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July 20, 2024

*Sent via e-mail*

Mairead Lavery  
President and Chief Executive Officer  
Export Development Canada  
150 Slater St., Ottawa, ON K1A 1K3

Dear Ms. Lavery:

**Re: Climate change and human rights concerns with an anticipated Export Development Canada transaction to Enbridge Inc.**

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Please find enclosed a submission, on behalf of **Above Ground (a project of MakeWay), Center for International Environmental Law, Environmental Defence Canada, Oil Change International and Stand.earth**, that outlines serious environmental, climate, and human rights concerns with an anticipated Export Development Canada (EDC) transaction to provide financing in support of Enbridge Inc.'s oil and gas business. The listed organizations are stakeholders that advocate on environmental and human rights issues, including climate change.

Across the globe climate change is severely impacting human rights and life. The enclosed submission outlines EDC's obligations founded, in statute, policies and commitments, to assess its customers and transactions and adhere to international environmental and human rights laws and obligations.

The organizations make this submission to inform EDC's assessment of an anticipated transaction and its due diligence. The submission highlights and links to publicly available information on the impact of Enbridge Inc.'s oil and gas business on climate change and human rights. While EDC has not publicly indicated that it is considering providing financing to Enbridge, we suspect such a transaction may be imminent. As described in the enclosed submission, EDC has a history of financing Enbridge Inc. and since 2020 has given financing renewals or amendments annually up to \$200 million to support its oil and gas transportation and storage or for working capital. The enclosed submission assumes that a similar transaction may be under consideration. If that is not the case, please confirm in writing.

Please also confirm receipt of the enclosed submission and ensure it is placed before the decision-maker of any such potential financing to Enbridge's oil and gas business. The facts and arguments presented in the enclosed submission apply and should be taken into account whether the transaction under consideration for Enbridge is for oil and gas transportation and storage, working capital, or other support to its oil and gas operations.

We also request a meeting with you and the relevant decision-maker to discuss the concerns raised herein. Additionally, should EDC decide to provide such financing to Enbridge Inc., or its associated companies, please provide: (1) notification of the transaction; and (2) a copy of the reasons for the decision to enter the transaction.

Further, if the transaction decision has already been made, we submit that EDC must still consider this submission and assess whether to suspend, terminate, or amend the transaction or exit the relationship due to the climate change-related and direct project-related human rights concerns we have identified. If that is the case, we seek confirmation that EDC is undertaking such an assessment.

Finally, irrespective of the outcome of any Enbridge financing decision, the listed organizations request information, analysis or any documentation about how EDC is considering the cumulative climate impact of its overall financing portfolio. In particular, please provide analysis or any documentation reflecting EDC's consideration of the cumulative impact of its financing on Canada's climate targets and obligations under the Paris Agreement.

Thank you in advance for your consideration of the serious matters raised in this submission.

Sincerely,

  
\_\_\_\_\_  
Tanya Jemec  
Finance Lawyer

Encl.

cc:

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The Honourable Mary Ng, PC, MP, Minister of Export Promotion, International Trade and  
Economic Development

The Honourable Chrystia Freeland, PC, MP, Deputy Prime Minister and Minister of  
Finance

The Honourable Ryan Turnbull, MP, Parliamentary Secretary to the Deputy Prime Minister  
and Minister of Finance and Parliamentary Secretary to the Minister of Innovation,  
Science and Industry

**Submission to Export Development Canada (EDC) to Inform its Due Diligence on an Anticipated Transaction to Enbridge Inc.**

July 20, 2024

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## I. Overview

**We are living in a climate crisis.** People in Canada and around the world are experiencing the impacts of climate change - feeling the rising temperatures, living through increasing extreme weather events like heat waves and hurricanes, as well as grappling with unprecedented wildfires, drought, and floods. People have died and their physical and mental health is suffering due to climate change. These impacts will only worsen with rising global temperatures. Fossil fuels are the main cause of the anthropogenic climate change that is threatening a safe and a liveable future now and for generations to come. As stated by the Supreme Court of Canada:

Climate change is real. It is caused by greenhouse gas emissions resulting from human activities, and it poses a grave threat to humanity's future. The only way to address the threat of climate change is to reduce greenhouse gas emissions.<sup>1</sup>

**Scientists, governments, businesses, and financial institutions globally have recognized that to avoid the worst impacts of climate change, warming must remain below 1.5°C.** To stay within a 1.5°C pathway, new fossil fuel sources cannot be developed, especially in the global North by cumulative high greenhouse gas (GHG) emitters and wealthy nations; rather these fuels must be urgently phased out. Projected emissions from the use of existing fossil fuel infrastructure already exceed the remaining global “carbon budget” for a chance of keeping warming below 1.5°C, making the development of any new fossil fuel sources or infrastructure inconsistent with a safe climate future. EDC and Canada have knowledge of the dire consequences and causes of climate change and have committed to take action to limit warming to 1.5°C. Canada has publicly committed to ending public finance to fossil fuels, internationally and domestically.<sup>2</sup>

**EDC, a Crown corporation, must not support activities that grow fossil fuel dependence.**

That means not providing new financing, including a renewal or amendment, to a company maintaining and entrenching dependence on fossil fuels – including a company expanding infrastructure that supports new fossil fuel supply, boosts transportation of existing or expanded fossil fuel supply, transports fossil fuel supply to new markets, or expands existing markets. These activities all grow dependence on fossil fuel infrastructure and use, leading to increasing climate change-causing GHG emissions, while delaying the transition to a renewable energy system.

**Given EDC's history of providing financing to Enbridge in relation to its oil and gas operations, we have reason to believe that a similar transaction may be under**

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<sup>1</sup> *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, para. 2 [hereinafter *References re GHG*].

<sup>2</sup> See Government of Canada, [Guidelines for Canada's International Support for the Clean Energy Transition](#), (Dec. 2022) [hereinafter Canada's CEPT Guidelines](Canada's guidelines for implementing the Clean Energy Transition Partnership (CETP), but also reaffirming at p. 2 its plans “to phase out public financing of the fossil fuel sector, including by federal Crown corporations”). Cf Anna Geddes et al., [Ending Canadian Domestic Public Financing for Fossil Fuels](#), International Institute for Sustainable Development (IISD) (2024) [hereinafter IISD, *Ending Canadian Domestic Public Financing for Fossil Fuels*].

**consideration.** EDC has repeatedly provided financing to Enbridge over the last two decades.<sup>3</sup> In 2019, EDC provided financing to Enbridge Inc. for \$100-250 million and \$250-500 million.<sup>4</sup> Since 2020, EDC has annually given “financing renewals/amendments” of “\$100-<\$200 million” to Enbridge Inc. described as support in relation to oil or gas transportation and storage or “working capital.”<sup>5</sup>

**Enbridge is a fossil fuel company.** Based on public information, Enbridge has expansion plans that include new fossil fuel infrastructure. Reports indicate that Enbridge’s direct and indirect emissions are increasing, rather than decreasing in line with the goal of limiting warming to 1.5°C. Unless guarantees are made to the contrary, it is reasonable to presume that a transaction from EDC to Enbridge’s oil and gas business will contribute to the expansion or lock-in of the production and use of fossil fuels, rather than their necessary phaseout.<sup>6</sup> There are also human rights concerns from the climate change impacts of Enbridge’s business. Additionally, local communities and Indigenous nations have publicly raised concerns about the impacts of fossil fuel production and use from certain Enbridge-related projects on the environment, human health, and culture, among other harms.

**While EDC has the authority to provide financing pursuant to the *Export Development Act (EDA)*,<sup>7</sup> its discretionary decision-making power is not boundless.** Under the EDA and the Environmental and Social Risk Management (ESRM) Policy Framework, EDC’s actions should be consistent with—and not contrary to—international environmental and human rights law and standards. This includes international climate agreements and commitments, and the obligation to respect and protect human rights by which Canada, and hence EDC, is bound.

**EDC must consider the climate and human rights impacts of a transaction with Enbridge.** This assessment must consider the entirety of Enbridge’s business that could benefit from EDC financing, and its current and anticipated impact on environmental and social (E&S) risks,

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<sup>3</sup> Since 2001 (i.e., the start of Export Development Canada’s (EDC) public information regarding its individual transactions), we note 44 of EDC’s reported Individual Transactions list, as the Principal Counterparty and/or Canadian Company receiving EDC “financing (including guarantees) and equity”, Enbridge Inc. or one of the following: Enbridge (U.S.) Inc., Enbridge Energy Partners L.P., Enbridge Pipelines (Southern Lights), Enbridge Income Fund, Enbridge Pipelines Inc., or Enbridge Inc., Pembina Pipeline Corporation (together herein referred to as Enbridge). This information was compiled from EDC’s historical individual transaction information. See EDC, Historical Individual Transaction Information (date modified, May 10, 2023), <https://www.edc.ca/en/about-us/corporate/disclosure/reporting-transactions/historic-individual-transactions.html> [hereinafter EDC, Historical Individual Transaction Information].

<sup>4</sup> Financing was provided twice to Enbridge Inc. in February 2019 as “Support for Canadian Direct Investment Abroad” in the range of \$100-250 million and \$250-500 million. EDC, “[2019 Individual Transaction Information](#),” (2019).

<sup>5</sup> EDC reports that it provided, “financing renewals or amendments” to Enbridge Inc, oil and gas industry sector, as “Support for Canadian Direct Investment Abroad,” with the country of transaction listed as the U.S. in the range of \$100-<200 million, signed on July 24, 2020, July 23, 2021, August 3, 2022, and July 24, 2023. See [EDC, Historical Individual Transaction Information](#).

<sup>6</sup> When EDC has provided financing for Enbridge’s renewable energy portfolio, the transaction has been labeled accordingly. See EDC, [2022 Individual Transaction Information](#), p. 284, transaction from 16/12/22 labeled as “Support in relation to solar power generation infrastructure.”

<sup>7</sup> [Export Development Act](#), RSC 1985, c. E-20 [hereinafter *EDA*].

including impacts on climate change and human rights. EDC must also consider how this transaction would affect its own cumulative climate impact.

**EDC should ensure it has completed its due diligence and that it has a clear understanding of the impacts of the anticipated transaction.** The information we provide in this submission is not exhaustive. There is more information on the science, dire consequences of, and role of fossil fuels in causing climate change. There is also more information available on Enbridge’s climate change and human rights impacts.

**Nonetheless, the ample public information discussed and cited<sup>8</sup> herein sufficiently highlights the incompatibility of Enbridge’s fossil fuel operations with EDC’s climate change and human rights obligations.** These operations enable fossil fuel expansion and lock-in dependence on oil and gas production and use, generating GHG emissions and adverse human rights impacts. For the purposes of this submission, the definition of *fossil fuel expansion* includes building new, or developing existing, infrastructure that makes it possible to extract more fossil fuels (oil, gas, or coal) from an existing source than originally planned or makes it likely that the supply of or the demand for fossil fuels will increase in volume or duration. Additionally, *lock-in* is defined as “the entrenched dependence on carbon-intensive infrastructure and technologies. It occurs when investments, policies, or societal norms become deeply rooted in carbon-based energy systems, creating inertia against adopting alternatives.”<sup>9</sup>

## **II. Factual Background**

### **A. Science: Climate Change is a Grave Threat that can Only be Tackled by Phasing Out Fossil Fuels**

**EDC has committed to take into account the best available scientific knowledge, including the findings of the Intergovernmental Panel on Climate Change (IPCC).**<sup>10</sup> The following summarizes key elements of climate science consensus from the IPCC and other leading sources.

*i. We are Living in a Climate Crisis Fueled by Fossil Fuels.*

**The science is unequivocal.** Climate change is the result of increased concentrations of GHGs in

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<sup>8</sup> The citations include hyperlinks to the sources for the review of any decision-maker.

<sup>9</sup> Olivier Bois von Kursk et al., *Transitioning Away From Oil and Gas: A Production Phase-out Primer*, International Institute for Sustainable Development (IISD), p. vii (2024) [hereinafter IISD, *Transitioning Away from Oil and Gas*].

<sup>10</sup> United Nations Environment Programme (UNEP), *The Net Zero Export Credit Agencies Alliance: Commitment Document*, p. 1, s. 1(a) (EDC is a founding member. See UNEP, Net-Zero Export Credit Agencies Alliance, <https://www.unepfi.org/climate-change/net-zero-export-credit-agencies/> (last visited July 17, 2024)); Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, Ch. VI, Commentary, para. 76 (2023) [hereinafter OECD Guidelines] (EDC ESRM Policy Framework is informed and designed, in part, by these guidelines, which recognize IPCC as best available science).

the atmosphere, driven primarily by the production and combustion of fossil fuels.<sup>11</sup> Human use of fossil fuels has caused the climate crisis; GHGs have already caused global warming, increasing the average global temperature to 1.2-1.36°C above pre-industrial levels as of 2023.<sup>12</sup>

**Climate change poses an existential threat to humans.** The IPCC has found changes in our climate are already endangering individuals and communities.<sup>13</sup> Observed impacts include increasing heat-related human mortality, areas burned by wildfires, and adverse impacts from tropical cyclones, with related losses and damages.<sup>14</sup> Climate change is also jeopardizing human physical and mental health.<sup>15</sup> The IPCC reports show that across the globe, changes in Earth's climate are putting communities at risk and threatening basic human needs, such as health, food, water, and human security.<sup>16</sup>

**Climate change is already causing deaths, negative health consequences, and extreme weather events in Canada.** Both Canada's observed and projected temperature increases are about twice the global average.<sup>17</sup> This warming is making disasters more likely and more severe. Scientists found that climate change played a significant role in the 2023 wildfires in Quebec.<sup>18</sup>

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<sup>11</sup> IPCC, *2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, p. 5 (Rejenda K. Pachauri et al., eds., 2014) [hereinafter IPCC, AR5]; Richard Heede, *Tracing Anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854-2010*, 122 *Climatic Change* 229 (2014); IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, p. 4, para. A.1 (Hoesung Lee et al., eds., 2023) [hereinafter IPCC, AR6 SYR].

<sup>12</sup> NASA, *Global Climate Change: Vital Signs of the Planet*, <https://climate.nasa.gov/vital-signs/global-temperature> (noting that the Earth was about 1.36°C warmer in 2023 than in the late 19th century pre-industrial average); Rebecca Lindsey & Luann Dahlman, *Climate Change: Global Temperature* (Jan. 18, 2024), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>; Raymond Zhong, *Have We Crossed a Dangerous Warming Threshold? Here's What to Know*, *The New York Times* (Feb. 8, 2024), <https://www.nytimes.com/2024/02/08/climate/global-warming-dangerous-threshold.html> (stating that while 2023 was approximately 1.5°C warmer, most estimates put average warming between 1.2°C and 1.3°C warmer than pre-industrial levels).

<sup>13</sup> IPCC, *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Summary for Policymakers, para. B.5 (2018) [hereinafter IPCC, 1.5SR]; IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, paras. B.1-B.1.7 (2022) [hereinafter IPCC, AR6 WGII].

<sup>14</sup> IPCC, AR6 WGII, Summary for Policymakers, para. B.1.1; see also IPCC, *Special Report on the Ocean and Cryosphere in a Changing Climate*, Summary for Policymakers, pp. 10-11, 16 (2019); IPCC, 1.5SR, Ch. 3, paras. 3.3.2-3.3.3, 3.4.6; IPCC, *2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, para. A.3 (Valerie Masson-Delmotte et al., eds., 2021) [hereinafter IPCC, AR6 WGI].

<sup>15</sup> IPCC, AR6 WGII, Summary for Policymakers, paras. B.1.4, B.4.4, B.5.1, Figs. SPM.1, SPM.2 SPM.3, SPM.4, Chs. 7, 13; World Health Organization, *Mental Health and Climate Change: Policy Brief* (2022).

<sup>16</sup> IPCC, 1.5SR, Summary for Policymakers, para. B.5; IPCC, AR6 WGII, Summary for Policymakers, paras. B.1-B.1.7.

<sup>17</sup> Elizabeth Bush & Donald S. Lemmen, eds., *Canada's Changing Climate Report*, Government of Canada, p. 116 (2019).

<sup>18</sup> Clair Barnes et al., *Climate change more than doubled the likelihood of extreme fire weather conditions in Eastern Canada*, p. 2 (Aug. 21, 2023).

Health costs spiked in Canada in 2023 due to poor air quality resulting from the unprecedented extreme wildfires across the country.<sup>19</sup> Climate change also contributed to a heat wave in British Columbia in 2021<sup>20</sup> that resulted in the death of 619 people.<sup>21</sup> Scientists estimate that over five recent years, poor air quality from wildfire smoke has caused as many as 240 premature deaths from short-term exposure and as many as 2,500 premature deaths due to long-term exposure.<sup>22</sup>

ii. *The Scientific Consensus and International Obligations Require Warming to be Limited to 1.5°C*

**Science makes it clear that avoiding and minimizing further foreseeable harm and the irreversible damage of overshooting 1.5°C requires rapid and steep reductions in GHG emissions only possible through the phaseout of all fossil fuels, including oil, and gas.** To have more than a 50% chance of limiting warming to 1.5°C, with no or limited overshoot, IPCC reports state that global carbon dioxide (CO<sub>2</sub>) emissions must decrease by at least 48% from 2019 levels by 2030 and reach net zero around 2050, alongside similar reductions in non-CO<sub>2</sub> GHGs.<sup>23</sup> The IPCC finds that the pathways that limit warming to 1.5°C with little or no overshoot rely on near-term emissions reductions achieved through a rapid phase-out of fossil fuels.<sup>24</sup> In its most recent report, the IPCC found that to have an over 50% chance of limiting warming to 1.5°C with limited or no overshoot, fossil fuel use needs to decline fast, with oil use declining by up to 90% and gas by up to 85% from 2019 levels by 2050.<sup>25</sup>

**Every fraction of a degree of warming matters, as it accelerates and intensifies the harms from climate change, while reducing the resilience and adaptive capacity of human and natural systems.** The IPCC’s Sixth Assessment Report reaffirmed that “every increment of global warming will intensify multiple and concurrent hazards (*high confidence*).”<sup>26</sup>

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<sup>19</sup> James MacCarthy et al., [Extreme wildfires in Canada and their contribution to global loss in tree cover and carbon emissions in 2023](#), 30(6) *Global Change Biology* (June 27, 2024).

<sup>20</sup> Piyush Jain et al., [Record-breaking fire weather in North America in 2021 was initiated by the Pacific northwest heat dome](#), 5 *Communications Earth and Environment*, p. 1 (2024). See also Human Rights Watch, [Canada: Disastrous Impact of Extreme Heat: Failure to Protect Older People, People with Disabilities in British Columbia](#), (Oct. 5, 2021).

<sup>21</sup> British Columbia Coroners Service, [Extreme Heat and Human Mortality: A Review of Heat-Related Deaths in B.C. in Summer 2021](#), Report to the Chief Coroner of British Columbia. British Columbia Coroner’s Office, p. 4 (June 7, 2022).

<sup>22</sup> Pierre Gosselin et al., *Natural Hazards*, in [Health of Canadians in a Changing Climate: Advancing our Knowledge for Action](#), p. 21 (Peter Berry & Rebekka Schnitters eds., 2022).

<sup>23</sup> See [IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change](#), Summary for Policymakers, para. C.1.2, Table SPM.2 (P.R. Shukla et al., eds. 2022) [hereinafter IPCC, AR6 WGIII].

<sup>24</sup> See the “C1” pathways. [IPCC, AR6 WGIII](#), Ch. 3, para. 3.2, Summary for Policymakers, paras. C.2-C.4, fig. SPM.5. Cf. UNEP et al., [The Production Gap Report 2021](#), pp. 4, 12, 14-15 (Oct. 2021) (concluding that a 1.5°C consistent pathway requires an immediate and steep decline in fossil fuel production).

<sup>25</sup> [IPCC, AR6 WGIII](#), Summary for Policymakers, para. C.3.2 (Referring to the p5-95 data. Note that without CCS the decline is even greater. “The use of coal, oil and gas without CCS in modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot is projected to be reduced to a greater degree, with median values of about 100%, 60% and 70% in 2050 compared to 2019.”).

<sup>26</sup> [IPCC, AR6 SYR](#), Summary for Policymakers, para. B.1.

**Warming above 1.5°C, even temporarily, runs the risk of triggering irreversible, catastrophic impacts.**<sup>27</sup> However, even 1.5°C is not safe. As the IPCC states, “warming of 1.5°C is not considered ‘safe’ for most nations, communities, ecosystems.”<sup>28</sup> Society at large will experience significantly greater “climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth” at 1.5°C warming.<sup>29</sup> There is a brief and rapidly closing window of opportunity to secure a liveable and sustainable future; and as the IPCC notes any further delay will miss the window.<sup>30</sup>

**As such, through international climate agreements, states—including Canada—have committed to keeping warming below 1.5°C.**<sup>31</sup>

*iii. Keeping Warming Below 1.5°C Requires a Fossil Fuel Phaseout*

**To keep warming below 1.5°C no new fossil fuel projects or infrastructure can be built, and existing infrastructure will need to be retired.** The IPCC states:

- “Without early retirements, or reductions in utilization, the current fossil infrastructure will emit more GHGs than is compatible with limiting warming to 1.5°C.”<sup>32</sup>
- “Estimates of future CO<sub>2</sub> emissions from existing fossil fuel infrastructures without additional abatement already exceed the remaining carbon budget for limiting warming to 1.5°C (50%) (high confidence).”<sup>33</sup>
- “Projected cumulative future CO<sub>2</sub> emissions over the lifetime of existing and planned fossil fuel infrastructure, if historical operating patterns are maintained and without additional abatement, are approximately equal to the remaining carbon budget for limiting warming to 2°C with a likelihood of 83% (high confidence).”<sup>34</sup>

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<sup>27</sup> See, e.g., [IPCC, AR6 WGII, Summary for Policymakers](#), para. B.6.1, Technical Summary, paras. TS.C.2.5, TS.C.13.1.

<sup>28</sup> [IPCC, 1.5SR, Technical Summary](#), p. 44, Ch. 5, p. 447. See also [IPCC, AR6 WGII, Summary for Policymakers](#), paras. B.3, B.5.2, *Technical Summary*, Table TS.1, foreword, p. vii (“The assessment underscores the importance of limiting global warming to 1.5°C if we are to achieve a fair, equitable and sustainable world.”).

<sup>29</sup> [IPCC, 1.5SR, Summary for Policymakers](#), para. B.5; see also [IPCC, AR6 WGII, Summary for Policymakers](#), paras. B.5.2, B.3, *Technical Summary*, Table TS.1.

<sup>30</sup> [IPCC, AR6 WGII, Summary for Policymakers](#), para. D.5.3.

<sup>31</sup> Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79, art. 2 (entered into force on Nov. 4, 2016) [hereinafter Paris Agreement]; United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107, art. 2 (entered into force Mar. 21, 1994) [hereinafter UNFCCC]. Canada is party to both treaties. See U.N. Treaty Collection (UNTC), 7. U.N. Framework Convention on Climate Change (last visited July 17, 2024),

[https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg\\_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en); UNTC, 7. d. Paris Agreement (last visited July 17, 2024) [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en).

<sup>32</sup> [IPCC, AR6 WGIII, Technical Summary](#), Box. TS.8. See also [IPCC, AR6 WGIII, Summary for Policymakers](#), para. B.7.1, Ch. 17, para. 17.5. See also Kelly Trout et al., [Existing Fossil Fuel Extraction would Warm the World Beyond 1.5°C](#), 17 *Environ. Res. Lett.* 064010, p. 8 (May 17, 2022) (“Based on our median estimate, almost 40% of developed reserves cannot be burned (or must be abated) to stay within the 1.5 °C budget (50%).”).

<sup>33</sup> [IPCC, AR6 SYR, Summary for Policymakers](#), para. B.5.3.

<sup>34</sup> [IPCC, AR6 SYR, Summary for Policymakers](#), para. B.5.3.

Additionally, in 2021, the International Energy Agency (IEA) declared that “there is no need for investment in new fossil fuel supply” in its scenario for achieving net zero emissions by 2050<sup>35</sup>—a finding it reiterated again in 2023.<sup>36</sup> The conclusions in the IPCC and IEA—that there is no room for new fossil fuel supply—are supported by other studies and models.<sup>37</sup>

**According to the IPCC if the current pace of emissions continues, the global average temperature will likely reach 1.5°C above pre-industrial levels by 2040, with warming continuing beyond that point.**<sup>38</sup> More recent information from the World Meteorological Organization in June 2024 finds that there is an 80% likelihood that the annual average global temperature will temporarily exceed 1.5°C for at least one of the next five years.<sup>39</sup>

**Further, fossil fuel infrastructure is at a financial risk of becoming stranded assets, meaning that it may become a liability before the end of its anticipated economic life because of decreasing demand and the climate transition.** The IPCC estimates that from 2015 to 2050 between \$1 trillion and \$4 trillion in unburned fossil fuels and related infrastructure will be stranded in order to limit global warming to 2°C.<sup>40</sup> According to the IEA, in its net zero emissions scenario, “a global supply glut [for gas] forms in the mid-2020s and under construction projects are no longer necessary”<sup>41</sup> and the new boom in LNG presents a risk of oversupply.<sup>42</sup>

**Emissions reduction must happen now and cannot be delayed for ineffective and unproven measures that could prolong dependency on fossil fuels.** Immediate and large-scale emissions reductions resulting from increases in energy efficiency and the replacement of fossil fuels with renewable energy are the most critical component of any pathway that aims to limit global

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<sup>35</sup> International Energy Association (IEA), [Net Zero by 2050: A Roadmap for the Global Energy Sector](#), p. 21 (2021). The IEA’s 2021 net zero pathway strongly states that in its scenario there is no further need for any exploration for new oil resources, no new oil fields are necessary (other than those approved in 2021), no new natural gas fields are needed beyond those already under development, and many of the LNG liquefaction facilities currently under construction or at the planning stage are not needed. The IEA further states that between 2020 and 2050 gas traded as LNG falls by 60% and trade by pipeline falls by 65%. See pp. 101-03.

<sup>36</sup> IEA, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#), p. 21 (2021); see also IEA, [Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach](#), p. 16 (2023).

<sup>37</sup> Mohamed Adow et al., [Navigating Energy Transitions: Mapping the Road to 1.5°C](#), IISD, pp. 17-18 (Oct. 2022) (finding this conclusion supported from a review of “other well known pathways” from intergovernmental organizations, academic institutions, and the private sector.); IISD, [Transitioning Away from Oil and Gas](#), pp. iii, 4 (mitigation scenarios show that oil and gas production must decline between 58% and 99% by 2050 to limit warming to 1.5°C by the end of the century); See also Oliver Richters et al., [NGFS Phase 4 Scenario Database](#) (hosted by International Institute for Applied Systems Analysis (IIASA)), IXMP Scenario Explorer v1.1.0-ce2afd9 (2023) (The NGFS net-zero scenarios include the rapid phase out of fossil fuels including gas, and support the conclusion that there is no room for new fossil fuel supply).

<sup>38</sup> [IPCC, AR6 WGI, Summary for Policymakers](#), para. B.1.3, Table SPM.1.

<sup>39</sup> World Meteorological Organization, [WMO Global Annual to Decadal Climate Update: 2024-2028](#), p. 2 (2024).

<sup>40</sup> [IPCC, AR6 WGIII, Summary for Policymakers](#), para. C.4.4. See also Gregor Semieniuk et al., [Stranded fossil-fuel assets translate to major losses for investors in advanced economies](#), 12 *Nature Climate Change* 532-38 (2022) (showing significant risk to financial markets in OECD countries).

<sup>41</sup> IEA, [World Energy Outlook](#), p. 139 (2023).

<sup>42</sup> IEA, [The Oil and Gas Industry in Net Zero Transitions: World Energy Outlook Special Report](#), p. 37 (Feb. 2024); See also, IEEFA, [Global LNG Outlook 2024-2028](#), p. 4 (Apr. 2024).

warming.<sup>43</sup> Technologies that purport to reduce or remove fossil fuel emissions rather than reducing fossil fuel production and use are not effective climate mitigation measures. The IPCC states that carbon capture and storage (CCS), for example, is among the measures with the highest cost and the lowest potential to reduce emissions by 2030—the most critical period for avoiding catastrophic climate change.<sup>44</sup> The IPCC also recognizes that carbon dioxide removal (CDR) technologies “are uncertain and entail clear risks,”<sup>45</sup> and “CDR cannot serve as a substitute for deep emissions reductions.”<sup>46</sup> The U.N. Environment Programme (UNEP) Working Group, Production Gap report also “call[s] for an even more rapid global phase out of all fossil fuels,” “given risks and uncertainties of CCS and CDR” and due to the “potential failure of these measures to become sufficiently viable at scale.”<sup>47</sup>

*iv. Fossil Gas Is Not a Transition Fuel*

**The phase out of fossil fuels includes all fossil fuels.** Fossil gas is a major contributor to GHG emissions; it is a form of fossil fuel—not a so-called transition fuel that shifts the world away from fossil-based systems of energy production and consumption.<sup>48</sup>

**Methane, the primary component of fossil gas and a GHG, has a more potent warming effect than carbon dioxide over short periods of time.** Over a 20-year period, methane has approximately an 82.5 to 86 times more potent warming effect than carbon dioxide.<sup>49</sup> Recent studies show that methane leaks from gas infrastructure far more than previously estimated.<sup>50</sup> Additionally, shale gas, like that in the Permian Basin where Enbridge has disclosed plans to expand its capacity,<sup>51</sup> releases large quantities of methane through its lifecycle.<sup>52</sup>

**Several recent analyses have also found that exported Liquefied Natural Gas (LNG) has much higher lifecycle emissions than fossil gas burned domestically.**<sup>53</sup> One preprint study

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<sup>43</sup> [IPCC, AR6 WGIII](#), Ch. 3, Fig. 3.7.

<sup>44</sup> [IPCC, AR6 WGIII](#), *Summary for Policymakers*, para. C.4.6, Technical Summary, para. 5.1. *See also* [IPCC, AR6 WGIII](#), Ch. 6, para. 6.7.4. *See also* Angela Carter & Laura Cameron, [Why Carbon Capture and Storage is Not a Net-Zero Solution for Canada’s Oil and Gas Sector](#), IISD (Feb. 9, 2023).

<sup>45</sup> [IPCC, 1.5SR](#), Ch. 2, p. 95. *See also* IPCC, AR6 WG II, *Summary for Policymakers*, paras. B.5.4-B.5.5, Technical Summary, para. TS.C.11.10; [IPCC, AR6 WGIII](#), Ch. 3, paras. 3.3.2.23-36, *Summary for Policymakers*, paras. C.11, C.11.1, C.11.2.

<sup>46</sup> [IPCC, AR6 WGIII](#), Ch.12, Cross-Chapter Box 8, para. 12.3.

<sup>47</sup> SEI, Climate Analytics, E3G, IISD & UNEP, [The Production Gap: Phasing down of phasing up? Top fossil fuel producers plan even more extraction despite climate promises](#), Executive Summary, p. 2 (Nov. 8, 2023).

<sup>48</sup> *See* Greg Muttitt, [Gas is not a bridge fuel, it’s a wall, so why are governments still funding it?](#) IISD (June 10, 2021).

<sup>49</sup> [IPCC, AR6 WGI](#), Ch. 7, p. 1017, Table 7.15; Robert W. Howarth, [Methane emissions and climatic warming risk from hydraulic fracturing and shale gas development: Implications for policy](#), p. 49 (2015).

<sup>50</sup> *See, e.g.*, Evan D. Sherwin et al., [US oil and gas system emissions from nearly one million aerial site measurements](#), 627 *Nature* 328–334 (2024).

<sup>51</sup> “Enbridge to form natural gas supply venture connecting Permian and Gulf Coast,” *Reuters*, Mar. 26, 2004, <https://www.reuters.com/business/energy/enbridge-form-natural-gas-supply-venture-2024-03-26/>.

<sup>52</sup> *See generally* Howarth, [Methane emissions and climatic warming risk from hydraulic fracturing and shale gas development: Implications for policy](#).

<sup>53</sup> *See, e.g.*, Christina Swanson & Amanda Levin, [Sailing to Nowhere: Liquefied Natural Gas is not an Effective Climate Strategy](#), (2020).

found that gas exported from the U.S. has higher lifecycle emissions than coal due to methane leaks and emissions from processing and transporting the fuel.<sup>54</sup> Due to these inefficiencies, studies have found that expanding LNG exports is incompatible with pathways that keep warming under 2°C, much less 1.5°C.<sup>55</sup>

**Modeling demonstrates that new gas tends to displace renewable energy.** This negates any benefit of supplanting coal, and also raises emissions more than the displaced renewable alternative.<sup>56</sup> According to the IPCC, renewables have the lowest cost and highest potential contribution to emissions reductions in the energy sector this decade.<sup>57</sup> Studies show that renewable energy is also more affordable and efficient.<sup>58</sup> In IPCC 1.5°C pathway scenarios, the use of fossil gas declines rapidly alongside all other fossil fuels.<sup>59</sup> The IEA net zero pathway also indicates a rapid drop in oil and gas demand.<sup>60</sup>

## **B. Enbridge is an Oil and Gas Company with Expansion and Lock-in Plans**

**Public information about Enbridge’s operations, investments, and plans show that it is an oil and gas company, whose primary business assumes entrenched fossil fuel dependence, and planning fossil fuel expansion projects that will increase GHG emissions.**

### *i. Enbridge is Primarily an Oil and Gas Company*

**Enbridge’s primary portfolio is fossil fuel infrastructure.** Its core business is made up of four areas: liquids pipelines, natural gas transmission and midstream, gas distribution and storage, and renewable energy.<sup>61</sup>

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<sup>54</sup> Robert W. Howarth, [The Greenhouse Gas Footprint of Liquefied Natural Gas \(LNG\) Exported from the United States](#) (2023).

<sup>55</sup> Shuting Yang, Sara Hastings-Simon & Arvind P. Ravikumar, [Global liquefied natural gas expansion exceeds demand for coal-to-gas switching in paris compliant pathways](#), 17(6) *Environmental Research Letters* (2022).

<sup>56</sup> Haewon McJeon et al., [Limited impact on decadal-scale climate change from increased use of natural gas](#), 514 *Nature* 482-85 (2014); Ziaochun Zhang et al., [Climate benefits of natural gas as a bridge fuel and potential delay of near-zero energy systems](#), 167 *Applied Energy* 317-322 (2016); C. Gürsan & V. de Gooyert, [The systemic impact of a transition fuel: Does natural gas help or hinder the energy transition?](#), 138 *Renewable and Sustainable Energy Reviews* (2021).

<sup>57</sup> See [IPCC, AR6 WGIII, Summary for Policymakers](#), fig. SPM.7.

<sup>58</sup> Nichole Dusyk & Lasse Toft Christensen, [Why Canada’s Energy Security Hinges on Renewables](#), IISD, pp. 4, 7 (Oct. 2022); Stephen Thomas & Tom Green, [Shifting Power: Zero-Emissions Electricity Across Canada by 2035](#), Clean Power Pathways & David Suzuki Foundation (May 2022); see also [IPCC, AR6 WGIII](#), Ch. 17, s. 17.5, p. 1771 (concluding that the phase-out of fossil fuels in energy systems is technically feasible and relatively low cost).

<sup>59</sup> Keywan Riahi & Roberto Schaeffer et al., [Mitigation pathways compatible with long-term goals](#), in [IPCC, AR6 WGIII](#).

<sup>60</sup> IEA, [Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach](#), 2023, pp. 16, 61.

<sup>61</sup> Enbridge Inc., [Tomorrow is On: 2023 Annual Report](#) (U.S. Sec. & Exch. Comm’n Form 10-K) [hereinafter 2023 Annual Report], p. 8.

**Pipelines, gas infrastructure, and fossil fuel storage made up more than 63% of Enbridge’s assets<sup>62</sup> and the company’s liquids pipelines, gas transmission and midstream, and gas distribution and storage business areas made up more than 94% of its earnings in 2023.<sup>63</sup>**

Enbridge’s business is under the umbrella of fossil fuel activity (as defined by the Canadian government).<sup>64</sup> Renewables are only a small portion of Enbridge’s business, making up 3.2%<sup>65</sup> of the company’s property, plant, and equipment assets before depreciation and only 0.084% of the company’s planned capital expenditures on growth projects from 2024 to 2028.<sup>66</sup>

**Enbridge’s plans include and assume fossil fuel expansion and the continued and growing dependence on fossil fuels into the future.** In its annual report and disclosures to investors, the company discusses continuing “to capitalize on strong gas fundamentals to deliver safe, reliable, and sustainable energy to North Americans while simultaneously growing LNG exports.”<sup>67</sup> Enbridge says it expects “US demand for Canadian crude oil production will support the use of our infrastructure for the foreseeable future,” and that “demand is expected to grow into the next decade.”<sup>68</sup>

*ii. Enbridge’s Fossil Fuel Expansion Plans*

**Enbridge’s corporate documents and statements show plans to build new fossil fuel infrastructure that will enable, and be critical components of, fossil fuel expansion and lock-in.** Enbridge’s U.S. “growth projects” include an offshore pipeline, the expansion of natural gas utilities, oil storage and export capacity, and pipelines for LNG export facilities.<sup>69</sup> This new infrastructure will facilitate the movement of more fossil fuels throughout the U.S., expand U.S.

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<sup>62</sup> [2023 Annual Report](#), p. 137 (This is based on our calculations of the “Property, Plant and Equipment” table. We added the value of Pipelines (\$66,698 million), Gas mains, services and other (\$15,346 million), and Storage (\$4,929) assets before depreciation, then divided by the total assets before depreciation (\$137,199 million)).

<sup>63</sup> [2023 Annual Report](#), p. 70 (This is based on our calculations of the “results of operations” table. We added earnings from the categories “Liquids Pipelines” (of \$9,499 million), “Gas Transmission and Midstream” (of \$4,264 million) and “Gas Distribution and Storage”(of \$1,592 million) which were divided by the earnings before interest, income taxes, and depreciation and amortization (of \$16,304 million)).

<sup>64</sup> Government of Canada, [Inefficient Fossil Fuel Subsidies Government of Canada – Guidelines](#), Annex B (last modified July 24, 2023) (“Fossil Fuel Activities” refers to activities directly related to Fossil Fuel production (i.e., exploration, extraction, and processing including refining]) or Fossil Fuel use (i.e., storage, transportation, sale and production of electricity and/or heat.”).

<sup>65</sup> [2023 Annual Report](#), p. 137 (This percentage is based on our calculations of the “property, plant and equipment” table. Renewables calculated here includes the row “wind turbines, solar panels and other” (\$4,511 million) divided by the total property, plant and equipment before depreciation (\$137,199 million)).

<sup>66</sup> Enbridge Inc., [First Quarter 2024: Supplemental Package \(unaudited\)\(Supplement to Form 10-Q\)](#), p. 15 (March 31, 2024) (Based on the estimated capital cost of “Renewable Power Generation” in the table “Growth Projects.” Note that we converted the USD of the Fox Squirrel Solar Phase II project using a .73 rate for 0.41 billion CAD. The Renewable Power Generation therefore was .211 billion CAD, which we divided by the total 2024-2028 capital program estimate of \$25 billion CAD).

<sup>67</sup> [2023 Annual Report](#), p. 9.

<sup>68</sup> [2023 Annual Report](#), p. 20.

<sup>69</sup> Enbridge Inc., [Consolidated Financial Statements \(unaudited\)](#), p. 12 (Mar. 31, 2024); Enbridge Inc., [First Quarter 2024: Supplemental Package](#), p. 15 (Mar. 31, 2024).

LNG exports, enable new supplies of oil and gas, and further entrench and lock in dependence on fossil fuels both in the U.S. and abroad.

**Enbridge pipeline, storage, utilities, and infrastructure are all crucial components in the larger fossil fuel system, and they enable further extraction.** Below are non-exhaustive examples of currently planned new infrastructure, based on publicly available information.<sup>70</sup>

*New LNG Pipeline Projects:*

- a) **Rio Bravo pipeline project**, a planned 137-mile pipeline in Texas, which Enbridge states will move as much as 4.5 billion cubic feet per day of gas from the Texas Permian Basin to the Rio Grande LNG terminal for liquefaction and export to foreign markets.<sup>71</sup> The terminal is expected to begin operations in 2027,<sup>72</sup> and its owner has contracts to produce LNG until at least 2047.<sup>73</sup>
- b) **Venice Extension project**, a new planned pipeline to connect to an LNG terminal in Louisiana. Enbridge has stated it expects the project to come into service in 2024 and to transport 1.26 billion cubic feet per day of gas to the Louisiana coast, expanding existing infrastructure and transportation capacity.<sup>74</sup>

The LNG export facilities that Enbridge’s pipelines feed are part of a much larger, planned build-out of LNG infrastructure in the U.S. Gulf Coast region that is driving demand for natural gas in the U.S., as well as placing the U.S. as a top exporter of LNG, according to the U.S. Energy Information Administration.<sup>75</sup> Further, satellite studies have shown that the Permian Basin, has a methane leak rate 60% higher than the U.S. national average.<sup>76</sup> Gas production in the Permian

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<sup>70</sup> Because the majority (i.e., 36 of 44 published transactions) of past transactions between EDC and Enbridge have taken place in the U.S., we primarily focus on Enbridge’s portfolio in the U.S. However, Enbridge’s publicly available information show similar plans for new LNG infrastructure (see “[Woodfibre LNG](#)”) and pipelines (see “[Aspen Point Program](#)”) in Canada.

<sup>71</sup> Enbridge Inc., *Rio Bravo Pipeline Project*, <https://www.enbridge.com/projects-and-infrastructure/projects/rio-bravo-pipeline-project> (last visited June 27, 2024).

<sup>72</sup> Scott Disavino, *US LNG project approvals on track for record new volumes*, *Reuters* (June 23, 2023) <https://www.reuters.com/business/energy/us-lng-project-approvals-track-record-new-volumes-2023-06-23/>.

<sup>73</sup> For example, Saudi Aramco has signed a 20-year supply deal for the project. See “NextDecade, Saudi Aramco sign 20-year LNG supply deal,” *Reuters* (June 12, 2024) <https://www.reuters.com/business/energy/nextdecade-saudi-aramco-sign-20-year-lng-supply-deal-2024-06-13/>.

<sup>74</sup> Enbridge Inc., *Venice Extension Project*, <https://www.enbridge.com/projects-and-infrastructure/projects/venice-extension-project> (Note that the capacity is listed by Enbridge as “[p]eak day capacity”) (last visited June 27, 2024).

<sup>75</sup> U.S. Energy Information Administration (EIA), *LNG-exporting Gulf Coast states drove U.S. natural gas demand growth*, (June 27, 2023), <https://www.eia.gov/todayinenergy/detail.php?id=56940>; U.S. EIA., *The United States exported more LNG than any other country in the first half of 2023* (Sept. 12, 2023), <https://www.eia.gov/todayinenergy/detail.php?id=60361>.

<sup>76</sup> Yuzhong Zhang et al., *Quantifying methane emissions from the largest oil-producing basin in the United States from space*, *Science Advances* (Apr. 22, 2020).

Basin of the U.S. is also linked to oil production,<sup>77</sup> meaning Enbridge’s gas infrastructure enables the production of crude oil.

*Crude Oil Storage and Export Infrastructure:*

- a) **Enbridge Ingleside Energy Center (EIEC)**, is the largest crude oil storage and export terminal by volume in the U.S. The company is planning to construct new tanks and an 18-mile pipeline, to “enhance the EIEC’s oil export capabilities.”<sup>78</sup> According to a news article by oil and gas industry publisher Hart Energy, Enbridge is planning to add 2.5 million barrels of storage capacity.<sup>79</sup> In describing the EIEC, Enbridge refers to the export facility as “a critical link connecting growing Permian and Eagle Ford production to international markets.”<sup>80</sup> According to Hart Energy, Enbridge’s plans, including projects around the EIEC, are “aggressive expansion plans.”<sup>81</sup>
- b) **Enbridge Houston Oil Terminal (EHOT)**, a new crude oil storage facility in Texas that will have an export capacity of 930,000 barrels per day.<sup>82</sup>

*New Fossil Fuel Pipelines Enabling New Fossil Fuel Production and Use:*

- a) **Sparta Offshore pipeline**, will transport oil and gas from Shell’s and Equinor’s Sparta development offshore Louisiana.<sup>83</sup> Equinor says the Sparta development will begin production in 2028 with a capacity of 100,000 barrels of oil equivalent per day at peak.<sup>84</sup>
- b) **Tennessee Ridgeline Expansion project**, where Enbridge is planning to construct a pipeline to a new fossil gas plant planned by the Tennessee Valley Authority (TVA) utility,<sup>85</sup> despite calls for a fully renewable replacement.<sup>86</sup>

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<sup>77</sup> U.S. EIA., EIA expands coverage of crude oil and natural gas production with regional forecast (June 12, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=62283>; Christopher E. Smith, *Permian crude production growth requires natural gas pipelines*, *Oil & Gas Journal* (June 4, 2024).

<sup>78</sup> Enbridge Inc., *Ingleside Energy Center Projects*, <https://www.enbridge.com/projects-and-infrastructure/projects/ingleside-energy-center-projects#projectdetails:fact-sheets> (last visited July 17, 2024).

<sup>79</sup> Sandy Segrist, *Enbridge Fortifies Dominant Role in Corpus Christi Crude Transport*, *Hart Energy* (March 20, 2024) <https://www.hartenergy.com/exclusives/enbridge-fortifies-dominant-role-corpus-christi-crude-transport-208557> [hereinafter Segrist, *Enbridge Fortifies*].

<sup>80</sup> Enbridge Inc., *Enbridge’s Energy Infrastructure Assets*, p. 68, (last updated Mar. 18, 2024),.

<sup>81</sup> Segrist, *Enbridge Fortifies*.

<sup>82</sup> Enbridge Inc., *Enbridge Houston Oil Terminal (EHOT)*, <https://www.enbridge.com/projects-and-infrastructure/projects/enbridge-houston-oil-terminal> (last visited June 27, 2024).

<sup>83</sup> Enbridge Inc., *Enbridge Announces Suite of USGC Export Investments at Annual Investor Community Conference in NYC* (Mar. 6, 2024), <https://www.enbridge.com/stories/2024/march/enbridge-day-2024-conference-nyc-enb-first-choice-investment-opportunity>.

<sup>84</sup> Equinor, *Final Investment Decision for Sparta in the US Gulf of Mexico* (Dec. 20, 2023), <https://www.equinor.com/news/20231220-final-investment-decision-sparta>.

<sup>85</sup> Enbridge Inc., *Ridgeline Expansion Project Opportunity*, <https://www.enbridge.com/projects-and-infrastructure/projects/ridgeline-expansion-project> (last visited June 27, 2024).

<sup>86</sup> See, e.g., Jonathan Mattise, *Conservation groups sue over federal utility’s plan to replace coal plant with gas*, *Associated Press* (June 16, 2023), <https://apnews.com/article/coal-natural-gas-tva-lawsuit-tennessee-2a610faf64cb682e0e6b0d66e146e1b0>.

*Other Early-Stage Fossil Fuel Expansion:*

- a) **Pipeline expansion**, such as the Gray Oak Pipeline to move up to 120,000 barrels per day of oil between the Permian Basin and the Gulf Coast.<sup>87</sup> The Gray Oak expansion is said to be necessary to keep up with the growth and maintain shares of Permian volumes which are expected to increase by 245,000 barrels per day by the end of the year.<sup>88</sup> Project Maple is another proposed expansion project.<sup>89</sup>
- b) **New deepwater storage terminal** with export capacity for crude oil and other refined products (e.g., St. James Development Project).<sup>90</sup>

*iii. Enbridge's GHG Emissions*

**Enbridge is responsible for a significant amount of direct (scope 1 and 2) GHG emissions.**

For 2022, Enbridge reports its gross global scope 1 “oil and gas production activities (midstream)” emissions at 7,713,017 metric tons CO<sub>2</sub>e (mtCO<sub>2</sub>e), as well as its gross global scope 2 location-based emissions at 6,693,000 mtCO<sub>2</sub>e, and market-based emissions at 6,117,000 mtCO<sub>2</sub>e.<sup>91</sup>

**Enbridge reports an increase in its direct GHG emissions from its pipelines.** Enbridge reports that its scope 1 and scope 2 emissions increased from 2021 to 2022 by 404,293 mtCO<sub>2</sub>e, because of increase in throughput across its pipeline network.<sup>92</sup>

**Enbridge has not fully disclosed scope 3 emissions,<sup>93</sup> but reports indicate those have and will continue to grow.** Enbridge says that while the emissions are relevant, it has not calculated the scope 3 emissions for purchased goods and services, capital goods and upstream transportation and distribution.<sup>94</sup> Further, a report by an environmental organization and

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<sup>87</sup> Enbridge Inc., *Gray Oak Pipeline LLC Announces Binding Open Season* (May 9, 2024), <https://www.enbridge.com/media-center/news/details?id=123814&lang=en>; Georgina McCartney & Arathy Somasekhar, *Enbridge eyes 120,000 bpd expansion to Gray Oak, Texas oil pipeline by 2025*, *Reuters* (Mar. 19, 2024), <https://www.reuters.com/business/energy/ceraweek-enbridge-eyes-120000-bpd-expansion-gray-oak-texas-oil-pipeline-by-2025-2024-03-19/>.

<sup>88</sup> Segrist, *Enbridge Fortifies*.

<sup>89</sup> Enbridge Inc., *Project Maple: Open Season Notice for Firm Service*, p. 2.

<sup>90</sup> Enbridge Inc., St. James Development Project, <https://www.enbridge.com/projects-and-infrastructure/projects/st-james-development-project> (Note that this is a joint venture where Enbridge will hold a 50% interest) (last visited June 27, 2024).

<sup>91</sup> *Enbridge Carbon Disclosure Project (CDP) Response Climate Change 2023*, C6.3, C-CE7.4/C-CH7.4/C-C07.4C-EU7.4C-MM7.4/C-OG7.4/C-ST7.4/C.TO7.4/C-TS7.4 [hereinafter *Enbridge CDP Response 2023*] (last visited July 10, 2024), <https://www.cdp.net/en/responses?queries%5Bname%5D=Enbridge>.

<sup>92</sup> *Enbridge CDP Response 2023*, C7.9, 7.9a. (Enbridge reports three CO<sub>2</sub>e reducing initiatives which together it reports as saving 355,575 mtCO<sub>2</sub>e in scope 2 emissions, which is less than the impact of the increased throughput see *Enbridge CDP Response 2023*, C4.3a.).

<sup>93</sup> Enbridge does provide some scope 3 disclosure in its CDP response of category 3 emissions (i.e., fuel and energy related activities), which in 2018 were 419,000 mtCO<sub>2</sub>e; category 6 (business travel), which in 2018 were 7,200 mtCO<sub>2</sub>e; and category 11 (use of sold products), which in 2018 was 49,800,000 mtCO<sub>2</sub>e. *Enbridge CDP Response 2023*, C6.5.

<sup>94</sup> *Enbridge CDP Response 2023*, C6.5.

shareholder of Enbridge, alleges that Enbridge’s scope 3 reporting is incomplete because it excludes downstream emissions for use of goods and services from its midstream business services - the transportation and storage of oil and gas. The report applies conservative estimates and finds that since 2014, Enbridge’s scope 3 emissions associated only with its pipelines and transmission services have grown approximately 76% - from 456,830,000 mtCO<sub>2</sub>e in 2014 to 805,240,000 mtCO<sub>2</sub>e in 2023.<sup>95</sup> The report also estimated that Enbridge’s proposed project will increase these scope 3 emissions by another 27%, or 216,700,000 mtCO<sub>2</sub>e annually.<sup>96</sup>

*iv. Concerns with Enbridge’s Climate Commitments*

**While Enbridge has publicly committed to a goal of net zero emissions by 2050 and asserts that its emissions reduction targets are aligned with the goals of the Paris Agreement,<sup>97</sup> climate monitoring groups have publicly found that its climate transition plan falls short of standards to meet a limit of 1.5°C of warming.** For instance, Climate Engagement Canada (CEC)<sup>98</sup> raises serious concerns with respect to Enbridge’s corporate disclosure to align their business with Paris Agreement goals. Among other concerns, CEC finds that Enbridge’s disclosure framework is lacking for: failing to include the most relevant scope 3 GHG emissions categories in its commitment; not disclosing long-term targets aligned with 1.5°C; not setting a short-term target; and not disclosing its capital allocation alignment.<sup>99</sup> As approximately 80% of emissions in the oil and gas sector come from use or combustion,<sup>100</sup> a failure to robustly include all scope 3 emissions in its commitment represents a significant gap.

**Enbridge’s climate policy engagement has also been evaluated and assigned a ‘D’ letter grade on LobbyMap.<sup>101</sup>** This is because Enbridge undertakes “negative advocacy on

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<sup>95</sup> Investors for Paris Compliance (I4PC), *Estimating Enbridge’s Scope 3 Emissions*, pp. 2-3, 5 (Mar. 2024) [hereinafter I4PC, Enbridge Emissions Estimate] (Note that the data in the report is in megatons of CO<sub>2</sub>e and has been converted to metric tons of CO<sub>2</sub>e in this submission for consistency with Enbridge’s own reporting).

<sup>96</sup> I4PC, *Enbridge Emissions Estimate*, pp. 2-3, 5. Note that shareholder resolutions asking Enbridge Inc to disclose these scope 3 emissions received 24.4% of support in 2023 and 28.4% of support in 2024 (see I4PC, Enbridge Resolution (March 3, 2024), <https://www.investorsforparis.com/enbridge-2024/>).

<sup>97</sup> Enbridge Inc., *Net Zero by 2050*, p. 2 (May 2023).

<sup>98</sup> Climate Engagement Canada (CEC) is a finance-led initiative that drives dialogue between finance and industry to promote a just transition to a net zero economy. CEC added Enbridge to its focus list in 2023, made up of companies that have been identified as the top reporting or estimated emitters on the Toronto Stock Exchange and/or who have a significant opportunity to contribute to a low-carbon future. CEC, *Finance Leaders Driving Canada’s Business Transition to Net Zero*, <https://climateengagement.ca/> (last visited July 17, 2024); CEC, *Climate Engagement Canada launches Focus List of corporate issuers to engage on climate risks and opportunities on the road to a net-zero future*, <https://climateengagement.ca/financial-community-to-engage-40-canadian-corporate-issuers-for-alignment-on-net-zero-transition/> (last visited July 17, 2024).

<sup>99</sup> Climate Engagement Canada, Enbridge: Company Assessment, <https://climateengagement.ca/companies/enbridge/> (last visited July 10, 2024).

<sup>100</sup> CDP, *CDP Technical Note: Relevance of Scope 3 Categories by Sector*, version 3.0, p. 39 (June 28, 2024).

<sup>101</sup> LobbyMap “is the world’s leading platform measuring corporate climate policy engagement” providing “an independent, data-driven assessment of how the world’s largest companies and their industry associations are influencing policy and regulations needed to transition the global economy towards zero emissions.” LobbyMap, An InfluenceMap Platform, About Us, <https://lobbymap.org/about> (last visited July 18, 2024).

decarbonization policies” and “appears to remain actively engaged on energy policy in North America to promote fossil fuels in the energy mix.”<sup>102</sup>

### **III. Statute and Policy Require EDC to Act Consistently with International Environmental and Human Rights Law and Standards**

#### **A. The *Export Development Act* (EDA)**

**EDC’s powers are set out in the EDA.** Section 10(1.1) of the EDA enumerates a list of actions that EDC may undertake in carrying out its purposes, including financing.<sup>103</sup>

**The Supreme Court of Canada has held that domestic legislation should be presumed to conform with international law and should not be interpreted to breach international obligations.**<sup>104</sup> For instance, in *Canada v. Vavilov*, the Supreme Court of Canada stated “[i]t is well established that domestic legislation is presumed to comply with Canada’s international obligations, and that it must be interpreted in a manner that reflects the principles of customary and conventional international law.”<sup>105</sup>

**Applying the Supreme Court of Canada’s direction, means that EDC’s powers must be interpreted consistently with Canada’s international law obligations.** This requires reading section 10(1.1) to prohibit, and not permit, EDC financing that violates Canada’s international law obligations. Moreover, EDC is a government actor whose conduct is attributable to Canada,<sup>106</sup> and is thus bound by Canada’s international law obligations.

**Further, even when international treaties and conventions have not been implemented domestically, they can be a constraint on the exercise of administrative power.**<sup>107</sup> As noted in *Vavilov* “in some administrative decision-making contexts, international law will operate as an important constraint on an administrative decision maker.”<sup>108</sup>

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<sup>102</sup> LobbyMap, Enbridge InfluenceMap Score for Climate Policy Engagement, <https://lobbymap.org/company/Enbridge-fa83bd6f5cc0d0fbd7aa37c2cbd4c527> (last visited July 17, 2024).

<sup>103</sup> *EDA*, s.10(1.1) (Specifically s. 10(1.1)(c) permits EDC to “enter into any arrangement that has the effect of extending credit to any person or providing an undertaking to pay money to any person.”).

<sup>104</sup> *R v. Hape*, [2007 SCC 26](#), para. 53 (“it is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law.”); *Canada v. Vavilov*, [2019 SCC 65](#), para. 182 [hereinafter *Vavilov*]; *R v. Appulonappa*, [2015 SCC 59](#), para. 40; *GreCon Dimter inc v. JR Normand inc*, [2005 SCC 46](#), para. 39.

<sup>105</sup> *Vavilov*, para. 182.

<sup>106</sup> Committee on Economic Social and Cultural Rights (CESCR), *General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, U.N. Doc. E/C.12/GC/24, para. 15 (Aug. 10, 2017) [hereinafter, CESCR, GC No. 24] (referring to export credit agencies as a form of State support); Committee on the Rights of the Child (CRC), *General comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children’s Rights*, U.N. Doc. CRC/C/GC/16, para. 45(c), (2013) [hereinafter CRC, GC No. 16] (referring to export credit agencies as State agencies).

<sup>107</sup> *Vavilov*, para. 114.

<sup>108</sup> *Vavilov*, para. 114.

**The relevant international law obligations that constrain EDC include treaties ratified by Canada.** These treaties include, among others: the U.N. Framework Convention on Climate Change (UNFCCC), Paris Agreement, and seven major international human rights treaties.<sup>109</sup>

## **B. EDC’s Environmental and Social Risk Management (ESRM) Policy Framework**

**EDC must apply its ESRM Policy Framework<sup>110</sup> to any potential new transaction, which should include renewals, and to assess its ongoing customer relationships.**

### *i. Policies Incorporate International Environmental and Human Rights Laws and Standards*

**The ESRM Policy Framework is set up to ensure alignment of EDC’s practices with international climate and human rights obligations and commitments.** The ESRM Policy Framework incorporates Canada’s obligations from the international climate agreements and human rights treaties, as well as leading international environmental and human rights standards, as guiding frameworks for EDC’s decision making. For instance, the policies state that:

- the ESRM Policy Framework “is designed and informed by leading international environmental and social standards, frameworks, agreements and principles,”<sup>111</sup>
- EDC is committed to “aligning with leading standards and industry best practices for E&S [Environmental & Social] Risk management and due diligence,”<sup>112</sup>
- EDC “considers relevant multilateral agreements or frameworks signed by Canada,”<sup>113</sup>
- EDC “operate[s] in a manner consistent with Canadian law which embeds the international commitments made by Canada and in line with the Government of Canada’s

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<sup>109</sup> Government of Canada, United Nations Framework Convention on Climate Change (last visited July 17, 2024), <https://www.canada.ca/en/environment-climate-change/corporate/international-affairs/partnerships-organizations/united-nations-framework-climate-change.html> (Canada ratified the UNFCCC on December 4, 1992 and it entered into force in Canada on March 21, 1994. Canada ratified the Paris Agreement on October 5, 2016 and it entered into force in Canada on November 6, 2016); Government of Canada, Reports on United Nations Human Rights Treaties (July 12, 2022), <https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/reports-united-nations-treaties.html> (Canada has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, and Convention on the Rights of Persons with Disabilities.).

<sup>110</sup> EDC’s ESRM Policy Framework includes a set of associated policies, guidelines, and frameworks, including: ESRM Policy, ESRM Guideline, Human Rights Policy and Climate Change Policy, and the Human Rights Policy and Climate Change Policy. Stemming from the latter two are the Due Diligence Framework: Human Rights, Due Diligence Framework: Climate Change, and Principles on Leverage and Remedy.

<sup>111</sup> EDC, [Environmental and Social Risk Management Policy](#), version 4.0, p. iii (2022) [hereinafter EDC, ESRM Policy].

<sup>112</sup> EDC, [ESRM Policy](#), p. 2.

<sup>113</sup> EDC, [ESRM Policy](#), p. 3.

policies, strategies and guidance, specifically with respect to responsible business conduct,”<sup>114</sup> and

- EDC “recognize[s] our responsibility<sup>115</sup> to respect the internationally recognized Human Rights enshrined within the *International Bill of Human Rights*.”<sup>116</sup>

**The ESRM Policy Framework references the following standards, instruments, agreements, and principles, among others:**<sup>117</sup> the Paris Agreement, the U.N. Guiding Principles on Business and Human Rights (UNGPs), the *International Bill of Human Rights* (which consists of Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights<sup>118</sup>); the Convention on the Elimination of All Forms of Discrimination against Women; the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP); the OECD Guidelines for Multinational Enterprises; and the United Nations Global Compact.<sup>119</sup> Moreover, the UNGPs incorporate the full spectrum of international human rights treaties.<sup>120</sup>

- ii. *Policies Establish a Process to Assess, Monitor, and Deny Transactions and Exit Customer Relationships that are Too Risky*

**The ESRM Policy Framework creates a process for EDC to deny transactions that are not aligned or that pose too high of an environmental or social risk.**<sup>121</sup> The policies also permit

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<sup>114</sup> EDC, [Human Rights Policy](#), version 2.0, p. 2 (2022) [hereinafter EDC, Human Rights Policy].

<sup>115</sup> EDC, [Human Rights Policy](#), p. 2; *see also* p. 1. While EDC states it has a responsibility to respect human rights, because, as mentioned above, EDC is a state actor and therefore it also has a *duty* to respect human rights, as laid out in international human rights treaties and the U.N. Guiding Principles on Business Human Rights. *See, e.g.*, U.N. Human Rights, [United Nations Guiding Principles on Business and Human Rights](#), Princip. 1 Commentary, Princip. 4 Commentary (2011), adopted by the U.N. Human Rights Council, A/HRC/RES/17/4 (July 6, 2011) [hereinafter UNGPs]. As the content of the duty to respect human rights and the responsibility to respect human rights is largely the same, this submission will refer to both the duty and responsibility (or obligation) to respect human rights and discuss the implications collectively. Moreover, the Supreme Court of Canada has recognized that corporations may be duty bearers under international law. *See* [Nevsun Resources Ltd. v. Araya, 2020 SCC 5](#), paras. 105-14 (holding on a motion to strike, “Ultimately, for the purposes of this appeal, it is enough to conclude that the breaches of customary international law, or *jus cogens*, relied on by the Eritrean workers may well apply to Nevsun.”). *See also* Commission on Human Rights of the Philippines (CHRP), [National Inquiry on Climate Change Report](#), p. 89 (2022) [hereinafter CHRP Climate Change Report]; Colombian Constitutional Court, [Sentencia T-732 of 2016](#), para. 52.

<sup>116</sup> EDC, [Human Rights Policy](#), p. 2; EDC, [Due Diligence Framework: Human Rights](#), version 5.0, p. 2 (Feb. 29, 2024)[hereinafter EDC, Human Rights Due Diligence Framework].

<sup>117</sup> *See* EDC, [ESRM Policy](#), pp. iii, 2-3; EDC, [Environmental and Social Risk Management Review Guideline](#), version 1.1, p. 8 (Aug. 1, 2021) [hereinafter EDC, ESRM Review Guideline]; EDC, [Human Rights Policy](#), pp. 1-4, 20-21; EDC, [Human Rights Due Diligence Framework](#), p. 2, 6; EDC, [Climate Change Policy](#), version 3.0, p. 2 (Oct. 2022) [hereinafter EDC, Climate Change Policy].

<sup>118</sup> UNGPs, Princip. 12 Commentary. These three agreements are not the only relevant human rights instruments.

<sup>119</sup> EDC is also a signatory to the United Nations Global Compact, Company Information: Export Development Canada, <https://unglobalcompact.org/participation/report/cop/active/470477> (last visited July 4, 2024).

<sup>120</sup> UNGPs, Princip. 12 Commentary.

<sup>121</sup> EDC, [ESRM Review Guideline](#), p. 2 (“If risks are identified, further due diligence by EDC’s Environmental and Social Risk Management team may be required, *the outcome of which could influence EDC’s decision to support the transaction*” (emphasis added)); EDC, [Human Rights Due Diligence Framework](#), p. 4 (outlining multiple decision

EDC to exit customer relationships where “the severity of Human Rights Risks is such that they cannot be managed.”<sup>122</sup>

**EDC’s ESRM Policy Framework integrates ESG considerations into its business operations and embeds them into decision-making.**<sup>123</sup> It explains that “identifying, managing, and mitigating E&S Risks is intrinsic to our business,” and that the Policy Framework “sets out EDC’s commitment to ensuring that E&S Risks are duly considered throughout the transaction process.”<sup>124</sup> The ESRM Policy also states that “EDC is committed to (i) reviewing, examining, understanding and considering the potential environmental and social impacts of the transactions and Customers we support.”<sup>125</sup> EDC defines environmental and social risks as “any actual or potential adverse impacts on the environment (including climate, biodiversity, ecosystems and natural resources); human rights ... community rights and wellbeing, health, safety and security; land acquisition and involuntary resettlement; and Indigenous Peoples that may be associated with EDC’s business.”<sup>126</sup> All transactions undergo screening for environmental and social risks.<sup>127</sup> For non-project transactions that have certain risk indicators, EDC will do an Environmental and Social Risk Review.<sup>128</sup>

**EDC’s policies provide a framework to ensure that it assesses and monitors the E&S risks of each transaction and customer from the time the transaction is considered pre-approval and throughout the active relationship.**<sup>129</sup> The Framework explains that EDC considers “[m]onitoring ... an integral part of EDC’s E&S Risk management process.”<sup>130</sup> Thus, EDC

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points in EDC’s due diligence approach where EDC will “decide whether to move forward with a customer relationship or transaction).

<sup>122</sup> EDC, [Human Rights Policy](#), p. 5, *see also* p. 4; EDC, [EDC’s Principles on Leverage and Remedy](#), p. 3 (Mar. 2023) [hereinafter, EDC, Principles on Leverage](noting that a relationship or transaction life-cycle may end with an exit).

<sup>123</sup> EDC, [ESRM Policy](#), pp. iii, 1.

<sup>124</sup> EDC, [ESRM Policy](#), p. iii.

<sup>125</sup> EDC, [ESRM Policy](#), p. 2.

<sup>126</sup> EDC, [ESRM Policy](#), p. 10.

<sup>127</sup> *See* EDC, [ESRM Review Guideline](#), p. 2; *see also* EDC, [Human Rights Due Diligence Framework](#), pp. 3-4 (p. 3 “Human rights considerations are integrated at each phase of this process [EDC’s environmental and social due diligence] to identify and address potential and/or actual severe human rights impacts that could be connected to the products EDC offers to our customers.”).

<sup>128</sup> EDC, [ESRM Review Guideline](#), p. 2; *see also* EDC, [Human Rights Policy](#), p. 4.

<sup>129</sup> *See* EDC, [ESRM Policy](#), pp. iii-iv, 3; EDC, [ESRM Review Guideline](#), pp. 2, 4; EDC, [Human Rights Policy](#), pp. 1-5; EDC, [Human Rights Due Diligence Framework](#), pp. 2, 4 (outlining EDC’s due diligence approach for human rights and also noting that EDC conducts “customer annual review for certain EDC products”), p. 7 (defining human rights due diligence as “an ongoing risk-management process.”); EDC, [Due Diligence Framework: Climate Change](#), version 1.3, p. 2 (Feb. 2021); EDC, [Principles on Leverage](#), p. 1 (“EDC’s Human Rights Policy commits us to building and using our leverage to prevent and *manage* human rights risks and impacts.”), p. 3 (“Considerations of leverage and remedy are relevant at all stages of a relationship or transaction, from the first engagement to close-out or exit.”); *See also* EDC, [Letter from Lorraine Audsley](#), Chief Sustainability Officer to Ms. Spice and Mr. Boyd, Sept. 20, 2023 (“every transaction opportunity undergoes its own specific and rigorous due diligence.”); EDC, [Letter from Lorraine Audsley](#), Chief Sustainability Officer to Ms. Spice and Mr. Boyd, Mar. 16, 2023 (“We undertake due diligence not only at the prospective stage but also throughout the life of the transaction and as part of customer relationship management.”).

<sup>130</sup> EDC, [ESRM Policy](#), p. 3.

should be continuously assessing and monitoring the environmental and social risks of its transactions and customer relationships for the entirety of those relationships. Conducting ongoing due diligence is also consistent with the UNGPs and the OECD Guidelines for Multinational Enterprises,<sup>131</sup> standards which EDC says its diligence process is aligned with and/or informed by.<sup>132</sup>

#### **IV. EDC Must Assess the Climate and Human Rights Impact of the Anticipated Transaction**

**To ensure alignment with the EDA and ESRM Policy Framework, EDC must comprehensively assess the climate impacts of its transactions, including the anticipated transaction to Enbridge.** EDC must understand the alignment of its decisions and customers with international environmental and human rights law and standards, including the customers' GHG emissions trajectory and any fossil fuel expansion and lock-in plans.

**EDC's assessment must include the full scope and trajectory of Enbridge's GHG emissions, including its scope 3 emissions.** EDC's policies state that, "in considering the risk associated with a particular transaction, EDC assesses Customers' activities across the Value Chain to identify both the likelihood of environmental and social impacts and the severity of any potential impact."<sup>133</sup> This must include scope 3 emissions.<sup>134</sup> EDC has committed, as part of the Net Zero Export Credit Agencies Alliance (NZECAA), to consider the full scope of emissions, including scope 3 emissions, of transactions where significant and where data allows.<sup>135</sup> Several courts around the world have found that environmental or climate impact assessments of fossil fuel activities must consider scope 3 emissions resulting from downstream combustion and use, which are the inevitable impacts of the activity.<sup>136</sup>

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<sup>131</sup> UNGPs, Princip. 18 Commentary; [OECD Guidelines](#), Ch. IV Commentary, p. 27, para. 50 (2023) [hereinafter OECD Guidelines]; OECD, [Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key Considerations for Banks Implementing the OECD Guidelines for Multinational Enterprises](#), p. 39 (2019) [hereinafter OECD, Due Diligence for Responsible Corporate Lending].

<sup>132</sup> EDC, [ESRM Policy](#), pp. 2-3, s. 1.4; EDC, [Human Rights Policy](#), pp. 2-4.

<sup>133</sup> EDC, [ESRM Policy](#), p. 3. (*see also* p. 13 where EDC defines value chain as "every step a business takes to produce a product or service and deliver it to the customer from its conception to its end use and beyond.").

<sup>134</sup> *See Greenhouse Gas Protocol, FAQ*, s. 4, [https://ghgprotocol.org/sites/default/files/standards\\_supporting/FAQ.pdf](https://ghgprotocol.org/sites/default/files/standards_supporting/FAQ.pdf).

<sup>135</sup> UNEP, [The Net Zero Export Credit Agencies Alliance: Commitment Document](#).

<sup>136</sup> *See e.g. R. v. Surrey County Council and others*, [2024] UKSC 20, paras. 2,7, 79, 92, 105 (June 20, 2024); *Gray v. Minister for Planning* (2006) 152 LGERA 258, NSWLEC 720 (Australia); *Gloucester Resources Limited v. Minister for Planning*, NSWLEC 7 (2019) (Australia), para. 490; *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019), p. 73; *Greenpeace Nordic and Nature & Youth v. Energy Ministry* (The North Sea Fields Case), Case No. 23-099330TVI-TOSL/05 (Oslo District Court, 18 Jan. 2024) (Norway) ([unofficial English translation](#)); Press Release, Greenpeace International, "Environmental and Youth Groups Win Climate Court Case against the Norwegian State," (Jan. 18, 2024), <https://www.greenpeace.org/international/press-release/64831/environmental-youth-groups-win-climate-court-case-against-norwegian-state/>.

**EDC must also assess scope 3 emissions as part of its obligation to respect human rights.** To respect human rights, EDC must not cause or contribute to violations of human rights.<sup>137</sup> Therefore, as part of its requisite due diligence, EDC must identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.<sup>138</sup> EDC cannot do this without an assessment of the transaction’s or customer’s associated full value chain emissions.<sup>139</sup> Moreover, EDC should assess the climate-related human rights impacts “resulting from production-related and consumption-related activities and those connected to their value chains and global operations.”<sup>140</sup> For a fossil fuel company like Enbridge, value chain climate impacts necessarily include scope 3 emissions from upstream extraction and processing of oil and gas, such as methane leaks, and downstream emissions when the oil and gas is used as intended – primarily for combustion. As set out above, Enbridge’s estimated scope 3 emissions are not decreasing, but have been rising significantly and will continue to do so given its planned expansion projects.

**Additionally, EDC’s assessment should also consider whether Enbridge’s net zero commitment is aligned with climate science.**<sup>141</sup> The U.N. High Level Expert Group’s (U.N. HLEG) report which sets standards for credibly making net zero commitments requires businesses to have interim targets and plans that are aligned with IPCC or IEA pathways that

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<sup>137</sup> See [UNGPs](#), Princip. 13(a); Office of the High Commissioner of Human Rights, International Human Rights Law, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>; [CRC, GC No. 16](#), paras. 26-27; Human Rights Committee (HRC), [General Comment No. 36 on Article 6: right to life](#), U.N. Doc. CCPR/C/GC/36, paras. 7, 63 (2019) [hereinafter HRC, GC No. 36]; CESCR, [General Comment No. 24](#), para. 29.

<sup>138</sup> [UNGPs](#), Princip. 18; [CRC, GC No. 16](#), paras. 26-27, 45(c); [HRC, GC No. 36](#), para. 21; CRC, [General Comment No. 26 \(2012\) on Children’s Rights and the Environment, with a Special Focus on Climate Change](#), U.N. Doc. CRC/C/GC.26, para. 69 (Aug. 22, 2023) [hereinafter CRC, GC No. 26]; [Certain Activities Carried Out by Nicaragua in the Border Area \(Costa Rica v. Nicaragua\), Construction of a Road in Costa Rica along the River San Juan \(Nicaragua v. Costa Rica\)](#), 665 ICJ Reports 2015, para. 104 (Dec. 16, 2015).

<sup>139</sup> See District Court of the Hague, [Milieudefensie et al v. Royal Dutch Shell](#), para. 4.4.19-4.4.20, case no. C/09/571932 / HA ZA 19-379 (May 26, 2021), (Shell has appealed the decision and the appeal is pending) [hereinafter *Milieudefensie*]. See also U.N. Working Group on the issue of human rights and transnational corporations and other business enterprises (U.N. WG on BHR), [Information Note on Climate Change and the Guiding Principles on Business and Human Rights](#), paras. 8(e), 17(d) (June 2023) [hereinafter U.N. WG on BHR, Info Note on Climate Change]; U.N. WG on BHR et al., [Communication to Sumitomo Mitsui Banking Corporation](#), Ref.: AL OTH 89/2023, pp. 7-8 (June 27, 2023)[hereinafter U.N. WG on BHR, Communication to SMBC] (The Working Group and 4 U.N. Special Rapporteurs sent letters to Saudi Aramco and 12 funders. In the letter the Mandates asked “Please indicate any steps your company has taken to identify the Scope 1, 2 and 3 greenhouse gas emissions of companies that it engages through business activities and/or relationships, with an explanation of how such identification is science-based, verifiable and informed by expert input, as well as being based on meaningful consultation with all relevant stakeholders.”). [CRC, GC No. 26](#), para. 107; Commission on Human Rights of the Philippines (CHRP), [National Inquiry on Climate Change Report](#), pp. 95, 134, 2022 [hereinafter CHRP Climate Change Report].

<sup>140</sup> [CRC, GC No. 26](#), para. 107.

<sup>141</sup> EDC, [ESRM Review Guideline](#), p. 3, s. 4.1(c) (stating that “EDC may also take into account commitments its customers have made in accordance with corporate sustainability and responsibility initiatives, standards and guidelines”); Enbridge Inc., [Net Zero by 2050](#), p. 2 (May 2023).

limit warming to 1.5°C and with global emissions declining by at least 50% by 2030.<sup>142</sup> The net zero plans of businesses “must not support new supply of fossil fuels” and “there is a need to decommission and cancel existing assets.”<sup>143</sup> As the report states, “[n]on-state actors cannot claim to be net zero while continuing to build or invest in new fossil fuel supply. Coal, oil and gas account for over 75% of global greenhouse gas emissions.”<sup>144</sup>

**Finally, EDC must also examine the cumulative impacts of this anticipated transaction in light of its own overall financial portfolio.** EDC must understand how its cumulative financing impacts climate change and human rights, as well as aligns or misaligns with international environmental human rights laws and standards. A cumulative assessment is particularly important for EDC given its significant financial support to the fossil fuel sector.<sup>145</sup>

## **V. The Anticipated Transaction Would be Inconsistent with EDC and Canada’s Climate Obligations and Commitments**

**In the past, EDC has acknowledged that its financing facilitates Enbridge’s “ambitious [oil and gas] infrastructure expansion plan.”**<sup>146</sup> As noted above, Enbridge’s current plan also shows ambitious expansion that includes new LNG pipeline projects, crude oil storage, export infrastructure, a new fossil fuel pipeline, and other early-stage fossil fuel expansion. Hence, if it

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<sup>142</sup> United Nations High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions*, p. 15 (Nov. 2022) [hereinafter U.N. HLEG, Integrity Matters Report].

<sup>143</sup> U.N. HLEG, *Integrity Matters Report*, p. 12.

<sup>144</sup> U.N. HLEG, *Integrity Matters Report*, p. 7; see also U.N. Secretary-General, “Secretary-General’s Video Message to the Press Conference Launch of IPCC Report” (Feb. 28, 2022), <https://www.un.org/sg/en/content/sg/statement/2022-02-28/secretary-generals-video-message-the-press-conference-launch-of-ipcc-report-scroll-down-for-languages> [hereinafter U.N. SG Video Message re Launch of IPCC].

<sup>145</sup> See IISD *Ending Canadian Domestic Public Financing for Fossil Fuels*, pp. 5-6; EDC, “Canada Account Transactions,” (last modified June 28, 2024), <https://www.edc.ca/en/about-us/corporate/disclosure/reporting-transactions/canada-account.html> (financing to Trans Mountain Corporation, signed on May 17, 2024); EDC, “Individual Transaction Information,” (last viewed July 17, 2024) <https://www19.edc.ca/edcsecure/disclosure/DisclosureView.aspx> (financing for export capacity to Cedar LNG Partners LP, signed on June 25, 2024).

<sup>146</sup> EDC, *EDC in an Evolving Trade Environment*, p. 16 (2008) (Though EDC gives very little public information about its transactions, EDC acknowledged in 2008 that its financing facilitated Enbridge’s fossil fuel infrastructure expansion, noting that “...Enbridge is building new infrastructure for oil and gas, including pipelines to carry crude oil to new and existing markets. The company has an ambitious infrastructure expansion plan in the short to medium term, with commercially secured projects totaling \$12 billion for oil pipelines and another \$15 billion in development. Enbridge counts on EDC, as one of its financial partners, to provide financing for this expansion.”).

chooses to support Enbridge’s oil and gas portfolio, working capital,<sup>147</sup> or other general financing,<sup>148</sup> EDC would be financing continued dependence on fossil fuels.

**Publicly available information indicates that Enbridge is not acting to phase out its oil and gas business, and instead is expanding that business and increasing its GHG emissions.**

Therefore, based on the best available science, Enbridge is not currently aligned with 1.5°C. Moreover, as set out above, Enbridge does not appear to have a plan to become aligned with 1.5°C. These concerns together, and individually, show the inconsistency of the anticipated transaction with EDC’s and Canada’s climate obligations and commitments.

**Financing fossil fuel expansion and lock-in is incompatible with international law, standards and obligations.** As set out below, EDC financing that supports fossil fuel expansion and lock-in, and increased GHG emissions is incompatible with: (A) international climate agreements (the UNFCCC and Paris Agreement), and Canada’s and EDC’s commitments to achieve net zero by 2050; (B) the Statement on International Public Support for the Clean Energy Transition (formerly known as the Glasgow Statement) and Canada’s corresponding guidelines; and (C) international human rights law and standards.

**A. Financing Oil and Gas Lock-in or Expansion is Inconsistent with the Paris Agreement and EDC’s Other Climate Obligations**

**Financing that facilitates oil and gas lock-in or expansion is contrary to the aims of the Paris Agreement and the ultimate objective of the UNFCCC.** Canada is a party to both the UNFCCC and Paris Agreement. As such, Canada has committed to the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>149</sup> Through the Paris Agreement, Canada also committed to achieving this goal by taking action to, *inter alia*, (a) meet a long-term temperature goal of limiting warming to 1.5°C (i.e., article 2.1(a));<sup>150</sup> and (b) to “make financial

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<sup>147</sup> The provision and renewal of finance for the purposes of working capital cannot be disaggregated from Enbridge’s infrastructure projects -- its core business -- because working capital is an intrinsic part of the company’s day-to-day operations. Unrestricted working capital can thus be used by Enbridge for any of its business operations - including infrastructure projects. When EDC has provided financing for Enbridge’s renewable energy portfolio, the transaction has been labeled accordingly. See EDC, 2022 Individual Transaction Information, p. 284, transaction from 16/12/22 labeled as “Support in relation to solar power generation infrastructure.”

<sup>148</sup> Unless that general financing is specifically earmarked only for its renewable business portfolio.

<sup>149</sup> [UNFCCC](#), art. 2.

<sup>150</sup> [Paris Agreement](#), art. 2.1(a) (In the Agreement, states committed to “holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.” In light of the commitment to base climate action on the best available scientific knowledge, states parties—including Canada—have recognized that warming above 1.5°C is not safe and must be the long-term temperature goal. See [Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, held in Sharm el-Sheikh from 6 to 20 November 2022](#), Decision 1/CMA.4, FCCC/PA/CMA/2022/10/Add.1 (Sharm el-Sheikh Implementation Plan), paras. 8, 15; [Outcome of the First Global](#)

flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development” (i.e., article 2.1(c)).<sup>151</sup> Through both of these agreements, Canada has committed to ensuring that its climate action is based on the best available science.<sup>152</sup>

**Canada has publicly affirmed the importance of article 2.1(c) on financial flows, and its application to EDC.**<sup>153</sup> Further, in its climate change policy, EDC states that it supports the Paris Agreement and acknowledges that “it can contribute to the 2015 Paris Climate Change Agreement’s aims through decisions that inform our support to our Customers across our financing.”<sup>154</sup>

**For financing to be consistent with a pathway towards low-GHG emissions and climate-resilient development, it must align with limiting warming to 1.5°C.**<sup>155</sup> Aligning financial flows with keeping warming under 1.5°C requires an economy-wide shift away from financing high-emission sectors, such as fossil fuels.<sup>156</sup> However, in assessing current mitigation progress

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*Stocktake*, Decision 1/CMA.5, FCCC/PA/CMA/2023/16, Add.1, paras. 3-5; Submission by Canada: [Sharm el-Sheikh mitigation ambition and implementation work programme](#), p. 1 (2023)).

<sup>151</sup> [Paris Agreement](#), art. 2.1(c).

<sup>152</sup> [UNFCCC](#), art. 4(2)(d); [Paris Agreement](#), art. 4(1). The IPCC reports have been recognized as a reliable, comprehensive, and authoritative synthesis of existing scientific knowledge about climate change and its impacts, thus constituting best available science. *See, e.g., Mathur v. Ontario*, [2023 ONSC 2316](#), para. 19; International Tribunal for the Law of the Sea, [Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, Case No. 31](#), para. 208 (May 21, 2024); [Case of Verein Klimasenioren Schweiz and Others v. Switzerland, App. No. 53600/20, ECTHR, Judgment, Grand Chamber](#), paras. 429, 432 (Apr. 9, 2024) [hereinafter *Klimasenioren*].

<sup>153</sup> [Canada’s Submission to the UNFCCC’s Standing Committee on Finance on Ways to Achieve Article 2.1c of the Paris Agreement](#), pp. 1-3 (July 2023) (*see* p. 3 “Governments at all levels must support the implementation of Article 2.1c by establishing the necessary enabling conditions required for actors to align financial flows with low carbon, climate-resilient development. This includes supporting Paris Alignment of financial flows within and across state-owned organizations such as Crown Corporations.”).

<sup>154</sup> [Climate Change Policy](#), p. 2.

<sup>155</sup> UNFCCC Standing Committee on Finance (SCF), [2018 Biennial Assessment and Overview of Climate Finance Flows Technical Report](#), p. 101, para. 342 (2018) [hereinafter *SCF, Third BA (2018)*]; Standing Committee on Finance (SCF), [Fourth \(2020\) Biennial Assessment and Overview of Climate Finance Flows Technical Report](#), p. 125, para. 367 (Oct. 29, 2021) [hereinafter *SCF, Fourth (2020) BA*]; UNFCCC COP, [Decision 5/CP.26](#) (Oct. 31, 2021), Annex I (Summary by the Standing Committee on Finance of the fourth (2020) Biennial Assessment and Overview of Climate Finance Flows), para. 53.

<sup>156</sup> [SCF, Fourth \(2020\) BA](#), p. 12, paras. 45-47; [SCF, Third BA \(2018\)](#), pp. 101, 103, paras. 343, 348; UNFCCC, [Synthesis report for the technical assessment component of the first global stocktake: Synthesis report on the information identified in decision 19/CMA.1, paragraph 36 \(d\)](#), para. 48. (Apr. 20, 2022); [Canada’s Submission to the UNFCCC’s Standing Committee on Finance on Ways to Achieve Article 2.1c of the Paris Agreement](#) (May 2022), p. 4 (“Phasing out direct finance to the fossil fuel sector can be a way to shift support to decarbonization and clean technologies needed to transition the sector into alignment with Paris goals.”); UNFCCC Conference of the Parties (COP), Decision 1/CMA.5 <https://unfccc.int/documents/637073>, FCCC/PA/CMA/2023/16/Add.1, para. 28 (Dec. 13, 2023) (Calls on Parties to ... “Transition [] away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2020 in keeping with the science”). *See also* Kate Cook and Jorge Vinales, [Legal Opinion: International Obligations Governing the Activities of Export Credit Agencies in Connection with the Continued Financing of Fossil Fuel-Related Projects and Activities](#), para. 72 (Mar. 24, 2021).

and challenges, the IPCC acknowledges that “finance flows fall short of the levels needed to meet climate goals across all sectors and regions.”<sup>157</sup> This slow progress on aligning financial flows with low GHG emissions development is partially due to “[p]ersistently high levels of both public and private fossil fuel-related financing [which] continue to be of major concern.”<sup>158</sup> To meet climate goals, financial capital must be redirected to climate action, as fossil fuel finance is still greater than climate mitigation and adaptation finance.<sup>159</sup> Financing fossil fuels is inconsistent with climate resilient development<sup>160</sup> pathways which the IPCC notes, “have been constrained by past development, emissions and climate change and are progressively constrained by every increment of warming, in particular beyond 1.5°C.”<sup>161</sup>

**Furthermore, as a state with a disproportionate cumulative responsibility for GHG emissions, Canada,<sup>162</sup> and hence EDC, has an increased obligation under the Paris Agreement to reduce emissions.** Pursuant to article 2.2, the Paris Agreement must be implemented in a way that reflects equity and the principle of common but differentiated responsibilities and respective capabilities.<sup>163</sup> These principles mean that states, like Canada, who have historic responsibility for emissions, continuing high emissions per capita, and status as an economically advanced nation, must advance further and faster to achieve emissions reductions.

**The climate commitments of Canada and EDC also both require immediate actions to reduce emissions.** In addition to ratifying the Paris Agreement, Canada has made a net zero commitment, enacting the *Canadian Net-Zero Emissions Accountability Act* in 2021 and in 2022 set an overall emissions reduction target of 40-45% below 2005 levels by 2030.<sup>164</sup> In July 2021, EDC announced its own commitment to net zero emissions by 2050 across its business lines and in its global operations.<sup>165</sup> Net zero commitments require actions and plans to reduce emissions; as stated by the U.N. HLEG “net zero is entirely incompatible with continued investment in

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<sup>157</sup> [IPCC, AR6 SYR](#), Summary for Policymakers, para. A.4.

<sup>158</sup> IPCC, AR6 WGIII, [Ch. 15 \(Investment and Finance\)](#), p. 1549.

<sup>159</sup> [IPCC, AR6 SYR](#), Summary for Policymakers, paras. A.4, A.4.5, 2.3.3.

<sup>160</sup> [IPCC, AR6 SYR](#), Summary for Policymakers, para. C.1 (“Climate resilient development “integrates adaptation and mitigation to advance sustainable development for all.”).

<sup>161</sup> [IPCC, AR6 SYR](#), Summary for Policymakers, para. C.1.1.

<sup>162</sup> Matthew W. Jones, et al., [National contributions to climate change due to historical emissions of carbon dioxide, methane, and nitrous oxide since 1850](#), *Scientific Data* 10:155, p. 14 (2023).

<sup>163</sup> [Paris Agreement](#), art. 2.2; *see also* art. 4.

<sup>164</sup> *Canadian Net-Zero Emissions Accountability Act*, [SC 2001, c 22](#); Canada, *Canada’s 2030 Emissions Reduction Plan - Overview* (last modified June 22, 2022),

[www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/emissions-reduction-2030/plan/overview.html](http://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/emissions-reduction-2030/plan/overview.html). Climate Action Tracker, an independent scientific project that tracks

government climate action and measures it against the Paris Agreement goals,” has assessed Canada’s NDC as insufficient against their fair share. And only “almost sufficient,” to keep warming below 2°C, thus wholly

insufficient to keep warming below 1.5°C. *See* Climate Action Tracker, [Canada](#),

<https://climateactiontracker.org/countries/canada/> (last visited July 17, 2024).

<sup>165</sup> EDC, [EDC Net Zero 2050](#), p. 3 (July 2021).

fossil fuels.”<sup>166</sup> Moreover, the U.N. HLEG recommends financial institutions’ have phase out policies that end financing and investment support to the fossil fuel activities that Enbridge’s business supports including expansion of oil and gas reserves and oil and gas production.<sup>167</sup>

**As an export credit agency and member of the NZECAA, EDC also has obligations to align itself with limiting the global temperature increase to 1.5°C.**<sup>168</sup> In December 2023, EDC joined NZECAA, thereby committing to net zero GHG emissions by 2050 consistent with a maximum temperature rise of 1.5°C, taking into account the best available science, including IPCC findings.<sup>169</sup> If EDC follows this NZECAA commitment its action must align with the 1.5°C temperature limit. Therefore, it should not finance Enbridge’s oil and gas business because of the unequivocal need to phase out fossil fuel production and use urgently and equitably, and transition to renewable energy and energy efficiency rapidly.

**As set out above, should EDC provide financing to Enbridge’s oil and gas operations, the financing will support fossil fuel expansion and lock-in that is inconsistent with the 1.5°C pathway and an economy-wide shift in financial flows away from high-emission sectors.** As such, financial support to Enbridge would not be consistent with the Paris Agreement or Canada and EDC’s climate commitments.

## **B. The Anticipated Transaction is Inconsistent with the Clean Energy Transition Partnership (CETP)**

**Canada has committed to “end new direct public support for the international unabated fossil fuel energy sector by the end of 2022, except in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement.”**<sup>170</sup> As a signatory to the CETP, Canada affirms its recognition of the findings of the IPCC and the IEA net-zero report, which “show that in the pathways consistent with a 1.5°C warming limit and the goals of the Paris Agreement, the global production and use of unabated

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<sup>166</sup> U.N. HLEG, [Integrity Matters Report](#), pp. 7, 12 (Note that the U.N. HLEG report referenced is specifically referring to the net zero commitments of financial institutions and other non-state actors; however, the statement quoted is equally applicable to all net zero commitments).

<sup>167</sup> U.N. HLEG, [Integrity Matters Report](#), p. 24 (“On oil and gas, oil and gas phase-out policies from financial institutions must include a commitment to end financing and investing in support of (i) exploration for new oil and gas fields; (ii) expansion of oil and gas reserves, and (iii) oil and gas production.”).

<sup>168</sup> UNEP, Net -Zero Export Credit Agencies Alliance, <https://www.unepfi.org/climate-change/net-zero-export-credit-agencies/> (last visited July 17, 2024).

<sup>169</sup> UNEP, [The Net Zero Export Credit Agencies Alliance: Commitment Document](#), p. 1.

<sup>170</sup> News Release, Natural Resources Canada, “Canada announces commitment to end new direct public support for the international unabated fossil fuel sector by the end of 2022” (Nov. 4, 2021), <https://www.canada.ca/en/natural-resources-canada/news/2021/11/canada-announces-commitment-to-end-new-direct-public-support-for-the-international-unabated-fossil-fuel-sector-by-the-end-of-2022.html>; Clean Energy Transition Partnership, Statement on International Public Support for the Clean Energy Transition, [cleanenergytransitionpartnership.org/the-statement/](https://cleanenergytransitionpartnership.org/the-statement/) (last visited July 17, 2024) [hereinafter CETP Statement]; Clean Energy Transition Partnership, Who we are, [cleanenergytransitionpartnership.org/who-we-are/](https://cleanenergytransitionpartnership.org/who-we-are/) (last visited July 17, 2024).

fossil fuels must decrease significantly by 2030.”<sup>171</sup> It also agrees to prioritize “support fully towards the clean energy transition.”<sup>172</sup> In line with this statement, EDC committed to “no longer provide new direct financing to international fossil fuel companies and projects by the end of 2022.”<sup>173</sup>

**New support for fossil fuels in the energy sector, like the anticipated financing to Enbridge’s oil and gas business, is inconsistent with the CETP.** Further, the anticipated transaction fits within Canada’s CEPT implementation guideline definition of “international unabated fossil fuel energy sector” (i.e., the type of financing that should not occur) as it is for the transportation of crude oil and natural gas. Also, based on past transactions, it is reasonable to expect that the country of the transaction will be the U.S., thereby meeting the definition of international, which refers to operations outside of Canada regardless of owner domicile. Finally, based on Enbridge’s portfolio, funding may support projects without any abatement measures, and we assume that Enbridge has not proven that any abatement measures it may use are effective, meaning they are “leading to significant emissions reductions.”<sup>174</sup> The guideline’s policy exemptions also do not apply as they require “compliance with the goals of the Paris Agreement,” proof that “the support will not delay or diminish the transition to renewables,” coherence with the nationally determined contribution (NDC), as well as alignment with a 1.5°C pathway and the NDC of the country where the project will be located.<sup>175</sup> As set out above, this anticipated transaction to Enbridge’s oil and gas business would further entrench fossil fuel dependence and not be aligned with the goals of the Paris Agreement or a 1.5°C pathway. Further, the exemptions require assessment and management of “stranded assets and carbon lock-in risks,” and a credible alternatives analysis. As outlined above, there are real risks of stranded fossil fuel assets and carbon lock-in. Moreover, the U.S., like Canada, is a large cumulative emitter and a developed country that must act first and fastest to take climate action intended to keep temperature rise below 1.5°C, including phasing out fossil fuels. Thus, the anticipated transaction would not satisfy these exemptions.

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<sup>171</sup> [CETP Statement](#), para. I.

<sup>172</sup> [CETP Statement](#), para. A.

<sup>173</sup> EDC, [EDC Net Zero 2050: 2022 Update](#), p. 8 (July 2022). See also News Release, EDC, “EDC confirms support for Canada’s Glasgow Statement implementation guidelines” (Dec. 8, 2022), [www.edc.ca/en/about-us/newsroom/edc-international-fossil-fuel-reduction.html](http://www.edc.ca/en/about-us/newsroom/edc-international-fossil-fuel-reduction.html).

<sup>174</sup> [Canada’s CEPT Guidelines](#), p. 2. Note that the Guideline applies to EDC and implementation of the guideline is in the government’s Statement of Priorities and Accountabilities for EDC (see Government of Canada, [Letter from the Honourable Mary Ng, PC, MP, to Mr. Lindsay Gordon](#), Dec. 21, 2022).

<sup>175</sup> While EDC may consider coherence with the NDC of the country where the project is located, coherence may not mean alignment with the goals of the Paris Agreement or a 1.5°C pathway. Analysis indicates that globally NDC’s are not sufficient to keep global temperatures below 1.5°C. See Press Release, United Nations Climate Change, “New Analysis of National Climate Plans: Insufficient Progress Made, COP28 Must Set Stage for Immediate Action” (Nov. 14, 2023), <https://unfccc.int/news/new-analysis-of-national-climate-plans-insufficient-progress-made-cop28-must-set-stage-for-immediate>; UNFCCC, [Nationally determined contributions under the Paris Agreement](#), FCCC/PA/CMA/2023/12, p. 6, paras. 14-16 (Nov. 14, 2023). For example, the U.S. NDC has been assessed as insufficient. See Climate Action Tracker, USA, <https://climateactiontracker.org/countries/usa/>.

### C. Financing Oil and Gas Lock-In or Expansion is Inconsistent with Canada’s and EDC’s International Human Rights Obligations and Commitments

**As set out above, under the EDA and the ESRM Policy Framework, EDC must respect human rights, and ensure its actions do not violate Canada’s international human rights obligations.** In providing financing to an oil and gas company whose operations and infrastructure investments are entrenching dependence on or expanding the production and use of fossil fuels, EDC would be contributing to climate change and its foreseeable adverse impacts on human rights. Thus, this financing would be contrary to EDC’s—and Canada’s—human rights obligations, including the duties not to cause or contribute to, and to prevent and mitigate climate change, chiefly by phasing out fossil fuels.

**To respect human rights, EDC must refrain from conduct that causes or contributes to, or is directly linked to, reasonably foreseeable harms to human rights,<sup>176</sup> including the adverse human rights impacts from climate change.<sup>177</sup>** Thus, Canada and EDC must “*avoid taking measures that could accelerate climate change.*”<sup>178</sup> Once EDC determines that through a transaction it is contributing, or may contribute, to adverse human rights impacts (which in the context of climate change are existential) it should cease or prevent its contribution.<sup>179</sup> EDC should also seek to prevent or mitigate adverse human rights impacts that are directly linked to their services by their business relationships.<sup>180</sup> To protect and respect human rights, Canada and EDC must also “prevent and mitigate against the human rights impacts of climate change.”<sup>181</sup>

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<sup>176</sup> See [HRC, GC No. 36](#), paras. 7, 63; [CESCR, GC No. 24](#), para. 29; [CRC, GC No. 16](#), paras. 26-27, 45(c) (para. 27 “States should not invest public finances and other resources in business activities that violate children’s rights.”); [UNGPs](#), Princip. 13(a); U.N. Office of the High Commissioner for Human Rights, [OHCHR Response to Request from BankTrack for Advice Regarding the Application of the UNGP in the Context of the Banking Sector](#), pp. 5-6, 8 (June 12, 2017) [hereinafter OHCHR Response to BankTrack]. See also [OECD Guidelines](#), Ch. II, pp. 14-15, paras. A.(2), (12), Ch. IV, pp. 25, paras. 1-3, Ch. IV Commentary, p. 26, para. 47, Ch. VI Commentary, pp. 35-36, para. 68 (2023) [hereinafter OECD Guidelines]; OECD, [Due Diligence for Responsible Corporate Lending](#), pp. 43-46; United Nations Global Compact, The Ten Principles, Principals. 1, 2, <https://unglobalcompact.org/what-is-ge/mission/principles> (last visited July 2, 2024).

<sup>177</sup> [U.N. WG on BHR, Info Note on Climate Change](#), para. 16; [U.N. WG on BHR, Communication to SMBC](#), pp. 7-8; CESCR, [Climate Change and the International Covenant on Economic, Social and Cultural Rights](#), paras. 8-9 (Oct. 8, 2018) [hereinafter CESCR, Statement on Climate Change].

<sup>178</sup> Joint Statement by the Committee on the Elimination of Discrimination Against Women (CEDAW), the CESCR, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CRC and the Committee on the Rights of Persons with Disabilities, [Statement on Human Rights and Climate Change](#), U.N. Doc. HRI/2019/1, para. 7 (May 14, 2020, originally released Sept. 16, 2019) [hereinafter Joint Treaty Body Statement on Human Rights and Climate Change]; [CESCR, Statement on Climate Change](#), para. 8.

<sup>179</sup> [UNGPs](#), Principals. 13(a), 19 (and associated Commentary); [OECD Guidelines](#), Ch. II Commentary, para. 22, Ch. IV, paras. 1-2, Ch. IV Commentary, paras. 46-47; [OHCHR Response to BankTrack](#), pp. 10-11.

<sup>180</sup> [UNGPs](#), Principals. 13(b), 19; [OECD Guidelines](#), Ch. II, para. 12, Ch. IV, para. 3, Ch. IV Commentary, para. 43; [OHCHR Response to BankTrack](#), pp. 13-14.

<sup>181</sup> [U.N. WG on BHR, Info Note on Climate Change](#), para. 9. See also [Joint Treaty Body Statement on Human Rights and Climate Change](#), paras. 10-11; [CRC, GC No. 16](#), para. 28; [CRC, GC No. 26](#), paras. 68-69, 95-100, 107; CEDAW, [General Recommendation No. 34 on the Rights of Rural Women](#), U.N. Doc. CEDAW/C/GC/34, para. 12 (2016).

This duty to prevent and mitigate is heightened given Canada’s role as a large cumulative emitter.<sup>182</sup>

**It is indisputable that climate change is already adversely impacting the full range of human rights.** As the U.N. General Assembly Resolution on the right to a clean, healthy, sustainable environment recognizes, climate change is one of “the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.”<sup>183</sup> The Supreme Court of Canada, and other courts, have also recognized that climate change poses an existential threat to human life.<sup>184</sup> Due to climate change’s ongoing and foreseeable harm, human rights bodies and courts have held that climate change engages states’ and companies’ human rights obligations.<sup>185</sup>

**Financing that enables continued dependence on, and exploitation of, fossil fuels—the main driver of climate change—adversely affects the full range of human rights.**<sup>186</sup> As five U.N. Special Rapporteurs and one Independent Expert explained in a recent joint statement, “... coal, oil and gas literally fuel the climate emergency, which is already preventing the full enjoyment of a range of human rights with disproportionate impacts on certain groups and communities.”<sup>187</sup> As the U.N. Working Group on the issue of human rights and transnational corporations and other business enterprises (U.N. Working Group on Business and Human Rights) and multiple U.N. mandate holders wrote in a letter to a midstream oil company, “The burning of fossil fuels constitutes one of the human activities that has the largest impact on the Earth’s climate. In this

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<sup>182</sup> [CRC, GC No. 26](#), para. 95; U.N. Special Rapporteur on human rights and the environment, et al., [Fossil Fuels at the Heart of the Planetary Environmental Crisis: UN experts](#) (Nov. 30, 2023) [hereinafter U.N. Experts Joint Statement on Fossil Fuels].

<sup>183</sup> U.N., [Resolution adopted by the General Assembly on July 28, 2022, The human right to a clean, healthy and sustainable environment](#), U.N. Doc. A/RES/76/300, pp. 2-3 (2022). See also [Joint Treaty Body Statement on Human Rights and Climate Change](#), para. 3 (“the adverse impacts of climate change “threaten, among others, the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights.”); [HRC, GC No. 36](#), para. 62 (“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”).

<sup>184</sup> See, e.g., *References re GHG*, paras. 2, [171](#); *Klimaseniorinnen*, para. 410; [Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Case No. 31, Advisory Opinion](#), para. 65 (May 21, 2024).

<sup>185</sup> See, e.g., Human Rights Committee, *Daniel Billy v. Australia*, [CCPR/C/135/D/3624/2019](#), paras. 8.3, 8.9, 8.12, 8.14, U.N. Doc. CCPR/C/135/D/3624/2019 (Sept. 18, 2023); *Klimaseniorinnen*, paras. 435-436, 509-510, 544, 548, 573; *Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment) (English translation)*, ECLI:NL:HR:2019:2007, Supreme Court of the Netherlands, paras. 5.6.2, 5.7.1 (Dec. 20, 2019) [hereinafter *Urgenda*]; *Neubauer and Others v. Germany (English translation)*, BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, p. 43, para. 148 (Mar. 24, 2021) (Federal Constitutional Court, Ger.); *Milieudefensie*, paras. 4.1.3, 4.4.10, 4.4.16, 4.4.37; [CHRP Climate Change Report](#), pp. 94, 112-113, 131.

<sup>186</sup> See [CHRP Climate Change Report](#), p. 132 (“Although their direct emissions are negligible, their role as financiers of the sectors and projects that generate GHG emissions, including and most significantly, the fossil fuel industry, make them similarly accountable for global warming and climate change.”), p. 134 (“investors should be more circumspect in making investment decisions and mindful of their obligation under the UNGP to respect human rights by ensuring that the companies they invest in do not tolerate, propagate or contribute to human rights violations in all phases of their operations and broader value chains.”).

<sup>187</sup> [U.N. Experts Joint Statement on Fossil Fuels](#).

context, we remain preoccupied by the impact of fossil fuels exploitation in general and the establishment of the pipeline in particular on greenhouse gas emissions, contributing to the current climate crisis.”<sup>188</sup>

**International human rights bodies and experts have affirmed that to respect human rights and prevent foreseeable threats to human rights from climate change, states and businesses must urgently reduce emissions including phasing out fossil fuels.** As the U.N. Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, explains, “[s]tates must limit greenhouse gas emissions to prevent the current and future negative human rights impacts of climate change.”<sup>189</sup> The U.N. Secretary General,<sup>190</sup> human rights treaty bodies,<sup>191</sup> U.N. Human Rights Council Advisory Committee,<sup>192</sup> as well as U.N. Independent Experts and Special Rapporteurs,<sup>193</sup> all affirm that doing so requires an urgent and rapid shift

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<sup>188</sup> U.N. WG on BHR et al., [Communication to TCenergy](#), Ref.: AL OTH 123/2022 (Jan. 13, 2023), p. 6 (letter sent from U.N. WG on BHR and 7 U.N. Special Rapporteurs and 1 Independent Expert).

<sup>189</sup> Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, [Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation](#), U.N. Doc. A/77/226, para. 9 (July 26, 2022) [hereinafter, SR on Climate Change, Protection of Human Rights Report].

<sup>190</sup> U.N. Meetings Coverage and Press Releases, “Secretary-General Calls on States to Tackle Climate Change ‘Time Bomb’ through New Solidarity Pact, Acceleration Agenda, at Launch of Intergovernmental Panel Report,” U.N. Doc. SG/SM/21730 (March 20, 2023), <https://press.un.org/en/2023/sgsm21730.doc.htm> [hereinafter Secretary-General Calls on States to Tackle Climate Change]; [U.N. SG Video Message re Launch of IPCC](#); “UN Chief Says Ending Fossil Fuel Use is Only Way to Save Burning Planet,” *Reuters*, (Dec. 1, 2023), <https://www.reuters.com/business/environment/un-chief-says-ending-fossil-fuel-use-is-only-way-save-burning-planet-2023-12-01/> (“The 1.5-degree limit is only possible if we ultimately stop burning all fossil fuels. Not reduce. Not abate.”); U.N. Secretary General, “UN Secretary-General’s Remarks to the 52<sup>nd</sup> Session of the Human Rights Council,” (Feb. 27, 2023), <https://www.un.org/sg/en/content/sg/speeches/2023-02-27/un-secretary-generals-remarks-the-52nd-session-of-the-human-rights-council> [hereinafter U.N. SG Remarks to UNHRC 52<sup>nd</sup> Sess.]; see also U.N. Secretary General, Secretary-General’s Video Message to the Sixth Austrian World Summit, Amina J. Mohammed, Deputy Secretary-General (June 14, 2022), <https://www.un.org/sg/en/content/sg/statement/2022-06-14/secretary-generals-video-message-the-sixth-austrian-world-summit> [hereinafter U.N. Deputy Secretary-General video message Austrian World Summit].

<sup>191</sup> [Joint Treaty Body Statement on Human Rights and Climate Change](#), paras. 5, 12; [CRC, GC No. 26](#), paras. 96-98(b)-(e); CESCR, [General Comment No. 26 on land and economic, social and cultural rights](#), UN Doc. E/C.12/GC/26, para. 56 (Jan. 24, 2023) (“Mitigation policies should lead to absolute emissions reductions through the phasing out of fossil fuel production and use.”); see also CRC, [List of issues prior to submission of the combined third to sixth periodic reports of South Africa](#), U.N. Doc. CRC/C/ZAF/QPR/3-6, para. 23(b) (Mar. 4, 2021); CRC, [List of issues prior to submission of the combined sixth and seventh periodic reports of Bulgaria](#), U.N. Doc. CRC/C/BGR/QPR/6-7, para. 22(a) (July 9, 2021).

<sup>192</sup> Human Rights Council Advisory Committee, [Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights](#), U.N. Doc. A/HRC/54/47, paras. 4, 71 (Aug. 10, 2023) [hereinafter, HRC Advisory Committee, report on NTCs] (see para. 4: “In successive reports, the Intergovernmental Panel on Climate Change has made it clear that phasing out fossil fuels is imperative to mitigate climate change and minimize its future negative human rights impact on people.”).

<sup>193</sup> [U.N. Experts Joint Statement on Fossil Fuels](#); David Boyd, Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, [The human rights to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals](#), U.N. Doc. A/77/284, para. 80(e) (Aug. 10, 2022) [SR on Human Rights and the Environment, SDGs Report]; [SR on Climate Change, Protection of Human Rights Report](#), paras. 15, 90(d) (para. 15 “Urgent and drastic action is required by States and business enterprises to reduce their emissions”); Special Rapporteur on the

away from fossil fuels. The U.N. Working Group on Business and Human Rights has also affirmed that to respect human rights businesses should “phase out both the use of fossil fuels and the production of greenhouse gas emissions...”<sup>194</sup> A phase out requires halting fossil fuel expansion.<sup>195</sup> U.N. human rights bodies and experts have identified states’ exploitation, export, and continued reliance on fossil fuels, and increase in extractive activities, as contrary to their commitment under the Paris Agreement to limit global warming in line with a 1.5°C pathway and at odds with their human rights obligations.<sup>196</sup> Moreover, Canada’s efforts to prolong the operations of Enbridge’s Line 5 pipeline has recently been called out by the U.N. Special Rapporteur on Indigenous Peoples who said Canada’s efforts are “inconsistent with its international commitment to prevent and mitigate the effects of climate change by phasing out fossil fuels.”<sup>197</sup>

**New financing for fossil fuels is contrary to states and businesses’ human rights obligations.**

In their joint statement on fossil fuels, the U.N. Special Rapporteurs and Independent Expert explained, “[w]ealthy States and high emitters should lead the phase out of fossil fuels, *beginning with avoiding new investments and terminating fossil fuel subsidies.*”<sup>198</sup> Additional

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Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes (Marcos Orellana), [The Toxic Impacts of Some Proposed Climate Change Solutions](#), U.N. Doc. A/HRC/54/25, paras. 71, 90 (July 13, 2023) [hereinafter, SR on Toxics, Climate Change Solutions Report]. See also Philip Alston (Special Rapporteur on Extreme Poverty), [Report on Climate Change and Poverty](#), U.N. Doc. A/HRC/41/39, paras. 40, 43, 44, 59 (July 17, 2019).

<sup>194</sup> [U.N. WG on BHR, Info Note on Climate Change](#), para. 19(b); see also [U.N. WG on BHR, Communication to SMBC](#) (stating “we would like to express our most serious concern regarding the adverse impacts on human rights caused by activities such as the exploitation of fossil fuels which contribute to climate change”).

<sup>195</sup> [SR on Human Rights and the Environment, SDGs Report](#), para. 80(e); (“Accelerate actions required to address the global climate emergency, including the phaseout of ... oil and natural gas (including no further permits for oil and gas exploration or infrastructure expansion in high-income States, effective immediately);” [CHRP Climate Change Report](#), pp. 131-132; [Secretary-General Calls on States to Tackle Climate Change; SR on Climate Change, Protection of Human Rights Report](#), para. 90(e).

<sup>196</sup> CESCR, [Concluding observations on the fourth periodic report of Ecuador](#), U.N. Doc. E/C.12/ECU/CO/4, paras. 11-12 (Nov. 14, 2019); CESCR, [Concluding observations on the fourth periodic report of Argentina](#), U.N. Doc. E/C.12/ARG/CO/4, paras. 13-14 (Nov. 1, 2018) (“The Committee recommends that the State party reconsider the large-scale exploitation of unconventional fossil fuels ... in order to ensure compliance with its obligations under the Covenant, in the light of the Paris Agreement commitments.”); CEDAW, [Concluding Observations on the Ninth Periodic Report of Guyana](#), U.N. Doc. CEDAW/C/GUY/CO/9, para. 41 (July 30, 2019) (“the continuing and expanding extraction of oil and gas in the State party and the resulting greenhouse gas emissions could undermine its obligations to women’s empowerment and gender equality”).

<sup>197</sup> U.N. Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, [Visit to Canada](#), U.N. Doc. A/HRC/54/31/Add.2, para. 71 (July 24, 2023) [hereinafter, SR IP, Visit to Canada].

<sup>198</sup> [U.N. Experts Joint Statement on Fossil Fuels](#)

U.N. Special Rapporteurs,<sup>199</sup> the U.N. Secretary General,<sup>200</sup> and the Commission on Human Rights of the Philippines<sup>201</sup> have all expressed similar conclusions. The U.N. Working Group on Business and Human Rights has also explained that to respect human rights, “[i]nternational, national and regional financial institutions and other investors should move away from financing fossil fuel projects.”<sup>202</sup> U.N. treaty bodies have also expressed concern over public and private investment in fossil fuels, “despite the harmful impact of such fuels on the climate,”<sup>203</sup> in the context of state reporting procedures, including regarding Canada.<sup>204</sup>

**Financing CCS or CDR does not make financing fossil fuels (with or without these measures) consistent with human rights obligations.** No amount of investment in CCS and CDR can accelerate the phaseout of fossil fuels. Multiple human rights bodies and experts have recognized that relying on such CCS or CDR measures is inconsistent with duties to mitigate and prevent against the effects of climate change.<sup>205</sup> In line with the above, the Supreme Court of the Netherlands held that relying on pathways that are dependent on measures to remove CO<sub>2</sub> from the atmosphere, which at this time do not work on a “sufficiently large scale,” “would run counter to the precautionary principle that must be observed when applying Articles 2 [right to life] and 8 [private and family life] ECHR and Article 3(3) UNFCCC.”<sup>206</sup>

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<sup>199</sup> [SR on Climate Change, Protection of Human Rights Report](#), para. 90(d) (calling for the establishment of “an international human rights tribunal to hold accountable governments, business and financial institutions for their ongoing investments in fossil fuels ... and the related human rights effects that such investments invoke.”); [SR on Toxics, Climate Change Solutions Report](#), para. 106(e)(recommending business enterprises including financial institutions, “divest from fossil fuel extraction or combustion projects”); [SR on Human Rights and the Environment, SDGs Report](#), para. 82(a)(“accelerate and standardize fossil fuel exclusion policies”); *see also* [U.N. WG on BHR, Communication to SMBC](#), p. 11.

<sup>200</sup> [U.N. SG Remarks to UNHRC 52<sup>nd</sup> Sess](#); [Secretary-General Calls on States to Tackle Climate Change](#) (“ceas[e] all ... funding of new oil and gas...”); *see also* [U.N. Deputy Secretary-General video message Austrian World Summit](#) (“I call on all financial actors to abandon fossil fuel finance”)

<sup>201</sup> [CHRP Climate Change Report](#), p. 132 (“To meet the targets of the Paris Agreement, the global carbon budget demands the cessation of new fossil fuel extraction and the creation of more infrastructure thereof. This would be possible if financiers break away from lending and investing in carbon-related industries.”), p. 133 (financial institutions can influence the direct actions of companies to transition to a low-carbon economy, “by refusing to inject capital into activities relation to fossil fuel extraction and convention fossil-based power generation.”).

<sup>202</sup> [U.N. WG on BHR, Info Note on Climate Change](#), para. 20; *see also* [U.N. WG on BHR, Communication to SMBC](#) (In a letter sent to public and private funders of a state based oil and gas company the working group wrote that fossil fuel expansion, with funding from banks “appear[s] to be ... adversely impacting the promotion and protection of human rights in the context of climate change,” and negatively impacting the enjoyment of the human right to a clean, healthy and sustainable environment.).

<sup>203</sup> CESCR, [Concluding observations on the fourth periodic report on Switzerland](#), U.N. Doc. E/C.12/CHE/CO/4, para. 18 (Nov. 18, 2019) [hereinafter CESCR, Concluding Observations Switzerland].

<sup>204</sup> CRC, [Concluding observations on the combined fifth and sixth periodic reports of Canada](#), U.N. Doc. CRC/C/CAN/CO/5-6, para. 37 (June 23, 2022) (“The Committee is concerned about the disproportionately high carbon footprint of the State party, in particular through investments made in fossil fuels...”); *see also* [CESCR, Concluding Observations Switzerland](#), paras. 18-19; CESCR, [Concluding observations on the fourth periodic report of Luxembourg](#), U.N. Doc. E/C.12/LUX/CO/4, paras. 10-11 (Nov. 15, 2022).

<sup>205</sup> [CRC, GC No. 26](#), para. 98(e); [HRC Advisory Committee, report on NTCPs](#), paras. 5-28, 46-57; [SR on Toxics, Climate Change Solutions Report](#), paras. 69-70, 72, 74-76.

<sup>206</sup> [Urgenda](#), para. 7.2.5.

**Financing the entrenchment or expansion of fossil fuel production and use contributes to climate change and its adverse human rights impacts, including potentially irreversible and devastating harms in Canada and around the world.** Thus, providing financing to Enbridge’s oil and gas business which, as set out above includes fossil fuel expansion and lock-in, is contrary to EDC’s duty and responsibility to respect human rights and phase out fossil fuels.

## **VI. The Anticipated Transaction may Contribute or be Directly Linked to Additional Adverse Human Rights Impacts**

**The EDA and ESRM Policy Framework do not permit financing that contributes or is directly linked to human rights violations.** EDC’s Human Rights Due Diligence Framework states that it relies on widely available and credible sources focused on human rights issues to inform its due diligence process.<sup>207</sup> Below we highlight publicly available reports of public opposition by impacted communities, Indigenous nations, and environmental organizations to Enbridge projects (and associated projects) due to environmental and social risks. EDC must duly consider these reports in its Environmental and Social Risk Review.<sup>208</sup> Its assessment must look at both the proposed transaction and the customer given that “in most cases, this [customer relationship] is where we [EDC] have the greatest risk of being connected to Severe Human Rights Impacts.”<sup>209</sup> As set out in its human rights due diligence framework, EDC should consider, amongst other factors, Enbridge’s “track record indicating human rights incidents, legal actions, deteriorating performance, or credible third-party criticism,” “sector related risks,” and “presence of vulnerable peoples and their likelihood of being impacted,” “adverse media coverage,”<sup>210</sup> and “community opposition.”<sup>211</sup> Through its assessment, EDC must ensure it does not contribute or that it is not directly linked to adverse human rights impacts due to its transaction or customer relationship.<sup>212</sup>

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<sup>207</sup> EDC, [Human Rights Due Diligence Framework](#), p. 5.

<sup>208</sup> EDC, [ESRM Review Guideline](#), p. 2. EDC also states that the IFC Performance Standards are one of the standards that its Framework is “designed and informed by.” EDC, [ESRM Policy](#), p. iii; *see also* p. 3; EDC, [Human Rights Policy](#), p. 3. The inherent risks associated with oil and gas projects discussed in this submission, as well as the reported community opposition and impacts on Indigenous Peoples, also suggests incompatibility with the IFC Performance Standards. Relevant Performance Standards (PS) include: PS 1 which requires assessment of environmental and social risk and Informed Consultation and Participation of Affected Communities. PS 3 which requires projects to “avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities.” PS 4 requires avoiding or minimizing risks and impacts to community health, safety, and security. PS 6 which is meant to protect and conserve biodiversity, maintain ecosystem services, and promote sustainable practices. PS 7 which requires respect for the rights of Indigenous Peoples, including ensuring their free, prior, and informed consent. PS 8 which requires protecting cultural heritage. *See* IFC, [Performance Standards on Environmental and Social Sustainability](#) (Jan 1, 2012).

<sup>209</sup> EDC, [Human Rights Policy](#), p. 1.

<sup>210</sup> EDC, [Human Rights Due Diligence Framework](#), p. 4.

<sup>211</sup> EDC, [Human Rights Due Diligence Framework](#), p. 5.

<sup>212</sup> *See* [CRC, GC No. 16](#), paras. 26-27, 45(c) (para. 45(c) “Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children’s rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children’s rights abuses.”).

The information below summarizes reported human rights issues and concerns connected to Enbridge’s projects, which include alleged violations of, and threats to, Indigenous Peoples’ right to free, prior, and informed consent,<sup>213</sup> the right to health, culture, and a healthy environment, amongst others. These examples are not exhaustive, and EDC’s review should not be limited to these brief summaries. To accurately assess the impacts, EDC should consult directly with impacted communities.<sup>214</sup>

**Rio Bravo Pipeline: Impacted communities, Indigenous Peoples, and environmental groups have expressed public opposition to the pipeline and associated LNG terminal.**<sup>215</sup> Reported concerns include adverse impacts on the Carrizo Comecrudo Tribe’s cultural sites, local fishing economy and ecotourism, acres of wetlands, and wildlife, as well as the environmental and health risks of transporting fracked gas, and the associated risks of water, soil, and air pollution.<sup>216</sup> According to a statement by the Chairman of the Carrizo Comecrudo Tribe in June 2023, Enbridge had not consulted with the tribe.<sup>217</sup> Furthermore, groups are challenging the

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<sup>213</sup> This right is protected by rights in numerous treaties and instruments. See U.N. General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, arts. 10, 11, 19, 20, 32 (Oct. 2, 2007); Expert Mechanism on the Rights of Indigenous Peoples, [Free, Prior and Informed Consent: a Human Rights-Based Approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples](#), U.N. Doc. A/HRC/39/62, paras. 3, 6-10 (2018); CERD, [General recommendation XXIII on the rights of indigenous peoples](#), U.N. Doc. A/52/18, annex V, p. 122, paras. 4(d), 5 (1997); CESCR, GC No. 24, paras. 12, 17; CESCR, [General comment No. 21: Right of everyone to take part in cultural life \(art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights\)](#), E/C.12/GC/21, para. 55(e) (2009); HRC, [List of Issues Prior to Submission of Seventh Periodic Report to Canada](#), U.N. Doc. CCPR/C/CAN/QPR/7, para. 24 (2021); [Letter](#) from Anastasia Crickley, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Rosemary McCarney, Permanent Representative of Canada to the United Nations Office, Reference CERD/91<sup>st</sup>/EWUAP/SW/ks (Dec. 13, 2016).

<sup>214</sup> EDC’s Human Rights Due Diligence Framework states that stakeholder engagement and site visits are some of the information sources that can form part of its due diligence process. EDC defines affected stakeholders as “individuals whose human rights have been affected by an enterprise’s operations, products or services. It may include ... external stakeholders (e.g., communities). EDC, [Human Rights Due Diligence Framework](#), p. 6.

<sup>215</sup> Rainforest Action Network et al., [Rio Grande Valley: At Risk from Fracked-Gas Export Terminals](#) (2022 update); Rainforest Action Network et al., [Rio Grande Valley: at Risk from Fracked-Gas Export Terminals](#) (2023 Update); Press Release, Rainforest Action Network, “South Texas Communities and International Allies Condemn Rio Grande LNG’s Contract with French Petrochemical Giant” (June 14, 2023), <https://www.ran.org/press-releases/south-texas-communities-and-international-allies-condemn-rio-grande-lngs-contract-with-french-petrochemical-giant/> [hereinafter RAN Press Release, South Texas Communication and International Allies Condemn Rio Grande LNG’s Contract with French Petrochemical Giant]; Press Release, Sierra Club, “Rio Grande Valley LNG Projects Hit with Legal Challenges Over FERC’s Flawed Approvals” (July 11, 2023), <https://www.sierraclub.org/press-releases/2023/07/rio-grande-valley-lng-projects-hit-legal-challenges-over-ferc-s-flawed>; Dan Stockman, “Catholic sisters urge Citigroup to assess climate, human rights policies,” Earthbeat (May 2, 2024), <https://www.nronline.org/earthbeat/justice/news/catholic-sisters-urge-citigroup-assess-climate-human-rights-policies>; Press Release, Sierra Club, “Over 850 Public Comments Submitted in Opposition to Rio Grande LNG and Rio Bravo Pipeline” (Dec. 4, 2018), <https://www.sierraclub.org/press-releases/2018/12/over-850-public-comments-submitted-opposition-rio-grande-lng-and-rio-bravo>; Sarah Sneath, *Thousands of miles of pipelines planned to boost LNG exports*, Louisiana Illuminator (Aug. 16, 2023), <https://lailluminator.com/2023/08/16/lng-pipelines/>.

<sup>216</sup> See sources cited above in footnote 215. The risk and harms from fracking are well documented. See e.g. Physicians for Social Responsibility, [Compendium of Scientific, Medical and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure](#), (Oct. 2023).

<sup>217</sup> [RAN Press Release, South Texas Communication and International Allies Condemn Rio Grande LNG’s Contract with French Petrochemical Giant](#). (Statement from Juan Mancias, Chairman of the Carrizo Comecrudo Tribe of

projects' (Rio Bravo Pipeline and LNG terminal) approval by the Federal Energy Regulatory Commission (FERC) arguing that the Commission's air pollution and climate change analysis is deficient.<sup>218</sup>

**Line 5 pipeline: For years, Tribal and First Nations have expressed public opposition and have been calling for the pipeline to be decommissioned or shut down.**<sup>219</sup> This opposition is due to the grave threat that a catastrophic oil spill would pose to their health, culture, and environment, including the Great Lakes which millions of people rely on for drinking water.<sup>220</sup> In November 2020, the Michigan Governor terminated the easement that allowed Enbridge to operate in the Straits of Mackinac, based on threats to the environment and Tribal nations.<sup>221</sup> There is pending litigation involving Michigan officials.<sup>222</sup> In addition, a U.S. Federal Court in

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South Texas “the Carrizo Comecrudo Tribe has never been consulted by companies like Rio Grande LNG, TotalEnergies, Enbridge, or Texas LNG, despite the clear and enormous threat they pose to our sacred lands.”)<sup>218</sup> The project's authorization is currently being reviewed by the U.S. Court of Appeals for the District of Columbia Circuit. *City of Port Isabel, et al., v. Federal Energy Regulatory Commission*, Nos. 23-1174, 23-1221 (D.C. Cir., 2023); see *Petitioners Joint Rule 30(c) Proof Opening Brief*, Doc. No. 2030336 (Dec. 6, 2023). See also Press Release, Sierra Club, “Rio Grande Valley LNG Projects Hit with Legal Challenges Over FERC's Flawed Approvals,” (July 11, 2023), <https://www.sierraclub.org/press-releases/2023/07/rio-grande-valley-lng-projects-hit-legal-challenges-over-ferc-s-flawed>. In August 2021, the U.S. Court of Appeals for the District of Columbia Circuit held, in part, that “analyses of the projects' impacts on climate change and environmental justice communities were deficient” and remanded the application back to FERC for further analyses. See *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021). FERC subsequently issued further and amended authorizations concerning the construction of the proposed Rio Grande LNG facility.

<sup>219</sup> See Oil and Water Don't Mix, *Federally Recognized Indian Tribes are Speaking out to Protect this Vital and Sacred Water*, [https://www.oilandwaterdontmix.org/tribal\\_supporters](https://www.oilandwaterdontmix.org/tribal_supporters) (last visited July 16, 2024); Midwest Alliance of Sovereign Tribes, *Midwest Alliance of Sovereign Tribes Opposes Continued Operation of Line 5 Across the Mackinac Straits*, [Resolution No. 004-16](https://www.msoa.org/Resolution-No.-004-16) (Apr. 27, 2017) (representing the thirty-three federally recognized tribes and four intertribal organizations in the States of Minnesota, Wisconsin, Michigan, Indiana, and Iowa); Anishinabek Nation, *Anishinabek Nation leadership supports shut down of Line 5 pipeline* (May 6, 2021), <https://www.anishinabek.ca/2021/05/06/anishinabek-nation-leadership-supports-shut-down-of-line-5-pipeline/> (representing 39 member First Nations across Ontario).

<sup>220</sup> See Anishinabek Nation et al., *Canada's Support for the Line 5 Crude Oil Pipeline: Submission to the United Nations Human Rights Council in relation to the Fourth Universal Periodic Review of Canada* (Apr. 4, 2023); Letter to President Joseph R. Biden from Tribal Leaders, *re Seventh Circuit Request to the United States for its Views Regarding the Transit Pipeline Treaty and Tribal Sovereignty in Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Company, Inc.* (Feb. 27, 2024) (attaching a second letter from Bay Mills Indian Community and Bad River Band of Lake Superior Chippewa); Bay Mills Indian Community, *Bay Mills Indian Community's Comments On The Scope Of The Environmental Impact Statement For The Enbridge Line 5 Tunnel Project, Submitted to U.S. Army Corps of Engineers* (Oct. 14, 2022) [hereinafter Bay Mills Comments on Tunnel Project]; Bad River Band, *Comments on the Section 404 and Section 10 Permit Application for the Enbridge Line 5 Pipeline Segment Relocation Project*, Army Corps of Engineers, St. Paul District, File No. MVP-2020-00260-WMS, p. 19 (Mar. 22, 2022) [hereinafter Bad River Band, Comments on Relocation].

<sup>221</sup> State of Michigan, Office of the Governor, Dept. of Natural Resources, *Notice of Revocation and Termination of Easement* (Nov. 13, 2020). Cf. *Amicus Brief of the State of Michigan and Dana Nessel, Attorney General of the State of Michigan, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc (W.D. Wis. May 17, 2023) (Dkt. 665) (p. 3 “[t]he alarming erosion at the Bad River meander poses an imminent threat of irreparable harm to Lake Superior which far outweighs the risk of impacts associated with a shutdown of the Line 5 pipeline.”).

<sup>222</sup> There are two cases pending. 1) A lawsuit brought by Michigan's Attorney General to stop the pipeline's operations. The parties were litigating whether the case should be heard in Federal or State court, and in June 2024 the Sixth Circuit Court of Appeals remanded the case to the District with a direction to remove to State Court. See

Wisconsin found that Enbridge has been, and is, trespassing on land belonging to the Bad River Band, and, in June 2023, ordered the relevant portion of the pipeline to be decommissioned within three years.<sup>223</sup> Enbridge is appealing the decision and litigation is pending.<sup>224</sup> Moreover, Enbridge is seeking to reroute the pipeline in Wisconsin and to build a new pipeline in a tunnel under the Straits.<sup>225</sup> Impacted Tribal Nations have expressed their concerns for both of these proposed projects,<sup>226</sup> and Tribes in Michigan are appealing a recent decision by the Michigan Public Service Commission approving the permit for the tunnel project.<sup>227</sup> U.N. experts and bodies have drawn attention to the human rights risks that Line 5 poses.<sup>228</sup> Twice, the U.N.

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*Nessel v. Enbridge Energy, LP*, 104 F.4th 958 (6th Cir. 2024). 2) In 2021, the Governor of Michigan and the Michigan Department of Natural Resources brought an action seeking declaratory relief regarding the validity of the revocation and termination and the easement and an injunction ordering Enbridge to cease the pipeline's operations and decommission it. After Enbridge removed to Federal Court, the Governor subsequently dismissed the case. Enbridge filed an action seeking declaratory and injunctive relief against the revocation and termination, and that matter is pending in federal court. See *Michigan, State of et al., v. Enbridge Energy, Limited Partnership et al.*, Case 1:20-cv-01142 (W.D. Mich.); *Enbridge Energy, Limited Partnership, et al. v. Gretchen Whitmer et al.*, Case 1:20-cv-01141 (W.D. Mich.); Kyle Davidson, Judge Denies Request to Dismiss Enbridge's Case against Whitmer over Line 5 Easement, *Michigan Advance* (July 9, 2024), <https://michiganadvance.com/2024/07/09/judge-denies-request-to-dismiss-enbridges-case-against-whitmer-over-line-5-easement/>.

<sup>223</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, \*45 (W.D. Wis. Sep. 7, 2022); *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2023 U.S. Dist. LEXIS 105397 (W.D. Wis. June 16, 2023), amended by, Amended Final Judgment in a Civil Case, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, 19-cv-602 (June 29, 2023)(Dkt. 689).

<sup>224</sup> Notice of Appeal, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 3:19-cv-602 (W.D. Wis. June 30, 2023) (Dkt. 692). See also Earthjustice, [Line 5 Media Backgrounder](#).

<sup>225</sup> Enbridge, *The Great Lakes Tunnel Project*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/great-lakes-tunnel-project> (last visited July 16, 2024); Enbridge, *Line 5 through the Bad River Reservation*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-wisconsin-segment-relocation-project/line-5-through-the-bad-river-reservation> (last visited July 16, 2024).

<sup>226</sup> See Bay Mills Comments on Tunnel Project; Bad River Band, Comments on Relocation. See also *Letter from Aurora Conley, et al., to U.S. Army Corps of Engineers* (Apr. 27, 2022); *Response Brief on Remand on Behalf of the Bay Mills Indian Community*, Case No. U-20763, Michigan Public Service Commission (May 19, 2023); Press Release, Earthjustice, "Enbridge's Line 5 Tunnel Could 'Rain Devastation and Destruction' on Great Lakes," (May 22, 2023), <https://earthjustice.org/press/2023/enbridges-line-5-tunnel-could-rain-devastation-and-destruction-on-great-lakes> (with cites to relevant additional resources); U.S. Env't Prot. Agency, *EPA scoping comments – Notice of Intent to Prepare a Draft Environmental Impact Statement for the Enbridge Line 5 Tunnel Project, Mackinac and Emmet Counties, Michigan* (Oct. 7, 2022); U.S. Env't Prot. Agency, *Comments on the State Draft Environmental Impact Statement for the Proposed Enbridge Line 5 Relocation Project in Ashland, Bayfield, Douglas, and Iron Counties, Wisconsin* (Mar. 21, 2022), [https://widnr.widen.net/s/wpx8fhcpg7/el5\\_deis-comments\\_federal\\_usepa](https://widnr.widen.net/s/wpx8fhcpg7/el5_deis-comments_federal_usepa).

<sup>227</sup> Press Release, Earthjustice, "Statement: Four Michigan Tribes Appeal Line 5 Tunnel Permit" (Dec. 22, 2023) <https://earthjustice.org/press/2023/statement-four-michigan-tribes-appeal-line-5-tunnel-permit>.

<sup>228</sup> United Nations Permanent Forum on Indigenous Issues (UNPFII), *Permanent Forum on Indigenous Issues: Report on the Twenty-Second Session (17-28 April 2023)*, E/2023/43-E/C.19/2023/7, para. 65 (2023)[hereinafter UNPFII Report 22nd Session] (Stating that Line 5 "jeopardizes the Great Lakes" and "presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada."); UNPFII, *Permanent Forum on Indigenous Issues: Report on the Twenty-Third Session (15-26 April 2024)*, E/2024/43-E/C.19/2024/8, para. 35 (2024) [hereinafter UNPFII Report 23rd Session] ("The Permanent Forum reiterates that the Enbridge Line 5 oil pipeline jeopardizes the Great Lakes and poses a real and credible threat to the human rights of Indigenous Peoples in Canada and the United States."). *SR IP, Visit to Canada*, para. 71 ("The transportation of

Permanent Forum on Indigenous Issues has called on Canada and the U.S. to decommission the pipeline.<sup>229</sup> The U.N. Special Rapporteur on the Rights of Indigenous Peoples has also called on Canada to cease operations of the pipeline until the free, prior and informed consent of Indigenous Peoples is secured.<sup>230</sup>

**Line 3 pipeline: Indigenous-led groups asked the Committee on the Elimination of Racial Discrimination to intervene to address the alleged violations of the Anishinaabe’s human rights.** The groups alleged violations, including, to their right to health due to Line 3’s climate impacts and impacts on the watersheds and wild rice, their culture, religion, right to security and peaceful assembly, and the right to free, prior, and informed consent.<sup>231</sup> The Committee sent two letters to the U.S. government and in its first letter, expressed concern over the allegations that “if verified, could amount to violations of the [International Convention on the Elimination of All Forms of Racial Discrimination].”<sup>232</sup> In 2022, Enbridge entered into agreements with Minnesota state agencies and Fond du Lac Band agreeing to pay more than \$11 million in payments, environmental projects, and financial assurances due to water quality violations and aquifer breaches.<sup>233</sup> Enbridge also reached a settlement with the Minnesota Attorney General wherein it admitted to breaching an aquifer and a delayed notification to the Department of Natural Resources as required.<sup>234</sup>

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crude oil and liquid natural gas by Canadian-owned Enbridge is creating the risk of a catastrophic oil spill that could contaminate the lands and waters of Indigenous Peoples on both sides of the border.”).

<sup>229</sup> [UNPFII Report 22nd Session](#), para. 65; [UNPFII Report 23rd Session](#), para. 71.

<sup>230</sup> [SR IP, Visit to Canada](#), para. 96(i). *See also* Letter from Verene Shepherd, Chair, Comm. Elimination of Racial Discrimination to H.E. Mrs. Leslie Norton, Permanent Representative of Canada to the United Nations Office, [Reference: CERD/EWUAP/111th Session/2023/MJ/CS/ks](#) (Dec. 8, 2023) (letter to Canada, seeking information on its conduct to support the pipeline, which the Committee explained may amount to a breach of Canada’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination.).

<sup>231</sup> Honor the Earth, Giniw Collective, First Peoples Worldwide and the University of Colorado School of Law’s American Indian Law Clinic, [Request for Early Warning Measures and Urgent Action Procedures to the United Nations Committee on the Elimination of Racial Discrimination](#) (Mar. 29, 2021); First Peoples’ Worldwide, [United Nations Requests Response from U.S. about Allegations of Indigenous Peoples’ Human Rights Violations from Line 3 Construction](#) (Sept. 3, 2021), <https://www.colorado.edu/program/fpw/2021/09/03/united-nations-requests-response-us-about-allegations-indigenous-peoples-human-rights> [FPW, U.N. response to Line 3 request]; First Peoples Worldwide, [United Nations Responds a Second Time to Violations of Anishinaabe Rights, Signals Priorities for Imminent Review of U.S.’s Racial Discrimination Record](#), (June 13, 2022), <https://www.colorado.edu/program/fpw/2022/06/13/united-nations-responds-second-time-violations-anishinaabe-rights-signals-priorities> [hereinafter FPW, U.N. Second Response re Line 3].

<sup>232</sup> Letter from Verene Shepherd, Chair, Comm. Elimination of Racial Discrimination to H.E. Mr. Benjamin Moeling, Chargé d’affaires, Permanent Mission of the United States of America to the United Nations Office, [Reference: CERD/EWUAP/104 th session/2021/CS/ks](#), p. 2 (Aug. 25, 2021); *see also* FPW, [U.N. response to Line 3 Request](#).

<sup>233</sup> Press Release, Minnesota Pollution Control Agency, “Minnesota State Agencies and Fond du Lac Band Announce Enbridge Enforcement Resulting in \$11M in Payments, Environmental Projects, and Financial Assurances,” (Oct. 17, 2022), <https://www.pca.state.mn.us/news-and-stories/minnesota-state-agencies-and-fond-du-lac-band-announce-enbridge-enforcement-resulting-in-11m-in>.

<sup>234</sup> Office of the Minnesota Attorney General Keith Ellison, [Enbridge Admits it Breached Aquifer in Line 3 Construction, will Pay and Perform Restoration](#) (Oct. 17, 2022), [https://www.ag.state.mn.us/Office/Communications/2022/10/17\\_Enbridge.asp](https://www.ag.state.mn.us/Office/Communications/2022/10/17_Enbridge.asp).

**Project Maple: over 90 organizations and community groups are voicing opposition to this proposed project due to the expected impacts of fracked gas on the environment, public health, and the climate.**<sup>235</sup> In a letter to the Governor of Massachusetts, the groups state that “communities located along the pipeline route ... breathe in toxic emissions from compressor stations and live in constant fear of a devastating pipeline accident.”<sup>236</sup>

**Moreover, EDC must recognize and properly assess the human rights impacts from fossil fuels.** As set out in the joint Special Rapporteur statement on fossil fuels, fossil fuels “also directly contribute to biodiversity loss, toxic pollution and water scarcity. In fact, fossil fuels are at the heart of the planetary ecological crisis and their tremendous negative impacts on human rights are felt throughout their life cycle, from exploration and extraction to combustion and contamination. Fossil fuels exploitation affects the rights to life, health, food, water and sanitation, education, an adequate standard of living, cultural rights, and a clean, healthy and sustainable environment with marginalized and vulnerable communities bearing the brunt of the consequences.”<sup>237</sup>

## VII. *Charter* Rights and Values would be Triggered by the Anticipated Transaction

**Finally, EDC must consider the impact that financing Enbridge would have on *Charter* rights and values.** Herein, we focus on the climate change impacts to the right to life, liberty, and security of the person protected by section 7.<sup>238</sup> However, climate change also can engage equality rights and values protected by section 15 of the *Charter*.<sup>239</sup>

### A. EDC Decisions Must Not Violate *Charter* Rights or Values

**The *Charter* applies broadly to the legislative, executive, and administrative branches of government in respect of all matters within their authority.**<sup>240</sup> As a Crown corporation and Canada’s export credit agency, implementing government policy under the authority of federal law, EDC is a government actor and must not violate the *Charter*.<sup>241</sup> Administrative decision-

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<sup>235</sup> Miriam Wasser, *Environmentalists demand Northeast governors oppose gas pipeline expansion project*, WBUR (Jan. 25, 2024), <https://www.wbur.org/news/2024/01/25/project-maple-massachusetts-maura-healey-enbridge-weymouth-compressor-natural-gas>; Fore River Residents Against the Compressor Station (FRRACS), Coalition Letter to Governor Healy, (Jan. 17, 2024), [https://media.wbur.org/wp/2024/01/Stop-Project-Maple-Coalition-Letter-GovernorHealey-FRRACS\\_01-2024.pdf](https://media.wbur.org/wp/2024/01/Stop-Project-Maple-Coalition-Letter-GovernorHealey-FRRACS_01-2024.pdf) [hereinafter Coalition Letter].

<sup>236</sup> [Coalition Letter](#).

<sup>237</sup> [U.N. Experts Joint Statement on Fossil Fuels](#).

<sup>238</sup> [Canadian Charter of Rights and Freedoms](#), Part 1 of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s. 7 [hereinafter *Charter*].

<sup>239</sup> EDC should also be particularly aware and concerned with potential violations to section 15 *Charter* rights and values. In climate litigation, the Ontario Superior Court of Justice has stated “I agree with the Applicants that the evidence in this case shows that young people are disproportionately impacted by climate change.” The evidence in that case also showed that climate change has disproportionate impacts on Indigenous peoples. See *Mathur v. Ontario*, [2023 ONSC 2316](#), paras. [25](#), [178](#) (SCJ), appeal pending on other grounds.

<sup>240</sup> *Charter*, s. 32(1); *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#), paras. [41-45](#).

<sup>241</sup> *EDA*, s.10(1); *Export Development Canada v. Canada*, [2023 FC 1538](#), paras. [4-5](#). EDC is also listed in Schedule III, Part 1 in the [Financial Administration Act](#), RSC 1985, c F-11. Further EDC’s Board members are appointed by

makers are required to act consistently with *Charter* values; therefore, EDC’s actions must be consistent with the *Charter* values.<sup>242</sup>

## **B. The Grave Life and Health Impacts of Climate Change Engage Section 7**

**The impacts of climate change engage the right to life and security of the person protected under section 7 and limit values underlying that right.** Section 7 of the *Charter* provides the right to be free from state conduct leading to an increased risk of serious harm or an increased risk of death “either directly or indirectly”.<sup>243</sup> The right to the security of the person in section 7 is engaged even where the risk of harm is low, where the evidence establishes an increase in that risk as a result of government conduct.<sup>244</sup> The Supreme Court of Canada has stated that “[t]he sanctity of life is one of our most fundamental societal values. Section 7 is rooted in a profound respect for the value of human life.”<sup>245</sup>

**The Supreme Court of Canada has recognized that climate change is a threat to life.** It summarized that climate change “poses a grave threat to humanity’s future,” and is “an existential challenge,” “a threat of the highest order to the country,” and “an existential threat to human life in Canada and around the world.”<sup>246</sup> Canada will be particularly impacted by climate change, as will Indigenous Peoples.<sup>247</sup>

**Death, displacement, and health impacts have already been experienced due to extreme weather events and other impacts that were made more likely and severe due to climate change.** The Ontario Superior Court of Justice has stated that “it is indisputable that, as a result of climate change... Ontarians in general are experiencing an increased risk of death and an increased risk to security of the person.”<sup>248</sup> The Federal Court of Appeal has stated that “[c]limate change’s current and potential effects are widespread and grave, they include loss of

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the Government of Canada, and report to Parliament through the Minister for International Trade. EDC employees also are required to abide by the Values and Ethics Code for the Public Sector and the Minister of International Trade Diversification provides a Statement of Priorities and Accountabilities to the EDC Board Chair annually. *See* EDC, Management and Governance, [www.edc.ca/en/about-us/corporate/management-governance.html](http://www.edc.ca/en/about-us/corporate/management-governance.html) (last visited July 17, 2024).

<sup>242</sup> *Doré v. Barreau du Québec*, [2012] 1 SCR 395, para. 24 (“It goes without saying that administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values...”).

<sup>243</sup> *Carter v. Canada (Attorney General)*, [2015] 1 SCR 331, para. 62.

<sup>244</sup> *See, e.g., R v. Morgentaler*, [1988] 1 SCR 30, pp. 58-60 (*per* Dickson CJ, explaining that delayed access to abortions resulted in a security of the person deprivation even where “the overall complication and mortality rates for women who undergo abortions are very low” since “the increasing risk caused by the delay are so clearly established.”). *See also* similar statements in the opinion of Beetz J., *R v. Morgentaler*, pp. 102-103.

<sup>245</sup> *Carter v. Canada (Attorney General)*, [2015] 1 SCR 331, para 63.

<sup>246</sup> *References re GHG*, paras. 2, 167, 171. Appellate courts have echoed these conclusions. *See Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544, paras. 3, 105; *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40, paras. 4, 236.

<sup>247</sup> *References re GHG*, paras. 10-11. *See also* Elizabeth Bush et al., *Canada’s Changing Climate Report in Light of the Latest Global Science Assessment*, p. 37 (2022).

<sup>248</sup> *Mathur v. Ontario*, 2023 ONSC 2316, para. 120 (SCJ), appeal pending on other grounds. *See also Mathur*, paras. 23-25 for a description of the evidence on the impacts of climate change.

land and culture, food insecurity, injury and death.”<sup>249</sup> Other courts and international bodies have recognized the grave threat that climate change poses to human life and health across the globe.<sup>250</sup> The impacts of climate change will materially increase the risk of death and harm to Canadians without giving them any choice about whether to face exposure to that threat.

**If it chooses to provide this financing, EDC would be facilitating, enabling and incentivizing GHG emissions through its financial support that, in turn, will lead to s. 7 deprivations.** The principles of fundamental justice, particularly gross disproportionality and arbitrariness, may be breached.<sup>251</sup> The dire impact that each fraction of degree of global warming has to life and security interests is not proportional to the purpose of supporting Canadian direct investment abroad, nor to supporting trade or other economic considerations.<sup>252</sup> Climate change has cascading impacts and even beyond life and security concerns it will cause severe disruptions to planetary systems, trade, and economies in a manner contrary to the purposes of the EDA.

## VIII. Conclusion

**EDC is obliged to assess the climate change and human rights risks posed by its potential transactions and its customers.** Given Enbridge’s existing operations and announced plans to invest in new fossil fuel infrastructure into the future, any EDC financing provided to Enbridge presumptively supports fossil fuel expansion and/or prolongation of fossil fuel production and use, contributing to lock-in.<sup>253</sup> As such, EDC should refrain from entering into any further transactions in support of Enbridge’s oil and gas business. Additionally, there are publicly available reports of adverse human rights impacts connected to Enbridge projects, which EDC must carefully consider to ensure it neither contributes to nor is directly linked to such impacts through its financing. It must ensure that it is not violating *Charter* rights or values.

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<sup>249</sup> *La Rose v. Canada*, [2023 FCA 241](#), para. 116.

<sup>250</sup> See, e.g., *Friends of the Irish Environment v. Ireland*, [\[2020\] IESC 49](#), para. 3.6 (Supreme Court of Ireland) (“It can, however, safely be said the consequences of failing to address climate change are accepted by both sides as being very severe with potential significant risk both to life and health throughout the world...”); *Ioane Teitiota v. New Zealand*, [CCPR/C/127/D/2728/2016](#), U.N. Human Rights Committee, para. 9.4 (Jan. 7, 2020) (“Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”). See also *Demanda Generaciones Futuras v. Minambiente*, [STC No. 4360-2018](#), April 4, 2018 (Supreme Court of Justice of Colombia) (From the [unofficial English translation](#): “The increasing deterioration of the environment is a serious attack on current and future life and on other fundamental rights; it gradually depletes life and all its related rights.”); *Milieudefensie*, para. 2.3.7.

<sup>251</sup> For example, the seriousness of the deprivation that climate change brings is totally out of sync with the objective of Canadian directive investment abroad (i.e., gross disproportionality) and there would be no rational connection between the object of the decision and the limit it imposes on s. 7 rights and values (i.e., arbitrariness). See *Canada (Attorney General) v. Bedford*, [\[2013\] 3 SCR 1101](#), [2013 SCC 72](#), paras. 111, 120.

<sup>252</sup> Note that the purpose of supporting Canadian direct investment abroad has been characterized as an “important driver of innovation, competitiveness and economic prosperity.” See Government of Canada, Foreign direct investment and Canadian direct investment abroad, <https://www.international.gc.ca/trade-commerce/economist-economiste/investment-direct-investissement.aspx?lang=eng> (last visited July 17, 2024).

<sup>253</sup> Unless such financing is specifically earmarked for Enbridge’s renewable portfolio only.

**Continued investment in oil and gas today maintains, prolongs, or extends, in duration or in volume, the production and use of fossil fuels, thereby increasing GHG emissions precisely when the world must be urgently and drastically reducing them.** Putting new funding into the primary cause of climate change – fossil fuels – is irreconcilable with taking action on climate change. It is also inconsistent with EDC’s legal framework, policies, and commitments. This is especially so when viewed cumulatively with EDC’s entire financial portfolio, which is heavily invested in fossil fuels, including fossil fuel expansion.

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environmental  
defence



### **Above Ground (a project of MakeWay)**

Above Ground works to ensure that companies based in Canada or supported by the Canadian state respect human rights wherever they operate. We shed light on how Canadian business activities are contributing to some of the biggest human rights crises of our times, from threats to Indigenous peoples’ survival to the global climate emergency. We advance solutions to hold Canadian companies to account for their impacts, and to secure access to justice for victims of abuse.

### **Center for International Environmental Law**

The Center for International Environmental Law (CIEL) is a non-profit organization that uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. Since 1989, CIEL has been a leader in the development of international environmental and human rights law, including with respect to climate change and the interlinkages between human rights and climate policies.

**Environmental Defence**

Environmental Defence is a leading Canadian environmental advocacy organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities. ([environmentaldefence.ca](http://environmentaldefence.ca))

**Oil Change International**

Oil Change International (OCI) is a research, communications, and advocacy organization focused on exposing the true costs of fossil fuels and facilitating the ongoing transition to clean energy. Rooted in community solidarity and principled policy analysis, we work within larger movements to build a fossil free future.

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