



**Enbridge Gas Inc.**

**2020 Federal Carbon Pricing Program Application**

**PROCEDURAL ORDER NO. 4**

**May 10, 2021**

Enbridge Gas Inc. applied to the OEB on November 18, 2019 for approval under section 36(1) of the *Ontario Energy Board Act, 1998* to increase rates effective April 1, 2020 to recover costs associated with meeting its obligations under the federal *Greenhouse Gas Pollution Pricing Act* (GGPPA). Enbridge Gas also applied to recover from customers the 2019 balances in the related deferral and variance accounts.

The GGPPA established a carbon pricing program, the Federal Carbon Pricing Program (FCPP), under which a natural gas utility in Ontario, such as Enbridge Gas, is required to pay a Fuel Charge to the Government of Canada, for emissions from the natural gas that it delivers to its customers, and for its own emissions. Enbridge Gas includes a Federal Carbon Charge on customer bills to recover the amount of the Fuel Charge it pays to the Government of Canada for its customers' emissions.

A Decision and Order was issued in this 2020 FCPP proceeding on August 13, 2020. As part of that decision, Enbridge Gas's Federal Carbon Charge rate was left interim for First Nations on-reserve customers, pending the OEB's consideration of issues related to the constitutionality of the GGPPA Fuel Charge and the requirements of the federal *Indian Act* (the Deferred Issues), which were raised by the Chiefs of Ontario (COO) and Anwaatin Inc. (Anwaatin).

The OEB indicated consideration of the Deferred Issues would occur after the Supreme Court of Canada (SCC) had issued a decision regarding the constitutionality of the GGPPA. The SCC's [decision](#) on this matter was issued on March 25, 2021.

[Procedural Order No. 3](#), issued April 20, 2021, indicated that the OEB intended to move forward in making a final determination of the applicability of the Federal Carbon Charge rate for First Nations on-reserve customers, including addressing the Deferred Issues as needed. Anwaatin and COO were provided with the opportunity to file letters with the OEB to indicate whether, having regard to the SCC decision, they still requested the OEB to adjudicate the Deferred Issues. Both Anwaatin and COO subsequently filed

letters indicating that they are requesting the OEB to adjudicate the Deferred Issues, and intend to file submissions.

### Next Steps

The OEB is first requesting submissions from COO and Anwaatin, who originally raised the issues that were deferred. Following those submissions, Enbridge Gas, other intervenors, and OEB staff will be given an opportunity to file submissions on the Deferred Issues. The OEB is also scheduling a step for reply submissions.

In their submissions, COO and Anwaatin should set out their positions on the Deferred Issues including how sections 87 and 89 of the *Indian Act*, specific treaty rights, and section 35 of the *Constitution Act, 1982* impact the applicability of Enbridge Gas's Federal Carbon Charge for First Nations on-reserve customers.

The OEB notes that Anwaatin's filing requesting the OEB to adjudicate the Deferred Issues makes reference to "the constitutional applicability of GGPPA charges and levies to Indigenous communities on- and off-reserve".<sup>1</sup> The OEB intends to make a determination regarding the Enbridge Gas rate that is currently interim, which is the Federal Carbon Charge for First Nations on-reserve customers. In its Decision and Order of August 13, 2020, the OEB established final rates for the Federal Carbon Charge for all other Enbridge Gas customers, and further determined that other GGPPA-related costs recovered through rates, specifically the costs Enbridge Gas incurs for its own emissions, and for managing the FCPP program, are costs of doing business as a natural gas distributor to be borne by all customers.<sup>2</sup>

Anwaatin and COO are reminded of rule 36 of the OEB's [Rules of Practice and Procedure](#), which requires parties intending to raise a question about the constitutional validity or applicability of legislation to prepare a notice of a constitutional question that needs to be filed with the OEB and served on the other parties and the Attorneys General of Canada and Ontario, at least 15 days before the question is argued. The OEB will not proceed to hear any constitutional question until this service is complete.

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<sup>1</sup> Anwaatin letter, May 3, 2021

<sup>2</sup> EB-2019-0247, Decision and Order, August 13, 2020, pp. 18-20

**THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Anwaatin and the Chiefs of Ontario shall file submissions, if any, in regards to the applicability of the Federal Carbon Charge to Enbridge Gas's First Nations on-reserve customers with the OEB and serve them on all parties by **June 7, 2021**.
2. Enbridge Gas, OEB staff, and other intervenors shall file submissions, if any, in regards to the applicability of the Federal Carbon Charge to Enbridge Gas's First Nations on-reserve customers with the OEB and serve them on all parties by **July 5, 2021**.
3. Parties and OEB staff may respond to the submissions of other parties by filing reply submissions with the OEB and serve them on all parties by **July 19, 2021**.

**How to File Materials**

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2019-0247**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's web portal](#) at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>.

- Filings should clearly state the sender's name, postal address, telephone number, fax number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [Filing Systems page](#) on the [OEB's website](#).
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the web portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.

All communications should be directed to the attention of the Registrar at the address below and be received by end of business, 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, Michael Parkes at [Michael.Parkes@oeb.ca](mailto:Michael.Parkes@oeb.ca) and OEB Counsel, Lawren Murray at [Lawren.Murray@oeb.ca](mailto:Lawren.Murray@oeb.ca).

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)

Tel: 1-877-632-2727 (Toll free)

**DATED** at Toronto, **May 10, 2021**

**ONTARIO ENERGY BOARD**

*Original signed by*

Christine E. Long  
Registrar