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Dear Sirs/Mesdames:

**EB-2022-0094 (System Access for Ontario-Produced Gas)
Ontario Petroleum Institute – Reply Submissions**

In accordance with Procedural Order No. 7 in the above-noted proceeding, please find attached the reply submissions of the Ontario Petroleum Institute (“**OPI**”).

Yours very truly,



Richard King

RK:hi

Enc.

c: All Parties to EB-2022-0094
M. Millar (OEB Counsel)
R. Murray (OEB)

ONTARIO ENERGY BOARD

**ONTARIO PETROLEUM INSTITUTE
REPLY SUBMISSIONS
SYSTEM ACCESS PROCEEDING**

A. INTRODUCTION

1. In accordance with Procedural Order No. 7 dated July 11, 2023, the Ontario Petroleum Institute (“**OPI**”) makes the following reply submissions to the arguments filed by OEB Staff (“**Staff**”), Enbridge Gas Inc. (“**EGI**”), Energy Probe Research Foundation (“**Energy Probe**”), Canadian Manufacturers & Exporters (“**CME**”), Industrial Gas Users Association (“**IGUA**”), the Canadian Biogas Association (“**CBA**”) and School Energy Coalition (“**SEC**”).

2. OPI has received substantial support from intervenors¹ and Staff on the two key issues in this proceeding, namely:

- (a) Gaining and Maintaining System Access: requiring EGI to establish and adhere to clear, transparent processes (with fixed timelines) for new producer connections and producer shut-ins; and
- (b) Contestability: permitting producers to undertake a portion of new connection work on their own.

3. EGI does not agree with the positions of OPI, Staff, CBA, IGUA, SEC, or Energy Probe. Therefore, the bulk of this reply submission will focus on responding to the arguments in EGI’s submission. Before doing so, the next section will comment briefly on some of the more notable

¹ The only non-supportive intervenor is CME, which filed a brief letter stating that they take no position on the issues.

issues in other parties' submission. The final part of this reply submission will focus on Staff's proposed next steps and implementation measures.

B. BRIEF RESPONSE TO SUPPORTING SUBMISSIONS

4. While Staff and intervenors are supportive of OPI's submissions, the basis for such support differs:

- (a) Staff's support is based on the evidence in this proceeding:
 - (i) "OEB staff believes that the evidence shows that the connection and shut-in processes as they are today can be challenging for Producers."²
 - (ii) "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."³
- (b) Some intervenors have chosen to make more general comments on the two issues in this proceeding – i.e., their support is not based on the evidence in the proceeding, but rather on broader regulatory principles. For example:⁴
 - (i) "Regulated utilities, like Enbridge, who control access to their monopoly system should be mandated to establish transparent and fair access rules. These rules should include specific timelines for connections and disclose information pertaining to associated costs."
 - (ii) "[T]he OEB should view with skepticism arguments put forth by Enbridge that would prevent entities from constructing their own connection facilities. The contestability provisions included in the Distribution System Code ('DSC') play an important role in reducing costs for those seeking to connect. Like in the DSC, appropriate utility oversight can be put in place to ensure those assets are constructed in a way that does not harm the safe operation of the Enbridge system."

² Staff Submission, p.6.

³ Staff Submission, p.8.

⁴ SEC Submission.

5. Both rationales are important. OPI submits that the evidence produced in this proceeding has shown that the lack of transparent connection and shut-in procedures has harmed Ontario natural gas producers (“**Producers**”) and others. The CBA (whose members are akin to conventional gas Producers) highlights these real-life consequences:

- (i) “In the CBA’s respectful submission, that a local producer could be denied injection capacity and forced to flare their natural gas production into the atmosphere ... particularly when the local injections can obviate some of the costs of bringing outside natural gas into the local grid, is unconscionable.”⁵
- (ii) “The (ongoing) incident of an 8-month shut-in described by OPI is, the CBA respectfully submits, *prima facie* intolerable, and could, for many of the CBA’s members, result in the failure of their business were they to experience a similar shut-in.”⁶

6. OPI submits that the Board must keep these real-life consequences in mind. It would be easy to argue this case solely on the basis of regulatory principles – and a number of the submissions do just that. However, the issues being deliberated in this proceeding impact real businesses, run predominantly by Ontarians, impacting the local economies and environments in which they operate. These Producers may be a small customer class (as EGI has indicated) but that does not make these issues trivial or inconsequential.

7. When it comes to regulatory principles, several submissions support OPI’s position that connection processes and contestability rules applicable to electricity distributors should extend to EGI. Regulatory consistency across the electricity and natural gas sectors support this position – but, as Energy Probe notes, the reason why regulatory consistency makes sense is because the principles underlying the electricity rules are applicable here. Energy Probe makes this point by referencing EGI’s own submissions in its merger proceeding:

- (a) “While the MAADs policies were developed specifically for the electricity distribution sector, the underlying principles and goals are also applicable to natural

⁵ CBA Submission, p.3.

⁶ CBA Submission, p.4.

gas and therefore the policies should inform the Board’s consideration of the Applications.”

8. OPI submits that there is nothing in the evidentiary record in this proceeding that would: (a) justify a less prescriptive connection procedure for natural gas customers than electricity customers; and (b) warrant denying gas Producers a contestability right similar to that afforded to electricity generators.

9. OPI believes it is not asking for much in this proceeding – and certainly nothing that would be unusual in the context of utility regulation. Every regulated monopoly utility should expect to be subject to prescriptive system access rules and cost mitigation measures. In fact, OPI submits that ensuring fair system access and mitigating utility cost to consumers are the two key pillars of utility regulation.

10. Finally, Staff, Energy Probe and CBA make submissions on the issue of “priority *purchasing*” of locally-produced gas. Staff submits that the issue is outside the scope of this proceeding.⁷ CBA and Energy Probe disagree – with Energy Probe stating that “it is in Ontario’s interest to maintain its own gas exploration and production industry.”⁸

11. OPI believes that Staff (and potentially others) have misunderstood OPI’s “priority” argument. OPI’s position in this proceeding is not that EGI prioritize *the purchase* of locally produced natural gas over importing that gas. Rather, OPI is suggesting that the environmental and economic benefits of locally-produced gas be recognized and *connection* of Producers be prioritized (regardless of whether EGI purchases the gas). In other words, OPI is suggesting that EGI be made to treat Producer connection requests on an expedited basis, that it seek to minimize shut-ins, and make system modifications (e.g., distribution station settings) to enable as much locally-produced gas to be brought into the system as quickly as possible. The rationale for doing so is not just fair treatment of customers/transparency, but a recognition of the benefits and savings

⁷ Staff Submission, pp.9-10.

⁸ Energy Probe Submission, p.2.

associated with a reduced need to physically move gas to the franchise area. This is different from priority purchasing – and OPI submits, properly within the scope of this proceeding.

12. In all that the Board does, it must have regard to its statutory objectives – which include facilitating competition in the sale of gas to users, protecting consumer interests with respect to prices and service reliability, facilitating the rational expansion of the gas transmission and distribution system, and promoting energy conservation and energy efficiency in accordance with provincial policy. The system access and connection cost issues being deliberated here touch on all these objectives.

C. REPLY TO SUBMISSIONS OF EGI

13. In this section, OPI responds to the specific submissions of EGI (which are set out in bold, italicized text).

EGI: A Prescriptive Connection Process is Not Required Because Producers are a Small Customer Class and Inject Very Small Volumes into the Gas Distribution System

14. EGI makes this argument starting at paragraph 9 of its submission. OPI urges the Board to reject this position, for several reasons:

- (a) It ignores the evidence of Producers in this proceeding. As noted above, the lack of a prescriptive connection process has harmed Ontario Producers. Indeed, Ontario Producers want to (and believe they can) inject more natural gas into EGI's system, but the lack of clear processes for determining available market/capacity, costs of connection and prolonged shut-ins has, in OPI's view, increased the business risk of production.
- (b) It suggests that smaller customer classes are less important, and therefore entitled to a lesser quality of utility service. A core principle of utility regulation is non-discriminatory access to the utility's distribution system.

- (c) EGI’s argument relies on incomplete facts. EGI states that “natural gas purchased from Ontario producers amounts to ... 2100 GJ/day”. However, that does not account for amounts shipped by Ontario producers to Dawn. In addition to the 2,100 GJ/day sold to EGI, from August 2022 to July 2023, an average of 7,520 GJ/day was delivered by local conventional Producers to the Ontario natural gas distribution system and delivered to Dawn. Moreover, as noted in CBA’s submission, renewable natural gas producers expect to continue to materially increase their production volumes in Ontario.

EGI: Because EGI is not an Electricity Distributor, it Should Not Be Held to the Same Connection Procedures as Electricity Distributors

15. At paragraph 17 of its submission, EGI states that it “does not make practical sense” to subject EGI to the same connection procedures imposed on electricity distributors. EGI’s rationale for this position is that gas distribution equipment and facilities are different than electricity distribution equipment and facilities. OPI disagrees with EGI’s submission on this point for the following reasons:

- (a) EGI has provided no evidence or explanation for how the differences in equipment and facilities would make establishing a prescriptive connection process impossible. There is nothing on the record in this proceeding that supports the position of EGI.
- (b) As Energy Probe noted in its submission, EGI has in the past supported equivalency between the electricity and natural gas regulatory frameworks where the “underlying principles and goals” are the same. OPI submits that the principles and goals of the connection procedures imposed on electricity distributors (fair, timely, non-discriminatory access) are precisely the same as those needed by Producers.

EGI: Ontario Producer Connection Requests are Complex and Make Mandatory Timelines Unreasonable

16. In paragraphs 20 through 26 of its submission, EGI denies that its Producer connection process is ad hoc and “without firm timelines”. EGI then goes on to explain the work that EGI must do to assess and manage connection requests, before concluding that such connection requests are so complex that imposing mandatory timelines on EGI would be unreasonable. OPI disagrees with EGI’s arguments for the following reasons:

- (a) The evidence in this proceeding has already established that EGI’s connection process has no firm timelines. CBA’s submission also notes a recent report made to Agriculture and Agri-Food Canada (March 2022) noting that their members face similar challenges to those of OPI.
- (b) EGI’s argument on this point is inconsistent. In paragraph 20, EGI denies that their process for connection requests has no firm timelines, but in paragraph 25 EGI states that imposing mandatory timelines would be unreasonable. These two statements are contradictory.
- (c) There is no persuasive evidence on the record in this proceeding to suggest that connection requests from Producers (to EGI’s distribution system) are more complex than connection requests the electricity distribution system. In fact, what struck OPI in reading through EGI’s explanation of its own process to assess connection requests, is the similarity in issues faced by electricity distributors dealing with requests from small electricity generators (configuration, connection point, available capacity, etc.).

EGI: EGI Will Not Permit Producers (or Other Customers) to Build a Connecting Station because EGI is Subject to Technical Standards and Responsible for Safe Operation of its System

17. In paragraphs 26 through 30, EGI suggests several reasons why nobody other than EGI can construct a connection station. OPI disagrees with each of these, as follows:

- (a) EGI states that it is subject to technical and regulatory standards related to the safe and reliable operation of its assets and cannot delegate this authority. OPI believes

this to be incorrect. Electricity distributors have similar technical and regulatory standards with respect to their assets as well. These standards do not dictate who must construct station assets (or who must hire the contractors). As with the contestability rules on the electricity side, EGI would be able to meet its technical and regulatory requirements through initial design and inspection before asset transfer and putting the station into service.

- (b) EGI states that all company and contractor employees are tested and certified annually to ensure all work is completed to EGI standards and meets technical code requirements. Again, this obligation to meet technical code requirements can be discharged via inspection before asset transfer and putting the station into service. To OPI's knowledge, the contestability regime in the electricity sector is very similar, and there have not been major issues with such contestability regimes.

EGI: Sufficient Information Regarding Available Market/Capacity is Already Being Provided to Producers

18. In paragraphs 31 to 38 of its submission, EGI explains its process for determining available capacity (in response to Producer connection requests). EGI also notes that if a local gas system does not have capacity to meet requested injection amounts, two other options are considered (distribution station set points, and reinforcement). OPI's response to EGI's submissions on this point are as follows:

- (a) In general, OPI's experience has been that Producers have been provided with summer and winter available market/capacity numbers far smaller than what Producers know can be delivered into the local system. OPI believes that EGI should be required to provide (at the time it provides a Producer requesting connection with the summer and winter available market/capacity) the amount of gas consumed in the local system on a seasonal basis over the past 12 months.

- (b) As indicated in our initial evidence, OPI believes that EGI can determine the minimum pressure settings of regulators to ensure security of supply.⁹ Given EGI's ability to adjust station outlet pressure set points, OPI believes that EGI should be required to work with producers to establish station setting to maximize production from local Producers.

EGI: A Mandatory Regulatory Obligation on EGI to Minimize Shut-Ins (and Report to OEB) is Redundant

19. EGI argues that the Gas Production Agreement (GPA) already contains a clause that requires EGI to give at least 24 hours notice of a planned shut-in to Producers, so a regulatory requirement would be redundant. OPI submits that EGI's argument misses the point:

- (a) While as much notice as possible of a planned shut-in is appreciated, OPI's chief complaint is the duration of shut-ins. As noted, OPI currently has one member enduring an eight-plus month shut-in. That is an untenable situation. OPI's concern is that there must be a regulatory obligation to minimize shut-in duration.

D. NEXT STEPS AND IMPLEMENTATION

20. In its submission, Staff proposed a path forward for resolving these issues – namely, that the OEB require OPI, EGI (and CBA, if it chooses) to work together outside the OEB's hearing process to draft a proposal (by a certain date) that contains: (a) draft connection and shut-in processes; and (b) draft contestability provisions. Other parties would have the opportunity to file submissions on any agreed upon proposal, before the Board determining whether the proposal was reasonable. Staff also states that if an agreement on a proposal cannot be reached, then OPI, EGI (and CBA, if it chooses) should advise the OEB and explain why no agreement could be reached, following which the OEB could consider next steps.

21. OPI is mostly supportive of Staff's submissions, but would offer the following modifications:

⁹ OPI Evidence (March 3, 2023), page 6, line 3 to page 7, line 1.

- (a) Staff should be involved in the meetings with OPI, EGI (and CBA) in a facilitation role.
- (b) The timeline by which an agreed-upon proposal must be reached should be short.
- (c) If a proposal (on all or any) of the issues cannot be reached by the deadline, the next step should be that each party is entitled to submit its proposal to the Board for determination. Staff should be able to make submissions on each party's proposal.

22. The rationale for these modifications is straightforward. These have been long-standing issues for Producers. OPI, Producers and EGI have not resolved these issues on their own. The Board commencing this proceeding on its own motion is evidence of the failure to resolve these long-standing issues. Staff's presence as a facilitator would, OPI believes, benefit the process. In terms of timing, Staff's proposal for indeterminate next steps in the event that a proposal cannot be agreed upon should be rejected. Producers have expended much time and energy trying to resolve these issues. This proceeding alone (which has been significantly narrowed in scope) started 19 months ago. There needs to be a resolution.

23. In the alternative, OPI submits that the Board could make determinations on one or more of the issues herein on its own. There are analogous prescriptive processes for connections and contestability on the electricity side.