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August 25, 2023

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, P.O. Box 2319
Toronto ON, M4P 1E4

Dear Ms. Marconi,

**RE: EB-2022-0094 Price Paid for Ontario Production Natural Gas – System Access
Submission of Energy Probe**

Attached is the submission of Energy Probe Research Foundation (Energy Probe) on system access issues in the EB-2022-0094 Price Paid for Ontario Production Natural Gas proceeding.

Respectfully submitted on behalf of Energy Probe.

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

cc. Patricia Adams (Energy Probe Research Foundation)
Ritchie Murray (OEB Staff)
Parties to the Proceeding

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EB-2022-00094

ONTARIO ENERGY BOARD

Price Paid for Ontario Production Natural Gas

System Access Issues

Energy Probe Submission

August 25, 2023

Executive Summary

Energy Probe submits that the proposals by the OPI for access to the gas distribution system by Ontario gas producers are appropriate. The proposals will allow for fair and transparent access because they are similar to access provisions in the Distribution System Code for electricity distributors. Rejection of the proposals by Enbridge on the grounds that Enbridge Gas is not an electricity distributor is without merit since Enbridge had argued in its merger proceeding that OEB's MAADs policy for electricity distributors should apply to Enbridge, which OEB approved. Energy Probe submits that it is in Ontario's interest to maintain its own gas exploration and production industry. In its decision the OEB should direct Enbridge to cooperate with OPI to facilitate and improve access to its system by the adoption of OPI's proposals.

Regulatory Background

On February 7, 2022, The Ontario Energy Board (OEB) initiated a proceeding on its own motion to consider the price paid by rate-regulated natural gas distributors for natural gas produced in Ontario. The OEB explained the reason for this proceeding in its notice.

Most Ontario natural gas producers sell their gas directly to Distributors through gas purchase agreements. Under these agreements, Ontario's largest distributor (Enbridge Gas Inc.) currently pays Ontario natural gas producers a forward Dawn Index price for natural gas. In the OEB's recent consultation on Enbridge Gas's gas supply plan (EB-2019-0137), the Ontario Petroleum Institute (OPI) argued that Enbridge Gas should instead be paying the Total Gas Supply Commodity Charge (TGSCC) in the Union South rate zone for gas produced in Ontario. The TGSCC is usually (though not always) a higher price than the forward Dawn Index price.¹

In Procedural Order No. 2 the OEB directed the parties to the proceeding including OEB staff to file submissions on the following two questions.

Question 1. On what basis does the OEB have jurisdiction to set the price that Ontario natural gas producers get paid for the gas they produce and provide to Ontario distributors?

Question 2. On what basis can a panel of commissioners establish rules to ensure fair and transparent access for gas producers to gas distribution systems in Ontario?

In its Decision and Procedural Order No.3 of November 17, 2022, the OEB found in answer to Question 1, that *it does not have jurisdiction to directly set the price that Ontario natural gas*

¹ EB-2022-0094, OEB Notice, February 7, 2022

*producers get paid for the gas they produce and provide to Ontario distributors or any other purchaser.*²

In answer to Question 2, 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 allowed OPI to file evidence regarding access and connection constraints which OPI did. In subsequent procedural steps the OEB allowed for Enbridge to file evidence, and for an interrogatory process, and for submissions by other parties. This is the submission of Energy Probe.

Submission

Energy Probe supports the OPI's efforts to improve access to the Enbridge Gas system by Ontario producers as outlined in the OPI's evidence³ and its submission⁴. In its evidence and its submission OPI proposed that the OEB consider the access provisions in the Distribution System Code for electricity distributors and apply them to the access of Ontario gas producers to the Enbridge Gas system. Energy Probe in its submission will only deal with the Distribution System Code proposals put forward by OPI and rejected by Enbridge.

OPI made several proposals that would improve and facilitate access if Enbridge were to follow the Distribution System Code. In its evidence OPI made the following proposal.

“OPI understands that electricity distributors have prescriptive procedures for connecting electricity generators to their distribution systems, which include timelines for responding to connection requests (via a detailed cost estimate and an offer to connect) and standard form connection cost recovery agreements and connection agreements. OPI also understands that to some extent the procedures and timelines for connecting electricity generators have been tailored based on the size of the generation facility (with, for example, a simpler and quicker process for smaller generation facilities). In OPI's view, establishing a prescriptive connection policy/process would be helpful to Ontario producers and helpful to EGI in meeting its obligations under section 42 of the Ontario Energy Board Act, 1998 (the “OEB Act”).⁵”

This was rejected by Enbridge in its evidence.

“18. OPI stated that, in its view, establishing a prescriptive connection policy/process would be helpful to Ontario producers and helpful to Enbridge Gas in meeting its obligations under section 42 of the Ontario Energy Board Act, 1998 and provided prescriptive measures that OPI believes would provide local producers with greater certainty around timely connection.

² EB-2022-0094, Decision and Procedural Order November 22, 2022

³ EB-2022-0094, OPI Evidence, System Access Issues, March 3, 2023

⁴ OPI Submission, System Access Issues, July 23, 2023

⁵ OPI Evidence, March 3, 2023, page 4

19. Enbridge Gas does not agree that fixed performance parameters are required on producer connections when customer connections, performed using the same process, do not require such a standard.

20. Enbridge Gas treats an Ontario Producer request similar to other requests that it receives from customers. This process is outlined as follows:

i. The Producer requests to connect to the Enbridge Gas system providing the location and estimated volumes of production. The request is assigned to an Account Manager and forwarded to engineering to assess the request and determine the facilities required to connect to Enbridge's system. This includes:

- (a) The ability to accept volumes under winter and summer conditions,
- (b) Piping requirements to connect the injection station to the pipeline. Depending upon market availability, a pipeline may need to be installed to access the market.
- (c) Design of the injection station.

ii. Once the design is completed, Enbridge Gas prepares a cost estimate that includes materials, company labour, construction costs (fabrication/installation of injection station/pipeline), third party costs (fence, painting, electrical, etc.) and any other costs required to install the facilities.

iii. The Ontario Producer pays 100% of the costs".

In its evidence⁶ OPI made a proposal that producers be allowed to construct stations connecting their gas production facilities to the Enbridge Gas system.

"OPI has directly raised with EGI the possibility of OPI's members constructing these stations, and then transferring the station to EGI (after an EGI inspection). OPI's members would, of course, ensure these stations met all requisite technical and safety standards. However, EGI has advised OPI that this is not an option.

OPI's members see no reason why these stations cannot be constructed by producers (at the producers' cost) and transferred to EGI for nominal consideration. There are two reasons why OPI believes this is feasible. First, these stations are typically small, single customer stations – i.e., a station connects a single producer to the EGI transmission or distribution system. It is not like an electricity distribution or transmission station which contains assets used to serve large numbers of customers (and therefore should only be accessible to the incumbent utility that owns the station and bears the obligation to serve the many customers served from that station). Second, OPI understands that one way that electricity generators (and load customers) are able to mitigate the cost of connecting to the electricity distribution system is via a contestability procedure that enables the generator or load customer to construct connection assets to applicable legal standards and then transfer those assets to the electric utility. OPI further understands that all connection work can be undertaken in this manner by a connecting customer other than: (a) preliminary planning, design and engineering specifications for the connection work; and (b) construction work on the incumbent utility's existing facilities and equipment. OPI understands

⁶ OPI Evidence, March 3, 2023, Pages 11 and 12

that connecting electricity generators and load customers often choose to proceed with this approach because the customer believes it can carry out the work at a lower cost.

OPI believes that the same process should be available to connecting Ontario natural gas producers, and that it would mitigate the costs of connection – leading to a more financially viable gas production industry, and regulatory equivalency between Ontario’s gas and electricity.”

The proposal seems sensible. Not only is it similar to what is occurring in electricity distribution, but it is also similar to Enbridge’s own current practice with attaching new subdivisions where the builders working for the developer installs gas mains and services and then turns them over to Enbridge. Yet despite this the proposal was turned down by Enbridge.⁷

“30. OPI states that connecting electricity generators and load customers often choose to proceed with this approach because the customer believes it can carry out the work at a lower cost. OPI believes that the same process should be available to connecting Ontario natural gas producers, and that it would mitigate the costs of connection – leading to a more financially viable gas production industry, and regulatory equivalency between Ontario’s gas and electricity sectors. OPI explained that the principles set out in section 3.2.15A of the Distribution System Code (“Work that requires physical contact with the distributor's existing distribution system is not eligible for alternative bid unless the distributor decides in any given case to allow such work to be eligible for alternative bid”) would only apply to the final tie-in to Enbridge Gas’ pipeline.

31. For clarification, OPI members construct their facilities with a final above ground flange to which Enbridge Gas installs an isolation valve and then the station which connects to Enbridge Gas’ underground pipeline. Enbridge Gas’ station includes several components including: measurement, pressure control, gas quality, and odorization. As part of its procedures, Enbridge Gas must ensure that each of the components have material traceability and that its approved installation contractors have welders approved to Enbridge Gas’ standards, traceability of fabrication, and quality control records.

32. To ensure safe and reliable assets, Enbridge Gas does not permit customers to construct their own stations. As outlined above, Enbridge Gas considers the final connection much broader than just the final tie-in connection to an underground pipeline.”

In one of its interrogatory responses Enbridge goes further in rejecting OPI’s proposals.⁸

“Staff Questions:

- a) Please confirm Enbridge Gas’s view that the entire connecting station constitutes the final tie-in to Enbridge Gas’s pipeline system. Otherwise, please explain.
- b) Does Enbridge Gas consider its view in part a) of this question to be consistent with the Distribution System Code? Please explain, using specific references to the relevant sections of the Distribution System Code.

⁷ Enbridge Gas Evidence May 31, 2023, Page 9

⁸ EGI-Staff-7

- c) If Enbridge Gas does not consider its view in part a) of this question to be consistent with the Distribution System Code, then please provide an explanation for why Enbridge Gas believes it is appropriate for there to be an inconsistency between the contestability rules for electricity and natural gas.
- d) Please explain what Enbridge Gas would require for the connecting station work to be contestable.

EGI Responses:

a) Confirmed.

b) The Distribution System Code, section 1.4 states “This Code applies to all electricity distributors licensed by the Ontario Energy Board under Part V of the *Ontario Energy Board Act*.” Enbridge Gas is not an electricity distributor.” The Distribution System Code (DSC) states the following:

3.2.14 Where the distributor requires a capital contribution from the customer, the distributor shall allow the customer to obtain and use alternative bids for the work that is eligible for alternative bid. The distributor shall require the customer to use a qualified contractor for the work that is eligible for alternative bid provided that the customer agrees to transfer the expansion facilities that are constructed under the alternative bid option to the distributor upon completion.

3.2.15 The following activities are not eligible for alternative bid: (a) distribution system planning; and (b) the development of specifications for any of the following: i) the design of an expansion; ii) the engineering of an expansion; and iii) the layout of an expansion.

3.2.15A Work that requires physical contact with the distributor’s existing distribution system is not eligible for alternative bid unless the distributor decides in any given case to allow such work to be eligible for alternative bid.

3.2.15B Despite any other provision of this Code, decisions related to the temporary de-energization of any portion of the distributor’s existing distribution system are the sole responsibility of the distributor. Where the temporary de-energization is required in relation to work that is being done under alternative bid, the distributor shall apply the same protocols and procedures to the de-energization as it would if the customer had not selected the alternative bid option.

As stated in response to a) above, Enbridge Gas considers the entire station that connects the local gas producer to the distribution system to be the tie-in to the Enbridge Gas system. If Enbridge Gas was an electricity distributor, it would consider that section 3.2.15A of the DSC would apply such that the work on the station would not be eligible for an alternative bid.

c) The types of equipment and facilities as well as governing regulatory codes for electrical distribution and natural gas distribution are substantially different. It is to be expected that there would be a resulting inconsistency between the rules, or at least the application of such rules, for electricity and natural gas.

d) Please refer to Exhibit EGI-Staff-7”

Energy Probe submits that in the Merger proceeding Enbridge argued that the MAADS policy for electricity distributors should also apply to Enbridge.⁹

“The Board’s approach to mergers, acquisitions, amalgamations and divestitures (“MAADs”) complements its ratemaking framework. The Board’s MAADs policies recognize that integration brings additional risks and opportunities for efficiency improvements, and that the right balance of incentives and customer protection can facilitate the achievement of the Board’s overall regulatory goals.

While the MAADs policies were developed specifically for the electricity distribution sector, the underlying principles and goals are also applicable to natural gas and therefore the policies should inform the Board’s consideration of the Applications. These principles and goals include economies of scale and contiguity, lower per customer cost, ability to address the challenges of the evolving energy sector, and 8 EB-2005-0211/EB-2006-0081 Decision and Order, January 30, 2007, page 14. 9 RRFE Report, page 11. Filed: 2018-06-29 EB-2017-0306 EB-2017-0307 Page 6 of 86 meeting public policy goals.¹⁰ It is appropriate to consider the current amalgamation and rate mechanism applications under the Board’s MAADs policy framework, because the underlying principles and goals of the MAADs policy framework also apply to natural gas and are aligned with the Board’s regulatory policy goals more broadly.”

It seems to Energy Probe that Enbridge wants the MAADS policy, which it admits was developed for the electricity sector to apply to a gas distributor, Enbridge, but does not want any part of the Distribution System Code to apply to Enbridge because “*Enbridge Gas is not an electricity distributor.*”¹⁰ In its argument in the MAADS proceeding asks the OEB to consider underlying principles and goals of the MAADs policy framework as justification. The underlying principles and goals of the Distribution System Code are just as relevant. Enbridge’s position in EB-2022-0094 is inconsistent with its position in EB-2017-0306/0307.

Energy Probe submits that the utility which is now Enbridge Gas Inc. started with takeovers and mergers of many gas distributors years ago. Some used manufactured coal gas while others used Ontario produced natural gas where it was available, particularly in Southwestern Ontario and the Niagara Peninsula. Enbridge is now a large importer of shale gas from the US. There are substantial shale gas deposits in Ontario that may be developed at some time in the future to meet energy demands of Ontario due to population growth because of high immigration and potential shortage of electric power. It is in Ontario’s interest to maintain its own gas exploration and production industry. In its decision the OEB should direct Enbridge to co-operate with OPI to facilitate and improve access to its system by adoption of OPI’s proposals.

⁹ 2018-06-29 EB-2017-0306 EB-2017-0307 Page 6

¹⁰ Staff 6 b