



Enbridge Gas Inc.

**Application for leave to construct Greenstone Pipeline
Project in the Municipality of Greenstone**

DECISION ON CONFIDENTIALITY

November 26, 2021

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.

1.0 Confidentiality Request

Enbridge Gas included in its application 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 requested that certain information in the following exhibits be treated as confidential:

- Gas Distribution Contract (Ex B/T1/S1/Attachment 1):
 - Contract termination date - within Section 11 of the Contract, the date at which GGM can terminate the Contract including two redacted lines including details related to the customer's ability to terminate the contract
 - 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

- 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
 - 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 and on November 3, 2021 Enbridge Gas provided reasons for why the information should be treated as confidential and filed unredacted copies of the documents.

2.0 Process

The OEB issued Procedural Order No. 1 on November 12, 2021. Environmental Defence Research Foundation (Environmental Defence), Minodahmun Development LP (MDLP) and Pollution Probe have been granted an intervenor status in the proceeding.

Procedural Order No. 1, among other things, set the submissions process for Enbridge Gas's confidential treatment request in accordance with OEB's *Practice Direction on Confidential Filings* (Practice Direction). The OEB also noted that Enbridge Gas's request had 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 set out in the OEB's Practice Direction. The OEB provided for additional submissions from Enbridge Gas in respect of its confidentiality requests and for GGM to file any additional information in relation to Enbridge Gas's request for confidentiality for information in the Contract. On November 15, 2021 Enbridge Gas filed a submission which summarized its request for confidential treatment of the redacted information in the Contract. On November 16, 2021 GGM filed submission in support of Enbridge Gas's request and provided a rationale for the confidential treatment of the redacted information in the Contract. On November 19, 2021, in accordance with the procedural schedule, OEB staff, Pollution Probe and Environmental Defence filed written submissions. Enbridge Gas filed its written reply on November 23, 2021.

3.0 Positions of the Parties and Findings

3.1 Contract termination date

On November 16, 2021 Enbridge Gas withdrew its request for confidential treatment of the contract termination date. Enbridge Gas explained that, as GGM stated in the submission, the GGM the construction of the Greenstone Mine Project by its owners Equinox Gold and Orion Mine Financing was announced on October 27, 2021, and for that reason the commercial sensitivity of the information has ended and contract termination date may be disclosed.

OEB staff made no submissions on this matter.

Pollution Probe said it understood that the termination date is no longer part of the request for confidential information. Environmental Defence did not address contract termination date in its submission.

Findings

The request for confidentiality of the termination date of the contract between Enbridge Gas and GGM was withdrawn. Accordingly, no finding is necessary with respect to this issue.

3.2 Payment schedule for Contribution in Aid of Construction

Enbridge Gas maintained that the CIAC payment schedule of the financial payment obligations of GGM to Enbridge Gas and is the kind of information that the OEB consistently treats in a confidential manner. Enbridge Gas further explained that disclosure of the CIAC payments can prejudice a customer's competitive position and cause interference with a customer's ongoing commercial negotiations. GGM fully supported Enbridge Gas's position and requested that the OEB treat the CIAC payment schedule as confidential.

In support of its request 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.

Enbridge Gas further submitted that such information has consistently been treated as confidential by the OEB and noted several examples of the OEB applying confidential treatment to similar information within customer contracts. Examples included the 2021 Sarnia Industrial Line Reinforcement Project¹, the Sudbury Expansion Project², and the 2015 Sarnia Expansion Project³.

OEB staff view was 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

Environmental Defence believed that disclosure of the payment schedule would not result in any commercial or financial prejudice. Environmental Defence pointed that GGM did not specify a rationale for confidentiality but simply stated that it should be redacted because it is “commercial information negotiated between GGM and Enbridge Gas.” In Environmental Defence’s view this rationale does not meet the test for confidential treatment. Environmental Defence noted that this type of 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 “.

Environmental Defence also argued that treating this information as confidential would increase regulatory costs as additional procedures would be necessary to hear and decide on the evidence that is subject to confidential treatment.

Pollution Probe considered the CIAC schedule of payments “...essential component of determining the cost effectiveness and viability of the project.” Pollution Probe further asserted that the CIAC schedule “...is the only document that protects ratepayers from incurring costs should the CIAC payment not be made.”

Pollution Probe’s understanding was that a standard OEB’s practice is that the leave to construct applications contain unredacted CIAC schedule and amounts. Enbridge Gas disagreed and stated that “...the practice has been to redact CIAC payment schedule information in Enbridge Gas leave to construct applications.”

Enbridge Gas emphasized that several other provisions of the Contracts 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. Based on this

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

² EB-2015-0120, Updated response to Board Staff 5, July 8, 2015

³ EB-2014-0333, Application and Evidence, November 4, 2014, Schedule 3-1 and Schedule 3-2

Enbridge Gas confirmed its view that the OEB and intervenors may explore cost effectiveness and viability of the Project without public disclosure of the CIAC payment schedule.

Findings

The OEB finds that the CIAC payment schedule is commercially sensitive information and will be treated as confidential.

The OEB notes 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 have been made available. It is the view of the OEB that this information is sufficient to allow intervenors to assess cost effectiveness and viability of the Project without public disclosure of the CIAC payment schedule.

OEB has taken the same approach in similar proceedings

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

Environmental Defence did not object to confidential treatment of the “contract parameters” such as the customer demand figures.

Pollution Probe considered this information as critical to the proceeding “...and directly related to the OEB’s assessment of the application.” Pollution Probe disagreed with Enbridge Gas and GGM’s position that the information on customers-specific parameters is commercially sensitive.

Findings

The OEB finds that distribution contract parameters should be treated as confidential.

This finding is made on the basis that such information is commercially sensitive and could prejudice the competitive position of GGM. Additionally, the OEB agrees with Enbridge Gas that its disclosure may adversely affect a customer’s position in future negotiations involving negotiated rates as well as prejudice GGMs position in procuring natural gas in the market.

3.4 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).

OEB staff did not agree that signatures of individuals provided in a business capacity constitute personal information under FIPPA. OEB staff referred to section 2(3) of FIPPA: “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.” OEB’s staff view was that the names and signatures in the contract appear to identify individuals in a business capacity and are therefore not covered by FIPPA.

Pollution Probe’s view was that in a business context of the Contract none of information is personal as the entire document is of a business nature which implies that these should be disclosed.

Enbridge Gas submitted, in its reply, 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.”

Enbridge Gas indicated its preference for conservative approach and stated that the signatures should be redacted.

Findings

The OEB finds that the names, titles and authorizing signatures to the Contract should not be treated as confidential. Section 2(3) of FIPPA provides that the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity is not “personal information”. The OEB considers this to also apply to signatures that are provided directly in an individual’s business, professional or official capacity. It is also noted that such signatures are common place within the OEB’s regulatory environment.

3.5 Personal Information (Landowner List and Indigenous Consultation Log and Attachments)

Enbridge Gas has redacted the names and any other personal information in landowner lists and Indigenous consultation log and Attachments based on its understanding that this information is considered personal information and is protected under the FIPPA.

OEB staff noted that it was 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. OEB staff observed that 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 did 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. In OEB staff’s submission all of the information that is relevant to the application is unredacted.

Pollution Probe submitted that the only portion of evidence that appears to meet (in part) the OEB standard and FIPPA is the landowner list.

Findings

The OEB finds the names and any other personal information in the landowner lists and Indigenous consultation log and Attachments can be kept confidential.

While it is noted that some names and contact information that can identify a person are not covered by FIPPA, some may well have been acting in a non-official private capacity and therefore covered by FIPPA, therefore making it difficult to separate the two at this point. Furthermore, there does not appear to be a compelling interest with respect to this proceeding in having the actual names appear on the public record, at least at this time.

DATED at Toronto, **November 26, 2021**

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar