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March 6, 2020

**VIA RESS, EMAIL and COURIER**

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

Dear Ms. Long:

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

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In accordance with Procedural Order No. 11 issued by the Ontario Energy Board on January 31, 2020, please find enclosed Enbridge Gas Inc.'s combined Reply Argument.

The Reply Argument will be filed on RESS and a copy served on all parties.

Yours truly,

(Original Signed)

Joel Denomy  
Technical Manager Regulatory Applications

**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**

**REPLY ARGUMENT**

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## **A. OVERVIEW**

1. On February 7, 2020 Enbridge Gas Inc. (Enbridge Gas, or the Company) filed its Argument in Chief setting out its position on the two unsettled items in this proceeding. Briefly stated, Enbridge Gas believes that the Open Bill Access (OBA) program is functioning well, but has proposed updates to its dispute process to allow OBA customers to remove unwanted and disputed charges from the Enbridge Gas bill after a 15 day period during which any issues may be resolved between the customer and the Biller. Enbridge Gas does not believe that it is necessary to specifically prohibit end of contract charges from being included in the OBA program, since customers will have the right to request the removal of any third party charges from their bill.
2. Ten parties<sup>1</sup> filed submissions in response to Enbridge Gas. This Reply Argument sets out Enbridge Gas's response.
3. Parties take different views as to the level of control that OBA customers should have to remove unwanted third party charges from the Enbridge Gas bill. These range from assertions that customers should have the absolute and immediate right to remove any unwanted OBA charges from the bill to suggestions that the Enbridge Gas proposal is not flexible enough in allowing disputes to be solved.
4. As set out in Argument in Chief, Enbridge Gas has made a proposal that increases OBA customer control. Importantly, Enbridge Gas has taken into account the interests of all relevant parties (OBA customers, Enbridge Gas ratepayers, different Biller groups and the Company) in determining appropriate updated business practices. The balanced solution that Enbridge Gas proposes will allow OBA customers to remove unwanted or disputed charges in 15 days, but also leaves the opportunity for misunderstandings to be resolved without the customer leaving the OBA program. Customers will also benefit from the fact that, in most cases, unwanted charges will

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<sup>1</sup> OEB Staff (Staff), Building Owners and Managers Association (BOMA), Canadian Manufacturers & Exporters (CME), Enercare Inc. (Enercare), Energy Probe Research Foundation (EP), HVAC Coalition (HVAC), Reliance Comfort Limited Partnership (Reliance), Summitt Home Services LP (Summitt), Vista Credit Corp. (Vista) and Vulnerable Energy Consumers Coalition (VECC).

not appear on any future bills. It will be quick and cost-effective to implement Enbridge Gas's proposal, because it adapts existing business processes.

5. A number of parties assert that Enbridge Gas should not permit end of contract charges through the OBA program. Others parties, including Enbridge Gas do not believe that is necessary. The Company submits that OBA 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. For the reasons set out in Argument in Chief and in this Reply Argument, Enbridge Gas requests that the OEB endorse or approve the updated dispute resolution process that Enbridge Gas has proposed. The updated approach would be reflected in an updated OBA Contract with Billers and implemented in a timely manner.

## **B. CONTEXT**

7. Notwithstanding the narrow scope of the unsettled items in this case, several parties found it necessary to file lengthy submissions, in some cases making allegations and proposals that go beyond the scope of the unsettled items and the evidence filed in this proceeding.
8. Before specifically addressing other parties' submissions on the unsettled items, Enbridge Gas will briefly address some of these matters.

### **(a) The ongoing operation of the OBA program is not at issue**

9. Early in this case, HVAC indicated that they reserved the right challenge the ongoing operation of the OBA program. However, after lengthy discovery and ADR processes, all parties agreed to the October Settlement Agreement that the OBA program will continue under the existing financial terms until the end of Enbridge Gas' deferred

rebasing period (December 31, 2023).<sup>2</sup> To achieve that resolution, all parties agreed that:

- i. Enbridge Gas would work with interested parties to prepare 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 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 and posted to the Enbridge Gas website.<sup>3</sup>
- ii. Enbridge Gas will facilitate annual meetings of OBA stakeholders, and will provide ongoing provision of information about program performance to interested parties.<sup>4</sup>
- iii. Enbridge Gas will meet with stakeholders after the conclusion of this proceeding to renegotiate the OBA Contract between Enbridge Gas and Billers.<sup>5</sup>
- iv. The OEB would review and determine the two “unsettled items” about customer control and end of contract charges.<sup>6</sup>

10. Notwithstanding this resolution, parties now seem to be undercutting and arguing against the OBA program. VECC argues that “the long-term goal should be to eliminate this form of indirect billing”.<sup>7</sup> Energy Probe argues that OBA charges should only be allowed on the Enbridge Gas bill after the Company has reviewed and approved each specific contract between a Biller and a customer.<sup>8</sup> HVAC asserts that Enbridge Gas has lost its chance to be defenders of the customers and “it is time for the Board to step in and protect the customers directly”.<sup>9</sup>

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<sup>2</sup> Supplementary Partial Settlement Proposal, October 23, 2019, Exhibit N1, Tab 2, Schedule 1 (October Settlement Agreement), at page 6. The October Settlement Agreement was approved by the Board in the Decision and Procedural Order No. 8, issued on November 11, 2019.

<sup>3</sup> October Settlement Agreement, pages 7-8.

<sup>4</sup> October Settlement Agreement, pages 8-9.

<sup>5</sup> October Settlement Agreement, page 5.

<sup>6</sup> October Settlement Agreement, pages 10-11.

<sup>7</sup> VECC Submission, para. 2.

<sup>8</sup> Energy Probe Submission, page 5.

<sup>9</sup> HVAC Submission, para. 2.2.6.

11. Enbridge Gas submits that the fact that the OBA program will continue is undisputed. This proceeding is aimed at determining the appropriate business practices to allow the OBA program to function even more effectively in the interest of all impacted parties.

(b) Attacks on Enbridge Gas's motivations

12. In its submission, HVAC goes to great lengths to accuse Enbridge Gas of siding with large billers, not being an “honest broker” and failing to protect customers. This negative characterization is at odds with the testimony of Mr. Grochmal (HVAC’s witness), who did not question Enbridge Gas’s motives or actions, even when directly asked about what he thinks of the two unsettled items.<sup>10</sup>
13. Enbridge Gas takes great exception to HVAC’s inaccurate characterization.
14. First, it is clear from the submissions received that the divide between “large billers” and customer groups is not as clear as HVAC suggests. Other than Enercare, which is acknowledged to be the largest Biller, there is no evidence as to who is a “large biller” and who is a “smaller biller”. In any event, there is no unanimity in the positions of the Billers – while Enercare and Summitt generally support the Enbridge Gas position, other Billers (including Reliance, who HVAC refers to as a “large biller”<sup>11</sup>) do not. Unlike HVAC, who worked with Vista and consumer groups in preparing its submissions,<sup>12</sup> Enbridge Gas did not work with others to determine its position – the Company’s position was developed with all parties in mind and balances the impact on all affected parties.
15. Second, Enbridge Gas has clearly been responsive to the concerns about customer control raised in this proceeding. Enbridge Gas has proposed a solution that allows a customer to remove any third party charge from the bill (for any reason), subject

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<sup>10</sup> Mr. Grochmal’s testimony is at 2Tr.55-83. At 2Tr.56, Mr. Shepherd invited Mr. Grochmal to expound on “what you think about the two issues”.

<sup>11</sup> HVAC Submission, para. 1.2.3.

<sup>12</sup> HVAC Submission, paras. 1.1.8 and 2.1.3; and Vista Submission, para. 19.

only to a 15 day waiting period during which time a resolution with the Biller might be reached. This is a big step forward from the current process, which requires a customer to provide a reason for a dispute, and which has longer associated timeframes before disputed items are removed from the Enbridge Gas bill.

16. Third, HVAC's allegations against Enbridge Gas are based in part on items beyond the scope of what remains at issue, and these items are not supported by the evidence. For example, HVAC asserts that it is responsible for the customer protections that exist in the OBA program<sup>13</sup>, and argues that Enbridge Gas does not look out for customer interests.<sup>14</sup> More broadly, HVAC's submissions take the even-handed description of the history of the OBA program that was set out in Mr. Grochmal's evidence, and adds colour and accusations against Enbridge Gas' conduct.<sup>15</sup> This is unfair and unfounded.<sup>16</sup>

17. Finally, HVAC's position is premised on the assertion that there are widespread problems with billings and Billers under the OBA program and Enbridge Gas has failed to protect OBA customers. The evidence does not support this contention. HVAC's own witness has no recent direct experience with the OBA program<sup>17</sup>, and his testimony and written evidence do not address this contention. HVAC's ally in this proceeding, Vista, asserts that "the Enbridge bill is an excellent platform for periodic

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<sup>13</sup> HVAC Submission, para. 2.2.2(b). There is no evidence that HVAC is responsible for the consumer protections that exist in the OBA program. In any event, given that the history of the OBA program is that it has evolved through regulatory settlements, there could be no evidence about what party is responsible for particular aspects of a settlement. That is ADR confidential.

<sup>14</sup> HVAC Submission, para. 2.2.2(e) to (i). One of HVAC's accusations is that Enbridge Gas has failed to properly police the OBA program. Enbridge Gas rejects that accusation. The Company witnesses spoke about investigations and audits of Billers that have been undertaken in the last year. The witnesses also explained how Biller misconduct has abated with the introduction of changes to the *Consumer Protection Act* to restrict door-to-door transactions. See 1Tr.100-103.

<sup>15</sup> Compare Written Evidence of Roger Grochmal, pages 2 to 3 with HVAC Submission, paras. 2.2.2(a) to (c).

<sup>16</sup> One of the allegations made by HVAC is that it was not invited to participate in renegotiation of the OBA Contract in 2019. This concern has been resolved by the commitment to reopen the negotiation of the OBA Contract. In any event, all HVAC members who are also Billers (including Atlas Service Company, Mr. Grochmal's company) were invited to participate in the OBA negotiations in 2019. It was not secret. See Enbridge Gas response to HVAC Interrogatory #6.

<sup>17</sup> 2Tr.81-82.

payments well liked by customers and good for competition”.<sup>18</sup> Enbridge Gas’s evidence is that the current 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>19</sup>

(c) Many of the submissions are based on beliefs, not evidence

18. HVAC goes to great lengths in its submission to argue that the only “evidence” on the record in this proceeding from Billers is from HVAC and Vista, and indicates that the Board should be vigilant in considering statements of position and conclusions from large billers “supporting the status quo” ... “to ensure that those statements and conclusions are not disguised attempts to lead untested ‘evidence’”.<sup>20</sup>
19. Enbridge Gas submits that HVAC’s comments are applicable to many parties in this proceeding. Some of the submissions provided include “beliefs” or “experience” of the writers that are not found anywhere in the evidence. Some parties include additional ‘facts’ in their submissions that are not on the record of the proceeding.
20. Examples where parties who have gone beyond the evidence on the record, and have included their own viewpoints and added ‘facts’, can be seen in the submissions from Energy Probe<sup>21</sup>, VECC<sup>22</sup>,

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<sup>18</sup> Vista Submission, para. 43.

<sup>19</sup> See Argument in Chief, para. 19, and references cited therein.

<sup>20</sup> HVAC Submission, section 2.3 (see especially para. 2.3.4).

<sup>21</sup> Energy Probe Submission, page 5 (“Energy Probe believes that it is likely that a far larger number of customers would have complained about their bills but were afraid to do it due to poor command of English or fear of dealing with officials.”); page 6 (“Energy Probe believes that many OBA customers are not aware of this change and will likely remain unaware of it for some time, particularly newcomers to Canada with limited command of the English language.”); and page 8 (“Energy Probe believes that there is large information asymmetry as Enercare has most of the information and the customer very little. The customer is entirely at the mercy of Enercare.”)

<sup>22</sup> VECC Submission, para. 12 (“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 (25%) of its customers have complained about it.”); para. 15 (“One can only speculate as to why Enbridge does not take a more serious and proactive stance if only to protect its reputation.”); and para. 28 (“... this is the experience of VECC with the consumers it tries to represent.”).



HVAC<sup>23</sup> and Vista<sup>24</sup>.

(d) New proposals that were not advanced during the oral hearing

21. In their submissions, several parties have included proposals for the resolution of the first unsettled item. These proposals were not included in their earlier position statements and were not proposed to the Enbridge Gas witnesses during the hearing.

22. Examples include: (i) VECC's proposal to require Enbridge Gas to set up a real-time direct transfer of OBA customer complaints to Billers (failing which the entire OBA program would be open to review)<sup>25</sup>; (ii) Energy Probe's proposal that Enbridge Gas should review all Biller contracts and only place charges on the customer bill after it has approved the contract between the customer and the OBA biller<sup>26</sup>; and (iii) HVAC's proposal for a new six-step dispute process that modifies Enbridge Gas's proposal.<sup>27</sup>

23. Because these proposals were not advanced before or at the oral hearing, there has not been any opportunity for Enbridge Gas to provide evidence about the merits of any of them. The Company trusts that no party will take issue with the responses set out herein which might otherwise be thought of as new evidence.

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<sup>23</sup> HVAC Submission, para. 1.2.5 which indicates that Enbridge logs more than 100 new disputes each business day but then alleges that "This is only the disputes that Enbridge sees. Many others never get logged into the Enbridge tracking system"; para. 3.5.5 ("HVAC does not, however, think that protecting the customers will kill the program. We believe that billers will adapt to the shift to a more customer-focused program, but will still prefer the convenience the OBA Program offers to the billers, and the customers will still prefer the convenience the OBA Program provides to them. The result should in fact be fewer disputes (because the unfair advantage to the billers will have been removed), happier customers, and a more efficient program."); para. 3.2.2, which sets out HVAC's interpretation of the timeline for a current OBA dispute, which "HVAC believes ... is roughly correct", notwithstanding the fact that the Enbridge Gas witnesses disagreed when aspects of this timeline were put to the witnesses for comment (1Tr.108-110); and para. 3.2.14, which argues that Enercare's customer service representative may have "simply manipulated the conversation so that it would appear that the customer was accepting what she was saying".

<sup>24</sup> Vista Submission, para. 30, which discusses 2013 hearings at Queen's Park about door-to-door sales.

<sup>25</sup> VECC Submission, paras. 23-25.

<sup>26</sup> Energy Probe Submission, page 5.

<sup>27</sup> HVAC Submission, para. 3.4.4.

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

24. The submissions received confirm that the focus of the first unsettled item is on what control the customer should have over removing third party charges that are already on the Enbridge Gas bill. Other than Energy Probe<sup>28</sup>, no parties take issue with this narrow scope (indeed, HVAC goes so far as to accuse Enbridge Gas of raising a “straw man” where the Company sought to confirm the scope of this unsettled item in Argument in Chief<sup>29</sup>).
25. The resolution of the first unsettled item turns on whether there is a systemic problem that needs to be solved by giving OBA customers immediate control over removing their billed charges from the Enbridge Gas bill. Parties advocating for that position mostly assert that there is an unacceptable level of complaints about OBA charges, and customers should not have to wait to have these removed from the Enbridge Gas bill.<sup>30</sup>
26. Before responding to the specific proposals from other parties, Enbridge Gas believes that three points of context are important to highlight. Together, these support Enbridge Gas’s position that the OBA program is functioning well.
- i. As noted above, the level of customer disputes is not unduly high – while 25,000 to 30,000 disputes per year may appear significant, this has to be considered in the context of the 1.4 million (approx.) customers that are billed

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<sup>28</sup> Energy Probe Submission, page 5. Enbridge Gas specifically disagrees with Energy Probe’s allegation that the OBA program is a form of negative option billing and is subject to federal regulations. Customers enrolled in the OBA program have agreed to be billed on the Enbridge Gas bill. Even if this was a federally regulated activity (which it is not), it is not “negative option”. In any event, Enbridge Gas submits that it is not practical to review and approve every Biller contract. Billers are required to warrant that they have an enforceable agreement with each OBA customer (See Billing and Collection Services Agreement (OBA Contract), at section 7.1 – see Exhibit B, Tab 1, Schedule 1 Attachment 2, page 28.) That should be sufficient.

<sup>29</sup> HVAC Submission, para. 3.1.4.

<sup>30</sup> See, for example, CME Submission at page 2; VECC Submission, paras. 10-15; and HVAC Submission at paras. 2.2.5 to 2.2.6.

through the OBA program each month and over 16 million bills annually.<sup>31</sup> This is illustrated below<sup>32</sup>:

	2014	2015	2016	2017	2018	2019(Jan-Sep)
Total Disputes	27,402	30,819	26,601	25,272	26,373	19,129
Total Number of Bills	17,235,033	17,218,806	17,071,374	16,945,352	16,834,525	12,518,427
Dispute as a Percentage of Bills	0.16%	0.18%	0.16%	0.15%	0.16%	0.15%

- ii. Most OBA disputes are resolved in a manner which satisfies both the customer and the Biller. Only a small number of third party charges are removed because no resolution is reached before the time limit has run out. The applicable figures are seen below.<sup>33</sup>

	2014	2015	2016	2017	2018	2019 (Jan-Sep)
Resolved By Biller or Customer	25,458	26,509	24,606	22,407	21,520	18,039
No Resolution – Charge Removed From Bill	2,214	4,635	2,205	3,044	5,159	1,232
Total	27,672	31,144	26,811	25,451	26,679	19,271

- iii. Contrary to the allegations in some of the intervenor arguments<sup>34</sup>, the ratio and absolute number of disputes that may have been misrepresented by Billers as resolved is low. These are shown below as disputes that have been “reinstated” by a customer. The anecdotal evidence from Vista about circumstances where dispute resolutions have been misrepresented does not appear to be representative of general practice (otherwise one would have expected much more evidence on the topic).<sup>35</sup> On average, less than 10% of disputes fall into the “dispute reinstated” category. While it is true that the number of reinstated disputes has been rising<sup>36</sup>, the increases have been modest and the trend appears to have reversed in 2019. Please see below.<sup>37</sup>

<sup>31</sup>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>32</sup> Enbridge Gas response to Summitt interrogatory #1. Please note that the dispute totals in this table are slightly lower than in the following tables taken from the response to Staff interrogatory #9. That is because the table from the Summitt interrogatory response inadvertently excludes the small number of disputes from each year where there was no associated Bill Type Code.

<sup>33</sup> Enbridge Gas response to Staff interrogatory #9(a).

<sup>34</sup> See, for example, BOMA Submission, page 4; and Vista Submission, paras. 9 to 15.

<sup>35</sup> The submissions from the Billers in this case (Vista, HVAC, Enercare, Summitt) reveal differences of opinion about what is actually happening on a day to day basis.

<sup>36</sup> See Staff Submission, pages 2-3.

<sup>37</sup> Enbridge Gas response to Staff interrogatory #9(c).

	2014	2015	2016	2017	2018	2019 (Jan-Sep)
Resolved By Biller or Customer	25,458	26,509	24,606	22,407	21,520	18,039
Dispute Reinstated Once	1,936	1,774	2,174	2,547	3,013	1,679
Dispute Reinstated Twice	132	165	105	182	317	173

27. 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. However, Enbridge Gas does recognize that customers should have more control than is currently the case and should not have to deal with their Biller more than once after raising a dispute. Enbridge Gas's proposal (described at paragraph 21 of the Argument in Chief) takes these facts into account and presents a balanced solution that is an enhancement on the current dispute process. Enercare<sup>38</sup> and Summitt<sup>39</sup> generally agree with Enbridge Gas's proposal, and Staff agrees with Enbridge Gas's proposal in relation to disputed charges.<sup>40</sup> Staff submits that OBA customers who simply want their charges removed from the Enbridge Gas bill should be able to have that effected "within the 15 day dispute period" (more quickly than Enbridge Gas proposes).<sup>41</sup>

28. In large part, parties do not directly address specific concerns with Enbridge Gas's proposal<sup>42</sup>, preferring instead to simply present their own solution.

29. HVAC sets out four specific concerns with Enbridge Gas's proposal before presenting an alternative.<sup>43</sup> Enbridge Gas submits that HVAC's concerns are overstated. While it is true Enbridge Gas's proposal permits a Biller to inform Enbridge Gas of a

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<sup>38</sup> Enercare Submission, para. 2.

<sup>39</sup> Summitt Submission, para. 10.

<sup>40</sup> See Staff Submission, page 2. Staff indicate that Enbridge Gas should continue to track disputes as "CPA" and "non-CPA" – it is not clear to Enbridge Gas what purpose would be served by this tracking.

<sup>41</sup> Staff Submission, pages 3-4.

<sup>42</sup> Energy Probe submits that the OEB "should not have much confidence" in Enbridge Gas's proposal because the Company did not consult with their service provider (Energy Probe Submission, page 3). The Company would not have made its proposal unless it was confident that its existing business practices could be adapted as described. As the witnesses indicated in response to related questions from Energy Probe, they have the personal experience and accountability for the operation of the OBA program (1Tr.48-51).

<sup>43</sup> HVAC Submission, para. 3.3.3.

resolution of a dispute (within 15 days, or after that time with proof of customer agreement), there is no reason to expect that this option will be abused. The number of “reinstated disputes” has been low historically, and Enbridge Gas is proposing to automatically block future transactions when a dispute is reinstated by a customer for the first time (unless the Biller subsequently provides proof of customer agreement).

30. There is not a lot of difference between Enbridge Gas’s proposal and that of parties who seek to eliminate the dispute process entirely. Under Enbridge Gas’s proposal, a customer who is adamant that s/he does not want a third party charge on the Enbridge Gas bill will see that charge removed in 15 days. There will not be any resolution with the Biller in this scenario, because the customer does not want a resolution. In the interim, the customer does not need to pay the third party charge (and there is no applicable LPP). There is only one contact with Enbridge Gas, and the disputed charge will not be seen on the customer’s next Enbridge Gas bill (unless the dispute is raised within 15 days of the customer’s next bill issue date).<sup>44</sup> Contrary to the allegation from HVAC, there is no need for customer “to make two complaints over a multi-week period”.<sup>45</sup> Under this scenario, there is no reason for the customer to “reinitiate” the dispute.<sup>46</sup> The first call from the customer is all that is required to trigger the process that results in the removal of the charge after 15 days.

31. The two main differences proposed by parties who seek to eliminate the dispute process entirely are the proposals that disputed charges (including where a customer no longer wants its charges on the Enbridge Gas bill) should be removed immediately<sup>47</sup>, and that the charges can only be reinstated on the bill where *written* authorization from the customer is provided to Enbridge Gas<sup>48</sup>.

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<sup>44</sup> Enbridge Gas does not agree with HVAC’s assertion (see HVAC Submission, para. 3.3.2) that the disputed charges will continue to appear on three Enbridge Gas bills under the Company’s proposal –see 1Tr.111.

<sup>45</sup> HVAC Submission, para. 2.2.2(j).

<sup>46</sup> In this regard, Enbridge Gas disagrees with the observation at page 3 of the Staff Submission.

<sup>47</sup> See BOMA Submission, page 4; Reliance Submission, pages 1 and 3; and Vista Submission, para. 2(c).

<sup>48</sup> See Staff Submission, page 4; BOMA Submission, pages 4 and 8; Vista Submission, paras. 18-19; and HVAC Submission, para. 3.4.3(vi).

32. Enbridge Gas witnesses provided testimony explaining why a 15 day period during which disputes could be resolved makes sense so that misunderstandings can be resolved and billing can continue if agreed.<sup>49</sup>
33. Another advantage of the Company's proposal is that it can be implemented quickly and inexpensively, since it makes use of existing business processes that already include a 15 day dispute period for certain types of disputes. This existing business process will allow disputed charges to automatically be removed from the customer bill if no resolution is reported in 15 days. As explained in testimony, a process that directs immediate removal of disputed charges will require Enbridge Gas to manually make changes for each impacted customer to immediately stop billing, take charges off the bill and credit the customer for amounts paid.<sup>50</sup>
34. Staff invited Enbridge Gas to indicate in this Reply Argument the associated time and costs to automate a process that would immediately remove OBA charges from the Enbridge Gas bill.<sup>51</sup> Taking into account the current system freeze and other ongoing integration activities<sup>52</sup>, Enbridge Gas estimates that if the change can be done notwithstanding the current system freeze (which is still being investigated) then this could be completed by Q1 of 2021 and it would cost \$300,000 to implement the proposed changes. Taking into account the relatively small number of annual "disputes" (around 25,000-30,000, representing 0.15% to 0.18% of total bills) and the relatively small difference in proposed dispute resolution periods (15 days), Enbridge Gas questions the prudence of making these system changes.
35. Vista invited Enbridge Gas to comment upon whether a 15 day period before a charge is removed would serve any function in the event that the Board orders that a dispute can only be resolved upon the customer or Biller (with agency authorization) informing

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<sup>49</sup> 1Tr.13 and 75.

<sup>50</sup> 1Tr.15.

<sup>51</sup> Staff Submission, page 4.

<sup>52</sup> See Enbridge Gas testimony at 1Tr.15 and 21.

the Company of the resolution.<sup>53</sup> In response, Enbridge Gas submits that maintaining a 15 day “waiting period” would be useful, because it would allow the Company to continue using existing systems and business processes.

36. Enbridge Gas does not believe that there is a need to require *written* customer authorization of a resolved dispute and reinstatement of charges, so long as there is other appropriate proof of the customer’s agreement (such as a recorded phone call). While a lot is made in intervenor arguments about misleading phone interactions<sup>54</sup>, this appears to be a rare phenomenon.

37. Two parties (HVAC and VECC) propose alternative multi-step dispute processes that were not discussed at the oral hearing.

38. VECC’s six-step proposal includes a new process that includes a “real time” transfer of customer contacts/complaints received by Enbridge Gas directly to Billers, and then back to Enbridge Gas if a resolution is reached.<sup>55</sup>

39. Enbridge Gas has no information about whether Billers could or would implement their part of VECC’s proposed process. In any event, it is not something that Enbridge Gas can implement quickly or cost-effectively.

40. The nub of HVAC’s six-step proposal is that when an OBA customer raises a dispute with Enbridge Gas, then the Company will remove the disputed charge in 15 days unless it hears back from the customer that the charge is authorized. In the meantime, Enbridge Gas is expected to inform the Biller of the dispute and provide the one page information sheet to the customer.<sup>56</sup>

41. As set out in paragraph 30 of its Argument in Chief, Enbridge Gas is concerned that having customers responsible for communicating dispute resolutions will add cost and

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<sup>53</sup> Vista Submission, para. 6. Note that Vista’s question mirrors the process proposed by HVAC (described below).

<sup>54</sup> See, for example, Vista Submission, para. 19.

<sup>55</sup> VECC Submission, para. 23.

<sup>56</sup> HVAC Submission, para. 3.4.3.

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 resolved disputes in 2018) and there is a risk of incomplete information being provided which will result in further interactions.<sup>57</sup>

42. Enbridge Gas expects that it can implement its proposed updated dispute process promptly once the updated OBA Contract is completed. The updated dispute process can be implemented by adapting the current business processes without the need for significant system changes.<sup>58</sup>

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

43. In its Argument in Chief<sup>59</sup>, Enbridge Gas set out the reasons why no prohibition on end of contract charges under the OBA program is necessary. Parties will be protected by the fact that they can ask for any third party charge to be removed from the Enbridge Gas bill. Several parties agree with this position.<sup>60</sup>

44. Many of those who advocate for prohibiting end of contract charges are implicitly (or explicitly) arguing that these charges are not legitimate.<sup>61</sup> That is not an issue for the Board to determine.<sup>62</sup> Notwithstanding that fact, the arguments from many parties

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<sup>57</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.

<sup>58</sup> This is discussed in Enbridge Gas testimony in response to questions from HVAC Coalition – see 1Tr.106-107.

<sup>59</sup> See paras. 33-36.

<sup>60</sup> See, for example, Staff Submission, page 5; Reliance Submission, pages 1 and 3; Summitt Submission, para. 10; and Enercare Submission, para. 30.

<sup>61</sup> See, for example, Energy Probe Submission, page 7; BOMA Submission, page 9; VECC Submission, para. 27; and Vista Submission, paras. 30-32.

<sup>62</sup> Vista agrees that the legality of contracts or termination fees is not at issue in this proceeding – Vista Submission, para. 33. The evidence in this proceeding is that even Billers opposed to including end of contract charges on the Enbridge Gas bill themselves impose buyout charges (see Vista response to Enbridge Gas Interrogatory #4 and HVAC response to Enbridge Gas Interrogatory #4).



about the “coercive nature” of putting third party charges on the utility bill presumes that the end of contract charges are improper.<sup>63</sup> If that was not the case, then parties would have no concerns about the charges being included on the Enbridge Gas bill.

45. The only charges that a Biller can include on a customer bill under the OBA program are those that the Biller has “clearly and unambiguously established” in the associated Customer Services Agreement.<sup>64</sup> It is important to highlight that 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>65</sup>

46. As explained in Argument in Chief, Enbridge Gas believes that customers should have choice about the way that they are billed for end of contract OBA charges, rather than being categorically disentitled from paying such charges through the Enbridge Gas bill.<sup>66</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 period. The fact of this choice will be made clear to OBA customers through the one-page information sheet to be provided in the near future.

#### **E. REQUESTED RELIEF**

47. Enbridge Gas respectfully requests the following relief in relation to the two unsettled items in this proceeding.

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<sup>63</sup> See, for example, VECC Submission, para. 30; Vista Submission, para. 38 and HVAC Submission, para. 4.2.4.

<sup>64</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.

<sup>65</sup> 1Tr.16. See also the Enbridge Gas testimony in response to questions from Vista, at 1Tr.85.

<sup>66</sup> This is discussed in Enbridge Gas testimony in response to questions from Vista, at 1Tr.86-87.

- 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?*

Enbridge Gas requests that the Board confirm or approve that Enbridge Gas's proposed updated dispute process, as described at paragraph 21 of the Argument in Chief, affords OBA customers with appropriate control over the addition, removal and reinstatement of third party charges on their Enbridge Gas bill.

- 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?*

Enbridge Gas requests that the Board confirm or approve that there is no requirement for particular restrictions against billing OBA customers for penalties, exit or termination fees, or similar charges through the Enbridge Gas bill.

All of which is respectfully submitted this 6<sup>th</sup> day of March 2020.



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