

Patrick G. Duffy  
Direct: +1 416 869 5257  
pduffy@stikeman.com

January 28, 2020  
File No.: 145485.1001

**BY RESS and E-mail**  
*boardsec@oeb.ca*

Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto, ON M4P 1E4

Attention: Christine E. Long, Registrar and Board Secretary

Dear Ms. Long:

**Re: Enbridge Gas Inc. – Application for approval to continue the existing financial terms associated with offering Open Bill Access services for the years 2019 and 2020 — EB-2018-0319**

We write to provide a summary of the initial position of Enercare Inc. ("**Enercare**") in Enbridge's Open Bill Access ("**OBA**") program on the two unsettled issues. Consistent with the Board's direction, this letter is not intended to bind Enercare and its positions may change based on the evidence presented at the oral hearing.

As a preliminary comment, Enercare wishes to emphasize that this proceeding is limited to a determination of two discrete operational aspects of the OBA program. The Board should approach this proceeding with the objective of ensuring that there is fair and open access to the OBA program so as to promote usage of the OBA program amongst billers for the benefit of Enbridge's ratepayers. This proceeding is not about the regulation of billers' practices in the water heater rental market, which is already subject to extensive regulation including under the federal *Competition Act* and the provincial *Consumer Protection Act*. Enercare at all times complies with its obligations under the *Competition Act* and the *Consumer Protection Act*.

A number of intervenors in this proceeding are competitors and, as one would expect, they are advancing positions that they believe will benefit their commercial interests. As the largest biller in the OBA program (over 1 million bills per month), Enercare is naturally a target of other intervenors in this proceeding. The Board must be conscious of this dynamic in evaluating the evidence and positions of parties. The purpose of this proceeding is to evaluate two operational aspects of the OBA program. The Board should resist any attempts by competing businesses to use this proceeding for a purpose not concerned with the best operation of the OBA program.

Enercare's specific position on each of the two unsettled issues is set out below.

1. *What control should OBA customers have over the addition, removal and reinstatement of third party charges on their Enbridge Gas bill through the OBA services?*

Enercare generally supports the updated approach to the current OBA complaint and dispute management process proposed by Enbridge in response to HVAC IR#30 (Exhibit I.HVAC.30), subject to the considerations discussed below. As stated by Enbridge, the existing program is the result of extensive



consultation amongst billers, consumer groups and Enbridge -- and is functioning well. The evidence demonstrates that the number of billers in the OBA program has increased over time. Enercare believes that the operational details of the OBA program should be left within the discretion of Enbridge, with input from billers as appropriate.

Enercare does not support the proposals advanced by Vista and the HVAC Coalition, under which the only available dispute resolution process would be immediate removal of a third party charge when disputed by a customer. Enercare agrees that OBA customers should have ultimate control over what appears on their Enbridge bill; however, this needs to be balanced with the effective operation of the OBA program. The task is to devise an approach that: (i) affords billers and customers with a reasonable window to address disputes; (ii) provides customers with the power to remove third party charges in the event of an unresolved dispute; and (iii) is not administratively burdensome to customers, Enbridge or billers.

The evidence in this proceeding does not demonstrate a need for the immediate removal of a third party charge when disputed by a customer. To the contrary, the evidence shows that disputes in the OBA program are extremely rare (Exhibit I.Summit.1) and predominantly involve routine non-CPA matters that in the vast majority of cases are resolved without removal of the charge from the bill (Exhibit I.STAFF.9 and Exhibit I.VECC.5). Billers should be provided with a reasonable window of opportunity to resolve disputes prior to the removal of the charge from the Enbridge bill. Eliminating this opportunity to resolve disputes will result in the unnecessary removal of charges from the Enbridge bill.

It is important for the Board to appreciate that the customer is not put at risk when a third party charge is disputed. In response to interrogatory requests, Enbridge has confirmed that a customer does not need to pay any disputed amounts during the dispute resolution period (Exhibit I.VECC.9) and is not at risk of being disconnected due to an unresolved dispute over a third party charge (Exhibit I.STAFF.9). Enbridge has further advised that it has never disconnected a customer due to an unresolved dispute (Exhibit I.STAFF.9). Indeed, with the implementation of amendments to the Gas Distribution Access Rule ("GDAR") in March 2020, Enbridge will not be able to disconnect gas supply or apply late payment charges in connection with third party charges. To ensure that customers are made aware of their rights, Enbridge has committed to preparing (with input from interested parties) a customer information sheet that will describe the OBA program and include information about the customer's rights in the dispute process. This document will be provided to all existing Enbridge customers and new OBA customers, and will also be posted on the Enbridge website (Exhibit N1-2-1, pp. 7-8).

Enercare generally supports the revisions to the dispute process proposed by Enbridge. However, Enercare has two specific concerns with Enbridge's revisions. First, Enbridge's proposed 15-day period to resolve disputes may not be appropriate in all situations. Due to the routine nature of many non-CPA disputes, the responsiveness of a customer in resolving the dispute should be considered in determining the appropriate dispute resolution period. Second, Enercare does not fully understand Enbridge's proposed process to reinstate charges where a dispute is resolved after the expiry of the dispute resolution period, and will seek clarification at the hearing. Enercare seeks to ensure that there is a clear and efficient process for reinstating charges.

2. *What restrictions, if any, should be placed on billing OBA customers for penalties, exit or termination fees, or similar charges through the Enbridge Gas bill?*

The charges referred to in the second unsettled issue will be referred to as "non-recurring charges".

Enercare supports Enbridge's position that no specific restrictions should be placed on the ability of billers to bill non-recurring charges through the Enbridge bill as is the current practice (Exhibit I.HVAC.30). The evidence shows that customers overwhelmingly prefer to have all of their energy related services consolidated into a single bill for convenience (Vista Evidence, Attachment A).

Enercare does not support the proposals advanced by Vista and the HVAC Coalition under which non-recurring charges would be prohibited from being included on the Enbridge bill. The evidence does not establish that non-recurring charges need to be treated differently than other charges. The evidence shows that only a small percentage of non-recurring charges are disputed (Exhibit I.Enercare.5) and that only a portion of disputed charges are removed from the bill (Exhibit I.STAFF.9). In fact, the bulk of the non-recurring charge bill code types (when viewed cumulatively) result in credits to customers (Exhibit I.Summit.4). No compelling rationale has been presented to demonstrate why the option of billing non-recurring charges through the Enbridge bill should be eliminated.

Enercare does not accept that the exclusion of non-recurring charges from the Enbridge bill can be justified as a means of consumer protection. A customer's liability for a non-recurring charge is determined as a matter of contract between the biller and the customer, and in most cases, the contract is subject to regulation under the provincial *Consumer Protection Act*. The customer's obligation to pay a non-recurring charge is the same regardless of whether that charge is billed through the Enbridge bill or directly to the customer.

Enbridge's role in the billing process is not to act as a "collection agency" (as has been alleged by the HVAC Coalition). The evidence is that Enbridge does not become involved in disputed charges and will not disconnect a customer due to unpaid third party charges (Exhibit I.HVAC.41). As mentioned above, upon implementation of the amendments to GDAR in March 2020, Enbridge will not be able to disconnect a customer, or even apply late payment charges, due to unpaid third party charges. Further, as is the case with all other charges on the Enbridge bill, the customer ultimately retains the ability to remove a non-recurring charge through Enbridge's dispute process. In fact, disputed non-recurring charges will be automatically removed by Enbridge if the dispute remains unresolved after the resolution timeline. The existing process, coupled with the changes proposed by Enbridge and Enercare, protects consumers and reflects consumer preference.

We trust the Board will find this statement of Enercare's position to be of assistance.

Yours truly,



Patrick G. Duffy

PGD/rw

cc. Patrick Corney, *Stikeman Elliott LLP*  
Donald Lau, *Ontario Energy Board*  
Michael Millar, *Ontario Energy Board*  
All Parties Registered in EB-2018-0319