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**BY EMAIL**

August 25, 2023

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission  
OEB File Number: EB-2022-0094**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 7.

Yours truly,

Ritchie Murray  
Sr. Advisor, Applications – Natural Gas

Encl.

cc: All parties in EB-2022-0094



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**EB-2022-0094**

**August 25, 2023**

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## Background

In February 2022, the Ontario Energy Board (OEB) initiated a hearing on its own motion to consider the price paid by rate-regulated natural gas distributors (Gas Distributors) and their customers for natural gas produced in Ontario (the Proceeding).<sup>1</sup>

In Procedural Order No. 1, the OEB invited participants to provide their comments on a draft issues list.<sup>2</sup> After receiving the comments on the draft issues list, the OEB issued Procedural Order No. 2, asking for submissions on two jurisdictional questions that the OEB identified as being engaged by comments from the Ontario Petroleum Institute (OPI).<sup>3</sup> The OEB invited OPI to provide its submission first with other intervenors to respond and allowed OPI the opportunity to reply to the submissions of intervenors.

In its Decision and Procedural Order No. 3, the OEB found that it does not have jurisdiction to directly set the price that Ontario natural gas producers (Producers) get paid for the gas they produce and provide to Ontario Gas Distributors or any other purchaser.<sup>4</sup> Further, the OEB found that in a narrow set of circumstances, a panel of OEB 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 associated with gas purchase agreements.<sup>5</sup>

In its Decision and Procedural Order No. 4, the OEB found that the evidence proposed by OPI to cover the following areas falls within the scope of the Proceeding:<sup>6</sup>

1. Identification of contractual terms in the M13 rate schedule that, in OPI's experience, have acted as a barrier to fair access for Producers
2. Explanation of how each term operates as a barrier, including examples
3. Indication of whether the same term exists in the Gas Purchase Agreement
4. Identification of terms and conditions that OPI believes should be included in the M13 Contract in order to ensure fair and transparent access for Producers

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<sup>1</sup> Notice, February 7, 2022

<sup>2</sup> Procedural Order No. 1, March 4, 2022

<sup>3</sup> Procedural Order No. 2, May 3, 2022

<sup>4</sup> Decision and Procedural Order No. 3, November 17, 2022

<sup>5</sup> Rate M13 Schedule A (2013) uses the term "meter station" to describe the station required to receive and measure the natural gas Enbridge Gas Inc. receives from a Producer. For clarity, the record in this proceeding contains the synonymous terms connecting station, connection station, interconnect station, and customer station.

<sup>6</sup> Decision and Procedural Order No. 4, February 7, 2023

OPI filed its evidence on March 3, 2023 and Enbridge Gas Inc. (Enbridge Gas) filed responding evidence on May 31, 2023.

OPI filed its argument-in-chief on July 28, 2023. Submissions from OEB staff and intervenors (including Enbridge Gas) are due by August 25, 2023 and any reply submission from OPI is due by September 8, 2023.

As OEB staff and Enbridge Gas have the same deadline for filing submissions, OEB staff has not had the opportunity to review Enbridge Gas's position on the issues. As set out in further detail below, OEB staff is of the view that Enbridge Gas and OPI are best positioned to make an initial proposal regarding appropriate terms to address barriers Producers face in accessing and utilizing Enbridge Gas's system. OEB staff have also been mindful of the scope of the Proceeding, and in particular the focus on appropriate terms and conditions (or similar instruments) related to system access. Broader issues are outside the scope of this proceeding, which is being conducted under the OEB's rate making authority and not as a rule under section 44 of the *Ontario Energy Board Act, 1998*.

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## OEB Staff Submission

Guided by the scope of the proceeding as determined by the OEB and by the argument in chief of OPI, OEB staff has organized its submission under the following three headings. A summary of OEB staff's position is provided under each heading. A more detailed account of OEB staff's position is provided in subsequent sections.

### 1. Improving the Connection and Shut-In<sup>7</sup> Processes

OEB staff submits that Enbridge Gas's Producer connection and shut-in processes can and should be set out more clearly and be applied in a standard manner by Enbridge Gas. In OEB staff's view these processes should largely relate to timelines and communications from Enbridge Gas to producers; for example timelines for responding to connection requests and providing clear information regarding the reasons for any shut-ins. OEB staff believes that Enbridge Gas is best positioned to determine when shut-ins are appropriate (as opposed to how that should be communicated) and does not support formal new policies regarding when shut-ins should occur (or end).

The OEB should require Enbridge Gas and OPI (and invite the Canadian Biogas Association (CBA) if it chooses to participate) to convene and attempt to jointly prepare a proposal by a certain date that contains draft processes for the OEB's consideration. The proposal should also make a recommendation regarding where the processes should reside (e.g., Enbridge Gas's Conditions of Service, a schedule to the Rate M13 tariff and gas purchase agreements, etc.) (Proposal). Any Proposal would be subject to the OEB's approval.

### 2. Mitigating Connection Costs - Contestability

OEB staff submits that the OEB should establish provisions providing a right of contestability (i.e., the right to have their own qualified contractor build the connection to Enbridge Gas's system) for Producers with respect to connecting stations. As part of the Proposal described in item 1 above, the OEB should require Enbridge Gas and OPI (and invite the CBA if it chooses to participate) to convene and attempt to jointly set out draft contestability provisions for the OEB's consideration. Any Proposal would be subject to the OEB's approval.

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<sup>7</sup> A Producer is "shut-in" when an Ontario Distributor adjusts the connecting station to prevent locally produced gas from flowing into the Distributor's system. Reasons for a shut-in include a long-term lack of available capacity, the quality of the locally produced gas goes off specification, or the Distributor must perform work on its system.

### 3. Establishing Purchasing Priority

OEB staff submits that OPI's proposals with respect to establishing a purchasing priority is a rates issue (related to both the Quarterly Rate Adjustment Mechanism and the gas supply planning process) that is beyond the scope of this Proceeding. The scope established by the OEB relates to terms and conditions of access to Enbridge Gas's system. It does not relate to purchasing priority, the amount of gas Enbridge Gas should procure from Producers, or the price it should pay for that gas.

OEB staff expects that after any formal connection processes, shut-in processes and/or contestability provisions are approved by the OEB, any Producer alleging a breach of these processes or provisions could file a complaint with the OEB through the ordinary process (depending on the details of what is ultimately approved).

### 1. Improving the Initial Connection and Shut-In Processes

In its evidence, OPI characterized Enbridge Gas's Producer connection processes (including shut-ins) as being ad hoc and without firm timelines or standardized information exchange. OPI stated that there are no firm timelines with respect to connection requests, and no enforcement mechanism for whatever connection procedures or practices that do exist. As a result, Enbridge Gas's communications with Producers are not prompt or timely and Producers experience lengthy delays obtaining cost estimates for connecting stations. OPI noted that, under the OEB's Distribution System Code, electricity distributors have prescriptive procedures for connecting electricity generators to their distribution systems, which include timelines for responding to connection requests and standard form connection cost recovery agreements and connection agreements. OPI provided examples of these prescriptive procedures in an interrogatory response.<sup>8</sup> OPI submitted that establishing a prescriptive connection policy / process would provide Producers with greater certainty around timely connection and thereby help them better operate their businesses.

In its evidence, OPI asserted that shut-ins occur as a result of Enbridge Gas making changes to its system.<sup>9</sup> OPI expressed frustration that Enbridge Gas can unilaterally determine when a shut-in is required and its duration. OPI alleged that Producers are frequently shut-in with little notice<sup>10</sup> and for extended period of time with no effort by Enbridge Gas to minimize the impacts of the shut-ins on Producers. OPI said that Producers want: (a) Enbridge Gas to provide advanced notice of shut-ins; and (b) the

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<sup>8</sup> OPI-Staff-3

<sup>9</sup> OPI evidence, July 28, 2023, page 12

<sup>10</sup> OPI and Enbridge Gas each noted in their evidence that the GPA requires a minimum 24-hour notice. OEB staff notes that the same minimum requirement is found in Rate M13, Schedule "A 2013" General Terms and Conditions.

OEB to create a regulatory requirement to minimize shut-in durations.

In its evidence, Enbridge Gas stated that Producer connections are managed in the same way as other types of customer connections. Enbridge Gas noted that those other types of customer connections are not subject to a prescriptive connection policy / process. Enbridge Gas provided a detailed description of its customer connection process.<sup>11</sup> Enbridge Gas alleged that delays experienced by Producers are often the result of actions taken by the Producers.<sup>12</sup> Enbridge Gas noted that there are many reasons why a connecting station may be shut-in,<sup>13</sup> but the main reason is unacceptable gas quality.<sup>14</sup>

In response to an interrogatory, Enbridge Gas stated that it can work to standardize and enhance its communications with Producers including more timely responses and updates on the progress of each request.<sup>15</sup> In addition to providing minimum market demand in response to connection requests as it does today, Enbridge Gas stated that it could include more detailed market demand and injection pressure requirements for each season.

In its argument-in-chief, OPI stated that the current processes make it difficult for Producers to make informed investment decisions because Enbridge Gas controls when Producers can start selling (connection timelines), how much they can sell (available market / capacity), whether a Producer can mitigate its cost to sell gas (connection costs), and when a Producer must stop selling (shut-in practices). OPI stated that it does not believe Enbridge Gas's lack of timeliness and poor responsiveness to be the result of bad faith – rather, the lack of a clear prescriptive process. OPI submitted that:<sup>16</sup>

1. The connection process set out by Enbridge Gas in its evidence should be broken down into more granular elements – with specific, mandatory timelines attached to each, consistent with how electricity generators are treated
2. The timelines in the connection process must be subject to an OEB compliance / enforcement mechanism
3. The OEB should require Enbridge Gas to report regularly to the OEB on the specifics of any existing shut-ins (including location, start date, reason for shut-in, estimated return to service, mitigation efforts to allow Producer supply)

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<sup>11</sup> Enbridge Gas evidence, May 31, 2023, page 5

<sup>12</sup> Enbridge Gas evidence, May 31, 2023, page 7

<sup>13</sup> EGI-OPI-1

<sup>14</sup> EGI-CBA-1

<sup>15</sup> EGI-Staff-1

<sup>16</sup> OPI evidence, July 28, 2023, pages 3-4, 6 and 16



With respect to the determination of when a shut-in is appropriate, OPI expressed concerns about delays it says Producers face in obtaining information on: (a) the available capacity of Enbridge Gas's system; (b) a lack of transparency into the methodology of how Enbridge Gas determines available capacity; and (c) a lack of options for where Producers can connect to Enbridge Gas's system.

In its evidence, Enbridge Gas stated that it does not design its system based on non-firm supply sources, such as those provided by Producers. Enbridge Gas stated that a Producer's ability to access local markets is dependent on the Producer's ability to meet specific system pressure requirements, which are a function of system configuration, consumer demand, and location that the local natural gas is injected.

In its argument-in-chief, OPI noted that available capacity is a condition precedent to Rate M13 or a Gas Purchase Agreement. OPI reiterated its view that more transparency is needed into how Enbridge Gas determines available capacity. For example, OPI questioned why available capacity appears to be based on the most restrictive system conditions (i.e., the summer condition). OPI also noted that Enbridge Gas's system can be adjusted to help prioritize injection sources,<sup>17</sup> however it is not clear how often Enbridge Gas assesses its ability to make such adjustments.

#### OEB Staff Submission

OEB staff submits that Enbridge Gas's connection and shut-in procedures should be set out more clearly and be applied in a standard manner by Enbridge Gas. OEB staff believes that the evidence shows that the connection and shut-in processes as they are applied today can be challenging for Producers. OEB staff notes that the connection and shut-in processes are not just issues for local conventional natural gas producers – they may also be issues for the growing number of Renewable Natural Gas (RNG) producers.<sup>18</sup> Therefore, OEB staff submits that a clearer and more standardized process could benefit Producers by clarifying expectations on timelines for responses to connection requests, timelines for communications respecting shut-ins, and the types of information that should be provided regarding both connections and shut-ins.<sup>19</sup>

OEB staff submits that the OEB should require Enbridge Gas, OPI and the CBA (if it wishes to participate) to work to produce a Proposal for the OEB's consideration that contains drafts of the clearer and more standardized processes for connection and shut-

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<sup>17</sup> Enbridge Gas, 31, 2023, page 3

<sup>18</sup> OEB staff notes that the CBA is an intervenor in this proceeding and posed interrogatories to Enbridge Gas related to shut-in causes and durations, rate M13 and Gas Purchase Agreements, and managing local gas injections when there is low consumer demand and therefore high system operating pressures.

<sup>19</sup> OEB staff recognizes that there is a broader question of whether a generic Rule should be created in the future for other customer types. However, this question is beyond the scope of the current proceeding and no direction is needed from the current panel of Commissioners on the matter.

ins. OEB staff submits that the clearer and more standardized processes could be similar in concept to the processes used in the electricity sector (i.e., the OEB's Distribution System Code (DSC)) while recognizing any differences between the electricity and natural gas sectors or other relevant factors. The Proposal should also recommend where the processes should reside (e.g., as a schedule to Rate M13 and gas purchase agreements, Enbridge Gas's Conditions of Service, Enbridge Gas's website, or some other location). Any Proposal would be subject to the OEB's approval.

With respect to the issue of when shut-ins are appropriate, OEB staff submits that Enbridge Gas is best positioned to determine: (a) the available capacity of its system, and (b) when a shut-in is required due to a change in available capacity, work on its system, unacceptable gas quality, etc.<sup>20</sup> Determining available capacity is not a simple matter and depends on the circumstances.<sup>21</sup> Circumstances change, and current availability may be different from past availability.<sup>22</sup> OEB staff submits that it is not necessary for the OEB to establish new processes to provide guidance on when shut-ins are appropriate (though as described above OEB staff believes better communication processes are appropriate).

## **2. Mitigating Connection Costs - Contestability**

In its evidence, OPI expressed its view that Enbridge Gas's capital costs for connecting stations are high considering that the stations are typically small and only serve a single customer. OPI pointed to a contestability procedure in the OEB's electricity DSC that permits customers to construct their own connecting stations excluding: (a) preliminary planning, design and engineering specifications, and (b) construction work on the incumbent utility's existing facilities and equipment.<sup>23</sup> OPI said it raised with Enbridge Gas the possibility of Producers constructing their own stations to all requisite technical and safety standards and then transferring the stations to Enbridge Gas after an Enbridge Gas inspection. OPI noted that Enbridge Gas advised that this is not an option.

In its evidence, Enbridge Gas stated that, to ensure safe and reliable assets, Enbridge Gas does not permit customers to construct their own connecting stations.

In response to an interrogatory, Enbridge Gas noted that it is not an electricity distributor, however, if the DSC were applicable, Enbridge Gas's view is that the entire connection station is a "work" that requires physical contact with the distributor's existing distribution system and is therefore not eligible for alternative bid unless the distributor

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<sup>20</sup> In OEB staff's view, the onus is on the Producer to rectify any unacceptable gas quality issues and the timeline for ending the shut-in resulting from gas quality issues is primarily within their control.

<sup>21</sup> Enbridge Gas evidence, pages 3-4; EGI-Staff-2

<sup>22</sup> EGI-Staff-3

<sup>23</sup> [Distribution System Code](#), section 3.2.15

decides in any given case to allow such work to be eligible for alternative bid.<sup>24</sup> Enbridge Gas argued that the types of equipment and facilities as well as governing regulatory codes for electrical distribution and natural gas distribution are substantially different, and 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.<sup>25</sup>

In an interrogatory response, Enbridge Gas also stated that: (a) OPI has not demonstrated that Producers have practices and procedures in place that meet Enbridge Gas's requirements, and (b) Producers "cannot hire the same contractors that Enbridge Gas uses and provide an equivalent product."<sup>26</sup>

In its argument-in-chief, OPI reiterated that connection costs represent a significant threshold cost for Producers. OPI submitted that connecting customers should have contestability similar to those set out in the OEB's electricity DSC. OPI sees no reason why stations cannot be constructed by Producers at their cost and transferred to Enbridge Gas for nominal consideration. Producers are in the natural gas business, and can procure materials, retain contractors, and work with technical regulators. OPI argued that it is not in the interest of Producers to construct facilities – upon which they will rely – to less than industry standards.

### OEB Staff Submission

OEB staff submits that the OEB should establish provisions that allow natural gas Producers the right of contestability, similar to the provisions of the DSC. As part of the Proposal described in item 1 above, the OEB should require Enbridge Gas and OPI (and invite the CBA to the extent it chooses to participate) to convene and attempt to jointly prepare draft contestability provisions for the OEB's consideration. Any Proposal would be subject to the OEB's approval.

OEB staff accepts that there are differences between the electricity and natural gas systems, and that these differences may require somewhat different contestability provisions. However, OEB staff does not see any clear reason why contestability should be an option in the electricity sector, but not the natural gas sector. OEB staff believes that Enbridge Gas and OPI (and the CBA, to the extent it chooses to participate) are best positioned to develop suitable provisions for the OEB's consideration.

### **3. Establishing Purchasing Priority**

In its evidence, OPI alleged that Enbridge Gas treats local natural gas as "gas of last resort" and that Enbridge Gas gives preference to natural gas sourced from outside

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<sup>24</sup> EGI-Staff-6

<sup>25</sup> Ibid.

<sup>26</sup> EGI-Staff-7

Ontario. OPI suggested that Enbridge Gas is foregoing the opportunity to use locally produced gas to displace gas delivered through upstream systems to Ontario and through transmission systems from Dawn. OPI submitted that Enbridge Gas should give priority to local natural gas due to its economic and environmental benefits.<sup>27</sup>

In its evidence, Enbridge Gas rejected OPI's assertion that locally produced gas is displacing gas that is purchased upstream of Dawn. Enbridge Gas stated that if Ontario production was removed from Enbridge Gas's portfolio, that production would be replaced with purchases at Dawn. While Enbridge Gas acknowledged that the supply located at Dawn is imported from various production basins across North America, Enbridge Gas submitted that it is not reasonable to suggest that all or even a majority of Ontario production results in avoidance of transportation fuel at rates applicable to long-haul transportation from across the continent. However, in response to interrogatories, Enbridge Gas acknowledged that OPI is partially correct in theory, but that the impact is relatively small because less than 0.1% Enbridge Gas's system throughput is locally sourced.<sup>28, 29</sup>

In its argument-in-chief, OPI submitted that "the simplest way to recognize the additional benefits provided by local production is to give it priority over non-Ontario natural gas – i.e., to place an obligation on EGI to operate its system in a way that maximizes local production."<sup>30</sup>

### OEB staff submission

OEB staff submits that the issue raised by OPI regarding the prioritization of local natural gas supplies is outside the scope of this Proceeding.

Procedural Orders Nos. 3 and 4 set the scope for the remainder of this Proceeding. In Procedural Order No. 3, the OEB found that a panel of Commissioners does not have jurisdiction to create rules but may impose conditions within specific rates to address barriers to fair and transparent access.

As a general proposition, a panel of Commissioners does not have jurisdiction to create, amend or revoke rules relating to "establishing conditions of access to transmission, distribution and storage services

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<sup>27</sup> These economic and environmental benefits are discussed in OPI-Staff-6, OPI-IGUA-1, and OPI's argument-in-chief at page 11.

<sup>28</sup> EGI-Staff-6; EGI-OPI-13

<sup>29</sup> As part of the settlement proposal in the Enbridge Gas 2024 rebasing proceeding, EB-2022-0200, Enbridge Gas has agreed to file evidence in Phase 3 of that proceeding explaining whether and why/why not it believes there are avoided costs relevant to serving/receiving gas from local gas producers (including RNG producers) and whether these avoided costs benefit system gas customers and should result in some compensation to local producers (including RNG producers).

<sup>30</sup> OPI argument-in-chief, page 11

provided by a gas transmitter, gas distributor or storage company” pursuant to section 44 of the OEB Act. Rule making authority is assigned to the Chief Executive Officer under section 44 the OEB Act and the process for making section 44 rules is set out in section 45 of the OEB Act.

However, the OEB recognizes that the structure or terms of a particular rate, including a contract-based rate, may create or fail to address barriers to fair and transparent access to the distribution system. In exercising jurisdiction to set rates, a panel of Commissioners may impose conditions pursuant to sections 36 and 23 of the OEB Act to address those barriers to ensure that the rates will operate appropriately.

Further, in Procedural Order No. 3, the OEB found that the scope of OPI’s evidence (i.e., the evidence relevant to this proceeding) would be limited to the terms of service associated with the M13 rate schedule, station fees charged in gas purchase agreements, and any related access and connection constraints caused by those terms or fees.

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.

OEB staff submits that establishing a rule or requirement that requires a Gas Distributor to prioritize the purchase of local natural gas ahead of other supplies, and to require Enbridge Gas to manage its system in a way that prioritizes local gas suppliers, does not fall within the scope of the Proceeding as established by the OEB in the noted procedural orders. The scope established by the OEB relates to terms and conditions of access to Enbridge Gas’s system. It does not relate to purchasing priority, the amount of gas Enbridge Gas should procure from Producers, or the price it should pay for that gas.

### **Next Steps and Implementation**

OEB staff submits that the OEB should require Enbridge Gas and OPI (and the CBA to the extent it chooses to participate) to work together outside of the OEB’s hearing process (i.e., no formal settlement conference needs to be organized or scheduled by the OEB) to attempt to draft a Proposal as outlined in items 1 and 2 above for the OEB’s

consideration. The OEB should establish a deadline for any Proposal or require Enbridge Gas and OPI to establish and file a schedule for the preparation of the Proposal. The OEB could provide OEB staff and other intervenors, that are not parties to the settlement, the opportunity to file submissions on any Proposal. The OEB could then consider the Proposal and determine whether it is reasonable, or otherwise advise the parties of any changes that are required prior to approval. If Enbridge Gas, OPI and the CBA are unable to reach agreement on any Proposal, they should advise the OEB with an explanation of why no agreement could be reached. The OEB can then consider next steps.

~All of which is respectfully submitted~