



# **ONTARIO ENERGY BOARD**

**OEB Staff**

**Submission on  
Confidentiality**

**Enbridge Gas Inc.  
Greenstone Pipeline Project**

**Application for Leave to Construct**

**EB-2021-0205**

**November 19, 2021**

## Introduction and Overview

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on September 10, 2021, under sections 90 and 97 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), for an order granting leave to construct approximately 13 kilometres of natural gas pipeline and associated facilities in the Municipality of Greenstone. Enbridge Gas has entered into a Gas Distribution Contract with Greenstone Gold Mine LP (GGM) to provide natural gas service to the Greenstone Mine Project, an open pit gold mine located near the Town of Geraldton, in the Municipality of Greenstone.

Included in Enbridge Gas's application is a request for confidential treatment for certain information in the Gas Distribution Contract between Greenstone Gold Mine LP and Enbridge Gas (Contract), the landowner list and the Indigenous Consultation log. Specifically, Enbridge Gas is requesting that certain information in the following exhibits be treated as confidential:

- Gas Distribution Contract (Ex B/T1/S1/Attachment 1):
  1. Contract termination date - within Section 11 of the Contract, the date at which GGM can terminate the Contract
  2. Payment schedule for Contribution in Aid of Construction (CIAC)- within Appendix A of the Contract, the payment dates and amounts due from GGM to Enbridge Gas
  3. Customer-specific distribution parameters - within Schedule 1 of the Contract, including daily contract demand, customer balancing service parameters, negotiated delivery charges, and hourly consumption and pressure amounts
  4. Authorized signatory names and signatures
- Landowner List (Exhibit G/T1/S1/Attachment 5)
- Indigenous Consultation Log and Attachments (Exhibit H/T1/S1/Attachment 7)

In its application Enbridge Gas provided reasons for why the information should be treated as confidential and filed unredacted copies of the documents.

The OEB issued Procedural Order No. 1 on November 12, 2021, which, among other things, set the process for submissions on Enbridge Gas's confidential treatment request.

In its letter requesting intervenor status, Pollution Probe noted its objection to Enbridge Gas's request for confidential treatment of the Gas Distribution Contract. By letter dated November 3, 2021, Enbridge Gas responded to the concerns raised by Pollution Probe. Enbridge Gas provided additional reasons for why it is asking for confidential treatment and why the redacted information should not be placed on the public record. Enbridge Gas also stated that its confidentiality request is consistent with the OEB's treatment of similar information in previous proceedings.

By letter dated November 8, 2021, Environmental Defence stated that Enbridge Gas's request for confidentiality was not made in accordance with the process set out in the OEB's [Practice Direction on Confidential Filings](#) (Practice Direction) and requested that the OEB make provision for submissions on Enbridge Gas's request. Environmental Defence also asked that the OEB direct Enbridge Gas to "explain why it believes the information meets the criteria in Appendix A of the Practice Direction at the outset, not in its reply submissions."

The OEB noted in the Procedural Order No. 1 that Enbridge Gas's request for confidentiality has not been made in the manner set out in section 5 of the OEB's Practice Direction. Although the OEB did not ask Enbridge to refile its request for confidentiality, the OEB reminded Enbridge Gas that it must follow the process the set out in the OEB's Practice Direction. In Procedural Order No.1 the OEB made provision for any additional submissions from Enbridge Gas in respect of its confidentiality requests and for GGM to file any additional information in relation to its request for confidentiality for information in the Contract.

### **Confidential Treatment Request and Submission by GGM**

On November 16, 2021 in accordance with Procedural Order No. 1 Enbridge Gas filed submission on confidential treatment of customer contract Information outlining its position on each of the redacted portions of the Contract. On November 16, 2021, GGM filed its submission in support of Enbridge Gas confidentiality request and provided reasons for granting the confidential treatment to the Contract information.

Enbridge Gas requested confidential treatment of the CIAC payment schedule and specific distribution contract parameters pursuant to the Practice Direction. Enbridge Gas submitted that such information has consistently been treated as confidential by the OEB. Enbridge Gas noted several examples of the OEB applying confidential treatment to similar information within customer contracts. Examples include the 2021 Sarnia

Industrial Line Reinforcement Project<sup>1</sup>, the Sudbury Expansion Project<sup>2</sup>, and the 2015 Sarnia Expansion Project<sup>3</sup>.

Enbridge Gas rationale for the confidential treatment request and GGM submission supporting Enbridge Gas request are summarized below. OEB staff's submission on each of the requests follows.

## **1.Contract Termination Date**

Enbridge Gas explained that prior to filing the application and evidence on September 10, 2021, GGM requested that Enbridge Gas redact the date by which GGM can terminate the Contract. The basis for that request was that the disclosure of the termination date information was commercially sensitive as the GGM commitment to the gold mine project was not finalized. GGM confirmed that the construction of the Greenstone Mine Project by its owners Equinox Gold and Orion Mine Financing was announced on October 27, 2021, and as such, this information is no longer considered commercially sensitive and it may be disclosed. Based on that Enbridge Gas withdrew its request for confidential treatment of this contract termination date.

As this confidentiality request has been withdrawn, OEB staff will not be making a submission on this request.

## **2.CIAC Payment Schedule**

In support of its request for confidential treatment of the CIAC payment schedule Enbridge Gas referred to section 5.3 of the *OEB's Gas Distribution Access Rule* which requires that a natural gas distributor not disclose customer information to anyone other than the OEB, without the customer's written consent, unless specifically authorized by the OEB. Enbridge Gas stated it did not have GGM's consent to disclose the redacted information. The CIAC payment schedule outlines the financial payment obligations of GGM to Enbridge Gas and is information that Enbridge Gas consistently treats in a confidential manner. Enbridge Gas further explained that disclosure of the CIAC payments can prejudice to a customer's competitive position and cause interference with a customer's ongoing commercial negotiations. GGM in its submission fully supported Enbridge Gas's position and requested that the OEB treat the CIAC payment schedule as confidential.

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<sup>1</sup> EB-2019-0218, Application and Evidence, October 7, 2019, Exhibit B, Tab 1, Schedule 2, Attachment 1

<sup>2</sup> EB-2015-0120, Updated response to Board Staff 5, July 8, 2015

<sup>3</sup> EB-2014-0333, Application and Evidence, November 4, 2014, Schedule 3-1 and Schedule 3-2

## **OEB Staff Submission**

OEB staff view is that the confidential treatment of the CIAC payments schedule in the Contract should be granted by the OEB as it is commercially sensitive information, and the OEB has taken the same approach in similar proceedings<sup>4</sup>.

## **3.Distribution Contract Parameters**

Enbridge Gas submitted that the disclosure of customer-specific distribution contract parameters, including daily contract demand, customer balancing service parameters, and hourly consumption and pressure amounts, may provide insight into a customer's daily or hourly demand for natural gas. Disclosure of this information may diminish GGM's competitive position when procuring natural gas in the market. Public disclosure of a customer's negotiated delivery charge in the Contract could also prejudice both the customer's and Enbridge Gas's competitive position in future negotiations of contracts which involve negotiated rates. GGM agreed with Enbridge Gas's reasons for non-disclosure of customer-specific contract parameters. GGM stated that it "...has not fully developed its strategy for natural gas procurement and does not wish to be prejudiced...by public disclosure of its service parameters." GGM also highlighted that Enbridge Gas has redacted similar information in other cases.

## **OEB Staff Submission**

OEB staff view is that distribution contract parameters should be treated as confidential as this information is commercially sensitive information and could prejudice the competitive position of GGM. OEB staff supports Enbridge Gas request to keep this information confidential as its disclosure may adversely affect customers position in future negotiations involving negotiated rates. It is OEB staff's view that the disclosure may also prejudice GGM position in procuring natural gas in the market.

## **4.Authorized Signatory Names and Signatures**

Enbridge Gas has redacted the names and signatures of the authorized signatories of the Contract as this information is considered personal information and is protected under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

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<sup>4</sup> EB-2019-0218, Application and Evidence, October 7, 2019, Exhibit B, Tab 1, Schedule 2, Attachment 1; EB-2015-0120, Updated response to Board Staff 5, July 8, 2015; EB-2014-0333, Application and Evidence, November 4, 2014, Schedule 3-1 and Schedule 3-2

**OEB Staff Submission**

OEB staff does not agree that signatures of individuals provided in a business capacity constitute personal information under FIPPA. Section 2(3) of FIPPA states: “Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.” The names and signatures in the contract appear to identify individuals in a business capacity and are therefore not covered by FIPPA.

**Landowner List and Indigenous Consultation Log and Attachments – Personal Information**

Enbridge Gas has redacted the names and any other personal information as this information is considered personal information and is protected under the *Freedom of Information and Protection of Privacy Act*.

**OEB Staff Submission**

It is not entirely clear that all of the redacted names and other information in the Indigenous consultation log are in fact covered by FIPPA. As noted above, names and contact information that identify a person in a business, professional or official capacity are not covered by FIPPA. It is not entirely clear whether some or all of the people whose names and contact information have been redacted are acting in a business, professional or official capacity.

However, OEB staff does not object to this information remaining confidential. Some or all of the individuals may be acting in a more or less private capacity, and in any event there does not appear to be any compelling interest in having the actual names appear on the public record. All of the information that is relevant to the application is unredacted.

**Respectfully Submitted**