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August 6, 2020

TO: All Participants in the Consultation on Guidelines for Potential Projects to Expand Access to Natural Gas All Other Interested Parties

**RE: Potential Projects to Expand Access to Natural Gas Distribution:
OEB Staff Comments on Confidentiality of Filings
Ontario Energy Board File No. EB-2019-0255**

The Ontario Energy Board (OEB) has been asked to collect and analyze information about possible natural gas expansion projects, and to report back to the Ministry of Energy, Northern Development and Mines (Ministry) as an input to assist the government in making a determination on future expansion projects. On March 5, 2020, following a stakeholder consultation process, the OEB issued its final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution (Guidelines) that identify the information to be filed by interested project proponents for inclusion in the OEB's report to the Ministry.

In its letter dated December 19, 2020 accompanying the issuance of the consultation draft of the Guidelines, the OEB indicated that it generally intended to post each proponent's project information on the OEB's website after the deadline has passed for filing project information. The OEB invited interested project proponents that felt that confidential treatment should be considered for some or all of the project information to speak to this issue in their comments on the draft Guidelines by January 15, 2020. None of the project proponents raised any concerns with respect to confidentiality, and the letter accompanying the final Guidelines (issued May 15, 2020) reiterated the OEB's intention to make project proposals public following the deadline for filing project information.

On July 17, 2020, Enbridge Gas Inc. (Enbridge Gas) filed a letter with the OEB seeking

confidential treatment for all information related to projects proposed by Enbridge Gas and any other proponent. The OEB issued a letter on July 29, 2020 inviting interested participants to comment on Enbridge Gas's request for confidential treatment by August 6, 2020. The comments of OEB staff are set out below.

Summary of Enbridge Gas's Confidentiality Request

Enbridge Gas filed a letter with the OEB requesting that all information related to projects proposed by it and by any other proponent be kept confidential and not be posted on the OEB's website as currently contemplated by the OEB or made available pursuant to declarations and undertakings. Enbridge Gas argues that the submission of project information in response to the Guidelines is not a typical OEB process, and therefore the OEB must take into account the broader context when considering confidential information requests. Enbridge Gas observes that this matter does not involve an application that requires a hearing under the *Ontario Energy Board Act, 1998* (OEB Act). Instead, the project information is being provided to the OEB "as part of a response to a question raised by the Minister of Energy, Northern Mines and Development (Minister) under Section 35 of the OEB Act in conjunction with the Ontario government's Natural Gas Expansion Program". Enbridge Gas further argues that "[u]nlike the adjudication of an application, the publication of project information is not required for the OEB to fulfill the object, scope and purpose of the Minister's request and, as indicated below, such disclosure will be prejudicial to the Ontario government's discretion, to future processes undertaken by the Minister under the Natural Gas Expansion Program, to proponents in the current process, to the privacy of potential natural gas customers and to the safe operation of distribution systems."

The OEB's Approach to Confidential Information

As noted in the Practice Direction on Confidential Filings (Practice Direction), "the Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible." While the Practice Direction also acknowledges that some information may be of a confidential nature and should be protected as such, the onus is on the person requesting confidentiality to demonstrate to the satisfaction of the OEB that confidential treatment is warranted. OEB staff sees no reason for the OEB to depart from these principles in the context of this matter.

Personal Customer Information

With respect to the privacy of potential new customers, OEB staff agrees that, to the extent the project proposals include personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* (FIPPA), the personal information generally cannot form part of the public record and must be redacted. Enbridge Gas does not specifically mention FIPPA in its confidentiality request, and to the extent that Enbridge Gas believes there is personal information that cannot form part of the public record, it is requested to identify this information in its reply. Absent confidential treatment being accorded to the proposals in their entirety, it would fall to Enbridge Gas (and any similarly situated project proponents) to redact any personal information from the project information as filed.

Information Related to the Safe Operation of the Distribution System

Similarly, OEB staff agrees that if there is any information in the project proposals that could negatively impact the safe operation of the proponent's distribution system (or potential future distribution system), then it would be appropriate for this information to be accorded confidential treatment. However, OEB staff remains unclear regarding exactly what information Enbridge Gas believes may adversely impact safety if it were to be publicly disclosed, and how the information included in the proposals may expose safety concerns vis-à-vis information that Enbridge Gas normally includes in leave to construct applications. OEB staff believes that the OEB would be assisted if Enbridge Gas could provide additional details on what information is sensitive from a safety perspective, and why.

Prejudice in Future Expansion Efforts

Enbridge Gas argues that its project information, and that of the other project proponents, is proprietary. Enbridge Gas states:

The public disclosure of project information by the OEB will prejudice the participation by proponents in future expansion efforts by the Ontario government and otherwise. Proponents in the current process have undertaken substantial effort and incurred costs to develop project proposals. If public disclosure occurs, other parties can use that public information to pursue those projects not selected or for other unintended purposes, without incurring comparable efforts or providing due compensation to the original proponent. In this regard, Enbridge

Gas believes that the project information is proprietary...Enbridge Gas submits that the public disclosure of any of the information from its proposed projects will prejudice our competitive position in Ontario's energy market with respect to possible future development projects.

Appendix A to the Practice Direction indicates that one of the factors the OEB will consider in determining if confidential treatment is appropriate is whether disclosure of the information could result in prejudice to a person's competitive position. OEB staff accepts that some of the project information could, if publicly disclosed, potentially affect a proponent's competitive position. OEB staff notes, however, that based on the Section 35 letter from the Minister and Associate Minister dated December 12, 2019, if a project is in an area where a Certificate of Public Convenience and Necessity (Certificate) exists, the proponent must be the Certificate holder unless the Certificate holder does not propose a project for the area. As a result, OEB staff suggests that any potential adverse effect on Enbridge Gas's competitive position would be largely diminished as it holds the vast majority of Certificates in Ontario.

OEB staff also questions why all of the information contained in the proposals submitted to the OEB should be treated as confidential on the basis of a potential adverse impact on the competitive position of the proponent. OEB staff is of the view that the following information could be made public: the identity of the communities to be connected, including whether the project could serve any on-reserve Indigenous communities; expressions of support for the project; the number of customers projected to be connected at the end of the rate stability period; the funding required including the funding per customer, the funding per volume and the funding per greenhouse gas emissions (GHG) reductions; the profitability index without the funding; the annual savings from converting to natural gas; the avoided GHG emissions; and the construction start date. OEB staff believes that the OEB would be assisted by reply comments from project proponents about the potential detrimental impact that disclosure of these pieces of information may have. As a practical matter, the OEB may wish to consider an approach whereby the project proposals are not posted on the OEB's website but the information listed above is included in the OEB's report to the Ministry, which OEB staff assumes is intended to be made public.

Enbridge Gas also argued that the publication of project information may diminish the Ontario government's discretion to determine the ranking and geographic distribution of projects, also noting that the Section 35 letter from the Minister and the Associate Minister "did not authorize or direct the OEB to amend the parameters of the program to make submissions public". OEB staff acknowledges that the Section 35 letter does not

address the question of the publication of project proposals one way or another in the context of the Ministerial request to the OEB, which OEB staff notes is a separate process from the government's predecessor initiatives.

Other Considerations

OEB staff notes that Enbridge Gas has asked that all information related to its (and other project proponents') proposed projects be kept confidential. This is a broad request that appears to cover all of the information that Enbridge Gas has filed in this process, including even the identity of the community to be served. To the extent that this request is accepted, it raises questions as to what portions, if any, of the OEB's report to the Ministry could be released publicly.

OEB staff suggests that a staged approach may be warranted. The OEB may wish to defer making a decision on the confidentiality issue until closer to the date when the report is ready for transmittal to the Ministry. This would allow for a decision to be made once the OEB has had sufficient time to review the project information that has been filed, to more explicitly define the content of the report and to consider the implications of according confidential treatment to all or part of the project information. Until then, the project information would not be posted on the OEB's website. OEB staff does not see that such a staged approach could be prejudicial to any party in the interim.

Yours truly,

Original signed by

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