

ONTARIO ENERGY BOARD

**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**

FINAL SUBMISSIONS

Vista Credit Corp. (VISTA)

Summary of VISTA Position

1. While the first unsettled issue in this matter is broadly worded to include the process for addition of third party charges on the Enbridge Gas Inc. (EGI) bill, there does not appear to be any difference of opinion among the parties that the current process for adding approximately 800,000 new Open Bill Access (OBA) charges to EGI customer bills each year does not present any issues for resolution. EGI proposes to continue to take instructions from OBA Program registered third party billers (Billers) through an automated electronic process for the addition of such charges to EGI bills.¹ VISTA agrees with this proposal.
2. In respect of the process for resolving customer disputes and charge removal requests relating to Biller charges on the EGI bill, it is VISTA's position that:
 - (a) *A customer should be able to request removal of charges from Billers for any reason, whether due to a dispute about a charge or because they simply no longer wish to have a charge included on their EGI bill.*

EGI's proposal is consistent with this position.²
 - (b) *Upon receipt of such a request from a customer, EGI should advise the affected Biller. It is then up to the Biller to resolve the matter with its customer.*

¹ EGI AIC, paragraphs 27-28.

² EGI AIC, paragraph 21.i.; Transcript Volume 1, page 107, lines 18-25.

EGI's proposal is consistent with this position.³

- (c) *Upon direction from a customer for removal of a Biller charge, the charge should be immediately removed and credited to the customer.*
- (d) *A charge so removed should only be reinstated upon express customer direction, either directly or through an express written direction in a form to be approved by EGI and submitted by a Biller seeking to reinstate a charge.*

This position is consistent with EGI's proposal for reinstatement of charges after the 15 day waiting period which EGI has proposed.⁴

- 3. In short, VISTA disagrees, as do others, with EGI's proposal to retain a process under which a Biller can, without proof of customer authorization, provide instructions to EGI that a customer dispute or charge removal request has been resolved and the subject charge should remain on the bill. Like HVAC Coalition and others VISTA believes that once a customer direction to remove a charge is provided only the customer should be able to authorize reinstatement of that charge.
- 4. As the provider of administrative services to customers and their HVAC contractors, including services for engagement of the OBA Program, VISTA believes that such customer authorization could be direct to EGI from the customer, or by way of express written direction in a form to be approved by EGI and submitted by a Biller seeking to reinstate a charge. In its evidence VISTA has articulated this as "*contemporaneous authorization*" by the customer.⁵ In the latter instance, which VISTA expects would be the more usual, EGI should be required to verify submission by the Biller of the required form signed by the customer.
- 5. EGI has proposed the blocking of billing codes for Billers who reported resolution of a dispute where the customer subsequently indicates that there was no such resolution, or where there is no resolution within EGI's proposed 15 day waiting period. EGI's testimony indicates that "blocking" billing codes has no practical consequences for the ability of Billers to put charges back on EGI bills.⁶ The OBA Agreement is to be renegotiated following determination of this application, and VISTA believes that the parties to that renegotiation (which will include customer representatives) are best placed to develop

³ EGI AIC, paragraph 21.ii.

⁴ EGI AIC, paragraph 21.v.

⁵ Exhibit K1.5, paragraph 14.

⁶ Transcript Volume 1, page 68, lines 2-10.

more appropriate sanctions for Billers who seek to reinstate removed charges without obtaining and providing express customer authorization.

6. EGI has proposed that following a charge removal request, the charge will remain active on the EGI bill for 15 days, to allow “minor disputes and clarifications to be resolved”.⁷ There does not appear to be any function served by such a “waiting period” should the Board direct, as argued by VISTA and others, that reinstatements should only be permitted with express authorization from the customer. VISTA invites EGI to advise through its Reply herein whether such a waiting period would serve any administrative function in that event.
7. In respect of the second unsettled issue in this matter – maintaining post-contract OBA Program charges on the EGI bill - VISTA maintains that post-contract charges⁸ should not be permitted on the EGI bill, given;
 - (a) the evidence of historical abuse in respect of these types of charges;
 - (b) the coercive effect of including these types of significant charges on the utility bill; and
 - (c) the ready availability of various options for billers and customers to easily settle any such legitimate charges.

The Need for Customer Authorization for All Biller Charge Reinstatements

8. EGI has proposed that the first reinstatement of Biller charges following a request by a customer to remove such charges from their EGI bill would be effected by the Biller notifying EGD that the customer's request has been resolved. No evidence confirming such resolution would be required. The Biller would send an e-mail indicating “resolved” and EGI's system would remove the “disputed” status from the subject charge.⁹
9. VISTA has provided evidence of how poorly such a process works. In each of the cases evidenced the Biller advised EGI that a dispute was resolved when it was not.

⁷ EGI ACI, paragraph 21.ii.

⁸ Penalties, exit or termination fees or any charges claimed as owing as a result of a customer terminating an agreement with a third party Biller or any similar charges.

⁹ Transcript Volume 1, page 66, lines 6-20.

10. Case A included in Attachment B to VISTA's pre-filed evidence reflects a dispute of the validity of a buyout charge of \$616.00 plus tax¹⁰ by VISTA's customer, on the basis that the contract relied on by the Biller as authority for such charge was not signed by the customer¹¹. Communications from EGI to VISTA indicate that the dispute was resolved, on the basis that *"Enercare considers this charge to be valid"*, and that the customer *"has been made aware of the resolution"*¹². This evidence indicates that the disputed charge remained on the EGI bill on the advice of the Biller and despite ongoing dispute of the charge by the customer.
11. Case B included in Attachment B to VISTA's pre-filed evidence reflects a dispute of the validity of a buyout charge of \$1,065.59 (with tax)¹³ by VISTA's customer, on the basis that the contract relied on by the Biller as authority for such charge could not as a matter of consumer protection law include such charges¹⁴. Communications from the Biller to VISTA indicate that the buyout charge would be processed despite the customer's dispute¹⁵.
12. Case C included in Attachment B to VISTA's pre-filed evidence reflects a dispute of the validity of a buyout charge of \$853.00 plus tax¹⁶ by VISTA's customer, on the basis that the customer assumed a rental agreement from a builder when they bought their home¹⁷. Communications from EGI to VISTA indicate that as of January 2019 the dispute was provided to EGI's *"legal team, to look into"*¹⁸ while the charge remained on the EGI bill despite ongoing dispute of the charge by the customer from August 1, 2018.
13. Case D included in Attachment B to VISTA's pre-filed evidence reflects a dispute on the validity of a buyout charge of \$962.00 plus tax¹⁹ on the basis that the contract relied on by the Biller as authority for such charge could not as a matter of consumer protection law include such charges²⁰. Despite the customer's ongoing dispute of the validity of this

¹⁰ Exhibit K1.5, Attachment B, page 9 of 48, top.

¹¹ Exhibit K1.5, Attachment B, page 7 of 48, bottom.

¹² Exhibit K1.5, Attachment B, page 4 of 48, top.

¹³ Exhibit K1.5, Attachment B, page 20 of 48, top.

¹⁴ Exhibit K1.5, Attachment B, page 15 of 48, bottom.

¹⁵ Exhibit K1.5, Attachment B, page 13 of 48, top.

¹⁶ Exhibit K1.5, Attachment B, page 29 of 48, bottom.

¹⁷ Exhibit K1.5, Attachment B, page 27 of 48, bottom.

¹⁸ Exhibit K1.5, Attachment B, page 24 of 48, top.

¹⁹ Exhibit K1.5, Attachment B, page 37 of 48, top.

²⁰ Exhibit K1.5, Attachment B, page 35 of 48.

charge (including through communications from a lawyer acting for the customer²¹) the matter was placed in collections by EGI²².

14. In respect of Case E included in Attachment B to VISTA's pre-filed evidence, Enercare filed a transcript purporting to record a discussion between an Enercare representative and the subject customer in August 2018.²³ VISTA is unable to confirm that this is the same customer as in VISTA's Case E since the customer's identity has been redacted from the public version of Enercare's transcript. That transcript was not put into evidence. It appears to record a customer being advised by an Enercare representative to provide the bill with the Enercare buyout fee to VISTA. The material provided by VISTA in respect of Case E indicates that there remained a dispute regarding the authority for this charge as of October 2019 – 2 months after the discussion purported in the proffered transcript – and the buyout charge remained on the customer's bill on the basis of the Biller's advice to EGI that the dispute had been resolved²⁴.
15. These customer cases, and many more like them²⁵, reflect the practice of Billers advising EGI that an OBA charge should remain on the EGI bill despite an ongoing dispute regarding the validity of that charge. This evidence underscores the need to ensure that when a Biller reports a charge dispute or removal request "resolved", it is in fact resolved with the express and informed agreement of the customer, and not simply in the opinion of the Biller.
16. Although EGI recognizes in its AIC that Billers must contact customers to reach a resolution, EGI has not proposed a requirement for customers to communicate the resolution or provide specific, contemporaneous authorization for reinstatement of the charge on the basis that so requiring would *"result in a large volume of new communications and manual system entries and there is a risk of incomplete information being provided which will result in further interactions"*. EGI cites 21,500 resolved disputes in 2018 in support of this concern.

²¹ Exhibit K1.5, Attachment B, page 39 of 48.

²² Exhibit K1.5, Attachment B, page 40 and pages 41-42.

²³ Exhibit K2.1, Tab 4.

²⁴ Exhibit K1.5, Attachment B, page 46.

²⁵ IRR VISTA.Staff.1.

17. We note that “resolved” disputes does not equate to reinstated charges. Charges may also be resolved by removal from the bill as requested by the customer. Even using EGI’s 21,500 number, however, the number of customer communications for reinstatement would be significantly fewer, on average, than 100 per business day. There is no specific evidence to indicate that processing even this volume of reinstatement authorizations would be unduly burdensome or costly for a system that processes 800,000 new OBA billed charges every year.
18. VISTA believes that customers should always be able to contact EGI directly and provide instructions regarding the disposition of OBA Biller charges on their gas bill. VISTA has also proposed a “*contemporaneous authorization*” method²⁶ pursuant to which the customer would provide authorization to a Biller, with approved language to be developed and implemented under revised OBA rules to be negotiated, which;
- (a) clearly refers to the precise charges to be reinstated;
 - (b) is provided reasonably contemporaneously with the specific directed reinstatement; and
 - (c) is provided to EGI at the time that the direction for charge reinstatement is provided.
19. While VISTA initially proposed that such contemporaneous authorization be permitted in either written or electronically equivalent form (which could, as a matter of law, include a voice recording), given the selectivity associated with voice recordings, and considering the record herein (including the transcript of the customer conversation proffered by Enercare which VISTA views as equivocal at best, as addressed by HVAC Coalition in its final submissions), it is VISTA’s position that such contemporaneous authorization should be required to be in writing through a form to be approved by EGI (and which EGI will be able to retrieve and verify expeditiously).
20. EGI’s OBA processes already include the ability to check for duly completed forms (such as agency agreements authorizing the commencement of a dispute)²⁷. These forms are provided to EGI by e-mail and an EGI representative verifies that the appropriate authorization form is attached.

²⁶ Exhibit K1.5, paragraph 14.

²⁷ Transcript Volume 1, page 63.

21. EGI envisions a similar process for evidence of authorization to reinstate OBA charges following expiration of the proposed 15 day dispute resolution period or in cases where a customer had called a second time to dispute an OBA charge which the Biller previously advised had been resolved.²⁸
22. Both of these existing “manual” processes build on a system for “automated” screening of dispute related communications which is e-mail based.²⁹
23. Given;
- (a) the uncontradicted evidence of Billers advising EGI of OBA charge disputes having been resolved when such was not the case;
 - (b) the fact that EGI already uses a semi-manual process to confirm agency appointments for the purposes of lodging complaints and envisions a similar process for disputes falling outside of the dispute resolution period which it proposes; and
 - (c) an apparently manageable number of potential charge reinstatements;
- an express customer authorization confirmation process should be required for any disputed charge reinstatement.
24. However, despite any particularized evidence of such, should the Board remain concerned that requiring verification by EGI of written confirmation of contemporaneous customer authorization to reinstatement of disputed OBA charges would present an undue administrative burden, the Board should nonetheless direct that collection of such authorizations by Billers be required, and that EGI conduct periodic audits to ensure that Billers have obtained, and acted only in accord with, such authorizations.
25. In providing this alternative (though second best, from a customer protection perspective) proposal, VISTA;
- (a) suggests that the Board direct that the parameters for audit by EGI of the customer authorization requirements, and the consequences for Billers submitting reinstatement directions without obtaining such authorizations, be subject to negotiation in the OBA renegotiation mandated by the October 23, 2019 *Supplementary Partial Settlement Proposal*, Section 7;

²⁸ Transcript Volume 1, page 64 bottom to page 65 top.

²⁹ Transcript Volume 1 page 66.

- (b) assumes, and relies on, continuation of the on bill messaging protocols for advising customers that the subject Biller has resolved the dispute raised by the customer (see Exhibit I.B.EGI.BOMA.6, Attachment, page 22); and
- (c) strongly suggests the addition of language to such messages inviting the customer to contact EGI for removal of the charge should they disagree that the matter has been resolved.

Prohibition of Post-Contract Charges

- 26. The total dollar value of post-contract charges is in the millions of dollars, and as of 2016 in the tens of millions of dollars.³⁰
- 27. The largest number of customer disputes related to the OBA Program relate to post-contract charges. There are in the range of 2000 such disputes every year.³¹
- 28. The disputed post-contract charges can amount to several hundred dollars or more per customer.³²
- 29. In his oral testimony Mr. Leis of VISTA explained that hundreds of thousands of water heater customers were signed up through a frenzy of high pressure door-to-door selling that came to an end with the introduction of new consumer protection laws in 2014. Given the average 15 year service life for water heaters, the water heaters sold this way are still in customers' homes, though the sellers of these contracts have since been acquired by existing providers, including Reliance and Enercare.
- 30. Hearings were held at Queen's Park in the Fall of 2013 to discuss door-to-door water heater sales; VISTA testified, as did Enercare, which was then known as Direct Energy, as well as Enbridge. During the hearing Enercare testified that the sales practices of these door to door sellers were "misleading", "deceptive" and "criminal".³³ Perpetuating an enforcement mechanism for contracts obtained by various forms of deceptive high pressure sales tactics is not fair to consumers and should no longer be allowed to be facilitated by the OBA program.

³⁰ Exhibit I.Summit.4

³¹ Exhibit I.Enercare.5

³² Exhibit K1.5, Attachment B.

³³ Transcript Volume 1, page 122, lines 21-25; Legislative Assembly of Ontario, Second Session, 40th Parliament, Official Report Journal of Debates, Wednesday 23 October 2013, ISSN 1180-436X, p.21).

31. The evidence produced by VISTA includes examples of customers being charged rental water heater buyout fees of several hundred to a thousand dollars without any rental contracts at all, or on the basis of contracts which have been disputed as non-compliant with consumer protection law prohibitions on buy-out fees.³⁴ This evidence stands unchallenged and un-contradicted.
32. A series of orders have been issued by the Commissioner of Competition regarding anti-competitive and abusive post-contract charges.³⁵
33. It is not for the Board in this proceeding to rule on the legality or illegality of any contracts, contracting practices or buy-out charges. However, the evidence clearly indicates that the most controversial aspect of the OBA Program has been post-contract charges.
34. It is the un-contradicted evidence of VISTA's Mr. Leis, HVAC Coalition's Mr. Grochmal, and EGI's own customer surveying, that customers perceive that Biller OBA charges are somehow endorsed or approved by EGI, and that customers feel compelled to pay those charges.³⁶
35. It is also un-contradicted evidence that there are ready mechanisms for collection of legitimate, one time, post-contract charges that customers agree to³⁷. VISTA has found that if a customer agrees to the legitimacy of the post-contract charge they are generally willing to make arrangements with a biller either to place such charges on their credit cards or provide for an electronic funds transfer, and either method can be easily accommodated. Mr. Grochmal's testimony in reference to his own company's protocols in respect of legitimate post-contract charges is the same. Ms. Lynch testifying for EGI acknowledged the same.³⁸
36. There is no business requirement that third party billers use the Enbridge bill for collection of legitimate post-contract charges. Unlike the billing for and processing of regular monthly

³⁴ Exhibit K1.4, Attachment B.

³⁵ VISTA IRR to EGI-1.

³⁶ Exhibit K1.5, paragraph 9 and Attachment A; Written Evidence of Roger Grochmal, page 4 bottom and page 5.

³⁷ Exhibit K1.5, paragraph 26; Written Evidence of Roger Grochmal, page 8.

³⁸ Exhibit K1.4, paragraph 26; Written Evidence of Roger Grochmal, page 8; Transcript Volume 1, page 85, lines 9-16.

payments, there are no particular legitimate advantages of being able to include these significant payments on EGI bills.

37. When asked why EGI continues to support permitting post-contract charges to be included on EGI bills under the OBA Program, Ms. Lynch's response was³⁹;

- (a) they are permitted now;
- (b) the OBA provides one among several ways for customers to pay post-contract charges (i.e. everything else being equal, more choice is better); and
- (c) customers can dispute any charges.

None of these "reasons" commend continuation of post-contract charges on OBA Program bills, and, as demonstrated on the record herein and outlined above, everything else is not equal.

38. Given the evidence of;

- (a) historical abuse in respect of these types of charges;
- (b) the coercive effect of including these types of significant charges on the utility bill; and
- (c) the ready availability of various options for billers and customers to easily settle any such legitimate charges;

post-contract charges – i.e. penalties, exit or termination fees or any charges claimed as owing as a result of a customer terminating an agreement with a third party Biller or any similar charges - should no longer be permitted on the EGI bill under the OBA Program.

Conclusion

39. VISTA was one of the first Billers under the OBA Program, and has been involved in development and operation of the program throughout.⁴⁰

40. VISTA continues to believe that the program has been good for competition and good for customers. The program has allowed all HVAC service providers who chose to do so to offer the convenience of monthly on-bill payments to match the historical billing and

³⁹ Transcript Volume 1, pages 84-87.

⁴⁰ Transcript Volume 1, page 120.

payment offering that, as a result of the Consumers Gas water heater rental program, Ontario energy consumers have grown accustomed too.⁴¹

41. In the result, the onetime virtual monopoly on water heater rentals enjoyed by Enbridge Services, and then Direct Energy (now Enercare) has given way to greater competition.⁴²
42. Nonetheless, there have been issues with the program, which HVAC Coalition, with the support of VISTA and others, has brought before this Board for consideration in this proceeding.
43. Although the Enbridge bill is an excellent platform for periodic payments well liked by customers and good for competition, neither VISTA nor any other Biller need EGI to collect buyouts on their behalf. The changes which VISTA advocates would not in any way compromise any ability to enforce legitimate energy services agreements, but they would prevent the observed misuse of the Enbridge brand and the associated goodwill in support of disputed collection activities.
44. The OBA program would be improved, and the interests of customers and legitimate competitors would be served, by;
 - (a) modifying the dispute handling protocols of the program to allow customers to direct removal of any Biller charge from the EGI bill at any time, and precluding reinstatement of any such removed charges without direct and express authorization from the customer, in writing if authorizing a Biller to submit such reinstatement on the customer's behalf; and
 - (b) precluding altogether collection of post-contract charges through the program.

⁴¹ VISTA IRR VECC-1, part a., first paragraph.

⁴² Exhibit K1.4, pages 4 and 5.

45. VISTA respectfully requests that the Board so direct.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



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