



Enbridge Gas Inc.

2020 Federal Carbon Pricing Program Application

**DECISION ON UPDATED INTERVENTION REQUESTS AND
SCOPE OF PROCEEDING**

March 19, 2020

Enbridge Gas Inc. (Enbridge Gas) filed an application on November 18, 2019, under section 36(1) of the *Ontario Energy Board Act, 1998*, seeking Ontario Energy Board (OEB) approval to increase rates to recover costs associated with meeting its obligations under the federal *Greenhouse Gas Pollution Pricing Act* (GGPPA), and to dispose of 2019 balances for all deferral and variance accounts related to the Federal Carbon Pricing Program (FCPP).

On January 3, 2020, the OEB issued a Notice of Hearing for this proceeding. Procedural Order (PO) No. 1, addressing requests for intervenor status and cost award eligibility, was issued on February 6, 2020. In PO No. 1, the OEB denied requests for intervenor status received from a number of parties, on various grounds.

Following the issuance of PO No. 1, several parties that were initially denied intervenor status filed updated intervention requests, providing additional details on their interest in the proceeding.

In addition, on February 11, 2020, the OEB issued an Interim Decision and Order (Interim Decision), addressing Enbridge Gas' request for interim rates, and providing direction on the scope and next steps of this proceeding.

In this Decision, the OEB addresses the updated intervention requests and also provides additional direction on the scope of the proceeding and cost award eligibility. An updated list of parties in this proceeding is attached as Schedule A to this Decision.

UPDATED INTERVENTION REQUESTS

Procedural Order No. 1 Decision on Intervention Requests

In Procedural Order No. 1, the OEB denied the intervention requests of a number of parties.

The intervention requests of Building Owners and Managers Association, Greater Toronto (BOMA), Canadian Manufacturers & Exporters (CME), Energy Probe, the City of Kitchener, TransCanada Pipelines Limited and Vulnerable Energy Consumers Coalition (VECC) were denied on the grounds that these parties had not adequately explained their interest in the proceeding. The OEB also indicated that if these parties intended to provide further information to support intervenor status, they should be mindful that the OEB expected the scope of the current proceeding to be quite limited.

The intervention requests of Environmental Defence and Industrial Gas Users Association (IGUA) were also denied, on the grounds that the interests of these parties were related to abatement (reduction of greenhouse gas (GHG) emissions), which the OEB did not anticipate would be within scope of the current proceeding, based on the OEB's scoping of the proceeding related to Enbridge Gas' 2019 Federal Carbon Pricing Program application.¹

Procedural Order No. 1 noted that, should the OEB Panel hearing this application later determine that abatement was within scope, Environmental Defence and IGUA would be permitted to reapply for intervenor status.

Submissions of the Parties

Four intervenors that were denied intervention status in Procedural Order No. 1 subsequently submitted updated requests for intervention status: BOMA, Energy Probe, Environmental Defence, and VECC.

BOMA stated that its interest in the proceeding was related to the calculation and recovery of Enbridge Gas' carbon pricing-related costs, including Enbridge Gas' facilities-related obligations and Output-Based Pricing System (OBPS) costs, as well as the proposed disposition and allocation of the 2019 costs in the six deferral and variance accounts.

Energy Probe stated that it would focus on whether Enbridge Gas' proposed rate changes agree with the methodology previously approved by the OEB, and whether the 2019 balances recorded in Enbridge Gas' FCPP-related deferral and variance accounts were appropriate.

¹ EB-2018-0205, Procedural Order No. 2, April 2, 2019, pp. 1-2.

Environmental Defence stated that it wanted to explore: the process and timing regarding FCPP-related applications and rate changes; whether Enbridge Gas' approach to and treatment of fugitive emissions² was appropriate; whether increased energy efficiency measures driven by carbon pricing would be addressed in the demand-side management (DSM) framework process; and, the status of Enbridge Gas' work regarding new business activities aimed at carbon abatement.

VECC noted the bill impacts of FCPP-related rate changes on residential customers, particularly low-income customers, and stated that its interest in this proceeding was in how Enbridge Gas planned to communicate with these customers, to provide information on both the rate increases and on opportunities to reduce cost impacts through tax rebates and Enbridge Gas' energy efficiency tips and programs.

Response Letter from Applicant and Reply Letter from Environmental Defence

On February 13, 2020, Enbridge Gas filed a letter responding to these updated intervention requests. Enbridge Gas stated that it had no objections to the updated intervention requests from BOMA, Energy Probe, and VECC. However, Enbridge Gas objected to Environmental Defence's request for re-consideration of intervenor status. Enbridge Gas stated that "the issues presented by ED (Environmental Defence) appear to exceed the scope of the proceeding as defined by the OEB."

Specifically, Enbridge Gas submitted that:

- the issues of process and timing of future applications for FCPP-related rates are more appropriately managed by the applicant
- the Federal Carbon Charge does not apply to fugitive emissions, and unaccounted for gas volumes, which include fugitive emissions, are subject to review by the OEB through other proceedings such as annual deferral and variance account disposition proceedings
- if the intention of Environmental Defence is to propose that Enbridge Gas be directed to implement incremental abatement measures through this proceeding as a means to avoid FCPP-related costs associated with fugitive emissions, this appears to restate their original request for intervenor status which the OEB has already concluded to be out of scope

On February 14, 2020, Environmental Defence filed a response letter, stating that Enbridge Gas concerns were unfounded, and that its participation would be limited and fully in scope. Environmental Defence stated that it would not be proposing that

² "Fugitive emissions" is not a defined term in the GGPPA, but usually refers to leaks and other unintended losses of gases (from the natural gas transmission or distribution system in this context).

Enbridge implement incremental abatement measures through this proceeding, but would like to explore how Enbridge addressed unaccounted for gas volumes (including fugitive emissions) in its application, and seek information as to where and when the issues of incremental energy efficiency or new business activities to reduce GHGs will be addressed by the OEB. Finally, Environmental Defence submitted that the OEB had the jurisdiction to hear submissions on the process and timing of FCPP-related applications, and make directions on these matters.

Findings

The OEB has reviewed the updated intervention requests submitted by BOMA, Environmental Defence, Energy Probe, and VECC. The OEB approves the intervention requests of BOMA and Energy Probe insofar as they relate to the balances recorded in and the disposition of the FCPP-related deferral and variance accounts.

The OEB denies the intervention request by VECC, whose interest in this proceeding relates to how Enbridge Gas plans to communicate with residential customers about FCPP-related rate increases and opportunities to reduce the cost impacts. The OEB remains of the view, consistent with the decision on Enbridge Gas' 2019 FCPP application³, that it is not necessary for it to approve all of the details of Enbridge Gas' plans to engage and communicate with its customers concerning the FCPP. VECC indicated in its updated intervention request that it has met with staff of Enbridge Gas to discuss communications issues. The OEB encourages Enbridge Gas to continue engaging with stakeholders such as VECC on its communication plans. However, the OEB will not be seeking submissions on this matter in this proceeding.

For the reasons that follow, the OEB finds that the issues raised by Environmental Defence (process and timing, fugitive emissions, energy efficiency, and new business activities, described in more detail earlier in this Decision) are not in scope of this proceeding and therefore Environmental Defence's intervention request is denied.

The process for and timing of future applications is an administrative matter that the OEB typically addresses outside of the adjudicative process. The OEB will not be seeking submissions on process issues for future applications in this proceeding.

The OEB further notes that Enbridge Gas is not seeking recovery of any amounts relating to fugitive emissions and as a result, this issue is out of scope. Any issues related to fugitive emissions should be addressed within rebasing rate proceedings, at the same time that the OEB considers the treatment of unaccounted for gas.

³ EB-2018-0205, Decision and Order, July 4, 2019, pp. 11-12

Policies with respect to energy efficiency are being addressed through the OEB's comprehensive consultation on the post-2020 DSM policy framework (EB-2019-0003), as announced in a letter dated September 16, 2019. Whether Enbridge Gas should engage in new business activities to reduce GHG emissions is not in scope of a proceeding to address Enbridge Gas' recovery of its costs to comply with its obligations under the GGPPA.

In the Interim Decision, the OEB confirmed that the review of Enbridge Gas' application will be limited to considering recovery of its costs related to the FCPP. This comprises: 1) updating the Federal Carbon Charge and Facility Carbon Charge on customer bills, to match the levels set in the GGPPA; and 2) the review and disposition of the 2019 balances in Enbridge Gas' FCPP-related deferral and variance accounts. The OEB also indicated that the adjustment to Enbridge Gas' Federal Carbon Charge on customer bills to match the level set in the GGPPA is largely mechanistic. Intervenor activities in relation to this issue will therefore not be eligible for cost awards.

The OEB will establish further procedural steps once Enbridge Gas files updated balances related to the second issue.

INTERVENTIONS OF THE COO AND ANWAATIN

In Procedural Order No. 1, the intervention requests of the Chiefs of Ontario (COO) and Anwaatin Inc. (Anwaatin) were approved, although it also noted that the OEB Panel hearing this application would make a determination on the extent to which the issues that COO and Anwaatin have raised will be considered as part of the current proceeding.

The COO's intervention request noted its concern that permission from Enbridge Gas to recover the GGPPA carbon levy from customers is subject to sections 87 or 89 of the federal *Indian Act*, which COO notes recognize First Nation immunity from taxes or charges on any property situated on a reserve.⁴ COO also stated that "Canada ("the Crown") as the fiduciary, for First Nations people is obligated to insure the treaty and s. 35 rights of First Nations people are not ignored".⁵ In its intervention request, Anwaatin

⁴ Section 87(1) of the *Indian Act* states: "Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83 and section 5 of the First Nations Fiscal Management Act, the following property is exempt from taxation: (a) the interest of an Indian or a band in reserve lands or surrendered lands; and (b) the personal property of an Indian or a band situated on a reserve". Section 89(1) of the *Indian Act* states: "Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band."

⁵ Section 35 (1) of the federal *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada.

indicated that it may also make submissions on the constitutional and section 35 dimensions of Enbridge Gas' application and related First Nations rights.

Findings

The issues raised by the COO and Anwaatin were not raised or considered in the proceeding on Enbridge Gas' 2019 FCPP application. The Ontario Court of Appeal has, on a referral, rendered its opinion that the GGPPA is constitutional and that the charges imposed by the GGPPA are themselves constitutional, as they are regulatory in nature and not taxes.⁶ The OEB is proceeding on that basis.

The OEB notes that the Supreme Court of Canada (SCC) will be hearing an appeal from the Ontario Court of Appeal's decision (together with another appeal on the constitutionality of the GGPPA from Saskatchewan) later this year. The OEB has determined that it will defer consideration of the *Indian Act* and section 35 concerns raised by the COO and Anwaatin until such time as the SCC has rendered its decision on the two appeals. Should the SCC uphold the constitutionality of the GGPPA and of the charges thereunder such that the concerns raised by the COO and Anwaatin remain, these matters can be considered at that time and be informed by the SCC's views. The OEB notes, in this regard, that, among other matters, the issue of whether the charges imposed by the GGPPA are taxes has been raised in the SCC proceedings.

The scope of this proceeding is largely mechanistic and does not include the issues raised by Anwaatin associated with energy poverty in indigenous communities and the differential impact of natural gas rates on remote and near remote communities.

DATED at Toronto, **March 19, 2020**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary

⁶ Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 544, para. 5.

Schedule A

Enbridge Gas Inc.

EB-2019-0247

Applicant and List of Intervenors

Dated: March 19, 2020

**Enbridge Gas Inc.
Federal Carbon Pricing Program
EB-2019-0247**

APPLICANT & LIST OF INTERVENORS

March 19, 2020

APPLICANT

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**Enbridge Gas Inc.
Federal Carbon Pricing Program
EB-2019-0247**

APPLICANT & LIST OF INTERVENORS

March 19, 2020

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APPLICANT & LIST OF INTERVENORS

March 19, 2020

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March 19, 2020

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EB-2019-0247**

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