

**WRITTEN EVIDENCE OF ROGER GROCHMAL**

January 10, 2020

**Please state your name and background relevant to this proceeding.**

My name is Roger Grochmal, and I am the President of AtlasCare, a residential HVAC and plumbing contractor serving the Golden Horseshoe area. I am also the Chair of the HVAC Coalition. I have been active in the industry for more than 45 years, with the result that I have direct personal knowledge of the Enbridge Open Bill Program, including its history and current status.

My CV is attached to this evidence.

**Describe the purpose of your evidence.**

I intend with this evidence to deal with two things:

1. The genesis and evolution of the Open Bill Program, and
2. The current issues with the Program associated with customer control over their bill, and termination/exit/penalty fees.

**Please provide a summary of the Open Bill Program, its genesis and evolution.**

In the 1990s HVAC contractors, led by the HVAC Coalition, expressed their concerns in OEB hearings that the Enbridge (then called Consumers Gas) appliance rental program was anti-competitive, in large part because it was subsidized by the regulated gas distribution business through marginal cost pricing of rentals. At that time, more than 98% of the gas water heaters in the province were rented from the gas utility, and the utility had started to rent other appliances, such as furnaces, as well.

Over a series of proceedings, during which the OEB ordered Enbridge to use fully-allocated costing to allocate costs in a fairer manner to the rental program, Enbridge initially split out its non-core businesses (including equipment rentals and other HVAC services) into a separate company – Enbridge Home Services -- and after a few years, determined that it would exit the rental program. That rental business was sold to Centrica plc (operating as Direct Energy and later Enercare) in 2002 for \$1 billion, including more than 1.3 million rental water heaters installed in the homes of Enbridge customers. One of the

terms of the sale was that the purchaser would have an exclusive right to bill their customers using the Enbridge gas distribution bill. The inclusion of this exclusive benefit (privileged access to a unique utility service) no doubt contributed to the valuation of the business. This transaction was not subject to OEB approval so there was no opportunity for the HVAC contracting industry at that time to register concerns about those unusually favourable terms and their implications for consumers.

The HVAC Coalition and customer groups grew increasingly concerned that this exclusive arrangement was contrary to the public interest, particularly because many customers were already confused as to whether Enercare/Direct Energy was the utility or was in some way affiliated with the utility.

Contractors and customer groups at that time thought the bill either should be solely a gas distribution bill (called at the time a “naked bill”), or should be open to all third party companies on a non-discriminatory basis. Enercare/Direct Energy argued that it should be allowed to continue with its special arrangement. On February 9, 2006, the OEB in the EB-2005-0001/0237 decision gave Enbridge until the end of 2006 to propose a non-discriminatory third party billing program, failing which Enercare and Enbridge would be required to have separate bills starting January 1, 2007.

#### **How did the Board’s decision in EB-2005-0001/0237 lead to the Open Bill Program?**

Enbridge, HVAC, Enercare, customer groups and others formed a consultative and essentially negotiated the terms of the original Open Bill Program. I was personally involved as a member of the HVAC Coalition Board. Our goal, which we communicated to our negotiating team, was to achieve a result that would have similarly neutral effects as a naked bill, i.e. the bill would not be dominated by one third party, something we knew sowed confusion in the minds of customers. However, instead of pushing Enercare off the bill, we would encourage enough companies to use the Open Bill Program that Enercare no longer had a preferred position, and customers would no longer be confused by charges being on the utility bill. To do this, we sought to create a program that would be readily accessible as a method of billing by large and small contractors and others supplying home energy related products and services.

The consultative’s discussions led to a Settlement Agreement, filed February 12, 2007 in EB-2006-0034, and approved by the Board in its decision in that proceeding on July 5, 2007. This could best be described as an interim arrangement, but it started to open up the bill to others. The settlement was focused on ensuring that there were no legal, practical, or other barriers to companies accessing the Open Bill Program. The potential additional disadvantages to customers arising from the use of the

utility bill were not fully understood nor addressed at the time, largely because no-one except Enercare had been using the utility bill to bill their customers.

Since there were still a lot of details to work out, the consultative continued its work even after the 2007 decision, reaching a more detailed settlement on the operation of the Open Bill Program, which was approved by the Board in EB-2009-0043 on December 2, 2009. Many of the parties in this proceeding were involved at that time.

The Open Bill Program was further extended by agreement between the stakeholders, including many who are in this proceeding, in a settlement agreement that was approved by the Board in EB-2013-0099 on September 12, 2013. The major changes in that proceeding were that the program was extended indefinitely, financial terms were extended until the end of 2018, and a new form of agreement with billers was agreed upon. Under the terms of that settlement, the new biller agreement could not be altered unless all parties had proper notice and were able to be part of the negotiations.

In the 2009 and 2013 negotiations, there was only limited discussion about the issues arising from the unique leverage created by use of the utility bill, especially for companies with many existing customers. The goal at that time was still to broaden the participation sufficiently so that customers would recognize that third parties on the bill were not in any way uniquely associated with the utility. While some of the customer problems were starting to appear, we did not focus on them at that time.

**There is an agreement in this proceeding to continue the Open Bill Program, subject to resolution of two unresolved issues. Why do contractors support continuation of the program?**

Contractors are actually divided on whether they support the continuation of the Open Bill Program. Many, probably a significant majority, still believe strongly that a utility bill should not be used for billing charges other than regulated charges, and they tell me that customers are still too often confused with respect to their rights and responsibilities when it comes to the utility bill.

On the other hand, there has been modest success in expanding access to the utility bill so that the perception that one company – Enercare - is associated with or supported by the utility has been reduced. This perception has not been eliminated by any means, but we find fewer customers today confused over whether Enbridge and Enercare are one and the same. In large part that has been facilitated by companies like Vista Credit, which offer a service for smaller companies in billing their

customers through the Enbridge bill. Although Enercare is still the dominant biller, there are now dozens of other companies that regularly use the Open Bill Program: a small number directly, and some more through intermediaries like Vista.

In my view, it is unlikely that there will be increased penetration of the program in the contractor community. The administrative costs of using the Open Bill Program are significantly higher than using alternatives, including pre-authorized payments through the banks and credit cards, or even post-dated cheques. Most contractors will not offer Open Bill unless the customer specifically prefers this billing method, and this mostly happens in circumstances where the customer is already renting, and would prefer to continue with that form of monthly payment. The opportunity to take advantage of this service has been available to contractors for more than 10 years, and it has been well-promoted. I believe that those contractors and other suppliers who were inclined to incorporate the utility bill into their business model have already done so.

For example, my company, AltasCare, uses the Open Bill Program only sporadically. We looked at participating directly, and found that the administrative burdens in meeting the utility's requirements were substantial (lawyers, bankers, IT systems, etc.), and were really only suited to a very large company or one that altered its basic business model. Even at our relatively large size, direct participation was not cost-effective. When customers are particularly desirous of this billing method, or their situation is specifically suited to it (as when they are currently renting and want us to offer an equivalent), then we use the services of Vista Credit to bill customers on their Enbridge bill.

**Please describe your concerns, if any, with respect to the two unresolved issues.**

One of the things we have learned in practice that we didn't really appreciate when we first negotiated the terms of the program is that the Open Bill Program effectively makes Enbridge a collection agency for the third party billers. While initially I, for one, suspected there would be some aspect of this, it was not until we saw it work in practice that I realized how effective this mechanism would be for existing rental companies to hold on to their customers.

Once a charge goes on the Enbridge bill, customers that would otherwise not pay that charge are much more likely to pay it anyway, even if they dispute it. There seem to be two reasons for this.

First, there is what some in the industry call the “fear factor”. Rightly or wrongly, many customers believe that if they don’t pay any part of their Enbridge bill, their gas will be cut off, or the utility will get angry at them. It doesn’t matter how many times we tell them this is not true. This bill is still a utility bill. Customers are much more likely to pay their utility bills than their bills from anyone else.

Second, there is what I have started to call the “hassle factor”. Even if you understand that not paying third party charges on your bill is allowed by Enbridge, actually getting your dispute resolved with the third party and with Enbridge is more difficult and bureaucratic than if you were just dealing with that third party supplier on their own.

Take the example of a homeowner who feels that their rental furnace or water heater should be upgraded to a newer, more efficient model. They may call Enbridge first, because the charge is on the Enbridge bill, but then they will be referred to the third party biller. When they call the third party biller, they may first be told that it is not yet time for them to get a new rental, or that there will be a significant cost increase. If the customer is unhappy with those answers, they may seek to get quotes from multiple contractors on a new furnace.

This is where it gets more problematic. The rental company will continue to bill them, and may well tell them that they have to continue with that company for a period of time (or forever). The customer will be reluctant to stop paying their Enbridge bill, but if they call Enbridge to complain about their lack of choice, Enbridge will tell them to talk to the biller. If the customer then decides to replace the water heater through a new supplier, and tells the biller to take their rental water heater away, they may be told a) the biller will not remove the water heater, or b) water heater can be removed, but there will be a substantial termination fee on their next bill.

Contrast two situations. If that customer is being billed through the Enbridge bill, they cannot tell Enbridge they will not pay any more charges from that biller. Enbridge will just refer them to the biller, who can tell Enbridge to reinstate the charge.

If that customer is one of my customers, billed through pre-authorized payments, a) I won’t charge them that kind of termination fee, and b) they can stop any of my charges from going through their bank account just by telling their bank (online, phone, or in person). The bank doesn’t try to talk them out of it, or refer them to anyone else. It just stops processing those payments. Done.

For longer term financing arrangements we work with financing companies such as Vista and Snap who require that we have a proper executed contract, signed confirmation from the customer that the work has been completed to their satisfaction and that any extras have been billed and paid for separately.

The bottom line is that the customer is less able, and perhaps less willing, to protect their own rights because their charge is on the utility bill. Enbridge will not accept instructions from their own customer that they don't want their bill from Enbridge to include charges from a biller, or even all billers.

Whether the customer has third party charges on their Enbridge bill is solely decided between Enbridge and the third party biller. Further, the third party biller decides what those charges will be, and Enbridge doesn't ask any questions.

**Your comments raise the question of the first unsettled issue, the extent to which customers should be able to control what is billed through their bill. Please expand on that.**

I can tell you that I, personally, have no bills from anyone that include charges other than those I have said should be on that bill. My electricity, telephone, cell phone, and cable bills don't have anything on them except the charges from those companies that I have agreed to. I assume that Burlington Hydro, for example, which is my electricity distributor, would not include third party charges on my bill unless I told them directly it was OK.

The gas bill is currently an exception to that. Somebody who claims it's OK with me can tell Enbridge to bill me for something, and Enbridge will do that without checking with me, and without seeing any evidence that I actually agreed.

But that's not the worst part. The worst part is that if I call Enbridge and tell them it's not OK with me that this third party is billing me on the Enbridge bill, Enbridge won't follow my instructions and take it off. They'll refer me to the biller.

I accept that it is administratively difficult to allow third party billing only if the customer makes a phone call to Enbridge, or otherwise gives direct instructions. There is benefit in the simplicity of allowing third party billers to tell Enbridge that the customer has agreed billing on the utility bill is OK.

I don't accept, however, that if a customer tells Enbridge directly that they don't want a third party charge on their bill, it is OK for Enbridge to ignore their direct instruction. This gives third party billers more rights to control what is on my bill than I have.

From the point of view of the industry, this would solve some of the potential problems with billers taking advantage of customers. The utility would have less of a collection agency role, because the customer could just say no to the charge, and the utility would be out of the loop. The biller and the customer, independent of Enbridge, would have to work it out directly. Billers would have to collect their own charges whenever they were contentious.

This then allows customers to have more choice in the marketplace, and would limit the ability of more unscrupulous operators to use the utility bill to take advantage of customers.

From my point of view as a contractor, I would be happy if my customers were empowered to control what's on their bill. If I can't keep them satisfied, I shouldn't be able to use the utility bill to make them pay anyway. I am more than happy to work it out with them directly, and run the risk of not getting paid if I can't. That's how a competitive market works.

**If customers had control over what is billed through the utility bill, is it still necessary to prohibit termination, exit, penalty and similar fees being billed on the bill?**

I think if customers had more control, fewer companies would use these extra fees as a way of forcing customers to remain with them, rather than looking at other suppliers. This would promote customer choice, and encourage companies to keep their customers happy.

Unfortunately, the customers who would not be protected by having control over their bill are the ones that are the most vulnerable. For many customers, if they are told by a biller they have to pay a \$200 exit fee on their utility bill to change water heaters, they might call Enbridge to ask if they have to pay that utility bill. When Enbridge tells them it will come off the bill, problem solved. A more vulnerable customer, though, like a senior living alone, or a new immigrant still grappling with Canadian practices, may be less likely to object or ask questions. If the biller says they have to pay, and the charge turns up on their Enbridge bill, they will assume they have to pay. Otherwise, why would their utility include it in their bill?

My company does not charge termination fees. Furthermore, whenever there are extra fees for anything, those fees are not charged through the utility bill, even if the customer's normal charges have been billed that way. For example, sometimes a customer will want a buyout so that they can own equipment they are renting or leasing. That payment is made on their credit card, not the utility bill.

There is no reason why customers should be forced to pay for large extra fees just because they are billed on the utility bill. If the customer has really agreed to pay those amounts, they can be paid by cheque or credit card. If the customer is not willing to pay directly, that raises a legitimate concern that the customer has not really agreed to the payments.

To protect the customers, the best approach is to prohibit termination, exit, penalty, and similar fees from being billed on the Enbridge bill. That way, the customers can pay what they agree is payable, and assert their rights to resist payments that they do not believe should be payable.

**Do you have anything further to add?**

No. I will be available for cross-examination on this evidence.

## CURRICULUM VITAE

***ROGER GROCHMAL, BSc., MBA, P. Eng.***

Born: Calgary, 1950

### EDUCATION

- B. Sc. in Electrical Engineering (1972) University of Alberta
- MBA (1973) University of Alberta
- C.Dir., McMaster University (Conference Board of Canada)

### WORK HISTORY

- 1973 - *Dealer Manager* - Trane Company of Canada - a manufacturer of commercial, industrial and residential heating and air conditioning products.
- 1976 - *Service Division Manager* - Black & McDonald Limited - a national commercial and industrial service contractor.
- 1984 - *Vice President* - State Contractors Limited - A national commercial and industrial electrical and mechanical construction company.
- 1986 to Present - *Owner/ Manager* - AtlasCare- A residential heating, air conditioning, plumbing and drains service contractor operating in the Greater Toronto and Hamilton areas.

### PROFESSIONAL

- Registered Professional Engineer - Ontario
- Life Member – ASHRAE
- Life Member - HRAI

### INDUSTRY INVOLVEMENT

- Past Chair – Joint Training & Apprenticeship Committee (Air Conditioning)
- Past Member – George Brown College Advisory Committee
- Chair – HVAC Coalition
- Past Chair – ClimateCare Cooperative Corporation
- Vice Chair – Healthy Indoors Partnership
- Vice Chair – HRAI Government Relations Committee

### COMMUNITY INVOLVEMENT

- Charter member of the Meadowvale Rotary Club
  - Past President
  - Paul Harris Fellow
- Chaired election campaigns for Ward 9 councillor, Mississauga
- Member - Finance Committee - St. John of the Cross Church
- Past President, Mississauga Minor Basketball Association

#### PERSONAL

- Widowed with 2 children, 6 grandchildren