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**VIA RESS, EMAIL and COURIER**

Christine Long  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario, M4P 1E4

Dear Ms. Long:

**Re: Enbridge Gas Distribution Inc. ("Enbridge Gas")  
EB-2018-0319 – Open Bill Access Services  
Argument-in-Chief**

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In accordance with the Ontario Energy Board's (the "Board") Procedural Order No. 11 for the above noted proceeding, enclosed please find the Argument-in-Chief of Enbridge.

The Argument has been filed through the Board's RESS and will be available on the Enbridge website at: [www.enbridgegas.com/ratecase](http://www.enbridgegas.com/ratecase).

Please contact the undersigned if you have any questions.

Yours truly,

(original signed)

Joel Denomy  
Technical Manager

## **ONTARIO ENERGY BOARD**

IN THE MATTER OF the Ontario Energy Board Act, 1998,  
S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an application by Enbridge Gas  
Inc. for an order or orders to continue the existing financial  
terms associated with offering Open Bill Access services for  
the years 2019 and 2020.

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### **ENBRIDGE GAS INC.**

### **OPEN BILL ACCESS PROGRAM**

### **ARGUMENT-IN-CHIEF ON OUTSTANDING ITEMS**

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**A. OVERVIEW**

1. On November 11, 2019, the Ontario Energy Board (OEB, or the Board) approved an October 23, 2019 Partial Supplementary Settlement Proposal (October Settlement Agreement) setting out the financial terms and other details for Enbridge Gas Inc.'s (Enbridge Gas, or the Company) Open Bill Access (OBA) program to continue until December 31, 2023.
2. The October Settlement Agreement identified two discrete unsettled items to be determined by the Board:
  - i. What level of control should OBA customers have over the addition, removal and reinstatement of third party charges on their Enbridge Bill through the OBA Program?
  - ii. What restrictions, if any, should be placed on billing OBA customers for penalties, exit or termination fees, or similar charges through the Enbridge bill?
3. Enbridge Gas acknowledges the concerns raised by some participants in this proceeding that OBA customers should have even more control to remove third party charges from the Enbridge Gas bill. However, Enbridge Gas believes that it is important to balance the interests of all parties (OBA customers, Enbridge Gas ratepayers, different Biller groups and the Company) in determining updated business practices.
4. The evidence in this proceeding shows that the OBA program is functioning well under its current business processes. The overall level of disputes between Billers and customers is low, and there is already a mechanism for unsatisfied customers to have disputed third party charges removed from the Enbridge Gas bill and addressed directly with the Biller.
5. Enbridge Gas submits that only modest changes are needed to improve its current OBA business processes. The key update proposed by the Company is to shorten and standardize its OBA dispute process. Under Enbridge Gas's proposal, any concern raised by a customer about an OBA charge (including an assertion that the

customer no longer wants the third party charge on the Enbridge Gas bill) must be resolved by the Biller within 15 days. If there is no resolution, then Enbridge Gas will remove the charge and credit any disputed amount back to the customer and the Biller will not be permitted to include that charge on future Enbridge Gas bills. Assuming this change, Enbridge Gas does not believe that it is necessary to prohibit “end of contract” charges from being billed through the OBA program. Customers should have the choice of whether to pay such charges through the Enbridge Gas bill, or alternately to request that the charges be removed (and then billed through other means).

6. In this Argument in Chief, Enbridge Gas sets out context and explanation for its position on each of the unsettled items. While Enbridge Gas has been provided with statements setting out the “initial positions” of other parties on the unsettled items<sup>1</sup>, the Company will (for the most part) wait to receive the submissions from other parties setting out their “final” positions before providing a response. This will avoid the concern that Enbridge Gas is responding to positions that other parties do not ultimately adopt.

## **B. BACKGROUND AND CONTEXT**

7. The OBA program provides billing and collection services to third parties for their non-gas products and services through the Enbridge Gas bill.<sup>2</sup> The services provided through the OBA program include:
  - i. Billing of products and services, including bill processing and delivery;
  - ii. Collection of Biller charges and remittances;
  - iii. Basic Call Centre support; and
  - iv. Customer Dispute Tracking.

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<sup>1</sup> In response to Procedural Order No. 10, parties participating in cross-examination at the oral hearing were required to file their initial positions on the two unsettled items with the Board.

<sup>2</sup> Exhibit B, Tab 1, Schedule 1, page 3; and Enbridge Gas Evidence in Chief, 1Tr.7-8 (note that the Evidence Gas Evidence in Chief is also found at Ex. K1.1, Tab 1).

8. Over 100 products and services can be billed through the OBA program, such as water heaters, air conditioners, furnaces and protection plans.<sup>3</sup> Enbridge Gas currently has OBA contracts with 117 Billers. Approximately 1.4 million customers are billed through the OBA program each month.<sup>4</sup>
9. The OBA program is funded through fees paid by Billers, and it currently provides an annual net benefit of \$5.389 million to ratepayers in the Enbridge Gas Distribution (EGD) rate zone. This amount is embedded in rates through the end of the deferred rebasing period (until December 31, 2023).<sup>5</sup>
10. The current OBA program was first approved by the OEB in 2007, and since that time the Board has approved several settlements reached through the collaborative efforts of Enbridge Gas, Billers, customer groups and other interested parties.<sup>6</sup> These settlements provided for the ongoing operation of the OBA program, including financial consequences approved by the OEB until the end of 2018.
11. Enbridge Gas applied to the OEB in December 2018 for approval to extend the existing financial terms of the OBA program for 2 years, until the end of 2020. Enbridge Gas indicated that it would file a longer-term application after that time.<sup>7</sup>
12. Early on in the process, HVAC Coalition indicated that they were reserving the right to challenge the ongoing operation of the OBA program. That led to a Partial

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<sup>3</sup> Enbridge Gas Evidence in Chief, 1Tr.8. A full list of the products that can be billed through the OBA program can be found in Appendix B of the OBA Manual which is provided in the Enbridge Gas response to HVAC interrogatory #26.

<sup>4</sup> Enbridge Gas Evidence in Chief, 1Tr.8 (please note that while the transcript indicates that the OBA program has 170 Billers, this should read 117 Billers – please also see the response to Staff Interrogatory #4, which indicates that there were 108 Billers as of January 1, 2019). The Enbridge Gas response to HVAC interrogatory #29 provides a history of the number of Billers using the OBA program and the number of bills issued by Enbridge Gas on behalf of those Billers.

<sup>5</sup> Enbridge Gas Evidence in Chief, 1Tr.7-8.

<sup>6</sup> The history of the OBA program is described in the Enbridge Gas evidence at Exhibit B, Tab 1, Schedule 1, page 3 and Attachment 1 and in the HVAC evidence (Written Evidence of Roger Grochmal) at pages 1 to 3.

<sup>7</sup> Exhibit A, Tab 2, Schedule 1.

Settlement Proposal in March 2019 (the March Settlement Agreement)<sup>8</sup> which set out a process for the Board to determine HVAC Coalition's issue and allowed the OBA program to continue in the meantime.

13. Following Board approval of the March Settlement Agreement, Enbridge Gas answered more interrogatories and the interested parties met for a series of ADR sessions in June, July, September and October of 2019.

14. The ultimate result was the development of the October Settlement Agreement which was filed with and approved by the Board.<sup>9</sup> Key aspects of the October Settlement Agreement include<sup>10</sup>:

- i. The OBA program will continue under the existing financial terms until the end of Enbridge Gas' deferred rebasing period (December 31, 2023).
- ii. Enbridge Gas will prepare (with input from interested parties) a one-page Enbridge-branded customer information sheet that describes the OBA program, with emphasis on customer rights and obligations. This one-page customer information sheet will (among other things) set out the customer's rights in relation to charges that it disputes. This one-page customer information sheet will be provided to all Enbridge Gas customers in the Enbridge Gas Distribution rate zone as a bill insert in 2020 (and potentially thereafter), and will be provided by Billers to all new OBA customers.
- iii. Enbridge Gas will facilitate annual meetings of OBA stakeholders, and will provide ongoing provision of information about program performance to interested parties.
- iv. Enbridge Gas will meet with stakeholders after the conclusion of this proceeding to renegotiate the OBA Contract between Enbridge Gas and Billers.

15. The parties to the October Settlement Agreement identified two discrete items to be determined by the Board. Those are the only items left to be determined. These "unsettled items" are fully described in paragraph 2, above.

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<sup>8</sup> Exhibit N, Tab 1, Schedule 1. The March Settlement Agreement is attached to Decision and Procedural Order No. 4.

<sup>9</sup> Exhibit N1, Tab 2, Schedule 1 (attached to Decision and Procedural Order No. 8).

<sup>10</sup> See Enbridge Gas Evidence in Chief, at 1Tr.9, as well as the October Settlement Agreement, at Settled Items 1, 3, 4 and 7.

16. As agreed, Enbridge Gas filed supplementary evidence describing its current practices relevant to each of the unsettled items.<sup>11</sup> Enbridge Gas then answered interrogatories relevant to its supplementary evidence. Evidence related to the unsettled items was also filed by HVAC Coalition and Vista Credit Corporation (Vista).
17. The OEB held a two-day hearing on January 30 and 31, 2020 to hear evidence from Enbridge Gas, HVAC Coalition and Vista on the unsettled items. In its Evidence in Chief, and in response to questions from other parties<sup>12</sup>, Enbridge Gas presented and explained its position on the two unsettled items. This is summarized below.

### **C. OUTSTANDING ITEM #1 - CUSTOMER CONTROL**

18. Although the description of the first unsettled item relates to customer control over all aspects of OBA Billing, the main focus of this unsettled item appears to be on what control the customer should have over removing third party charges that are already on the Enbridge Gas bill.
19. Enbridge Gas's evidence is that the current business practices allowing a customer to dispute third party charges on the Enbridge Gas bill are working well. The dispute rate is low (ranging from 0.15% to 0.18% of all OBA charges over the past few years), and most of the disputes that are raised are resolved (the resolution rate for disputes has ranged from 81% to 94% over the past few years).<sup>13</sup>
20. Enbridge Gas has heard concerns raised by parties in this proceeding about customer control over disputed charges, and proposes enhancements to the current process in response.<sup>14</sup> These enhancements are intended to balance the interests of stakeholders, so that customers have more control over third party charges on the

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<sup>11</sup> Exhibit B, Tab 2, Schedules 1 to 3 (including Attachments). Enbridge Gas's evidence was summarized in Evidence in Chief – see 1Tr.10-12.

<sup>12</sup> The parties participating in the hearing were Board Staff, Enercare Inc. (Enercare), HVAC Coalition, Vista, Energy Probe Research Foundation (Energy Probe), Summitt Home Services LP (Summitt) and Vulnerable Energy Consumers' Coalition (VECC). Reliance Comfort Limited Partnership attended the hearing, but did not participate in cross-examination.

<sup>13</sup> Enbridge Gas response to Staff interrogatory #9.

<sup>14</sup> Enbridge Gas's proposal was summarized in Evidence in Chief, at 1Tr.12-14 and 19-20.

Enbridge Gas bill while allowing for misunderstandings or minor disputes to be resolved without a customer leaving the OBA program. Given that almost all OBA disputes are currently resolved, Enbridge Gas does not believe that it is efficient or warranted to entirely remove the dispute process.<sup>15</sup>

21. The key components of Enbridge Gas's proposal are the following:

- i. Any OBA customer will be entitled to contact Enbridge Gas (by phone or online) to raise a dispute about an OBA charge, or to indicate that they no longer wish to have one or more OBA charges included on their Enbridge Gas bill.<sup>16</sup>
- ii. Enbridge Gas will promptly advise the Biller of the customer's dispute, and the Biller will have 15 calendar days to resolve any issues with the customer, and to inform Enbridge Gas of any resolution. This will allow "minor disputes" and clarifications to be resolved.<sup>17</sup>
- iii. If no resolution is reported before 15 days have elapsed, then Enbridge Gas will remove the disputed OBA charge(s) from the customer bill, credit any disputed amounts paid by the customer and block the Biller from using the same "Bill Type Code" for that customer in the future.<sup>18</sup>
- iv. Where a customer contacts Enbridge Gas after a dispute is reported as resolved by the Biller, and indicates that the customer did not agree to the reported resolution, then Enbridge Gas will immediately remove the disputed OBA charge(s) from the customer bill, credit any disputed amounts paid by the customer and block the Biller from using the same "Bill Type Code" for that customer in the future.<sup>19</sup>
- v. Where the customer and the Biller reach a resolution outside of the 15 day dispute period, then the disputed OBA charge can only be reinstated on the Enbridge Gas bill upon the Biller providing details of the resolution to Enbridge Gas along with appropriate proof that the customer has agreed to the resolution.<sup>20</sup>

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<sup>15</sup> 1Tr.15.

<sup>16</sup> This is also discussed in Enbridge Gas testimony in response to OEB Staff questions at 1Tr.28-29.

<sup>17</sup> This is also discussed in Enbridge Gas testimony in response to questions from Vista at 1Tr.75.

<sup>18</sup> This is also discussed in Enbridge Gas testimony in response to questions from Vista at 1Tr.64.

<sup>19</sup> This is also discussed in Enbridge Gas testimony in response to OEB Staff questions at 1Tr.24-25 (see also 1Tr.76-78).

<sup>20</sup> This is also discussed in Enbridge Gas testimony in response to questions from Vista – see 1Tr.64-65.



22. There are several benefits to Enbridge Gas's proposed approach to OBA disputes, as compared to the current process.
23. First, it provides more customer control than is currently the case. Under the Enbridge Gas proposal, a customer will no longer be required to raise a dispute about the nature or amount of third party charges to initiate the process. Instead, the customer can simply inform Enbridge Gas that the customer no longer wants to have one or more third party charges billed through the Enbridge Gas bill.
24. Second, the proposed process will be faster than the current process. There will be no categorization of CPA (*Consumer Protection Act*) and non-CPA disputes with different resolution deadlines of up to 45 days. Instead, the dispute process will be completed in 15 days in all cases, with no reinstatement of disputes if a customer complains a second time. This will limit the times where a disputed OBA charge appears on more than one Enbridge Gas bill.
25. Third, the number of times that the customer has to contact Enbridge Gas will be reduced. In most cases, the customer will only have to be in touch once, when the dispute is raised. After that, the OBA charge will be removed in 15 days unless the Biller contacts the customer and reaches a resolution (which the Biller will then communicate to Enbridge Gas). In rare cases where a customer disagrees with the Biller's reported resolution,<sup>21</sup> the customer will have to contact Enbridge Gas a second time but at that point the disputed OBA charge will be immediately removed from the bill and blocked from future billing.
26. While not intending at this time to address all positions that may be advanced by other parties Enbridge Gas believes it is useful to explain two items that it has not included in its proposal.

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<sup>21</sup> As seen in Enbridge Gas's response to Staff Interrogatory #9(c), only a very small number of OBA disputes each year are currently "reinstated" (which is the term used when a customer calls to complain about a resolution reported by the Biller). For example, in the months from January 2018 to September 2019, there were 45,970 disputes and only 5,191 disputes were reinstated (11% of disputes). This should be viewed in the context of an OBA program with approximately 1.4 million customers.

27. First, Enbridge Gas has not included any changes to the manner in which third party charges are included on a customer's Enbridge Gas bill in the first instance. While the wording of the first unsettled item includes the question of what level of control a customer should have over the addition of third party charges, there is no evidence that there are problems with current business practices on this item. Said differently, there is no problem to be solved.
28. In any event, Enbridge Gas does not support transferring the obligation to let the Company know about new OBA charges from Billers to customers. As explained in Evidence in Chief, the Company adds around 800,000 new OBA charges to customer bills each year.<sup>22</sup> If Enbridge Gas had to take instructions from customers for each of these new charges (rather than getting automated and consolidated billing files from Billers), this would add immense administrative complexity and cost.
29. Second, Enbridge Gas has not included a requirement for customers to communicate the resolution of disputes to the Company within the 15 day dispute period. Instead, Enbridge Gas proposes to maintain the current approach where a Biller informs the Company of resolution of a dispute and provides any updated billing instructions to implement the resolution. It would only be where a dispute is not resolved in the 15 day dispute period that Enbridge Gas would require customer confirmation of resolution of the dispute.
30. Enbridge Gas is concerned that having customers responsible for communicating dispute resolutions will add cost and confusion. Enbridge Gas is currently able to receive automated instructions from Billers when disputes are resolved and this can immediately be implemented into updated billing. If information and instructions about dispute resolution instead comes directly from customers, then this will result in a large volume of new communications and manual system entries (there were 21,500

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<sup>22</sup> 1Tr.19. See also the Enbridge Gas testimony in response to questions from Energy Probe, at 1Tr.48-50.

resolved disputes in 2018) and there is a risk of incomplete information being provided which will result in further interactions.<sup>23</sup>

31. Enbridge Gas expects that it can implement its proposed updated dispute process promptly. The updated dispute process can be implemented by adapting the current business processes without the need for significant system changes.<sup>24</sup>

32. Enbridge Gas has agreed to convene negotiations over an updated OBA contract within 60 days of the Board's decision on the unsettled items. Enbridge Gas's proposed changes to the OBA dispute process will have to be reflected in the updated OBA contract (and in the Biller Manual). Enbridge Gas proposes, therefore, that the changes to the dispute process should be implemented at the same time as the new OBA contract comes into effect (assuming that there are no other changes coming from the OBA contract negotiation that take longer to implement).<sup>25</sup> This timing will ensure that the customer information sheet describing the OBA Program can be completed and sent to all customers in advance of the changes coming into effect.

#### **D. OUTSTANDING ITEM #2 – END OF CONTRACT CHARGES**

33. Under the OBA program, Enbridge Gas permits all charges included in the Customer Services Agreement between a Biller and a customer to be included on the customer's bill. To support this approach, the OBA contract between Enbridge Gas and a Biller includes the Biller's representation and warranty that the Biller has "clearly and unambiguously established" the charges being billed pursuant to the Customer Services Agreement.<sup>26</sup>

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<sup>23</sup> 1Tr.17-18. Details about how Enbridge Gas's dispute tracking system is automated were provided in Enbridge Gas testimony in response to questions from VECC, at 1Tr.43-44 and in response to questions from Vista, at 1Tr.66-67. The numbers of resolved disputes is set out in the Enbridge Gas response to Staff interrogatory #9.

<sup>24</sup> This is discussed in Enbridge Gas testimony in response to questions from HVAC Coalition – see 1Tr.106-107.

<sup>25</sup> 1Tr.22.

<sup>26</sup> Billing and Collection Services Agreement (OBA Contract), at section 7.1(d) – see Exhibit B, Tab 1, Schedule 1 Attachment 2, page 28. See also 1Tr.16 and 1Tr.84.

34. Enbridge Gas's evidence is that there is no current systemic problem with including end of contract charges (including buyout payments and other items) on customer bills in the OBA program.<sup>27</sup> While the level of disputes for such charges is modestly higher than for other types of charges, it is still within a reasonable range (less than 3% of total end of contract charges have been disputed in recent years).<sup>28</sup>
35. Removing an end of contract charge from the Enbridge Gas bill does not mean that a customer is absolved from paying that charge. Instead, this simply means that the customer will have to arrange a different means of payment with the Biller.<sup>29</sup> Enbridge Gas believes that a customer should have choice about the way that it is billed for end of contract OBA charges, rather than being categorically disentitled from paying such charges through the Enbridge Gas bill.<sup>30</sup> Enbridge Gas's proposed updated dispute process accommodates this. Where a customer is content to have a third party end of contract charge included on the Enbridge Gas bill (as appears to be the case in most instances), then this can happen. On the other hand, if the customer disputes the charge, or chooses not to have the charge on the Enbridge Gas bill, then that customer can contact Enbridge Gas and the charge will be removed after a 15 day dispute period.
36. Taking all of the foregoing into account, Enbridge Gas does not believe that any specific restrictions against including end of contract charges on OBA program bills is necessary.

All of which is respectfully submitted this 7<sup>th</sup> day of February 2020.



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David Stevens, Aird & Berlis LLP  
Counsel to Enbridge Gas

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<sup>27</sup> 1Tr.23.

<sup>28</sup> See Enbridge Gas response to Enercare interrogatory #5.

<sup>29</sup> 1Tr.16. See also the Enbridge Gas testimony in response to questions from Vista, at 1Tr.85.

<sup>30</sup> This is discussed in Enbridge Gas testimony in response to questions from Vista, at 1Tr.86-87.