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Enbridge Gas Distribution Inc.
EB-2018-0319
Open Bill Access Services

Submission
of the
Vulnerable Energy Consumers Coalition
(VECC)

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Vulnerable Energy Consumers Coalition

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Introduction

1. These are VECC's submission with respect to the following question:

    i. What level of control should Open Bill Access (OBA) customers have over the addition, removal and reinstatement of third-party charges on their Enbridge Bill through the OBA Program?
    ii. 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?

Customer control is important to a well-functioning market

2. While VECC accepts the limited nature of the issues before the Board in this proceeding and is a party to, and supports the settlement accepted by the Board our position generally is that third-party use of a regulated monopoly's bill is at best problematic. The long-term goal should be to eliminate this form of indirect billing. To understand why the current OBA program should be modified it is important to understand how the program has evolved, how well it serves the market and what impact the program has on Enbridge monopoly natural gas customers.

3. Regardless of the customer complaint processes adopted or the "customer education" provided many consumers inevitably conflate the matters of their regulated service with those of the other service providers using the same bill. And it is hard to blame them. A bill is the primary transactional vehicle for an ongoing relationship between a consumer and a service provider. Not only are the bill provider and the service provider different but the nature of the business is not the same. Consider the circumstance where Enbridge shares its bill with another monopoly, say municipal water service. At least in that case the terms of the service will be similar and the remedies available to the customer, that access to a regulatory, mean the transactions are more closely aligned. The Board is of course familiar with these types of shared bill agreements between municipally owned electricity distributors and the municipal water works. These type of shared bill arrangements rarely cause problems.

4. Monopoly utilities like electricity, gas and water are, in comparison to competitive services, straightforward enterprises. To see this one only needs to consider the currently 139 billing codes employed under the OBA program. A number of these are for apparently similar services – there are for example at least three water heater codes. As VECC examined in the hearing there is an ongoing dialogue between OBA billers and Enbridge creating and deleting codes. This allows for a constantly evolving number of

new services all likely unanticipated by the OEB to be added to the menu of available shared bill services.

5. Not only is there a continually evolving menu of services, but the services themselves are more complicated than the delivery of water or energy. For example, consider "Duct Cleaning Plan" (Code 0089). What precisely is this service and what are the issues that might arise in its delivery. Where the ducts cleaned on schedule? Were they cleaned properly? Did the service person leave a clean work site? Am I happy with this service? Should I terminate it if I am unsatisfied? How do I do that? The simple question with natural gas delivery (or water) is whether it is available when needed and whether my consumption was properly measured. Except in the very limited circumstance of safety Enbridge does not concern itself with the maintenance of gas appliances. When Enbridge "rents" its bill to a third-party service provider it places itself into these more complicated commercial relationships.

6. Not only are there more opportunities for these commercial relationship to breakdown, but when they do there is no regulator to hold the OBA company to account. Instead there is a "transactional equilibrium" based on the contract signed (if any) between the customer and the company and the ability of an aggrieved customer to withhold payment or terminate the relationship. As an HVAC contractor Mr. Grochmal provided insight into this more complicated relationship which among other things requires a company to consider reputational risk.[1] Mr. Grochmal also explained how the rental market can complicate matters for HAVC providers who work for firms competing with OBA billers.

7. Similarly, the representative for VISTA, Mr. Leis provided evidence as to the complications and conflation that can occur with OBA billing. He pointed out that in a number of cases there is no actual contract between the OBA biller and the customer. He also noted that a number of these arrangements are purported to continue under the provisions of agencies carried out with a home purchase but that no validation of that premise is actually carried out. The evidence of VISTA supports the experience of VECC in that OBA billing, by conflating competitive with regulated services obscures and complicates this relationship between customer and service provider. Ultimately OBA billers are able to tip the transactional balance in favour of themselves, leaving the customer with less information and less leverage in a dispute. In our view these are realities that the Board should factor into its consideration of what ongoing rules should be in place for customer-OBA disputes.

[1] See for example Mr. Grochmal's exchange with VECC at Vol. 2, pages 60-66

8. The OBA program only exists in the Enbridge rate zone due to a particular historical anomaly. The water tank rental business, originally carried out by the regulated utility as a load building exercise, had over the years morphed - first to a non-regulated affiliate activity and then finally sold off to an unrelated third party. The value of the sale of this business relied in large part on the ability to transition customers seamlessly from the Utility to the acquiring private company (now Enercare) and so as to minimize customer abandonment As a result, Ontario has a large water heater rental unlike many other provinces like Alberta where water heater rentals are rare. This market has become so prevalent that agency for rental equipment are now embedded in standard home sales agreements. More concerning to the matters at hand is that the single water heater rental market has been vastly expanded to include literally more than a hundred other types of services. We submit is unlikely the Board foresaw the massive growth in services that would find their way into the "water heater rental" part of the bill.

9. Enbridge testified that to be included in its OBA billing service (bill type code) the service must be an energy related product. But the list of codes belies that assertion[2]. 0078 is for a Rooftop Protection Plan, 0041 allows Home Security System charges and 0074 for Water Softener[3]. And while we accept that "Dishwasher" (Code 007) may be tangentially "energy related" it is clear that the breadth of services has far and widely expanded from the original proposition of renting water heaters.

10. Why is this all important for the Board to consider? If one accepts our submission that the nature of OBA billing upsets the normal balance in the competitive market as between consumer and service provider than it follows that the number of opportunities for these for these deficiencies to arises increases with the number of products and services sold under the OBA format. It becomes then all the more important for the Board to consider rules which best maintain the market transactional equilibrium as would exist in the case where the OBA provider could not rely upon the regulated utility bill.

11. The response of Enbridge to this concern is to minimize the complaints received. In our view Enbridge has taken upon itself to be an advocate for the OBA program. It points out the financial benefit of $5.389 million supposedly accruing to customers[4]. Enbridge

[2] Vo1. 1, January 30, 2020, page 41
[3] See Exhibit I.Staff.11 for a list of Bill Type Codes
[4] Enbridge AIC, page 3. While not important to the issue before the Board we would note in passing that given the deferred rebasing which the Utility has opted for it is difficult to assign any certain value to ratepayers of the ongoing OBA relationship.

also makes much of what it considers the relatively small number of complaints with respect to OBA billing. The table below shows the number of disputes with a resolution time limit equivalent to 15 days for CPA disputes and those with a time limit equivalent to the 45 days for Non- CPA disputes.[5]

	2014	2015	2016	2017	2018	2019(Jan-Sep)
C P A	1,956	1,882	1,698	1,642	3,059	3,884
Non-CPA	25,716	29,262	25,113	23,809	23,620	15,387
Total	27,672	31,144	26,811	25,451	26,679	19,271

12. The number of complaints relative to the number of OBA customers (1.4 million) has historically been just under 2%[6]. That may seem small but the evidence is not that only 2% of customers complain. It is that 2% of customer complain per year. Arguably, and there is no evidence to the contrary, one can extrapolate from this that over the past 12 years of the OBA program's existence about a quarter (2%x12) of its customers have complained about it. Even if is something less than that figure the fact that 27,000 customers complain each year is hardly evidence of the "success" of the current process.

13. Frankly we are perplexed by Enbridge's diminishment of what is a clear and evident customer issue with OBA providers. And we hardly find it comforting that the Utility is proposing to abandon their triage of complaints into "CPA" and "non-CPA" categories. Enbridge suggests that other than the shorter and now proposed complaint resolution time frame of 15 days nothing further is to be distinguished by the CPA category. We were of course surprised when it was explained to the Board that Enbridge does not report these complaints to the authorities[7]. One might have thought that a minimum an OBA biller who triggers successive "CPA" type complaints would be subject to audit and potentially dismissal from the program. After all these are still Enbridge customers and one would expect the Utility to be wary of those customers being exploited under the ambit of the Enbridge bill.

14. Our concern is all the greater given the recent significant increase in the "CPA" type of complaints. The table below show that in 2018 the number of these type of serious complaints was two-thirds higher than the years before. And with only three quarters

[5] I.Staff.9 , Enbridge further explains did not expressly track disputes as "CPA" or Non-CPA" prior to May 21, 2019. All dispute cases were created as CPA and the back-office team reviewed each dispute case and updated the due date as necessary.
[6] Exhibit I.Staff.9
[7] Vol. 1, January 30, 2020, page 30

of 2019 reported the number of CPA categorized complaints has more than doubled from the average between 2014 and 2017[8].

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15. One can only speculate as to why Enbridge does not take a more serious and proactive stance if only to protect its reputation. We suggest the Board consider whether the same laissez-faire attitude would be had if dissatisfied Enbridge customers were able to "vote with their feet" and leave the Utility to find an alternative gas provider. Our suggestion is that in those circumstances the reaction to their reputational risk from wayward OBA billing would be much different. The conspicuous absence of companies in competitive markets renting out space on their bills to unrelated businesses seems to us to clearly indicative of the reputation risk that is inherent in these types of arrangements.

16. Given Enbridge is not inclined to make efforts to protect its customers from unsavory transactions with OBA billers then it follows that customers should have the greatest control possible in dealing with an OBA biller. They should have nothing less than the same control as if the party billed them directly. If otherwise the Board risks standing in the way of a well-functioning competitive market and becomes complicit in the activities of parties it does not regulate.

17. Ironically, it is only the odd circumstance of third-party billing which even requires one to answer the questions that are now before the Board. What level of control should have a customer have over its OBA biller? The answer can only be exactly what they would have were there no OBA relationship. In the ordinary circumstances where one gets a monthly bill directly from their service provider and finds themselves in dispute the entire matter is in the hands of the customer. If a consumer doesn't want a service, they cancel it. If a consumer believes they should not pay a penalty or exit fee they are not obligated to do so. They do not need to wait days have this happen. If the situation is particular acrimonious and the biller continues to bill - the consumer if they feel justified - can ignore or discard that bill. If the OBA biller feels they are being unjustly treated by the consumer they also have remedies such as bill collection services and

[8] Ibid, page 2

ultimately in the courts. This is how competitive markets work and it is not always pretty, but it is a system which balances the powers of the consumer and the producer.

18. The suboptimal nature of the entire process of third-party billing is demonstrated by the fact that the customer is even talking to Enbridge. If this were a "normal" relationship the customer would contact service provider – not some intermediary who bills for the service. When they hear from a disgruntled OBA customer Enbridge in essences says "*we'll pass your message along*". Thanks for that. But Enbridge's role as intermediary only serves to introduce confusion and transactional red tape.

19. When one complains to Enbridge about an OBA biller does the Utility tell the complainant to call their service provider? No, Enbridge contacts the OBA biller and sets in motion a "resolution process." This isn't something the customer has asked for. If a customer calls and request, or even demands, that Enbridge stop a third party from putting its charges on its regulated utility bill why should they be obligated to justify that request? What authority does Enbridge have to put itself between the OBA service provider and the customer? Is the Board prepared to give Enbridge that authority? Is it even the Board's role to facilitate this hybrid market of consumers who through happenstance find third-party charges on the regulated utility bill? In thinking about these questions, we would ask the Board to consider – why does none of this exist in the former Union franchise and what harm has occurred by its absence in those places?

20. The argument put forward in support of a 15 (formerly 15 or 45 days) customer dispute process is to find resolution to disputes so as to not disrupt the OBA monthly billing. Why does Enbridge care so much if these arrangements – which are none of its business – are disrupted? If OBA customers and the providers are odds so be it. If a customer wants time to work out a solution with its service provider that is also ok. What is reasonable is <u>what the customer wants</u>. Not what the OBA biller wants and certainly not what Enbridge wants.

21. It is the proposition of Enbridge that most complaints get resolved within the 45- or 15-day period. Yet the evidence also shows that Enbridge does not play the role of arbitrator. It does not make an assessment of whether the dispute has been resolved to the satisfaction of the customer. It does not know whether the customer resolved the matter because they felt intimidated, or whether they were confused and conflated their monopoly service with that of the OBA biller. Enbridge does no serious follow-up. Nor do they know whether the customer just decided that the entire exercise was just too cumbersome for the amount of money involved. They know nothing about the resolution. Given that a certain number of complaints tagged "resolved" by the OBA biller come back to be revisited is demonstrative of their ignorance as to the veracity of

the entire exercise. They simply rely on the OBA biller – not the customer – but the OBA biller to tell them "it's all ok."

22. In our submission there is nothing inherently wrong with Enbridge's proposal to institute a 15-day working period. What is wrong is prohibiting customers from doing what they want when they are dissatisfied with the competitive non-regulated service. In our view the Board should not allow the regulated utility to put itself between the consumer and the non-regulated company which is using the regulated utility's bill.

23. For these reasons we suggest the following modifications to Enbridge's proposal.

    i. As a matter of policy, the Utility should not place itself between the customer and their OBA biller.
    ii. When contacted about an OBA biller and where the matter is a complaint that warrants - the Utility should provide a fact sheet (mail or email) which explains the reason the OBA biller is on the Utility bill and explicitly sets out that Enbridge does not endorses this vendor and any dispute between the OBA biller and the customer is of not consequence to the service proved by the regulated utility.
    iii. The customer should be immediately notified that if they do no want to continue with the OBA billing, they have the right to that terminate that service, but that that termination of Enbridge billing will not change any obligation they may have with their OBA biller. They are therefore encouraged to discuss the matter with the OBA service provider.
    iv. Enbridge after determining from the complainant whether OBA billing termination is desired, should offer to immediately transfer the customer to the OBA biller (irrespective of whether this contact is via mail, email or telephone or text communication).
    v. When the transferred call (contact) to the OBA biller is complete the OBA biller should be required to forward back the contact immediately to Enbridge for confirmation of the customers wishes.
    vi. Once the customer has completed this transaction with Enbridge, they should be reminded that they will receive an information package on their rights and responsibilities under OBA billing.
    vii. Enbridge should be required to report to the appropriate authorities' complaints it has received that it believes are non-CPA compliant.

24. If Enbridge and OBA billers do not have the capability to transfer contacts in real time then the Board should establish a timeframe of no more than 6 months for this capacity to be included in the OBA program.

25. If the provisions of paragraphs 23 and 24 cannot be complete in the timeframes established by the Board then a forum should be constituted to examine the ongoing viability of the OBA program.

Termination and exit fees and other penalties

26. Whatever the merits of OBA for billing (and we hold there are few) its intended purpose has always been to allow for an ongoing service relationship to be charged on a monthly basis. Enbridge, HVAC and Vista all put forward evidence which explains the genesis the OBA program which arose out of the continuation of utility water heater. As we have noted above, over time this simpler objective has been expanded by a plethora of products and services that can now be included under OBA billing codes.

27. As the list of programs has expanded to services that are not even tangentially related to natural gas service the types of charges have also expanded. The most controversial among these are termination and penalty charges. Because these charges occur at the end of the customer-service relationship they are prone to be contentious. Furthermore, these interactions with the OBA biller may be viewed as threatening by customers who may be told '*unless you pay us x dollars, we will not release you from your obligation*". Customers who feel intimated may not press to find what other remedies are available to them or even if in fact there is even a contractual obligation with the OBA biller. The lack of customer empowerment is abetted by the fact that the OBA bills are "on the paper" of the Utility who provides an essential service.

28. This creates a noxious mix which can lead to exploitation of vulnerable consumers. This is the evidence of Vista and this is the experience of VECC with the consumers it tries to represent.

29. Simply put there is no reason why a vendor terminating its relationship with a customer cannot produce a final invoice to that customer. If that invoice is for an onerous amount than there is no reason that OBA biller cannot make a payment plan independent of the Utility. Once termination is agreed to there is no ongoing relationship between the Enbridge customer and the OBA biller and therefore no reason for this relationship to continue.

30. It is our view that it is the coercive nature of OBA billing which makes it so attractive to its service provider adherents. It decreases their risk that the customer will default or otherwise determine to not meet an obligation or ascertain that they have no obligation to a service provider. In such circumstance's companies are forced to defend their market position. An expensive proposition but also one that serves to provide discipline

in the market place. And we might add the same discipline other HVAC providers like Mr. Grochmal's company face in their HVAC business. Even if those providers do not offer say OBA service - Home Security Systems (billing code 0042).

31. We acknowledge that there may be legitimate reasons for termination buy-outs of equipment like water heaters. However, it seems to us if these are legitimate charges, based on equipment service life and if the customer and service provider are in agreement, then the buyout period the transaction is equivalent to a limited time rental agreement. Perhaps this transaction might take the form of a new billing code -say called "***reasonable buy out of aging worthless water heater***." That might be registered as the fourth most popular code after water heater rentals (OBA code 0051 or if you like 0052) and following the ubiquitous OBA service entitled "Discount" (OBA code 0139) -- as the new OBA billing code 0140 [9].

THESE ARE OUR RESPECTFUL SUBMISSION

FEBRUARY 28, 2020

[9] I.Staff.11