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BY RESS AND EMAIL

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

Dear Ms. Long:

**Re: Enbridge Gas Inc. (Enbridge Gas)
Ontario Energy Board (OEB) File No.: EB-2021-0205
Reply Submission on Confidential Treatment of Customer Contract Information**

Pursuant to the OEB's Procedural Order No.1, please find below Enbridge Gas's reply submission on confidential treatment of the Northern Gas Distribution Contract between Enbridge Gas and Greenstone Gold Mines LP ("Contract").

On September 10, 2021, Enbridge Gas filed its application and evidence for the Greenstone Pipeline Project. To support the need for the project, Enbridge Gas filed a redacted version of the Contract which has given rise to the need to construct the Greenstone Pipeline. Enbridge Gas redacted the following information from the Contract:

- Within Section 11 of the Contract, the date at which Greenstone Gold Mines LP ("GGM") can terminate the Contract;
- Within Appendix A of the Contract, the payment date and amounts due from GGM to Enbridge Gas for Contribution in Aid of Construction ("CIAC");
- Within Schedule 1 of the Contract, customer-specific distribution parameters including daily contract demand, customer balancing service parameters, negotiated delivery charges, and hourly consumption and pressure amounts; and
- Authorized signatory names and signatures.

Enbridge Gas provided reasons for why the information should be treated as confidential and filed unredacted versions of the Contract. On November 3, in response to the intervenor request letter filed by Pollution Probe, Enbridge Gas provided additional information in support of its request for confidential treatment.

On November 15, pursuant to Procedural Order No. 1, Enbridge Gas filed a submission which summarized its request for confidential treatment of the information in the Contract and outlined its position on each of the redacted Contract elements. In this submission, Enbridge Gas explained that it was proper to treat the contract termination clause as confidential information pursuant to the OEB's *Practice Direction on Confidential Filings* ("Practice Direction") at the time of filing because disclosure of the information could result in prejudice to GGM's competitive position and/or interfere with negotiations being carried out by GGM in relation to their project. However, as this information was no longer commercially sensitive, Enbridge Gas withdrew its request for confidential treatment of this portion of the Contract.

Also on November 15, GGM filed a submission fully supporting Enbridge Gas's request.

On November 19, pursuant to Procedural Order No. 1, submissions on Enbridge Gas's request for confidential treatment of information were filed by OEB Staff, Pollution Probe, and Environmental Defence. Enbridge Gas summarizes and responds to these submissions below.

CIAC Payment Schedule

OEB Staff supports Enbridge Gas's request for confidential treatment of the CIAC payment schedule. OEB Staff states that the CIAC payment schedule is commercially sensitive information and the OEB has treated this information as confidential in similar proceedings.¹

Environmental Defence and Pollution Probe oppose confidential treatment of the CIAC payment schedule. Both parties comment on Enbridge Gas's submission that CIAC payment schedules have been treated confidentially in past OEB proceedings. Environmental Defence states that "Mr. Brophy describes his experience with Enbridge where such information was not treated as confidential."² However, Pollution Probe merely states that "it is standard practice to provide the CIAC payment schedule and amounts in a Leave to Construct application,"³ without providing any supporting references. In fact, as evidenced by the examples provided by Enbridge Gas in its November 15 submission, the practice has been to redact CIAC payment schedule information in Enbridge Gas leave to construct applications.

Pollution Probe states that the CIAC payment schedule includes information that is "core to the proceeding and directly related to the OEB's assessment of the application," is "an essential component of determining the cost-effectiveness and viability of the project" and is "the only document that protects ratepayers from incurring costs should the CIAC payment not be made."⁴ Environmental Defence states that "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."⁵

Enbridge Gas submits that it is not necessary to publicly disclose the CIAC payment schedule in order for the intervenors and the OEB to effectively explore the cost-effectiveness and viability of the project. Several other provisions of the Contract, including section 7, address the total estimated amount of the CIAC payment, the estimated capital investment of Enbridge Gas and how CIAC payments may be revised by Enbridge Gas. Section 7e) also notes how the final CIAC amount will be established within 15 months of the date of completion of the work based on the actual costs incurred by Enbridge Gas. The Contract, in section 10, also addresses credit requirements in place to ensure Enbridge Gas is protected from potential financial exposure for Project Costs and Cancellation Costs (as those terms are defined in the Contract). The only CIAC information that Enbridge Gas has not placed on the public record is Appendix A, which outlines specific payment dates and amounts due from GGM between the effective date of the Contract and the estimated completion of the Project.

Both Environmental Defence and Pollution Probe state throughout their submissions that Enbridge Gas has not provided a detailed description of how prejudice may arise to GGM if the CIAC payment schedule was made public in this proceeding. Enbridge Gas submits that it is self-evident that public disclosure of non-public customer-specific financial payment obligations

¹ OEB Staff Submission on Confidentiality, November 19, 2021, page 4

² ED Submission on Confidentiality, November 19, 2021, page 1

³ Pollution Probe Submission on Confidentiality, November 19, 2021, page 2

⁴ *ibid*

⁵ ED Submission on Confidentiality, November 19, 2021, page 2

at the level of granularity outlined in Appendix A of the Contract may provide insight into a customer's financial situation, such as specific cashflows. Further, Enbridge Gas negotiates unique payment obligations with customers to suit the specific needs of both the customer and Enbridge Gas for that project and disclosure of this information may prejudice future commercial negotiations with third parties. As GGM explains, individual customers expect that their detailed financial information and contractual information would remain confidential as a standard practice.

Distribution Contract Parameters

OEB Staff supports Enbridge Gas's request for confidential treatment of distribution contract parameters. OEB Staff states this information is commercially sensitive and could prejudice the position of GGM.⁶

Environmental Defence does not object to confidential treatment of this information.⁷

Pollution Probe does not make any specific objections to confidential treatment of the contract parameters.

Authorized Signatory Names and Signatures

OEB Staff does not agree with Enbridge Gas's position that signatures of individuals provided in a business capacity constitute personal information under FIPPA.⁸

Enbridge Gas submits that signatures may be considered personal information under FIPPA. Section 2(1) of FIPPA defines personal information as "recorded information about an identifiable individual, including, [...] (c) any identifying number, symbol or other particular assigned to the individual." In the Ontario government's Freedom of Information and Protection of Privacy Manual, "An identifying symbol is something that stands for, or suggests, something else by reason of relationship, association, convention, or accidental resemblance. Examples include a signature, a degree or professional designation, a tattoo, an emblem, or a scar."⁹ While the business identity information (name, title, contact information or business designation) of the individual is not personal information, this closed list does not capture signatures. A person's signature is identifying in both a business and personal context. It has higher sensitivity than the items on the business identity information list given personal risk associated with potential abuse (e.g., signature forgery, including in the cyber context). Enbridge Gas therefore takes the conservative approach in its filings that unless a person's signature is already posted on the public record in a context related to the filings, Enbridge Gas will redact the signature for the purpose of the public filings. Weighed against the probative value of signatures in a leave to construct filing, Enbridge Gas believes the conservative approach to redacting signatures is prudent.

⁶ OEB Staff Submission on Confidentiality, November 19, 2021, page 4

⁷ ED Submission on Confidentiality, November 19, 2021, page 1

⁸ OEB Staff Submission on Confidentiality, November 19, 2021, page 5

⁹ See <https://www.ontario.ca/document/freedom-information-and-protection-privacy-manual/chapter-7-privacy-fundamentals>.

If you have any questions, please contact the undersigned.

Sincerely,

Tania Persad
Senior Legal Counsel, Enbridge Gas Inc.