

**Ontario Energy
Board**

P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**

C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

March 28, 2019

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

Dear Ms. Walli:

**Re: Enbridge Gas Inc. (Enbridge Gas)
2019 Open Bill Access Application
OEB Staff Submission
OEB File No. EB-2018-0319**

In accordance with Procedural Order No. 3, please find attached OEB staff's submission on the partial settlement proposal for Enbridge Gas's 2019 application for approval to continue the existing financial terms associated with offering Open Bill Access services for the years 2019 and 2020. This document is also being forwarded to Enbridge Gas, Building Owners and Managers Association Toronto, Canadian Manufacturers and Exporters, Enercare Inc., Heating Ventilation and Air Conditioning Coalition, and Industrial Gas Users Association.

Yours truly,

Original Signed By

Donald Lau
Project Advisor – Rates Major Applications

Encl.

**APPLICATION FOR APPROVAL TO CONTINUE
THE EXISTING FINANCIAL TERMS ASSOCIATED
WITH OFFERING OPEN BILL ACCESS SERVICES**

Enbridge Gas Inc.

EB-2018-0319

**OEB STAFF SUBMISSION ON THE PARTIAL
SETTLEMENT PROPOSAL**

March 28, 2019

INTRODUCTION

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) on December 4, 2018 under section 36 of the *Ontario Energy Board Act, 1998*¹, seeking approval to continue the existing financial terms associated with offering Open Bill Access (OBA) services for 2019 and 2020. The parties to the partial settlement proposal are Enbridge Gas and the following approved intervenors in the proceeding: Building Owners and Managers Association Toronto (BOMA), Canadian Manufacturers and Exporters (CME), Enercare Inc. (Enercare), Heating Ventilation and Air Conditioning Coalition (HVAC), and Industrial Gas Users Association (IGUA), collectively called the Parties.

A settlement conference was held on March 6, 2019 and Enbridge Gas filed a partial settlement proposal on March 22, 2019 setting out a partial agreement among all the Parties to the proceeding.

This submission is based on the status of the record as of the filing of Enbridge Gas' partial settlement proposal and reflects observations which arise from OEB staff's review of the evidence and the partial settlement proposal. It is intended to assist the OEB in deciding upon Enbridge Gas's application and the partial settlement proposal.

Background

In the Enbridge Gas 2013 rates proceeding², Enbridge Gas and interested parties (billers and ratepayer groups) reached a full settlement on issues related to OBA services for 2013. In a decision dated November 26, 2012, the OEB accepted the settlement proposal between the parties.³

In a subsequent Enbridge Gas OBA proceeding⁴, Enbridge Gas and interested parties agreed to continue the terms of the approved 2013 OBA settlement proposal with certain adjustments. In September 2013, the OEB approved the

¹ *Ontario Energy Board Act, 1998* S.O. 1998, c. 15, Sched. B

² EB-2011-0354

³ *ibid*

⁴ EB-2013-0099

settlement agreement. The OEB approved 2014 OBA settlement agreement set out the pricing and costing for OBA services during Enbridge Gas' 2014 to 2018 Custom Incentive Rate-setting term. The agreement continued the approach for sharing of net revenues, earned through providing billing access to third parties, with ratepayers. The benefit included an embedded \$5.389 million credit to ratepayers each year. The 2014 OBA settlement agreement also allowed for the ongoing operation of the OBA program on an indefinite basis.⁵ Over the past five years, Enbridge Gas has been offering OBA services in accordance with the 2014 OBA settlement agreement. However, the financial terms of the 2014 OBA settlement agreement were valid only until the end of 2018.

The financial terms include the increase to billing fees, the sharing of net revenues through the open bill revenue variance account (OBRVA), and the yearly billing costs for the purpose of calculating the OBRVA. The 2014 OBA settlement agreement also included an OBA agreement, which is a contract template between Enbridge Gas and open bill participants.

Enbridge Gas has requested a two-year extension of the existing financial terms of the OBA program that are set out in the approved 2014 OBA settlement agreement.

Partial Settlement Proposal

In response to Enbridge Gas' request, HVAC indicated that it does not believe that the OBA program should continue and asserted that the OBA program should be wound down. The Parties were unable to reach a settlement on the continuation of the OBA program but have reached an agreement on how to move forward with Enbridge Gas' application.

The Parties have agreed, in the partial settlement proposal, that the scope of the matters considered in this application should include the issue of whether the OBA program should continue. The partial settlement proposal proposes expanded notice and a number of procedural steps to allow the OEB to fully consider whether the program should continue, and if so on what terms. The Parties have also proposed that the OBA program continue on its existing terms

⁵ EB-2013-0099, Enbridge Gas Open Bill Access Settlement Agreement, p.3

(other than the bill inserts component of the program – see below) pending the final outcome of the hearing.

Scope of the proceeding

To allow for HVAC's position to be considered, the Parties have agreed to expand the scope of the application to include the issue of whether the OBA program should continue and, if not, how it should be wound down.

OEB staff notes that the 2014 OBA settlement agreement stated that "It will remain open at any time for any interested party to make application to the OEB asking for the OBA program to be terminated or changed."⁶ While HVAC did not make a separate application to the OEB asking for the OBA program to be terminated, the 2014 OBA settlement agreement allowed for a process by which consideration of the termination of the program could be brought before the OEB. OEB staff submits that the request to expand the scope of the application is reasonable and consistent with the 2014 OBA settlement agreement.

OEB staff's understanding of the partial settlement proposal, should the OEB accept it, is that the OEB would need to decide on the continuation of the OBA program and the financial terms the OBA program would operate under. The OEB would also potentially need to decide on the continuation of the bill insert program, further explained below. OEB staff also notes that the Parties agreed to reopen the OBA agreement for discussion in the event that the OEB approves the ongoing operation of the OBA program. In a past decision on the OBA program, the OEB did not approve the OBA agreement itself.⁷

Procedural steps in the proceeding

In light of the additional issue proposed, the Parties agreed that it was appropriate to request that the OEB establish additional procedural steps to ensure all interested parties can participate and all relevant evidence is available to reach a decision. The Parties proposed the following procedural steps:

- Provide supplementary notice of the additional issue
- Permit additional parties to register as an intervenor to this proceeding

⁶ EB-2013-0099, Enbridge Gas Open Bill Access Settlement Agreement, p.3

⁷ EB-2019-0099 Decision on Settlement Agreement, September 23, 2013

- Allow additional filing of evidence and interrogatories
- Provide a settlement conference for the parties to discuss an appropriate way for the issues to be heard by the OEB.

OEB staff notes that it is unusual for a settlement proposal to be a settlement on the process to be followed going forward, as opposed to a settlement on the actual issues in the case. While OEB staff doesn't oppose the proposed procedural steps, the process and timing of the procedural steps should remain with the OEB.

Continued operation of the Open Bill Access program during the proceeding

The Parties also agreed that until the OEB issues a decision in this application the billing fees and costs used to determine the net revenue would be subject to an annual percentage change equal to the Canadian Consumer Price Index (CPI), up to 2.5%, for 2019 and 2020.

In the 2014 OBA settlement agreement, the billing fees were to be updated using the 2012 billing fees as the starting point, with annual adjustments to be equal to the change in the CPI.⁸ OEB staff submits that the proposed methodology for updating the billing fees in 2019 and 2020 is consistent with the 2014 OBA settlement agreement and is reasonable.

The 2014 OBA settlement agreement approved the costs to be used to determine the net revenues for each year from 2014 to 2018. These yearly increases were all above 2.5% per year, with the exception of the shared billing costs in 2015. In the partial settlement proposal the Parties agreed that the costs should be adjusted by the CPI, up to an annual maximum of 2.5%. In the absence of a new comprehensive analysis to determine the fully allocated costs of the OBA program, OEB staff submits that applying the CPI to costs for the purpose of calculating net revenue is appropriate as customers would be no worse off than under the previous methodology of calculating the net revenues.

The Parties further agreed that the sharing of net OBA program revenues will continue in the same manner as set out in the 2014 OBA settlement agreement.

⁸ EB-2013-0099, Enbridge Gas Open Bill Access Settlement Agreement, p.5

As part of the 2014 OBA settlement agreement an OBRVA was created to either share net OBA program revenues in excess of \$7.389 million or to allow Enbridge Gas to recover net OBA program revenue losses below \$4.889 million. OEB staff submits that the proposal to continue the OBRVA is reasonable.

The 2014 OBA settlement agreement stated that Enbridge Gas would report what proportion of its bill insert revenues are from the largest client and if that proportion is greater than 75% for the prior year, then Enbridge Gas would either discontinue the bill insert program or make an application to continue a bill insert program that will obtain greater market participation. In response to OEB staff's interrogatories, the largest client is responsible for 96% of the bill insert revenues.⁹ In Enbridge Gas' application, it did not propose how to continue the bill insert program with greater market participation.

Enbridge Gas agreed in the partial settlement proposal that it would discontinue its bill insert program until a new proposed approach for a bill insert program is approved. The Parties supported the discontinuance of the bill insert program with the exception of Enercare. However, OEB staff notes that the partial settlement proposal allows for parties that wish to continue the bill insert program to file proposed terms. In that event, the question of the continuation of the bill insert program would be included in the expanded scope of this proceeding. OEB staff submits that in accordance with the 2014 OBA settlement agreement it is reasonable to discontinue the bill insert program until a new proposed approach is approved. OEB staff understands that the OEB would be approving the discontinuation of the bill insert program by accepting the filed partial settlement agreement.

Future review of OBA agreement with billers and intervenors

The Parties agreed that in the event that the OEB approves the continuation of the OBA Program, then Enbridge Gas would reopen the OBA agreement for discussion and negotiation on certain details with all billers and all intervenors in this proceeding. OEB staff notes that this is consistent with the 2014 OBA settlement agreement in regards to the treatment of changes to the OBA

⁹ EB-2018-0319, Interrogatory Responses, February 8, 2019 (staff-2a)

agreement¹⁰ subsequent to the OEB's approval of the financial terms, and submits that this is reasonable.

All of which is respectfully submitted

¹⁰ EB-2013-0099, Enbridge Gas Open Bill Access Settlement Agreement, p.8