

# **DECISION AND ORDER**

**EB-2018-0319**

## **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**

**BEFORE: Lynne Anderson**  
Presiding Member

**Cathy Spoel**  
Member

**Robert Dodds**  
Member and Vice Chair

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**April 16, 2020**



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# 1 INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) filed an application with the Ontario Energy Board (OEB) on December 4, 2018 under section 36 of the *Ontario Energy Board Act, 1998*, for approval to continue the existing financial terms associated with offering Open Bill Access (OBA) services for 2019 and 2020.

Enbridge Gas is an Ontario corporation in the business of selling, distributing, transmitting, and storing natural gas within Ontario. Enbridge Gas also offers a third-party service known as the OBA program. The OBA program allows third parties to charge their customers directly by adding their charges to the Enbridge Gas bill.

In 2009, the OEB approved the 2009 settlement proposal between Enbridge Gas and third party billers that covered all aspects of the OBA program.<sup>1</sup> The 2009 settlement proposal outlined the rates that would be charged to third party billers and included a \$5.389 million sharing of net revenues with ratepayers, which was built into Enbridge Gas's revenue requirement.

In 2013 and 2014, the OEB approved subsequent settlement proposals that continued the OBA program.<sup>2</sup> The 2014 settlement proposal continued to set out the pricing and costing of the OBA program for Enbridge Gas's 2014 to 2018 Custom Incentive Rate-setting term and the sharing of annual net revenues of \$5.389 million. The 2014 settlement proposal also allowed Enbridge Gas to continue offering the OBA program indefinitely.

In this application, Enbridge Gas requested a two-year extension of the existing financial terms and the sharing of net revenues as set out in the 2014 settlement proposal.

On October 23, 2019, Enbridge Gas and intervenors filed a supplemental partial settlement proposal. The supplement partial settlement proposal settled on the following items:

- The OBA program would continue to operate under the existing financial terms until the earlier of either December 31, 2023 or an OEB decision on an Enbridge Gas application to expand the OBA program into the Union Gas service area
- The bill insert program has been discontinued
- Enbridge Gas would provide customers with a bill insert that describes the OBA program, with emphasis on customer rights and obligations

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<sup>1</sup> EB-2009-0043

<sup>2</sup> EB-2011-0354, EB-2013-0099

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- Enbridge Gas would host an annual stakeholder meeting and provide ongoing anonymized data about the operation of the OBA program
  - Enbridge Gas would coordinate dialogue with small billers to make the OBA program more attractive to small billers
  - Enbridge Gas would file, as part of its next OBA application, either a request to expand the OBA program to the Union Gas service area or an explanation as to why the request is not being made
  - Enbridge Gas would reopen the review of the OBA agreement with billers

The parties to the supplemental partial settlement proposal were unable to settle on the following items, which were put forth to the OEB for determination.

- What control should OBA customers have over the addition, removal and reinstatement of third party charges on their Enbridge Gas bill through the OBA program?
- What restrictions, if any, should be placed on billing OBA customers for penalties, exit or termination fees, or similar charges through the Enbridge Gas bill?

The OEB accepted the supplement partial settlement proposal.

The OEB has reviewed the positions of Enbridge Gas and the parties on the two unsettled issues. The OEB accepts Enbridge Gas's proposed revisions to the OBA process, which is detailed in this decision. The OEB will also not be imposing new restrictions on billing penalties, exit, or termination fees or similar charges.

## 2 THE PROCESS

Enbridge Gas filed an application with the OEB on December 4, 2018. The OEB issued a Notice of Hearing on December 20, 2018 inviting parties to apply for intervenor status. This Notice of Hearing contemplated the financial terms of the OBA program. Building Owners and Managers Association Toronto (BOMA), Canadian Manufacturers and Exporters (CME), HVAC Coalition (HVAC), Industrial Gas Users Association (IGUA), and Enercare Inc. (Enercare) applied for and were granted intervenor status. BOMA, CME, HVAC, and IGUA requested and were granted eligibility for an award of costs. OEB staff also participated in this proceeding.

The OEB issued Procedural Orders No. 1 and No. 2 on January 15, 2019 and February 13, 2019, respectively. These orders established, among other things, the timetable for a written interrogatory discovery process and a settlement conference.

A settlement conference was held on March 6, 2019. On March 22, 2019, Enbridge Gas (on behalf of the parties) filed a partial settlement proposal that proposed to expand the scope of this application including the question of whether the OBA program should continue at all, and if so, on what terms. The OEB accepted the partial settlement proposal on April 4, 2019. As part of the decision on the partial settlement proposal, the OEB established procedural steps to issue a supplementary Notice of Hearing, written interrogatories, and a settlement conference.<sup>3</sup>

The supplementary Notice of Hearing contemplated the continuation of the OBA program and the financial terms of the OBA program. After the supplementary Notice of Hearing, Energy Probe Research Foundation (Energy Probe), Vulnerable Energy Consumers Coalition (VECC), Reliance Comfort Limited Partnership (Reliance), Simply Green Home Services Inc. and Crown Crest Capital, Summitt Home Services LP (Summitt), Home Trust Company, and Vista Credit Corp (Vista) applied for and were granted intervenor status. Energy Probe and VECC requested and were granted eligibility for an award of costs. These intervenors were not part of the partial settlement proposal.

A second settlement conference was held on June 12, 2019, July 26, 2019, and September 4, 2019. On October 23, 2019, Enbridge Gas filed a supplementary partial settlement proposal which included a description of the two items that remained unsettled. The OEB accepted the supplementary partial settlement proposal on November 11, 2019 and allowed for additional written evidence to be filed for the two

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<sup>3</sup> Referenced in the partial settlement proposal as a facilitated meeting.

unsettled items along with written interrogatories, an oral hearing, and final written submissions.

An oral hearing was held on January 30 and 31, 2020. Enbridge Gas filed its argument-in-chief on February 7, 2020. Intervenors and OEB staff filed their submissions on February 21, 2020. Enbridge Gas filed its reply argument on March 6, 2020.

### 3 DECISION

In the supplementary partial settlement proposal accepted by the OEB on November 11, 2019, the following unsettled issues were put forth to the OEB for determination:

- What control should OBA customers have over the addition, removal and reinstatement of third party charges on their Enbridge Gas bill through the OBA program? (Customer Control)
- What restrictions, if any, should be placed on billing OBA customers for penalties, exit or termination fees, or similar charges through the Enbridge Gas bill? (Penalties, Termination, and Exit Fees)

#### 3.1 Customer Control

Enbridge Gas was of the view that the current OBA program and the dispute process are functioning well. The dispute rate has been between 0.15% to 0.18% for all OBA charges and, out of those, 81% to 94% were resolved. However, to address intervenor concerns, Enbridge Gas submitted that only modest changes were needed to improve its current OBA process. Enbridge Gas stated that its proposal was intended to balance the interests of stakeholders by giving customers more control over third party charges while allowing misunderstandings or minor disputes to be resolved without a customer leaving the OBA program.

Enbridge Gas stated that their proposal will enhance the current process in the following ways:

- The proposal provides customers with more control, as they will not be required to explain the nature of the dispute but instead can simply inform Enbridge Gas that they no longer want the OBA charge on their bill
- The proposal limits the number of times a disputed OBA charge will appear on an Enbridge Gas bill through the reduced timeline for the dispute process
- The proposal reduces the number of times a customer has to contact Enbridge Gas to remove a third party charge
- The proposal is also quick and cost-effective to implement

The table below shows Enbridge Gas's proposed dispute process as compared to the existing dispute process.

	Existing Dispute Process	Proposed Dispute Process
Dispute resolution time	For CPA <sup>4</sup> disputes, the resolution time is 15 days.  For non-CPA disputes, the resolution time is 45 days.	For CPA or non-CPA disputes, the resolution time is 15 days.
Dispute resolution	Biller informs Enbridge Gas with appropriate proof	Biller informs Enbridge Gas with appropriate proof
Dispute reinstatement	The dispute resolution time starts with the initial dispute and continues during reinstated disputes.  A customer has to reinstate a dispute three times before the disputed charge is removed and credited back to the customer. The third party biller is blocked from charging that customer the disputed charge type in the future.	The first time a customer reinstates a dispute, the disputed charge is removed and credited back to the customer. The third party biller is blocked from charging that customer the disputed charge type in the future.
Customer justification	Customer needs to provide a reason for dispute.	Customer does not need to provide a reason for dispute.

Reliance, CME, BOMA, Energy Probe, Vista, HVAC, VECC, and OEB staff all submitted that a customer should have more control over the charges that appear on their bill and be able to direct Enbridge Gas to remove a charge from their bill without a further process. Most of the same parties also stated that the reinstatement of a charge should only be done at a customer's direction and with written authorization.

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<sup>4</sup> Ontario Consumer Protection Act, 2002 (CPA)



BOMA, Energy Probe, Vista, HVAC, and VECC submitted that the Enbridge Gas bill should be between Enbridge Gas and its customers and that customers should have primacy in their billing arrangements; however, with the current dispute process, Enbridge Gas only takes the advice of the OBA biller and not its own customers. They noted that the current dispute process does not require the OBA biller to provide evidence in order to have an OBA charge reinstated. BOMA and Energy Probe also questioned Enbridge Gas's claim that certain changes to the OBA program would be administratively burdensome as Enbridge Gas did not address the costs of removing a charge nor did they consult their service provider.

BOMA proposed that the OBA dispute process be changed to look more like that used by the Canadian Payments Association, where a customer can direct a Canadian Payments Association member to cease making pre-authorized payment arrangements. Energy Probe stated that the OBA services provided by Enbridge Gas are identical to the services provided by financial institutions and therefore should be in compliance with the Negative Option Billing regulations.<sup>5</sup> Energy Probe proposed that Enbridge Gas should only place OBA charges on a customer's bill after it has approved the contract between the customer and OBA biller.

Vista proposed that the OEB direct the parameters for Enbridge Gas to conduct periodic audits to ensure that OBA billers have obtained authorizations from customers to reinstate a disputed OBA charge. The OEB should also direct the parameters of consequences for OBA billers that reinstate OBA charges without such authorizations. Vista also suggested that additional language be added to bill messages inviting customers to contact Enbridge Gas should they disagree that a disputed OBA charge has been resolved.

HVAC proposed that when a customer contacts Enbridge Gas to remove an OBA charge, Enbridge Gas should advise the customer to contact the OBA biller and advise the OBA biller that the customer must contact Enbridge Gas for the OBA charge to be reinstated. Enbridge Gas should not accept further instructions from the OBA biller without direct contact between Enbridge Gas and the customer. The OBA charge should be automatically removed in 15 days and future charges with the same billing code blocked unless otherwise directed by the customer.

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<sup>5</sup> Negative Option Billing Regulations (SOR/2012-23) <https://laws-lois.justice.gc.ca/eng/regulations/sor-2012-23/index.html>

VECC noted that there were a growing number of CPA type complaints and that customer control is important for a well-functioning market. VECC submitted that there should be transactional equilibrium where an aggrieved customer can withhold payment or terminate a relationship. VECC proposed that Enbridge Gas should not place itself between the customer and their OBA biller. Enbridge Gas should notify the customers that they, the customers, have the right to terminate the OBA billing and provide them a fact sheet about the program. When a customer calls to terminate the OBA billing there should be a transfer of calls between Enbridge Gas, the OBA biller, and the customer. In addition, Enbridge Gas should also be required to report non-CPA compliant complaints to the appropriate authorities.

OEB staff noted that there was a growing number of reinstated disputes and proposed that the dispute process differentiate a customer's request to remove an OBA charge from other disputes. OEB staff supported Enbridge Gas's dispute process for other disputes and also the shorter dispute resolution time for all disputes. OEB staff also submitted that the reinstatement of charges should be done through written authorization.

Summitt and Enercare submitted there is no evidence of systemic abuse of the OBA program and that some intervenors' positions are to advance their own competitive positions. They also noted that HVAC's witness did not have any recent direct experience with the OBA program. Summitt and Enercare supported Enbridge Gas's proposal and submitted that it is important to balance customer control and the effective operation of the OBA program. In addition, Enercare proposed that Enbridge Gas should be granted discretion on the resolution window and the proof required to reinstate a charge.

Enbridge Gas noted in its reply submission that some of the proposals from intervenors were not advanced during the oral hearing and that Enbridge Gas has not been given the opportunity to provide evidence about the merits of any of them. Enbridge Gas maintained the position that the OBA program is functioning well and that most OBA disputes are resolved. Enbridge Gas noted that the parties did not address specific concerns with Enbridge Gas's proposal but instead simply presented their own solution. Enbridge Gas also stated that it did not believe that there was a need for written authorization so long as there was appropriate proof.

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## Findings

The OEB has considered and accepts Enbridge Gas's proposed changes to the existing OBA program.

The OEB concludes that the evidence provided by Enbridge Gas supports its position that the OBA program is functioning well and most OBA disputes are resolved in a timely manner. The OEB agrees with the proposed shorter dispute resolution time for all disputes.

The OEB notes that as part of the supplemental partial settlement proposal accepted by the OEB:

- Customers will be provided with a bill insert that describes the OBA program with emphasis on customer rights and obligations
- There will be coordination of dialogue with small billers to make the OBA program more attractive to small billers
- The OBA agreement with billers will be reopened for review
- The bill insert program has been discontinued

Furthermore, Enbridge Gas will host an annual stakeholder meeting which will include a report on the progress of the approved changes to the OBA program. Enbridge Gas also agreed to provide ongoing anonymized data about the operation of the OBA program on a quarterly basis. The data will include information about complaints organized by billing codes. Enbridge Gas also stated that it is investigating operationalizing the bill type codes by removing duplications and adding an approval process.<sup>6</sup>

The OEB accepts that the proposed changes adequately address the concerns of stakeholders by giving customers more control over third party charges while allowing misunderstandings or minor disputes to be resolved without a customer leaving the OBA program. The OEB finds that the proposed changes effectively balance the objective of customer control and the effective operation of the OBA program.

The OEB notes that under the proposed changes to the OBA program customers will not be required to explain the nature of the dispute but instead can simply inform Enbridge Gas that they no longer want the OBA charge on their bill. Some intervenors

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<sup>6</sup> EB-2018-0319, Oral Hearing Transcript, January 30, 2020 (p. 69)

and OEB staff advised that the reinstatement of charges should be done through written authorization. However, the OEB agrees with Enbridge Gas and some intervenors that Enbridge Gas should be granted discretion on the proof required to reinstate a charge.

The OEB does not with agree that Enbridge Gas should also be required to report non-CPA compliant complaints to the appropriate authorities or be required to only place OBA charges on a customer's bill after it has approved the contract between the customer and OBA biller. The OEB concludes that Enbridge Gas is a facilitator of the on bill presentment, not the arbiter of the contractual relationship between the biller and the customer.

The OBA program will continue to operate under the existing financial terms until the earlier of either December 31, 2023 or an OEB decision on an Enbridge Gas application to expand the OBA program into the Union Gas service area.

Enbridge Gas will file, as part of its next rebasing rate application, a detailed proposal for whether the OBA program should be continued, and if so, whether it should be expanded to the Union Gas service area. The OEB's acceptance of the supplemental partial settlement proposal in this proceeding should not be interpreted as a determination on whether the OBA will continue beyond the next rebasing application.

### **3.2 Penalties, Termination, and Exit Fees**

The current OBA program allows all charges included in an agreement between the OBA biller and the customer to be on the bill. Enbridge Gas stated that it does not believe that specific restrictions against end of contract charges is necessary as there is no current systemic problem with including end of contract charges. Enbridge Gas further stated that a customer should have a choice in the way that they are billed for their end of contract OBA charges, which Enbridge Gas's proposal accommodates.

Summit, Reliance, and Enercare supported Enbridge Gas's position. Reliance submitted that customers should have the right to include and exclude charges from the Enbridge Gas bill. Enercare submitted that a customer is not further protected with the removal of end of contract charges. The liability for end of contract charges is determined by the contract between the biller and the customer and is already protected by applicable laws, including the CPA.

OEB staff submitted that a customer should be able to remove these charges without going through Enbridge Gas's proposed dispute process. However, if a customer is

disputing the quantum of the charge then it should go through Enbridge Gas's proposed dispute process.

Vista, VECC, HVAC, BOMA, and Energy Probe submitted that penalties, termination, and exit fees should not be permitted on Enbridge Gas's bill. Vista, VECC, HVAC, and Energy Probe submitted that allowing these charges lets the Enbridge Gas bill be used in a coercive nature. BOMA submitted that allowing these charges on the bill lends additional credibility to the fee. Vista, VECC, and BOMA also submitted that there are other methods to bill the customer for final one-time charges.

HVAC and Energy Probe noted that in some cases an OBA bill does not have an actual agreement with the customer. Energy Probe further believed that there is large information asymmetry between the customer and the OBA biller and that dominant market players use these charges as barriers of entry for its competitors.

Enbridge Gas noted that many intervenors objecting to the end of contract charges were implicitly/explicitly arguing that these charges were not legitimate. Enbridge Gas stated that this is not an issue for the OEB to determine and that the OBA program only allows charges associated with a Customer Services Agreement between the OBA biller and customer. Enbridge Gas further noted that the removal of the end of contract charges from the Enbridge Gas bill does not absolve the customer from paying the charge but instead means the OBA biller will have to arrange alternative means of payment from the customer.

## Findings

The OEB will not be imposing new restrictions on the billing for penalties, exit or termination fees or similar charges.

The OEB agrees that the current OBA program allows all charges included in an agreement between the OBA biller and the customer to be on the bill and there is no current systemic problem with including end of contract charges. Customers retain the right to choose the way that they are billed for their end of contract OBA charges.

The OEB recognizes the concern of some intervenors that allowing these charges on an Enbridge Gas bill lends additional credibility to the charge. However, one of the requirements of the supplemental partial settlement proposal is that customers will be provided with a bill insert that describes the OBA program with emphasis on customer rights and obligations. The OEB feels that the principle of an agreement between a willing buyer and a willing provider is adequately protected.

## 4 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. shall implement the approved changes to the OBA program as soon as possible.
2. Intervenors shall submit their cost claims with the OEB and forward to Enbridge Gas Inc. by April 30, 2020.
3. Enbridge Gas Inc. shall file with the OEB and forward to intervenors any objections to the claim costs by May 7, 2020.
4. Intervenors, to which Enbridge Gas Inc. filed an objection to the claimed costs, shall file with the OEB and forward to Enbridge Gas Inc. any responses to any objections for cost claims by May 14, 2020.
5. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All materials filed with the OEB must quote the file number, EB-2018-0319, be made in a searchable/unrestricted PDF format and sent electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available parties may email their documents to [boardsec@oeb.ca](mailto:boardsec@oeb.ca).

NOTE: The OEB is temporarily waiving the paper copy filing requirement until further notice. All communications should be directed to the attention of the Board Secretary and be received no later than 4:45 p.m. on the required date.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Donald Lau at [donald.lau@oeb.ca](mailto:donald.lau@oeb.ca) and OEB Counsel, Michael Millar at [michael.millar@oeb.ca](mailto:michael.millar@oeb.ca).

**DATED** at Toronto April 16, 2020

**ONTARIO ENERGY BOARD**

*Original Signed By*

Christine E. Long  
Registrar and Board Secretary