compliance Plans were developed and filed. These limitations were also recognized by the Board in its Procedural Orders and by its treatment of the strictly confidential information filed by the Gas Utilities as part of the 2017 and

2018 Compliance Plan proceedings. There is therefore no basis to conclude that the administrative costs incurred by either Gas Utility should have been less than what was actually incurred. Applying a Z-factor materiality threshold is simply an obvious attempt to penalize Enbridge Gas without cause.

88. Enbridge Gas therefore respectfully requests that the Board approve the 2016, 2017 and 2018 GGEIDA balances of the Gas Utilities and clear the balances through to rates. Finally, while the submissions of parties in respect of the balances recorded by the Gas Utilities in the GGECO – Customer-Related and the GGECO – Facility-Related accounts were limited, Enbridge Gas notes that no party found any error or expressed any concern about the mathematics presented in the pre-filed evidence. This is also true of Board Staff. Enbridge Gas therefore respectfully seeks an Order approving the balances in each of the applicable Cap and Trade-related deferral and variance accounts and clearing such balances through to rates.

All of which is respectfully submitted this 19th day of July, 2019.

*(Original Signed)*

Dennis M. O'Leary
Counsel to Enbridge Gas Inc.