

# Elson Advocacy

November 19, 2021

Ms. Christine Long  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700, P.O. Box 2319  
Toronto, Ontario M4P 1E4

Dear Ms. Long:

**Re: EB-2021-0205 – Enbridge Gas Inc. – Greenstone Pipeline Project**

I am writing pursuant to *Procedural Order #1* to make submissions regarding Enbridge's confidentiality request. Environmental Defence does not object to confidential treatment of the "contract parameters" such as the customer demand figures. However, Environmental Defence asks that the OEB direct Enbridge to file an unredacted version of the CIAC payment schedule.

Disclosure of the payment schedule would not result in any commercial or financial prejudice. This is clear from GGM's submissions. GGM describes in detail why it could be prejudiced by releasing the contract parameters. With respect to the payment schedule, it simply states that the information should be redacted because it is "commercial information negotiated between GGM and Enbridge Gas." This does not meet the test for confidential treatment. GGM has not described how it would be negative in any way for that information to be released. For example, it has not described how a competitor or supplier could use that information.

Enbridge asserts that the information is sensitive and that releasing it could cause prejudice. However, these are bald assertions. It is not sufficient to simply assert prejudice without explaining how prejudice might arise. If that were not the case, Enbridge could elect to redact any information it designates as sensitive and prejudicial.

Enbridge argues that this kind of information has been redacted in other proceedings. However, Enbridge does not cite any decisions in which the issue was actually considered and decided on by the OEB. Also, the projects cited by Enbridge were not as directly related to a single customer as in this case. In addition, Mr. Brophy describes his experience with Enbridge where such information was not treated as confidential. Although the information may have been treated as confidential and non-confidential at different times in the past, it clearly is not on the list of presumptively confidential items in the OEB's practice direction.

Enbridge also argues that the payment schedule should be treated confidentially because it would release financial information that is not otherwise be known publicly. Again, that is not the test for confidential treatment. If it were, very little information would be submitted to the Board.

At the conclusion of its submissions Enbridge states that “GGM intends to address these points more specifically in its own submissions to the OEB.” GGM’s subsequent submissions make strong points on the contract parameters but do not describe any potential prejudice with respect to the CIAC payment schedule.

Treating information confidentially raises regulatory costs that customers ultimately have to bear. Intervenor are required to submit a declaration, use special procedures to access the documents, and submit a destruction certificate. Submissions regarding confidential information must be made carefully and can require two sets of submissions – a redacted and unredacted version. It can also require two OEB decisions – a redacted and unredacted version. These and other steps cost money that ratepayers ultimately bear.

The CIAC payment schedule could be the subject of submissions and be addressed in the OEB’s reasons. Intervenor will likely address whether the terms of the contract adequately protect ratepayers from having to pay for a fossil fuel pipeline should a bankruptcy or other similar event occur. The issue of regulatory cost and complication associated with confidential information is not merely academic. Confidentiality should only be granted where it is truly warranted. That is not the case here.

In addition to the cost, confidentiality offends the open court principle and public transparency. That is sometimes necessary. However, it is not necessary here where the applicant has not established any kind of potential prejudice resulting from the release of the information.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', with a stylized, cursive script.

Kent Elson