

August 13, 2020

Christine Long
Registrar and Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Potential Projects to Expand Access to Natural Gas Distribution
Request for Confidential Treatment
Ontario Energy Board File No. EB-2019-0255**

Further to the Ontario Energy Board's ("OEB") letter dated July 29, 2020 inviting interested participants to comment on Enbridge Gas Inc.'s ("Enbridge Gas") request for confidential treatment of proposed project information submitted in this process, these are the reply submissions of Enbridge Gas.

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.¹

As was noted in Enbridge Gas' July 17, 2020 submission, supporting material provided by municipalities and submitted by Enbridge Gas includes names and addresses of residents that have expressed an interest in receiving gas distribution services - in particular, Schedule LL5(c), Attachments 1, 2 and 3. Parts of the project proposals containing information of this nature must be kept confidential due to the personal information contained throughout these schedules.

Furthermore, customer information can be determined indirectly from project related information. Enbridge Gas's proposed projects include those that are intended to serve a discrete number of customers on specific streets. In these circumstances, making public details of the location of existing and/or proposed gas distribution and transmission facilities can indirectly reveal customer information which would normally be protected from public disclosure by the OEB.

EPCOR notes that any project that is proposed through a leave to construct application faces the same issues regarding privacy and disclosure of facilities location. EPCOR is incorrect in this regard. Leave to construct applications do not normally deal with facilities of the size contemplated in the project proposals or in respect of street mains delivering gas to individual customers.

¹ OEB Staff Submission, August 6, 2020, page 3

Enbridge Gas submits that the project descriptions submitted to the OEB (i.e., Section 3.1 in Schedules A through 8V) contain specific detail down to street level and should not be put on the public record.

Information Related to the Safe Operation of the Distribution System

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.²

The concern that the public disclosure of specific locations of existing and proposed gas distribution and transmission facilities poses both a safety and a security risk is not unique to the current process. In EB-2017-0159, relating to the approval of a franchise agreement with the Town of Collingwood, in response to a request to provide a map of the Town of Collingwood showing the density and location of customers served, Enbridge Gas submitted a map identifying all of Enbridge Gas's existing gas mains in the municipality. Enbridge Gas requested confidential treatment for the submitted map on the basis that the information contained therein was proprietary and subject to periodic change and that it contained highly sensitive information from public safety, system security and customer personal information perspectives. As an alternative, Enbridge Gas proposed filing a Density Map to show areas with gas service and coloured indicators of relative population density. The OEB accepted the proposed Density Map to accurately delineate a distributor's service boundaries, as well as the general location and density of customers served.³

All of the project descriptions (i.e., Section 3.1 in Schedules A through 8V) and maps (i.e., Schedules A1 through 8V-1) submitted with Enbridge Gas' project proposals that provide detail on the location of existing and proposed facilities should remain confidential.

Prejudice in Future Expansion Efforts

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 (CPCN) exists, the proponent must be the CPCN holder unless the CPCN holder does not propose a project for the area. As a result, OEB Staff suggests that any potential adverse effect on Enbridge Gas' competitive position would be largely diminished as it holds the vast majority of Certificates in Ontario.⁴

As noted below, Enbridge Gas, in response to municipal interests, has submitted a significant number of projects for the Minister's consideration. Although many of the projects may not be selected under the current program initiative, the opportunity may be available in the future. It is Enbridge Gas' understanding that the CPCN qualification identified by OEB Staff only applies to the current process and not any future process to identify potential areas for natural gas expansion. As the OEB has determined previously, CPCNs are not exclusive and any party could apply to serve any currently unserved area within Ontario no matter if anyone holds the CPCN rights. As a result, it would be a significant disadvantage to Enbridge Gas in any future process for any other party to have access to any project specific information prepared by Enbridge Gas related to any currently unserved area within Ontario, regardless of whether Enbridge Gas holds the CPCN rights.

² OEB Staff Submission, August 6, 2020, page 3

³ EB-2017-0159 - Decision on Confidentiality and Procedural Order No. 2, July 4, 2017

⁴ OEB Staff Submission, August 6, 2020, page 4

Northern Cross Energy disagrees with Enbridge Gas' proposal on the confidential treatment of project proposals because this process should be open, transparent and public, especially when competing proposals for the same geographic territory are being considered. Enbridge Gas submits that because the future service of municipalities is subject to a competitive process, releasing competitive bids in advance of any other party submitting or making public project proposals for specific service areas puts the initial project proponent at a distinct disadvantage and creates an unfair process. SEC has endorsed the use of an unfair process in the future incorrectly asserting that a competitor's use of Enbridge's information will be to the ratepayers' advantage in a future competitive process. However, conducting a process where the price to beat is known is not a competitive process and competitors have little incentive to do more than marginally better. This is not in the ratepayers' interest.

OEB Staff is of the view that the following information could be made public without impacting the competitive position of the proponent:

- 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;
- the construction start date.

Enbridge Gas agrees that some of the information outlined above could be put on the public record at some point during the process in a summary document format based on the Minister's needs to determine Section 36 funding assistance. This would include information such as the name of the municipality, construction and in-service dates, expressions of support and number of forecasted customers. Information made public should not extend to detailed data or economic measures related to the viability of the project but could include funding required to achieve the profitability threshold, the annual savings from converting to natural gas and avoided GHG emissions.

With respect to identifying areas impacted by proposed projects, consistent with the submissions above, this information would not include details of locations within these municipalities and First Nations reserves. Instead, it would be limited to the names of the municipalities and First Nations reserves involved. Likewise, for letters and resolutions of support, original signatures on these documents should be redacted to protect the individuals involved and specifics of project locations within the municipalities should be redacted. Enbridge Gas can prepare a summary schedule and redacted documents associated with its project proposals for the OEB's use.

The OEB Report

As a practical matter, OEB Staff have submitted that 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.⁵

The Minister's Section 35 request is silent as to the degree of public disclosure and it is incorrect to speculate as to the intentions of the Minister as SEC has done in its submissions. In Enbridge Gas' view, it is not known how much information the Ministry will want to put on the public record with respect to project proposals. As a result, the OEB should consider the appropriate context related to the dissemination of that information, the clarity of that information and the Minister's intentions in respect of that information.

In this regard, as part of the current process, Enbridge Gas sought expression of interests from municipalities. In response to expressions of interest received, Enbridge Gas has submitted 204 project proposals to the OEB that account for \$2.49 billion in Section 36 funding requests, \$3.01 billion in proposed total capital expenditures and the proposed addition of 40,162 customers. Given that there is only \$130 million in Section 36 funding available, many of Enbridge Gas' project proposals will not be selected by the Ontario government for Section 36 funding assistance. Public identification of all municipalities for which project proposals have been submitted could create confusion and potentially create expectations by municipalities that natural gas service is imminent. The OEB's process is not to rank or award projects. That is the Minister's prerogative. Public disclosure of project details may be prejudicial to the Ontario government's discretion in assessing the project information and any future amendment to the regulations to advance the access to natural gas under the Natural Gas Expansion Program.

Since the current OEB process is an information gathering exercise only and is undertaken for the sole benefit of the Minister for his use in the exercise of his discretion in assessing the project information, it should be left to the Ontario government to decide if and how much of the information of the proposed projects should be publicly available. Since the OEB's report is being used as one of many pieces of information that will inform the Minister's decisions about projects suitable for Section 36 funding assistance, the OEB should refrain from making any information related to proposed projects publicly available and leave it with the Ontario government to make that determination.

Reply to Other Submissions

EPCOR and other parties do not support Enbridge Gas's request for confidentiality submitting that the OEB has already provided proponents with ample opportunity to raise concerns regarding the confidentiality of project information.

Enbridge Gas acknowledges that the OEB had sought submissions regarding confidentiality as part of its consideration of the Guidelines. However, there is no prejudice to any party to the making of these submissions at this time as it relates to the post-submission treatment of the project information and not the project information itself. The project proposals submitted in this process were not developed until after the Final Guidelines were issued and expressions of interest were received from municipalities, so the actual extent and detail of project proposals were unknown until later in the process. Furthermore, no party making the procedural argument as to the timing of Enbridge Gas' submissions have shown any prejudice.

⁵ OEB Staff Submission, August 6, 2020, page 4

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

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