



**EB-2021-0002**

**Enbridge Gas Inc.**

**Application for Multi-Year Natural Gas Demand Side  
Management Plan (2022 to 2027)**

**PROCEDURAL ORDER NO. 9 and  
DECISION ON CONFIDENTIALITY**

**November 21, 2022**

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) for approval of a new natural gas demand side management (DSM) policy framework, effective January 1, 2022, as well as approval of a new multi-year DSM plan, inclusive of budgets, programs and targets from January 1, 2022 to December 31, 2027.

**Enbridge Gas's Agreement with Natural Resources Canada**

On September 1, 2022, Enbridge Gas filed an update on the outcome from its negotiations with Natural Resources Canada (NRCan) regarding the joint delivery of the federal Green Homes Grant Program and Enbridge Gas's Residential Whole Home program. Enbridge Gas also filed a copy of the agreement documentation (EGI-NRCan Agreement). Enbridge Gas requested confidential treatment of various aspects of that documentation.

**Confidentiality Request**

Enbridge Gas requested confidential treatment for certain information contained in the following documents:

1. Attachment 1 - Contribution Agreement between Enbridge Gas and NRCan
2. Attachment 2 - Enbridge Gas and the CGHG Final Program Details Proposal
3. Attachment 3 - Agreement Overview and Question & Answer

Enbridge Gas requested confidential treatment of information contained in these documents on the basis of "reasons of privacy" and information not being relevant. Enbridge Gas also requested temporary confidential treatment of the EGI-NRCan Agreement pending a public announcement to avoid public confusion between the

current programs being delivered by Enbridge Gas and NRCan and the joint program that might compromise the efficiency of the start-up of the joint program.

On September 9, 2022, the OEB issued a Partial Decision on Confidentiality and Procedural Order No. 7, which approved Enbridge Gas's request for the temporary confidential treatment of the details of the joint program included within EGI-NRCan Agreement pending a public announcement, but denied Enbridge Gas's request for confidential treatment of the names, business titles and contact information of employees of either Enbridge Gas or NRCan included within Attachment 1 – Final Contribution Agreement between Enbridge Gas and NRCan.

As a result, the only redaction claims that remain to be decided are based on issues of relevancy of certain portions of the Attachments, each of which includes program details of the joint program that have not yet been publicly announced. Enbridge Gas has proposed redactions in these three documents on the basis that the information is not relevant to the current DSM application being decided on by the OEB. In the Partial Decision on Confidentiality and Procedural Order No. 7, the OEB stated that although redactions for irrelevance are contemplated under Part 11 of the OEB's *Practice Direction on Confidential Filings* (the Practice Direction), such requests are to be the exception and not the rule. The OEB further noted that the Chief Commissioner's December 17, 2021 letter attaching revisions to the Practice Direction stated: "There is, however, no requirement to redact out non-relevant information from a document that also contains relevant information and generally the OEB would not expect parties to do so absent a particular concern about the non-relevant information being made public."<sup>1</sup> The OEB requested that Enbridge Gas review its proposed redactions for irrelevance with this in mind and provide further explanation of the specific concern that arises from the public disclosure of the information it seeks to redact for irrelevance.

The Partial Decision on Confidentiality and Procedural Order No. 7 also scheduled a deadline for parties to make submissions on Enbridge Gas's request for confidential treatment of information that is non-relevant.

On September 14, 2022, Enbridge Gas filed further information in support of its confidentiality requests. On September 19, 2022, School Energy Coalition (SEC) and OEB staff filed submissions on Enbridge Gas's request for confidentiality, which are described below.

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<sup>1</sup> [Letter re: Adoption of Amendments to the Practice Direction on Confidential Filings and related revisions to the Rules of Practice and Procedure, Rules of Practice and Procedure for Enforcement Proceedings, and the Standard Declaration and Undertaking Form](#), December 17, 2021, page 5.

## Summary of Positions

OEB staff submitted that it does not oppose the redactions that have been made on the following pages: (i) Attachment 1, page 5-6; (ii) Attachment 1, page 8, and (iii) Attachment 2, page 33 which relate to payment terms, reporting requirements and funding reconciliation, which is not relevant to the current application. OEB staff submitted that the redactions are reasonable in this circumstance, given the concerns expressed by Enbridge Gas that disclosure of such information may prejudice future negotiations.

OEB staff submitted that the remaining redactions for irrelevance, which relate to budgets or administrative cost estimates (on Attachment 1, page 16 and Attachments 2, pages 30-31) should be denied because this information is relevant, and should be disclosed on the public record, since it appears to relate to amounts that will ultimately be paid for by ratepayers.

OEB staff submitted that any approved ratepayer funding for administrative costs will be used to allow Enbridge Gas to pay its portion of the administrative costs related to the joint program. Understanding any differences in the total amount of administrative costs that will be paid using ratepayer funding is directly relevant to the OEB's findings to ensure all costs have been reviewed to determine if they are reasonable and appropriate.

OEB staff also submitted that the funding amounts that are required by NRCAN in the table at Attachment 2, page 30, are relevant to understanding the overall funding contributions to allow the OEB to assess the reasonableness of the budget, including the proportion of ratepayer funds being provided, to determine the appropriateness of ratepayer funding in relation to the broader joint program.

SEC noted that since Enbridge Gas proposes to combine its DSM program with the federal program, it results in one program that is supported, in part, by ratepayers. SEC submitted that because of this, the details of the EGI-NRCAN Agreement, including costs and benefits, must be on the public record as they are relevant to the OEB's Decision. SEC submitted that if the OEB approves ratepayer funding for Enbridge Gas's proposed residential whole home program, which will soon be the joint program with NRCAN, the OEB's decision must, as a matter of law, be on the basis that there is an overall benefit to customers (and/or society) of proceeding with this combined program. For the OEB to reach that decision, the OEB must look at the combined program, including both its costs and benefits. Therefore, SEC submitted that as the financial terms of the EGI-NRCAN Agreement are, including how much Enbridge Gas is being paid, the process for forecasting costs and receiving payment, and how Enbridge Gas is

expected to spend the money, are relevant to the OEB's decision and that this information should be on the public record unless there is some other reason to treat this information as confidential.

In reply, Enbridge Gas submitted that concerns over budget and forecast spending figures noted by SEC and OEB staff are not justified, arguing that as part of future DSM deferral and variance account clearance proceedings, it will be required to provide relevant details of both ratepayer-funded and NRCAN-funded spending which has been used for the purposes of the Joint Program in the applicable calendar year.

Enbridge Gas argued that the figures in Attachment 1, page 16 and Attachment 2, page 30 are appropriate to redact because they are not relevant as they include budget costs grouped by tasks that were developed by NRCAN for internal purposes and cannot be compared to Enbridge Gas's proposed budgets. Enbridge Gas also noted that the costs are based on NRCAN's fiscal year which ends March 31<sup>st</sup> and include no breakdown of costs by calendar year.

Enbridge Gas submitted that comparisons between NRCAN funding and Enbridge Gas funding is also not appropriate due to a difference in amounts that are solely funded by each participant. For example, Enbridge Gas is solely financing residential rental participants and NRCAN will solely fund ex-franchise participants.

Enbridge Gas also submitted that the figures in Attachment 2, page 31 are also not relevant and not appropriate to compare as the figures apply to different cost categories and expressed by NRCAN's fiscal year, which amounts to an apples-to-oranges comparison. Enbridge Gas highlighted the challenge in comparing the costs included in the EGI-NRCAN Agreement, specifically administrative costs at Attachment 2, page 31 with its proposed administrative costs in its DSM plan application noting that OEB staff's attempt cited incompatible information that did not account for all administrative costs. Enbridge Gas submitted that this highlights that the cost forecasts in the EGI-NRCAN Agreement are not relevant and will likely only complicate future proceedings with requests for reconciliation. Therefore, Enbridge Gas submitted that the information in the tables discussed above can be of no assistance to the OEB in its consideration of the DSM plan application and impact of the EGI-NRCAN Agreement. Enbridge Gas indicated that at a future DSM deferral and variance account proceeding, it will account for both its expenditures and the contributions from NRCAN based on actual amounts.

## Findings

The OEB denies Enbridge Gas's request for redactions in Attachment 1, at page 5 and page 8 and Attachment 2, at page 33 based on its assertion of irrelevance. When a tribunal makes a ruling that evidence is not relevant, it generally remains on the record. The ruling simply prevents parties from relying on that evidence in the proceeding. In the present case, given that parties have already submitted their final submissions, no party is seeking to rely on the information that Enbridge Gas seeks to redact. Assuming that the information is not relevant in this proceeding, Enbridge Gas has not provided a compelling reason for its redaction. As drafted, the information is not commercially sensitive and is generally procedural in nature. It is not clear how this information could prejudice Enbridge Gas in other negotiations. The EGI-NRCan Agreement itself contains no provision for confidential treatment of any part of the Agreement. Finally, it is not for this panel to rule on issues of relevance that may arise in a future context, such as future proceedings, since that future context is not before us.

The OEB will not order redactions for irrelevance for evidence that relates to budgets or administrative cost estimates (on Attachment 1, page 16, and Attachment 2, pages 30-31). These redactions contain information of overall funding requirements associated with the EGI-NRCan Agreement and assist in the understanding of budgetary costs such as administrative costs and the ratepayer funding associated with the same. While the information contained in the proposed redactions may require additional explanation and comparison to alleviate confusion, the difficulty in its interpretation is not a reason for a finding of irrelevance and not a basis for redaction.

## Next Steps

As indicated in Procedural Order No. 8, temporary confidential treatment for the EGI-NRCan Agreement and related submissions, and the obligations under the Declaration and Undertaking expired with the public release of the DSM Decision on November 21, 2022.

As a result, as part of this Decision on Confidentiality and Procedural Order No. 9, the OEB requires Enbridge Gas to file a full unredacted copy of the EGI-NRCan Agreement.

## THE ONTARIO ENERGY BOARD ORDERS:

1. Enbridge Gas shall file with the OEB an unredacted copy of the EGI-NRCan Agreement and the Attachments on or before **November 25, 2022**.

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-2021-0002** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone 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 [File documents online 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 online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

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, Josh Wasylyk at [Josh.Wasylyk@oeb.ca](mailto:Josh.Wasylyk@oeb.ca) and OEB staff counsel, Lawren Murray at [Lawren.Murray@oeb.ca](mailto:Lawren.Murray@oeb.ca).

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

**DATED** at Toronto, **November 21, 2022**

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar