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August 28, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

DELIVERED BY EMAIL

Dear Ms. Walli,

**RE: Board File No. EB-2017-0319: Enbridge Gas Distribution Inc. Application
for Renewable Natural Gas Enabling Program**

Please find enclosed the submissions submitted on behalf of the Canadian Biogas Association.

If any further information is required please do not hesitate to contact the undersigned.

Yours very truly,



Michael R. Buonaguro
Encl.

Enbridge Gas Distribution Inc.

RNG Enabling and Geothermal Energy Service Programs EB-2017-0319

CANADIAN BIOGAS ASSOCIATION SUBMISSIONS

August 28, 2018

OVERVIEW

Under the current regulatory framework in Ontario there is no option for Renewable Natural Gas (RNG) producers to have Ontario produced RNG directly injected into a local Ontario gas distribution and/or transmission system.

Enbridge's proposal is aptly described as an "enabling" program, in that within the limited confines of the requested relief in this application all that Enbridge has requested is a ratemaking framework that will allow it to:

- a) make the necessary capital investments to enable Ontario produced RNG producers to access distribution and transmission services on the same basis as the traditional natural gas market,
- b) recover more than 100% of the costs of those capital investments and the related operating and maintenance costs from RNG producers through the use of rates that will help facilitate RNG production in Ontario¹, and
- c) provide a direct economic benefit to Enbridge's distribution customers while at the same time providing appropriate protection for both Enbridge and distribution customers against the normal risks associated with capital investments made by a regulated utility.

In the Canadian Biogas Association's (the "CBA's") respectful submission Enbridge's request for relief in this application should be granted, subject only to the following clarifications:

- a) RNG producers should have a right to a prudence review and appropriate remedies in respect of Monthly Service Fees that are materially in excess of the proposed Initial Monthly Service Fee that formed the basis of the contract for RNG Services in the first instance;
- b) it should be confirmed that RNG producers that wish to provide a contribution in aid of construction in order to reduce their overall service costs and financial assurance requirements will be permitted to do so, which in turn reduces the risk of the project to both Enbridge and distribution customers;

¹ Enbridge AIC page 9, Enbridge confirms that they are proposing to recover revenue from each project sufficient to produce a PI of 1.02, which will produce revenue in excess of the forecast costs of each project.

- c) it should be confirmed that in the event of termination of service, the residual obligations of the RNG producer will be adjusted to reflect the reduction in costs experienced when the service is terminated;
- d) RNG producers should have options and remedies available to them in the event that Enbridge is unable to satisfactorily perform contracted for upgrading services or is unable to accept injection of RNG into its distribution system, and
- e) Enbridge should be required to assess the risk that it may not be able to accept injection of RNG from the RNG producer as a result of the demand for natural gas in the relevant portion of the distribution system, develop and explain to the RNG producer the options that are available to Enbridge to mitigate that risk, and, finally, address and appropriately allocate that risk in the contracts between itself and RNG producers.

As a general comment the CBA respectfully notes that the issues in this proceeding do not include any examination as to whether Enbridge (or any other gas distributor regulated by the Board) should be procuring RNG produced in Ontario on behalf of itself or system gas customers. The only issues in this proceeding relate to whether (and on what basis) Enbridge should provide RNG Enabling services to RNG producers so that those producers can inject RNG into the Enbridge distribution system for their own purposes, including, for example, consumption by the RNG producers or their affiliates locally or transportation of their locally produced RNG to markets outside of Ontario². While the CBA expressly supports the notion that regulated distributors should be purchasing RNG on behalf of distribution customers for a variety of reasons, the issue to be resolved in this proceeding is the manner in which rates should be set for RNG Enabling services to be offered to RNG producers.

Enbridge's Argument in Chief sets out:

- a) the unique properties of RNG relative to conventionally sourced natural gas,
- b) the benefits of RNG,
- c) the continuing importance of carbon reduction through RNG,
- d) the need for distributors such as Enbridge to encourage development of RNG, and
- e) the nature of the proposed RNG Enabling Services.

² Exhibit B1, Tab 1, Schedule 1, page 21, Enbridge sets out the various options an RNG producer has with respect to its RNG once it is injected into the EGD distribution system, including consuming the gas itself within the Enbridge franchise area or transporting the RNG outside the Enbridge franchise area.

The CBA does not believe it is necessary to repeat or expand on those submissions by Enbridge, and as such will simply confirm that it repeats and relies upon those submissions to the extent that the support the requested relief in this application, noting only that:

- a) Given recent events, social movements, and ecological changes, it is the CBA's position that enabling RNG upgrading and injection into the monopoly distribution system in Ontario is a critical step towards facilitating natural gas companies' social license to operate, and
- b) The CBA supports allowing utilities in Ontario the ability to access federal funds to develop RNG, which will lower overall costs to Ontario ratepayers, and create more jobs. BC and Quebec, which have RNG enabling programs, will take advantage of the federal funds; so should Ontario.

For the purposes of this application, and in particular in light of the discrete relief requested, which is focussed on the development of a rate mechanism that allows Enbridge to recover more than 100% of the cost associated with the proposed RNG Enabling services directly from RNG producers using RNG producer specific rate schedules, the CBA believes it is sufficient for it to focus its submission on the discrete RNG Enabling Program specific issues as set out by the Board.

Issue 1 – Utility Business Activities (Should the new business activity – RNG Enabling Program – be considered as part of the utility's regulated business?)

The proposed RNG Enabling Program is, in the CBA's respectful submission, a core aspect of Enbridge's regulated business. Setting aside the differences between RNG and conventional sources of natural gas in terms of their respective environmental impacts and attributes, from the perspective of a distributor such as Enbridge RNG is simply natural gas, which it has the exclusive right to distribute within its franchise area in a regulated distribution system. In the CBA's submission it is without question that with the exclusive right to distribute natural gas using a distribution system comes the obligation to accommodate the injection of natural gas into its system where feasible. Seen in this light, the CBA respectfully submits, there is no question that the services encompassed by the proposed RNG Enabling Programs fall within the scope of Enbridge's core business activities and should be considered as part of the utility's regulated business.

As Enbridge notes in its evidence and argument in chief if an RNG producer wishes to distribute its RNG using Enbridge's distribution system the injection service must be performed by Enbridge as the owner and operator of the distribution system.³ The RNG producer cannot inject the natural gas into Enbridge's system on its own, or go into the market and retain the services of an unregulated 3rd party to inject the RNG into Enbridge's distribution system; at best such a 3rd party would, as one would expect, have to engage Enbridge to perform the injection.

³ Exhibit B Tab 1 Schedule 1 page 17.

Enbridge notes that, technically, the proposed RNG Upgrading Service could be performed by an RNG producer or a 3rd party provider prior to engaging Enbridge to perform the injection service.⁴ However, as Enbridge further notes, the reality is that the current market in Ontario for RNG producers to undertake Upgrading Services on their own or for 3rd Party unregulated entities to provide such Upgrading Services is essentially non-existent.⁵

As Enbridge points out, the upgrading of raw biogas into distribution quality RNG is a necessary precondition before injecting RNG into a distribution system, and as such is a natural extension of Enbridge's role as the ultimate distributor of that natural gas.⁶ For these reasons the CBA respectfully submits that it is appropriate in the current context to include Upgrading service as part of Enbridge's regulated business.

To be clear, it is the CBA's respectful submission that the current lack of any market for upgrading services in Ontario is largely driven by the complete lack of any ability for potential RNG producers to inject their product into their local distribution system and participate in the RNG market in Ontario and beyond. To that end it is reasonable, the CBA submits, at this nascent stage of the RNG market in Ontario, to acknowledge the important role distributors like Enbridge have in terms of enabling Ontario RNG producers by providing injection and upgrading services for, essentially, the first time in the province.

The market to provide upgrading services in Ontario may develop as the Ontario RNG market grows in response to the availability of Enbridge's RNG Enabling Program, perhaps requiring a re-evaluation of the impact on that market of Enbridge including the upgrading service in its regulated business in the future. However, in the CBA's submission, it would be unreasonable and counterproductive to the intended purpose of the proposed RNG Enabling Programs to prevent Enbridge from engaging in upgrading services as part of its regulated business on the basis of a theoretical market to provide those services which simply does not exist at this point in time, particularly since a material reason for the lack of such a market relates to the current inability to inject upgraded RNG into the local distribution system.

Issues 2.1 and 2.2 – Service Fees (Are the methodologies to set services fees for the RNG Enabling Program – Upgrading Service and Injection Service reasonable and appropriate?)

The Enbridge proposal to set service fees for the RNG Enabling Program is identical for each of the proposed services. At a high level, the service fees to be paid by RNG

⁴ Exhibit B Tab 1 Schedule 1 page 7.

⁵ Exhibit I.1.EGDI.STAFF.1 page 2 a) iii. Enbridge acknowledges that third parties can perform upgrading services, but asserts that the nascent state of the Ontario RNG market is such that its proposed service will not affect market competition for upgrading services in Ontario.

⁶ Enbridge AIC page 12.

producers under either service are designed to collect enough revenue to not only provide Enbridge its regulated return on any of its invested capital, but also an amount of excess revenue collected for the benefit of Enbridge's distribution customers.⁷

Unless and until an RNG producer engages Enbridge to provide Enabling Services there is no expense to Enbridge and no risk to Enbridge's distribution customers.

If and when an RNG producer engages Enbridge to provide Enabling Services the RNG producer will be required to fund more than 100% of the costs of the service, with the excess revenue accruing to the benefit of Enbridge's distribution customers.

To the extent there is any risk to distribution customers as a result of the use of a deferral account to track variances between the costs of Enabling Services and the revenues generated from RNG producers paying for those Enabling Services,⁸ that risk is mitigated not only as a result of the excess revenue built into the service fees paid by RNG producers as a whole, but also through the use of the same suite of security requirements that Enbridge imposes on its larger customers when those customers require material capital investments in order to obtain distribution service.⁹

The risk to Enbridge and distribution customers is further mitigated during the contracting phase insofar as the length of the services contract for either of the Enabling Services will generally be determined by the forecast life of the feedstock underpinning the RNG's producer's ability to produce RNG.¹⁰ With service fees determined on a levelized basis over the lifespan of an RNG producer's operation, RNG producers will be provided with certainty as to their upgrading and injection costs throughout the production term, while at the same time Enbridge will be very unlikely to be faced with the prospect of collecting service fees from an RNG producer that is no longer able to produce RNG.

⁷ Exhibit B Tab 1 Schedule 1 page 18.

⁸ In this context the CBA submits that the use of the variance account to smooth the utilities experience of revenue from such projects is not a manifested risk. The only risk the use of a variance account imposes is in the event an RNG producer is unable to take (or Enbridge becomes unable to provide) service under the contract, in which case there is a risk that the revenue flow from the Service Fees may discontinue; it is in mitigation of this risk that RNG producers will be required to provide security.

⁹ Exhibit I.1.EGDI.APPrO.2 page 2 c).

¹⁰ Exhibit I.2.EGDI.STAFF.9 page 6, d) ii).

Issue 2.4: Terms and Conditions (What are the appropriate terms and conditions of the RNG Enabling Program – Upgrading Service, and RNG Enabling Program – Injection Service?)

It is the CBA's understanding that Enbridge is not seeking approval of the forms of contracts to be approved, although it has provided pro forma contracts in response to interrogatories.¹¹ In Enbridge's view approval is only required with respect to the proposed rate schedules.

While the CBA believes it is not necessarily the case that a specific form of contract needs to be approved for all proposed RNG Enabling Service contracts, it also believes that there are some issues that, because of their direct impact on the fees ultimately paid by an RNG producer, should be specifically considered and approved by the Board as components of the rate approval.

The CBA notes that under the pro forma contracts the Monthly Service Fee under a proposed contract for service is to be trued up to match the actual costs incurred by Enbridge in constructing and operating the required facilities.¹² In the event the "trued up" Monthly Service Fee materially exceeds the Initial Monthly Service Fee the CBA respectfully submits that there should be a mechanism for the RNG producer to seek a review of the prudence of the "trued up" Monthly Service Fee and seek an appropriate remedy before the Board. The CBA believes it is reasonable to require Enbridge to explain any material increases in forecast cost, and depending on the circumstances it may be appropriate for the affected RNG producer to seek relief from those excess costs.

The CBA wishes to confirm that in the contracting phase it expects that RNG producers accessing Enbridge's enabling services will have the option of, if desirable to them, contributing to the capital component of the costs in advance in order to take advantage of any funding, internal or external, that may offset the capital cost of the proposed facilities and reduce the overall levelized fees necessary to fund to the project over its lifetime. Not only would doing so allow RNG producers to reduce their overall costs and the resulting financial assurance requirements, but allowing such contributions where available would further reduce any risk to Enbridge and ratepayers.

The CBA respectfully submits that in the event, for a particular RNG Enabling project, either the RNG producer ceases operation or Enbridge becomes unable satisfactorily perform the upgrading service or to accept injection of RNG into the system, there should be a mechanism for recalculating the Service Fee obligation of the RNG Producer to account for the permanent reduction in OM&A and other expenses that would no longer be incurred by Enbridge as a result of the cessation of service. Without such a mechanism the collection of Service Fees calculated on the basis of OM&A and other expenses that are no longer being incurred would result in an unreasonable over-recovery from the RNG producer.¹³

¹¹ Exhibit I.2.EGDI.STAFF 6 Attachment 1

¹² Exhibit I.2.EGDI.STAFF 6 Attachment 1 page 56.

¹³ The CBA believes that it may be the case that this concern is implicitly addressed in the calculation of the Termination Charge in the pro-forma contract for Injection Services

More specific to a scenario where Enbridge becomes unable to perform the contracted for service(s) the CBA believes there should be some consideration with respect to the consequences caused by Enbridge's inability to perform under the contract. As discussed at the technical conference the ability of Enbridge to accept injection of gas at any particular point in its system (as well as the forecast ability of Enbridge to continue to accept injection at any particular point in its system) is location specific and subject to change.¹⁴ By way of example Enbridge's pro forma contract suggests that in the event it cannot provide injection services because it does not have sufficient System Capacity (through no fault of the RNG producer) there is no remedy for an RNG producer.¹⁵

Based on Enbridge's assertion that it is not requesting approval of the contract terms for use in conjunction with RNG Enabling Services and its assertion that the specific contract terms will be negotiated on a project by project basis,¹⁶ the CBA presumes that the precise obligations of Enbridge under a contract in the event Enbridge is unable to provide the contracted service will be determined based on the specific circumstances of each project. In the context of this proceeding the CBA would respectfully request that Enbridge, in its reply argument, confirm the options at its disposal to avoid a material and persistent inability on the part of Enbridge to provide service under an RNG services contract, with particular focus on the inability on the part of Enbridge to accept RNG injection into the system because of a lack of System Capacity. Put more bluntly, the CBA is concerned about the possibility that RNG producers may enter into contracts with Enbridge for Injection service and commit to monthly service fees, only to discover at some time in the future that they cannot inject RNG under that contract through no fault of their own yet will continue to have to pay service fees.

The CBA notes that while Enbridge proposes a form of feasibility contract, the examples of the scope of work to be performed under the feasibility contract do not on their face appear to the CBA to include an analysis of the risks around the ability of Enbridge to accept injection of RNG at the proposed location either at the time of the study or on a forecast basis, or an analysis of the different options available to Enbridge to mitigate the risk to the RNG producer that Enbridge may not be able to accept RNG at the proposed injection site.¹⁷ In the CBA's respectful opinion such information is critical to the RNG producer's decision to procure RNG Enabling services.

provided at Exhibit I.2.EGDI.Staff 6, attachment 1, page 57 which indicates that the Termination Charge in any particular year after the commissioning of the facilities will be based on "the actual costs associated with the equipment", which CBA expects would exclude any OM&A and other costs not being incurred as a result of the termination of the service.

¹⁴ Technical Conference Transcripts pages 107-110.

¹⁵ EB-2017-0319 Exhibit I.2.EGDI.STAFF.6 Attachment 1 page 46.

¹⁶ Enbridge AIC, page 15.

¹⁷ EB-2017-0319 Exhibit I.2.EGDI.STAFF.6 Attachment 1 page 42.

Issue 3.1: Variance Accounts (*Is the proposal to include the annual sufficiency / deficiency of the RNG Enabling Programs within the Cap and Trade Compliance Obligation Variance Accounts reasonable and appropriate? and Issue 3.2: Is the disposition methodology appropriate?*)

The CBA supports Enbridge's proposal to include the annual sufficiency/deficiency of the RNG Enabling Programs within the Cap and Trade Compliance Obligation Variance Accounts and, if those accounts are closed as a result of changing government policy, to instead include the annual sufficiency/deficiency within a new RNG Enabling Program Variance Account.

The CBA notes that as a result of the proposed rate setting methodology for the RNG Enabling Programs, and in particular the proposed target PI of 1.02 for each proposed RNG Enabling project, the intent for any particular RNG Enabling project and for the portfolio of RNG Enabling Projects as a whole is to generate net positive revenue to be distributed to ratepayers. Accordingly the primary function of variance account treatment for RNG Enabling Program revenues and costs is to, in any particular year, ensure that Enbridge neither under recovers nor over recovers revenue from RNG Enabling Projects as a result of timing differences caused by the use of a levelized fee structure in conjunction with a schedule of actual costs that will vary in predictable ways over the course of the RNG Enabling Project contract.

In the CBA's submission, this is a reasonable proposal in support of the levelized fee structure proposed by Enbridge, and in support of the notion that the net revenue in excess of Enbridge's actual costs that is expected to accrue as a result of pricing the services using a PI of 1.02 should accrue to the benefit of ratepayers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF AUGUST 2018