



DECISION AND PROCEDURAL ORDER NO. 4

EB-2022-0094

ONTARIO ENERGY BOARD

**A hearing on the Ontario Energy Board's own motion to consider
the price paid by rate-regulated natural gas distributors and their
customers for natural gas produced in Ontario**

BEFORE: Allison Duff
Presiding Commissioner

Patrick Moran
Commissioner

David Sword
Commissioner

February 7, 2023



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1 OVERVIEW

On February 7, 2022, the Ontario Energy Board initiated a generic proceeding on its own motion to consider the price paid by rate-regulated natural gas distributors for natural gas produced in Ontario.¹

In its Decision and Procedural Order No. 3, the OEB decided two jurisdictional issues and provided the Ontario Petroleum Institute with an opportunity to file evidence. This evidence would focus on how the terms and conditions in the M13 rate schedule and station fees associated with Ontario gas purchase agreements may impair the Ontario Petroleum Institute's members from obtaining fair and transparent access to Ontario's natural gas distribution system.

The Ontario Petroleum Institute filed a high-level description of its proposed evidence. Enbridge Gas Inc. responded with a letter stating its view that the items identified by the Ontario Petroleum Institute are better addressed as part of the proceeding reviewing Enbridge Gas Inc.'s 2024 rebasing application (2024 Rebasing proceeding).² The Ontario Petroleum Institute responded with a letter requesting that the Ontario Energy Board deny Enbridge Gas Inc.'s proposal and instead continue to hear the Ontario Petroleum Institute's issues in the current proceeding.

The Ontario Energy Board finds that certain items identified by the Ontario Petroleum Institute are appropriately addressed in the current proceeding, while others are appropriately addressed in the 2024 Rebasing proceeding. Specifically, the Ontario Petroleum Institute's concerns about fair and transparent system access will be heard in the current proceeding and issues related to the terms of service associated with the current M13, 401 and proposed E80 rates will be heard in the 2024 Rebasing proceeding. Enbridge Gas Inc.'s proposal in the 2024 Rebasing proceeding for injection station fees will also remain in that proceeding.

¹ [Ontario Energy Board Notice](#), dated February 7, 2022

² [EB-2022-0200](#)

2 PROCESS

The Ontario Energy Board (OEB) issued Procedural Order No. 1³ in this proceeding (the System Access proceeding) on March 4, 2022. Each of Canadian Manufacturers and Exporters (CME), Enbridge Gas Inc. (Enbridge Gas), Energy Probe Research Foundation (Energy Probe), EPCOR Natural Gas Limited Partnership (EPCOR), Industrial Gas Users Association (IGUA), London Property Management Association (LPMA), Ontario Petroleum Institute (OPI) and School Energy Coalition (SEC) were granted intervenor status. CME, Energy Probe, IGUA, LPMA and SEC were also granted eligibility to apply for an award of costs.

The OEB issued Procedural Order No. 2⁴ in which the OEB found that the submissions received on the draft issues list raised questions relating to the OEB's jurisdiction, as set out in the [Ontario Energy Board Act, 1998](#) (OEB Act). To ensure an efficient and transparent process, the OEB determined that the issues related to jurisdiction should be addressed before proceeding further. The OEB made provision for submissions on certain aspects of the OEB's jurisdiction.

The OEB issued Decision and Procedural Order No. 3⁵ in which the OEB found that it does not have jurisdiction to directly set the price that Ontario natural gas producers get paid for the gas they produce and provide to Ontario distributors or any other purchaser. Further, the OEB found that in a narrow set of circumstances, a panel of Commissioners can address issues relating to fair and transparent access to the gas distribution system in the context of the terms and conditions associated with OEB approved rates. The OEB provided OPI with an opportunity to file evidence on access and connection constraints in the current M13 rate schedule or in relation to station fees in gas purchase agreements. The OEB required that OPI first provide it with a high-level description of its proposed evidence.

OPI filed a high-level description of its proposed evidence.⁶

Enbridge Gas filed a letter⁷ stating its view that the items identified by OPI are better addressed as part of the 2024 Rebasing proceeding.

³ [Procedural Order No. 1](#), dated March 4, 2022

⁴ [Procedural Order No. 2](#), dated May 3, 2022

⁵ [Decision and Procedural Order No. 3](#), dated November 17, 2022

⁶ [OPI proposed evidence letter](#), dated January 13, 2023

⁷ [Enbridge Gas submission on OPI proposed evidence](#), dated January 17, 2023

OPI filed a letter requesting that the OEB deny Enbridge Gas's proposal and continue to hear OPI's issues in the current proceeding.

3 PROPOSED EVIDENCE

In its high-level description of its proposed evidence, OPI indicated that it would identify barriers to fair and transparent system access, examine producer connection costs, and propose solutions. Specifically, OPI's evidence would:

- a) Identify contractual terms in the M13 rate schedule that, in OPI's experience, have acted as a barrier to fair access for Ontario gas producers
- b) Explain how each term operates as a barrier
- c) Where an example is feasible and might be useful to the OEB, provide such example
- d) Indicate whether the same term exists in the Gas Purchase Agreement
- e) Identify terms and conditions that OPI believes should be included in the M13 Contract in order to ensure fair and transparent access for Ontario producers

In its letter stating its view that the items identified by OPI are better addressed as part of the 2024 Rebasing proceeding, Enbridge Gas submitted that:

- a) Doing so would engage a broader group of stakeholders
- b) Not doing so poses the risk of inconsistent or duplicative OEB findings
- c) It would be a more efficient use of resources

Enbridge Gas noted that OPI had not requested intervenor status in the 2024 Rebasing proceeding and stated that Enbridge Gas would not object to it doing so.

In its letter requesting that the OEB deny Enbridge Gas's proposal and hear OPI's issues in the System Access proceeding, OPI stated that:

- a) Anyone interested in these issues could have intervened in this proceeding and that there is no broader group of stakeholders with an interest in these issues
- b) OPI is a small organization, and having its evidence made part of a "broad, lengthy, multi-issue rebasing proceeding" would increase OPI's costs to resolve its concerns

- c) The OEB has carefully prescribed the scope of permissible evidence to be filed by OPI in this proceeding, and OPI's evidence fits within the OEB's direction by focusing on system access and not rates

Findings

The OEB finds that the evidence proposed by OPI falls within the scope of the System Access proceeding.

The OEB acknowledges that there are advantages and disadvantages to hearing OPI's issues in either the System Access proceeding or the 2024 Rebasing proceeding. However, Decision and Procedural Order No. 3 was clear that certain matters would be considered in the System Access proceeding. Decision and Procedural Order No. 3 indicated:

The scope of OPI's evidence will be limited to its concerns with the terms of service associated with the M13 rate schedule and station fees charged in gas purchase agreements. Approved rates are not subject to change in this proceeding as this is not a rebasing proceeding, constituted to consider revenue requirement, cost allocation and rate design issues.

OPI's evidence should focus on describing what it interprets as access and connection constraints in the current M13 rate schedule or in relation to station fees in gas purchase agreements, and OPI's proposed solutions.

The OEB understands that the OPI has concerns with the transparency of how Enbridge Gas determines how much capacity its system has to receive natural gas from local producers and when. In its high-level description of its proposed evidence, OPI described this as "capacity constraints" relating to "shut-in periods and existing capacity". The OEB also understands that Ontario gas producers want to explore options for "mitigating customer connection costs". The OEB finds these to be matters of system access that will be heard in the System Access proceeding.

Enbridge Gas, in its 2024 Rebasing application, is proposing to replace its M13 rate for Ontario natural gas producers, and its rate 401 for renewable natural gas producers with a new rate E80 that would apply to both types of producers. Except for the system access issues related to those rates, this System Access proceeding will not address any aspect of what Enbridge Gas has proposed in the 2024 Rebasing proceeding, including the two proposed station fees, since station fees are rates. This proceeding will remain limited to system access issues only.

The OEB acknowledges the refinement of scope in the System Access proceeding, compared to the Notice of Application. The OEB directs Enbridge Gas to serve this Decision and accompanying cover letter on all current customers served under rates M13 and 401, including entities that Enbridge Gas is in discussion with regarding potential service.

In addition to establishing procedural steps related to OPI's evidence, the OEB is providing Enbridge Gas with the opportunity to file evidence, consistent with the scope defined in this Decision. Enbridge Gas shall notify the OEB of its intent to file evidence to enable the remaining procedural steps to be established.

The OEB notes that the OPI has been granted intervenor status in the 2024 Rebasing Proceeding.⁸ If requested, any intervenor in the 2024 Rebasing proceeding with an interest in the system access issues related to rate M13, rate 401 and the proposed new rate E80 will be granted late intervenor status in the System Access proceeding.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

⁸ [OEB letter](#) granting intervenor status to OPI in the 2024 Rebasing proceeding, EB-2022-0200

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas shall serve notice of this Decision and Procedural Order No. 4 and accompanying cover letter on all current customers served under rates M13 and 401, including entities that Enbridge Gas is in discussion with regarding potential service by **February 15, 2023**.
2. OPI shall file its evidence and serve it on all parties by **March 3, 2023**.
3. Enbridge Gas shall notify the OEB by letter on whether it intends to file evidence and serve the letter on all parties by **March 10, 2023**. If Enbridge Gas intends to file evidence, it shall provide a high-level description of the proposed evidence and when it will be filed.
4. OEB staff and Intervenors shall request any relevant information and documentation from the OPI that is in addition to the evidence filed, by written interrogatories filed with the OEB and served on the OPI and all other parties by **March 17, 2023**.
5. The OPI shall file with the OEB complete written responses to the interrogatories and serve them on all intervenors by **March 31, 2023**.

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-2022-0094** 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.

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- 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 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, Ritchie Murray at ritchie.murray@oeb.ca and OEB Counsel, Michael Millar at michael.millar@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto February 7, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar