

Environment & Climate Division

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**Sent via e-mail to:**

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**Re: City of Toronto's comments on Bill 165**

Dear Members of the Standing Committee on the Interior,

I am writing at the direction of City Council on behalf of the City Manager to provide comments on Bill 165, the *Keeping Energy Costs Down Act*, as authorized by Toronto City Council in its decision of March 20, 2024 ([IE11.8 Requiring Fair Payment from For-Profit Gas Utilities for Use of City Property](#)).

As the Committee studies and debates Bill 165, I hope these comments assist in determining the legislative outcome that limits costs for *all* customers on the natural gas grid and helps support Toronto's goal of net zero greenhouse gas emissions by 2040.

The background for these comments includes Toronto City Council's continued interest in affordability for Toronto residents and businesses and the Council-endorsed TransformTO Net Zero Strategy that plans for a broad transition away from natural gas as the primary energy source for heating buildings between now and 2040.

**Summary**

The potential impact of Bill 165 on resident affordability is a concern as we anticipate new developments in Toronto will increasingly avoid investment in natural gas infrastructure and equipment that may become stranded, as well as the City's work to support the

phased transition of existing buildings from heating with natural gas to using lower carbon energy like electricity.

Bill 165 – particularly its override of the Ontario Energy Board’s (“OEB” or “the Board”) decision on Phase 1 of Enbridge Gas Inc.’s 2024-2028 rate application (“OEB decision”) – would:

- re-introduce a cross-subsidy for new connections to the natural gas grid<sup>1</sup> that would impose hundreds of dollars in additional costs on Toronto ratepayers<sup>2</sup> for little, if any, savings for new developments in Toronto, most of which are expected to forego connecting to the natural gas grid for reasons of cost (lower lifecycle cost of electric heat pumps) and policy (future City-led emission standards applying to new developments and eventually existing buildings);
- maintain an uneven playing field by creating incentives for new gas connections that put ratepayers at risk, especially economically vulnerable ratepayers, of bearing the future costs of an energy transition away from fossil fuels including natural gas;
- conflict with the City’s TransformTO Net Zero Strategy, Toronto’s Official Plan, and key City of Toronto policy measures (such as the [Toronto Green Standard](#) for new development and forthcoming [Emission Performance Standards](#) for buildings), which altogether envision a broad transition away from natural gas as the primary energy source for heating buildings between now and 2040; and
- disregard the conclusions of the OEB as an expert, independent energy regulator that makes decisions based on evidence and an inclusive and transparent process – relatedly, Bill 165 also appears out of step with the findings and recommendations of the Government of Ontario’s own independent Electrification and Energy Transition Panel.

The comments below expand upon these points in further detail.

Finally, I note for clarity that while the City is a producer of renewable natural gas (abbreviated as “RNG”),<sup>3</sup> City staff do not believe that the OEB decision does or should impact current or future capital spending available for such projects, as the OEB decision only affected ratebase capital spending for new residential and small commercial connections to the natural gas grid while the City, working with Enbridge, has installed RNG infrastructure projects that are ultimately paid for by the City.

<sup>1</sup> Coupled with the Government of Ontario’s intention to “immediately introduce regulations to reset the revenue horizon for natural gas connection costs to 40 years” if Bill 165 is enacted: Government of Ontario, [“Backgrounder: The Keeping Energy Costs Down Act”](#) (Feb 22, 2024).

<sup>2</sup> In the OEB’s decision, the total capital spending Enbridge proposed for customer connections in the 2025-28 period was \$1.01 billion (Ontario Energy Board, [EB-2022-0200](#), Dec 21, 2023, Table 1 at p. 48). Assuming the entirety of this cost is cross-subsidized by 3.8 million existing Enbridge ratepayers in Ontario, it would total \$267 per customer.

<sup>3</sup> Natural gas is a fossil fuel that results in fossil carbon dioxide emissions when combusted for energy. Fossil carbon dioxide emissions are the main cause of climate change. In contrast, renewable natural gas (RNG) is derived from organic, not fossil, source material and results in biogenic carbon dioxide emissions that do not contribute to climate change. The City of Toronto produces RNG from biogas at City-run anaerobic digesters.

## **Comments**

### **1. The Ontario Energy Board's Decision**

The Toronto City Council-adopted TransformTO Net Zero Strategy aligns with the decision of the OEB that Bill 165 seeks to alter.<sup>4</sup>

The Board's decision followed from a lengthy hearing process in which Enbridge (the utility applicant) and nearly three dozen stakeholder intervenors participated, representing interests from across the spectrum including public school boards, large building owners and property managers, industrial and manufacturing groups, environmental groups, and a municipality. The Board considered thousands of pages of evidence, including expert evidence, as well as submissions by Enbridge, OEB staff and the intervenors in reaching its decision.

Much of the evidence dealt with the issue of whether Enbridge's planned spending for expansion of the natural gas grid in the context of a broad energy transition away from fossil fuels toward clean energy sources poses risks to ratepayers in the form of "stranded" assets (i.e. natural gas grid assets that are not fully utilized for their expected lifetime because of the energy transition).

The Government of Ontario's own Electrification and Energy Transition Panel recently identified the problem of stranded asset risk in the gas distribution system:

There is growing doubt that it will be possible to replace the vast quantities of fossil fuel natural gas used today with clean alternatives [...] Likewise, it is no longer clear that natural gas is the cheapest way to heat buildings, and customers may begin choosing to disconnect from the natural gas distribution system in the mid-term. This leads to a real risk of economically stranding the rate-regulated distribution assets used for home heating, with significant risk to customers, investors, and public finances.<sup>5</sup>

Furthermore, municipal climate plans like the City of Toronto's TransformTO Net Zero Strategy seek to significantly reduce buildings sector emissions through transitioning away from natural gas as the primary energy source for heating buildings.

In this context, the Board reviewed the expert evidence Enbridge provided on the energy transition and its potential risks, and concluded it provided a "completely insufficient evidentiary basis" on which to determine whether ratepayers are being protected, whether Enbridge's planned gas system expansion is rational, and whether Enbridge will continue to be viable.<sup>6</sup>

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<sup>4</sup> Ontario Energy Board, [EB-2022-0200](#), Dec 21, 2023.

<sup>5</sup> Report of the Electrification and Energy Transition Panel, "[Ontario's Clean Energy Opportunity](#)" (December 2023), at p. 72.

<sup>6</sup> Ontario Energy Board, [EB-2022-0200](#), Dec 21, 2023, at p. 22 (emphasis added).

In light of the evidence on stranded asset risk, the Board determined that the “revenue horizon” for new residential and small commercial connections to the natural gas grid should be reduced from 40 years to zero. Effectively, the Board decided that the full cost of a new connection should be paid by new customers upfront (\$4,412 to \$6,000 depending on location) instead of being cross-subsidized across the existing base of ratepayers over a 40 year period. (One member of the three-member Board panel dissented on the revenue horizon point, finding that reducing the revenue horizon from 40 years to 20 years would be an appropriate incremental step recognizing energy transition risk while accounting for uncertainty about gas alternatives).

The Board also found that “system renewal” activities (all the activities required to maintain the reliability and safety of the existing gas system) raise potential stranded asset risks because of the energy transition. For example, the like-for-like replacement of an existing natural gas pipeline may not be in the interest of ratepayers if it is premised on business-as-usual demand for natural gas decades into the future. The Board has already recognized this reality in denying a leave to construct application.<sup>7</sup>

## 2. Housing Affordability & Costs of New Natural Gas Grid Connection Assets

The focus of Bill 165 supports expanding the natural gas grid in Ontario via restoring a means to cross-subsidize new customer connections. However, it is no longer clear that natural gas is necessarily the cheapest way to heat buildings,<sup>8</sup> while at the same time it is clear that natural gas is a fossil fuel that must be phased out to achieve net zero emissions.<sup>9</sup> Bill 165 risks locking many new homeowners into natural gas equipment that: (i) is not necessarily cheaper to operate and, (ii) would have to eventually be replaced by clean energy equipment, potentially even before the end of its useful life as part of the energy transition.

Bill 165 allows for Ontario to determine the “revenue horizon” for new connections to the natural gas grid in regulations. Ontario has stated its intention to “immediately introduce regulations to reset the revenue horizon for natural gas connection costs to 40 years”.<sup>10</sup> The rationale is to prevent an “increase” in the upfront costs for new natural gas grid connections, in particular the cost of new residential homes.

Bill 165 would not prevent or eliminate new connection costs, it would shift those costs from developers back to existing ratepayers. In Toronto, this is likely to make the overall

<sup>7</sup> Mitchell Beer, “[St. Laurent North denied](#)” *Canadian Climate Institute* (April 14, 2023).

<sup>8</sup> Report of the Electrification and Energy Transition Panel, “[Ontario’s Clean Energy Opportunity](#)” (December 2023), at p. 72.

<sup>9</sup> See [TransformTO Net Zero Strategy](#) (December 2021), at p. 6 “Fossil fuels, primarily natural gas used in homes and buildings ... need to be completely phased out by 2040.”; and see Report of the Electrification and Energy Transition Panel, “[Ontario’s Clean Energy Opportunity](#)” (December 2023), see Key Theme Two: Energy Planning, where a key takeaway from the Panel’s engagement with stakeholders, Indigenous partners, federal, provincial and municipal departments and agencies and members of the general public was that “‘Net zero’ greenhouse gas emissions by 2050 should be the goal for Ontario”; and see Key Theme Three: Climate Targets and Commitments, where the Panel noted that “[m]any participants saw net zero by 2050 as inevitable and expressed that this target should be integrated into the energy planning process.”

<sup>10</sup> Government of Ontario, “[Backgrounder: The Keeping Energy Costs Down Act](#)” (Feb 22, 2024).

energy costs of housing less, not more, affordable. The City's net zero work to date aligns with the OEB's decision to reduce the revenue horizon to zero years, for all the reasons provided therein. The City also notes that even the dissenting member would have reduced the revenue horizon to 20 years.

Over 550,000 ratepayers in Toronto would pay approximately several hundred dollars on their bills to cross-subsidize the cost of connecting new customers to the natural gas grid.<sup>11</sup> Few of those new customers are expected to be Toronto residents or businesses for reasons of both cost and policy.

Preliminary independent analyses of the impact of Bill 165 question whether it even lowers costs for new home buyers at all once relevant factors are accounted for.<sup>12</sup> In fact, as Ontario's own Electrification and Energy Transition Panel recently found, "it is no longer clear that natural gas is the cheapest way to heat buildings."<sup>13</sup> For Toronto, recent research showed most building types would save money by switching from a gas furnace to an electric heat pump, accounting for all upfront and operating costs.<sup>14</sup> Moreover, City staff do not expect that new low-rise housing in Toronto will require a gas-fired furnace or hot water heater for backup purposes given the efficiency of new heat pump technologies and the building envelope improvements of new development (moreover, heat pumps supply both heating and cooling for a home, as opposed to only heating like natural gas furnaces or boilers).

City-led policy continues to support and encourage reliance on renewable energy sources to minimize reliance on natural gas in new developments. The Toronto Green Standard recommends energy efficiency and greenhouse gas intensity standards that are intended to become progressively more stringent over time for new residential (minimum 10 units) and non-residential developments. It is intended that by May 2028, if adopted by Council, the TGS requirements for near zero GHG emissions will discourage new natural gas connections for heating or domestic hot water – factoring in post-approval processes and construction this could mean greatly reduced new connections from some point in the early 2030s onward. Also, City Council has directed staff to develop an Emission Performance Standards by-law to address greenhouse gas emissions from existing buildings. If Council enacts a by-law requiring existing buildings to meet such emission standards, then property owners may need to take measures to reduce the greenhouse gas emissions from their buildings. This may include reducing the use of natural gas, thereby resulting in fewer existing and new buildings being connected to the gas grid.

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<sup>11</sup> In the OEB's decision, the total capital spending Enbridge proposed for customer connections in the 2025-28 period was \$1.01 billion (Ontario Energy Board, [EB-2022-0200](#), Dec 21, 2023, Table 1 at p. 48). Assuming a 40-year revenue horizon, the entirety of this cost would be cross-subsidized by existing ratepayers, totalling \$267 per customer assuming 3.8 million Enbridge customers in Ontario.

<sup>12</sup> Adam Fremeth and Brandon Schaufele, *Ivey Business School Energy Policy and Management Centre*, "[When Housing Policy meets the Energy Regulator: Understanding the Minister of Energy's Decision to Effectively Overrule the Ontario Energy Board](#)" (January 2024)

<sup>13</sup> Report of the Electrification and Energy Transition Panel, "[Ontario's Clean Energy Opportunity](#)" (December 2023), at p. 72.

<sup>14</sup> Canadian Climate Institute, "[Heat Pumps Pay Off: Unlocking lower-cost heating and cooling in Canada](#)" (September 2023).

The longer-term costs of Bill 165 would manifest through stranded asset risk. This is especially problematic if the new assets are not used for the full 40-year pay off period while a growing number of customers begin disconnecting from the natural gas grid. In this scenario, the stranded assets contribute to increasing the fixed costs of the grid that must be shouldered by a shrinking customer base who would face ever-increasing gas bills.<sup>15</sup> This poses an acute future affordability concern for those economically vulnerable customers unable to easily afford retiring their natural gas heating equipment (potentially before the end of its useful life) to avoid the escalating costs of remaining on the natural gas grid.

### 3. Impact on the TransformTO Net Zero Strategy & Natural Gas Policy Statement

Toronto City Council has set the ambitious goal of net zero greenhouse gas emissions in Toronto by 2040 and has endorsed the TransformTO Net Zero Strategy as the plan for achieving the goal.

There is no way to achieve the net zero goal without significant and rapid reductions in the consumption of natural gas. Currently, over half of the City's greenhouse gas emissions come from using natural gas to heat space and water in buildings.<sup>16</sup>

The TransformTO Net Zero Strategy plans for a broad move away from natural gas toward electrification of energy demand in the buildings sector between now and 2040. For example, in the modeled scenario of net zero by 2040, natural gas consumption falls to zero by 2040, with electricity from local renewables and the provincial grid serving most energy demand in buildings.<sup>17</sup>

The degree of change to meet net zero in the demand for natural gas would likely have economic implications for the gas distribution grid. The question of alternatives to maintaining (or increasing) the existing natural gas grid infrastructure on the presumption of continued demand, and how those alternatives are paid for, are important questions for Toronto and other municipalities planning for significant reductions in natural gas demand over the coming years.

Ensuring a level playing field for gas and electricity is important for ensuring investment capital flows to infrastructure that will still be useful in a net zero future. Ontario's Electrification and Energy Transition Panel has identified this need:

Levelling the playing field between electricity and natural gas might encourage developers and other customers to make choices that are more aligned with government's clean energy economy commitment.<sup>18</sup>

<sup>15</sup> Brandon Schaefe, "[The OEB got the economics right on Enbridge Gas](#)" (Feb 14, 2024).

<sup>16</sup> City of Toronto, "[2021 Sector-Based Emissions Inventory](#)" (January 2024), see Section 2.1 "Key Drivers of GHG Emissions".

<sup>17</sup> City of Toronto, "[TransformTO Net Zero Strategy – Technical Report](#)" (December 2021), at pp. 84-85.

<sup>18</sup> Report of the Electrification and Energy Transition Panel, "[Ontario's Clean Energy Opportunity](#)" (December 2023), at p. 96.



Bill 165 gives an incentive for developers to install new gas connections by requiring no upfront connection cost. This contrasts with electricity where the responsibility for covering the upfront costs of connection upgrades is typically placed on customers.<sup>19</sup> In this way, Bill 165 prevents a levelling of the playing field on upfront connections between gas and electricity infrastructure, with resulting consequences for greenhouse gas emissions over the following years or even decades.

The Government of Ontario has stated it will introduce a Natural Gas Policy Statement (“Policy Statement”) in the near future. It is expected that the OEB will be required to consider the matters in the Policy Statement in future decision-making.<sup>20</sup>

Municipalities, including the City of Toronto, should be consulted prior to the introduction of the Policy Statement given that provincial policy affecting the supply of and demand for natural gas is important for both affordability and for success of municipal net zero plans. The Policy Statement must account for the importance of transitioning away from natural gas as the primary energy source for heating buildings in the context of municipal net zero goals.

#### 4. Consideration of Alternatives in Natural Gas Grid System Renewal Projects

Reducing the number of natural gas pipeline projects requiring leave to construct approval from the Board via ss. 7-8 of Bill 165<sup>21</sup> may impact consideration of alternatives to natural gas grid system renewal projects in Toronto (including via loss of Board oversight of [Integrated Resource Planning](#) considerations in leave to construct hearings).

Specifically, removing certain system renewal projects (all the activities required to maintain the reliability and safety of the existing gas system) from the Board’s oversight could risk inadequate consideration of alternatives to like-for-like gas infrastructure replacements that are premised on steady future demand.

The City notes that the OEB decision found that system renewal projects also raise potential stranded asset risks because of the energy transition, just as with new connections.<sup>22</sup>

#### 5. Further Benefits of Transitioning Off Natural Gas

Transitioning away from natural gas for heating and other domestic uses in buildings has many benefits beyond the affordability and climate benefits described above:

- Natural gas combustion, including from cooking, impairs air quality raising risks for those persons with respiratory health conditions;<sup>23</sup>

<sup>19</sup> Report of the Electrification and Energy Transition Panel, “[Ontario’s Clean Energy Opportunity](#)” (December 2023), at p. 96.

<sup>20</sup> Government of Ontario, news release, “[Ontario Keeping Energy and Housing Costs Down](#)” (Feb 22, 2024).

<sup>21</sup> Coupled with the Government of Ontario’s intention to develop “regulations to exempt small pipelines projects that cost between \$2 million and \$10 million from [leave to construct requirements]” if Bill 165 is enacted: Government of Ontario, “[Background: The Keeping Energy Costs Down Act](#)” (Feb 22, 2024).

<sup>22</sup> Ontario Energy Board, [EB-2022-0200](#), Dec 21, 2023, at p. 51.

<sup>23</sup> John R. Balmes et al, “[Cooking with Natural Gas: Just the Facts, Please](#)” *Am J Respir Crit Care Med* (Apr 15, 2023).

- Increasing dependence on natural gas, which must be imported into Ontario, means Ontarians will lack predictability over household energy costs, which is especially important for lower income households;
- Natural gas is made up primarily of methane which is a potent short-term greenhouse gas. A portion of this methane leaks directly into the atmosphere along the natural gas supply chain causing 80 times more warming effect than carbon dioxide on a 20-year timescale. Reducing reliance on natural gas will reduce the amount of methane leaking into the atmosphere and help slow climate change in the near term;
- Many households in Toronto that don't currently have air conditioning will invest in electric heat pumps (which provide cooling *and* heating) anyway because of extreme heat driven by climate change – utilizing a single heat pump system to both heat and cool a house is more efficient;
- Removing the cross-subsidy for natural gas expansion (as the OEB decision did but Bill 165 would reverse) is consistent with Canada's international commitments to phasing out fossil subsidies;
- If buildings are transitioned off natural gas in accordance with the energy performance tiers of the new National Building Code of Canada, those buildings should achieve higher levels of energy efficiency which brings savings and resilience.

Best Regards,



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