



DECISION AND PROCEDURAL ORDER NO. 8

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

October 26, 2023



TABLE OF CONTENTS

1	OVERVIEW	1
2	PROCESS.....	2
3	DECISIONS ON THE ISSUES	5
3.1	PRODUCER CONNECTION AND SHUT-IN PROCESS AND TIMELINES	5
3.2	CONNECTING STATION CONTESTABILITY	11
3.3	AVAILABLE MARKET CAPACITY	15
3.4	ESTABLISHING PURCHASING PRIORITY.....	16
4	NEXT STEPS AND IMPLEMENTATION	19
5	ORDER	21

1 OVERVIEW

The Ontario Energy Board (OEB) initiated this 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 found that it does not have jurisdiction to directly set the price that Ontario natural gas producers get paid for the gas they produce. In its Decision and Procedural Order No. 4, the OEB limited the hearing to the issue of fair and transparent access to Enbridge Gas's system.²

The Ontario Petroleum Institute and Enbridge Gas Inc. each filed evidence which was tested by parties through an interrogatory process, prior to filing submissions.

The OEB finds that Enbridge Gas Inc.'s connection procedures, applicable to natural gas and renewable natural gas producers in Ontario, should be documented for inclusion in its transportation contract rates and gas purchase agreements. These connection procedures shall include timelines, a contestability option which includes the opportunity for a customer to obtain an alternative bid for constructing connection facilities. The procedure also needs to address available market capacity and shut-in processes. The OEB is making provision for a settlement conference for parties to file a settlement proposal for the OEB's consideration. If a partial settlement proposal, or no settlement proposal is filed, the OEB will seek submissions on any outstanding issues.

The OEB denies the Ontario Petroleum Institute's request for natural gas producers in Ontario to have priority connections on Enbridge Gas Inc.'s system.

¹ Ontario Energy Board Notice, issued February 7, 2022

² Decision and Procedural Order No. 4, dated February 7, 2023

2 PROCESS

The OEB issued Procedural Order No. 1³ in this proceeding on March 4, 2022. Each of Canadian Manufacturers & Exporters (CME), Enbridge Gas Inc. (Enbridge Gas), Energy Probe, EPCOR Natural Gas Limited Partnership (EPCOR), Industrial Gas Users Association (IGUA), London Property Management Association (LPMA), Ontario Petroleum Institute 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. 2 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).⁴ 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. 3 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.⁵ 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. OPI filed a high-level description of its proposed evidence.⁶

Enbridge Gas filed a letter stating that the items identified by OPI are better addressed as part of the 2024 rebasing proceeding.^{7,8}

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 EB-2022-0200, an application by Enbridge Gas to change its natural gas rates and other charges beginning January 1, 2024

⁸ 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.⁹

The OEB issued Decision and Procedural Order No. 4 in which the OEB found that certain items identified by OPI are appropriately addressed in the current proceeding, while others are appropriately addressed in the 2024 rebasing proceeding.¹⁰ Specifically, the OEB determined that OPI'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 and injection station fees will be heard in the 2024 rebasing proceeding.

In its Decision and Procedural Order No. 4, the OEB also stated that, "[i]f requested, any intervenor in the 2024 rebasing proceeding¹¹ 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."

The Canadian Biogas Association (CBA) filed a letter requesting intervenor status and cost eligibility for the System Access proceeding as its members are producers of renewable natural gas in Ontario.¹² The OEB issued Decision and Procedural Order No. 5 in which the OEB approved CBA as an intervenor and found that it is eligible to apply for an award of costs.¹³ For the purposes of this Decision, the term Producer includes both natural gas and renewable natural gas producers in Ontario.

Procedural Order No. 6 established a process for parties to file interrogatories on OPI's evidence and for OPI to respond to the interrogatories. The OEB established a process for Enbridge Gas to file evidence in the proceeding, for parties to file interrogatories on Enbridge Gas's evidence, and for Enbridge Gas to respond to the interrogatories.¹⁴ The OEB also established deadlines for arguments from OEB staff and intervenors.

In the cover letter to its interrogatory responses, Enbridge Gas requested a four-week extension to the deadline for intervenor and OEB staff submissions in this proceeding.¹⁵

⁹ OPI reply to Enbridge Gas submission on OPI evidence, dated January 20, 2023

¹⁰ Decision and Procedural Order No. 4, dated February 7, 2023

¹¹ EB-2022-0200

¹² CBA intervention request, dated February 17, 2023

¹³ Decision and Procedural Order No. 5, dated February 24, 2023

¹⁴ Decision and Procedural Order No. 6, dated March 13, 2023

¹⁵ Enbridge Gas interrogatory responses, dated March 17, 2023

The OEB approved the extension and rescheduled the remaining deadlines in Procedural Order No. 7.

OPI filed its submission on July 26, 2023. Each of Energy Probe, Enbridge Gas, IGUA, OEB staff, SEC, CME and CBA filed submissions on August 25, 2023. OPI filed its reply submission on September 8, 2023.

3 DECISIONS ON THE ISSUES

Consistent with the scope of the proceeding, parties generally organized their submissions on the need for more prescriptive processes and more available options compared to the current practice, under the headings:

1. Producer connection and shut-in process and timelines
2. Connecting station contestability
3. Available market capacity
4. Establishing purchase priority

3.1 Producer Connection and Shut-in Process and Timelines

Ontario Petroleum Institute

OPI characterized Enbridge Gas's Producer connection and shut-in practices 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 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 notice¹⁶ and for extended periods 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 OEB to create a regulatory requirement to minimize shut-in durations. OPI submitted that 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).¹⁷

¹⁶ OPI and Enbridge Gas each noted in their evidence that the Gas Purchase Agreement requires a minimum 24-hour notice. OEB staff noted that the same minimum requirement is found in Rate M13, Schedule "A 2013" General Terms and Conditions.

¹⁷ OPI evidence, July 28, 2023, pages 3-4, 6 and 16

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.

OPI stated that the current Producer connection 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:¹⁸

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

OPI submitted that, just because Producers are a small customer class it does not mean that they are less important and therefore entitled to a lesser quality of utility service. OPI submitted that a core principle of utility regulation is non-discriminatory access to the utility's distribution system.

Canadian Biogas Association

CBA submitted that a standardized, prescriptive Producer connection process is appropriate. While OPI noted that OPI raises issues on behalf of conventional natural gas producers, the same issues impact renewable natural gas (RNG) producers. In its report to Agriculture and Agri-Food Canada, the CBA highlighted similar issues as those raised by OPI in this proceeding, noting in relation to challenges connecting to the natural gas and electricity grids that “[s]takeholders reported a high cost of grid connection, complex or unclear interconnection process, and a slow response time and long timeline to connect.”¹⁹

¹⁸ OPI argument-in-chief, July 28, 2023, pages 3-4, 6 and 16

¹⁹ [Analysis of Regulatory Barriers Impacting Agricultural Biogas Development in Canada, March 2022](#) (page 36)

CBA referenced Enbridge Gas's comments to the effect that requests for producer connections for injection services are relatively infrequent and comprise a small part of Enbridge Gas's customer base, such that Enbridge Gas questions whether a standardized, prescriptive connection process is warranted.²⁰ CBA stated that in its 2024 rebasing application, Enbridge Gas is forecasting \$94.6 million in spending for RNG injection connections in 2024 alone, representing material growth in the number of RNG producers seeking to inject their product into the Enbridge Gas system.²¹ CBA stated that with the growth in the number of new producers, all seeking to connect within the same general time frame, and all seeking to compete with each other in the RNG marketplace, it is more important than ever that the connection process that stands between them and that marketplace be transparent, predictable, and fair especially when affiliates of Enbridge Gas seek to inject gas into the system.

Enbridge Gas

Enbridge Gas does not believe that prescriptive changes are required to direct or regulate its dealings with Producers. Enbridge Gas disagrees with the OPI's assertions that the current process for connecting Producers to the Enbridge Gas distribution system is ad hoc with no firm timelines or standardized information exchange procedures. 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 or process. Enbridge Gas provided a detailed description of its customer connection practice in evidence filed in this proceeding.²² 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.²³

Enbridge Gas reiterated a point made by OPI – that there have only been five Producer connection requests since 2014.²⁴ Enbridge Gas submitted that the infrequency of these requests requires it to refamiliarize itself with the facilities and contracts related to local production upon every request.

²⁰ Exhibit EGI-Staff-1 a)

²¹ EB-2022-0200 Exhibit I.2.5-STAFF-64

²² Enbridge Gas evidence, May 31, 2023, page 5

²³ EGI-Staff-1

²⁴ OPI-Enbridge-11

Enbridge Gas submitted that requests made by Producers are often more complex than other connections because they involve injections, and must take into account system constraints, proximity to the closet pipeline, and the impact of injection into the local pipeline during both the winter and summer conditions. In addition to the engineering assessment, consideration must also be given to permitting requirements from regulated authorities, railways, foreign pipelines, etc. All these can impact the timing of a response to requests from Ontario producers and make it unreasonable to suggest that mandatory timelines are required.

With respect to shut-ins, Enbridge Gas argued that it must safely and reliably operate its assets and from time to time must shut in Ontario gas producers. These shut-ins tend to be due to gas quality issues, emergencies due to third party damages and operational integrity inspections. Due to the safety nature of these shut-ins, it would serve no useful purpose to notify the OEB of such instances.

Enbridge Gas also noted that its 2024 Rebasing application proposes to harmonize its injection services, which will be an opportunity for Enbridge Gas to also align its account management practices with local producers. This alignment may improve customer service with respect to both the connection process (which includes communication of intake pressure requirements) and the timeliness of communications related to producer shut-ins or other events that may impact producers connected to Enbridge Gas's system. Prior to harmonizing the injection services, Enbridge Gas can work to standardize and enhance its communications with local producers including more timely responses and updates on the progress of each request. In addition to providing minimum market demand in response to connection requests as it does today, Enbridge Gas could include more detailed market demand and injection pressure requirements for each season.

Energy Probe

Energy Probe submitted that OPI's proposal for a more prescriptive Producer connection process and timelines is sensible. Not only is it similar to what occurs in electricity distribution, it is similar to Enbridge Gas's current practice for attaching new subdivisions where the builders working for the developer install gas mains and services and then turns them over to Enbridge Gas.

Industrial Gas Users Association

IGUA submitted that, although its members have not indicated any particular problems or concerns with historical Enbridge Gas connections, IGUA sees no harm, and

potential benefit, in Enbridge Gas being more descriptive of target timelines for responding to customer connection requests, even if in the case of producers (or other particularly complex connections) such timelines consist of broad ranges or include caveats regarding complexity or availability of information from connecting customers.

School Energy Coalition

SEC submitted that regulated utilities, like Enbridge Gas, 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. While the specific rules may need to be different, it should not matter if the entity seeking connection is a load customer or a gas producer.

OEB Staff

OEB staff submitted 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 stated that the connection and shut-in processes as they are applied today can be challenging for Producers. OEB staff noted 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 RNG producers. Therefore, OEB staff submitted 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.²⁵

With respect to shut-ins, OEB staff submitted that it is not necessary for the OEB to establish new processes to provide guidance on when shut-ins are appropriate.

Findings

The OEB finds the current ad hoc practice needs to be replaced with a documented connection procedure, addressing the process for shut-in situations. The OEB expects that such documentation will lead to a more efficient contractual process between Enbridge Gas and the Producers. It will be more efficient because there will be a common understanding of the connection process. Based on the evidence and

²⁵ OEB staff recognized that there is a broader question of whether a generic Rule should be created in the future for other customer types. However, OEB staff submitted that this question is beyond the scope of the current proceeding and no direction is needed from the current panel of Commissioners on the matter.

submissions filed in this proceeding, the OEB finds that the current practice is not efficient, potentially harms Producers and their investors, and results in strained customer relations. The need for improvement is evidenced by this generic proceeding.

This Decision will establish a new procedure to be included in both the current M13 and 401 contract rates and the gas purchase agreement (applicable to conventional and renewable natural gas producers). This will not affect Enbridge Gas's harmonization proposal to combine the two current contract rates into a new E80 rate, which will be considered in Phase 3 of the 2024 rebasing proceeding. By including these procedures in the rate schedules, which are subject to an OEB order, the standard OEB compliance process will apply.

With respect to the proposal that Enbridge Gas report shut-in situations to the OEB, the OEB does not find such reporting necessary as the proposed procedure is intended to improve communication between parties, not add administrative burden. As a matter of principle, shut-ins should only be as long as required for justifiable operational reasons. Better information and better transparency should go a long way to address Producer concerns. The new procedures should address these information and transparency issues. For example, the current 24-hour advance notice should include the reasons for the shut-in and the estimated duration. If the estimated duration changes, supplementary notice should be provided.

The OEB finds merit in OPI's proposal to include granular steps with timelines for new Producer connections. The OEB requires the procedure to include a producer connection information package with the process and timelines for connecting a Producer. Section 6.2 of the Distribution System Code has a similar model as part of the process for connecting generation facilities.

The OEB rejects Enbridge Gas's argument that given the small number of Producers, prescriptive procedures are not justified. Producers require a transparent process similar to that afforded to electricity generators under the Distribution System Code. Further, the RNG gas sector is expected to grow. In its 2024 rebasing evidence, Enbridge Gas forecast spending \$94.6 million for RNG injection connections in 2024 alone²⁶ which is indicative of an increasing number of Producer connection applications. Better transparency will benefit this growing sector.

²⁶ EB-2022-0200 Exhibit I.2.5-Staff-64

With a transparent process, Producers and Enbridge Gas will have a clear understanding of their respective responsibilities. Particularly in the context of RNG, a transparent process would inform investment decisions that are being considered for this emerging sector in Ontario. Further, non-discriminatory connection access must be provided regardless of whether a Producer is an affiliate of Enbridge Gas²⁷.

The OEB is providing Producers and Enbridge Gas an opportunity to develop a connection procedure for the OEB's consideration. The OEB finds that these parties are best suited to determine the process details as Producers and Enbridge Gas each know the intricate nature of their business needs. A settlement conference is scheduled to provide a forum for the parties to work together to propose a connection procedure.

The OEB requires Enbridge Gas to provide an initial draft of this connection procedure to the parties to the settlement conference prior to the settlement conference to expedite the discussion during the settlement conference.

The OEB expects the parties to meet with a view to establishing a transparent, predictable and fair connection process with enhanced communications. The OEB is confident that reasonable caveats regarding complex circumstances and timelines can be accommodated and applied in a standard manner by the parties.

3.2 Connecting Station Contestability

Ontario Petroleum Institute

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.²⁸

OPI submitted that Enbridge Gas provided no evidence or explanation for how the differences between electricity and natural gas in terms of equipment and facilities would make establishing a prescriptive connection process impossible. OPI asserted that electricity distributors have similar technical and regulatory standards with respect to their assets. 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,

²⁷ [Affiliate Relationships Code for Gas Utilities](#), Section 2.5

²⁸ OPI-Staff-3

Enbridge Gas would be able to meet its technical and regulatory requirements through initial design and inspection before asset transfer and putting the station into service.

Canadian Biogas Association

CBA submitted that, as the parties whose businesses rely on the timely and economically efficient construction of the assets necessary to connect their production to the Enbridge Gas system and who ultimately bear 100% of the costs to connect, it is obvious that Producers should be at liberty to access the competitive market for construction services and construction materials for the construction of their injection related assets. Under a properly defined framework, Enbridge Gas would retain authority over the preliminary planning, design and engineering specifications for customer stations, and would perform the final tie-in of the customer stations to Enbridge Gas and the energization and commissioning work. There is no defensible reason why the remainder of the work could not be performed by the producer and any properly qualified contractors it retains on its behalf.

Canadian Manufacturers and Exporters

CME took no position on OPI's proposals.

Enbridge Gas

Enbridge Gas submitted that the suggestion that it should be subject to connection procedure requirements similar to those imposed on electricity distributors does not make practical sense. The types of equipment and facilities as well as governing regulatory codes for electricity distribution and natural gas distribution are substantially different. Enbridge Gas is not an electricity distributor so it would be expected that there would be an inconsistency between the rules, or at least the application of such rules, for electricity and natural gas.

Enbridge Gas submitted that the entire connecting station constitutes the final tie-in to Enbridge Gas's pipeline system. The connecting stations are Enbridge Gas assets and must be fabricated and installed to Enbridge Gas' standards and procedures. Enbridge Gas stated that it would not permit Ontario producers, or other customers, to fabricate and install the connecting stations. Enbridge Gas submitted that OPI has not demonstrated that its members have practices and procedures in place that meet Enbridge Gas's requirements. To ensure safe and reliable assets, Enbridge Gas does not permit customers to construct their own stations because, contrary to the OPI's assertions, these cannot be minimized as simply small, single customer stations.

Industrial Gas Users Association

IGUA noted that Enbridge Gas's response to OPI's assertion that Producers should be entitled to obtain alternative bids (to Enbridge Gas) for connecting station work was, in part, that the entire connecting station constitutes the final tie-in to Enbridge Gas's pipeline system.²⁹ IGUA noted that Enbridge Gas also cited safety and contractor qualification requirements as the reasons that Enbridge Gas cannot permit Producers to assume responsibility for any portions of those stations.³⁰ IGUA stated that it does not agree with Enbridge Gas's position because there is no reason why Producers could not hire the same, or equivalently qualified and certified, contractors, to work on facilities for connection to Enbridge Gas's system. IGUA stated that similar arguments were made by electricity distributors and transmitters, and were rejected by the OEB, at the time of redefinition of the contestability provisions under the applicable electricity codes.

IGUA submitted that, regardless of who is responsible for the work on facilities up to the point of contact with Enbridge Gas's existing system, Enbridge Gas could (under provisions analogous to those found in the electricity codes) retain design and oversight authority to ensure the integrity of the connection assets constructed.

IGUA submitted that Enbridge Gas can, and should, publish clear and reasonable standards for such facilities, and make these available to customers in conjunction with proposed customer agreements. Adherence to such standards can and should be a condition for connection. The availability of such contestability provisions provides greater cost control for the benefit of the customers who ultimately pay those costs, whether or not customers choose to add such provisions or not.

School Energy Coalition

In its submission, SEC acknowledged the differences between electricity and natural gas infrastructure. However, SEC submitted that the OEB should view with skepticism arguments put forth by Enbridge Gas that would prevent entities from constructing their own connection facilities. The contestability provisions included in the Distribution System Code play an important role in reducing costs for those seeking to connect. As in the Distribution System Code, 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 Enbridge Gas's system.

²⁹ EGI-Staff-6

³⁰ EGI-Staff-7

OEB Staff

OEB staff accepted that there are differences between the electricity and natural gas systems, and that these differences may require somewhat different contestability provisions. However, OEB staff stated that there is no reason why contestability should be an option in the electricity sector but not the natural gas sector.

Findings

The OEB finds it reasonable to provide Producers the contestability which includes the opportunity for a customer to obtain an alternative bid for constructing connection facilities. By increasing customer options, the OEB is enabling Producers to access the competitive market of construction materials and services to potentially reduce connection costs and control the timing of future connections.

The OEB expects that this contestability process would be similar to the Distribution System Code applicable to the electricity sector, which has prescriptive procedures for electricity generators to connect to electric utilities. The OEB notes that the contestability process within the Distribution System Code has been successfully implemented for the last two decades and finds that the principles in that process apply equally to these circumstances. Enbridge Gas would retain authority over the design and specifications for the connection facilities and would perform the final tie-in of these facilities to its gas system. The Producer would then transfer ownership of the connecting facilities to the utility, similar to the process in the Distribution System Code.

The OEB recognizes that there are differences between connecting to an electricity system compared to a gas system, but to the extent such differences are material for contestability purposes, they can be addressed in the provisions included in the proposed procedures.

The OEB finds that the issues of safety and reliability are of equal importance in electricity and natural gas systems. The OEB notes that Enbridge Gas has been allowing for this type of third-party contestability, allowing developers to construct gas mains and services in new residential developments before the assets are subsequently transferred over to Enbridge Gas as the owner.

Qualified contractors are available in the competitive market as they are currently hired to support Enbridge Gas's construction activities.

3.3 Available Market Capacity

Ontario Petroleum Institute

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 regarding 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,³¹ however it is not clear how often Enbridge Gas assesses its ability to make such adjustments.

OPI stated that Producers want to (and believe they can) inject more natural gas into Enbridge Gas's system, but the lack of clear processes for determining available market capacity, costs of connections, and prolonged shut-ins has, in OPI's view, increased the business risk of production.

Enbridge Gas

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 the location that the local natural gas is injected.

Enbridge Gas stated that, in addition to providing minimum market demand in response to connection requests as it does today, it could include more detailed market demand and injection pressure requirements for each season.³²

OEB Staff

OEB staff submitted that Enbridge Gas is best positioned to determine the available capacity of its system. Determining available capacity is not a simple matter and depends on the circumstances.³³ Circumstances change, and current availability may be different from past availability.³⁴

³¹ Enbridge Gas, 31, 2023, page 3

³² EGI-Staff-1

³³ Enbridge Gas evidence, pages 3-4; EGI-Staff-2

³⁴ EGI-Staff-3

Findings

The OEB finds that Enbridge Gas is in the best position to determine the available capacity of its system. The OEB expects that increased transparency and a shared understanding of system needs and constraints will assist Producers in managing their business risks of production. Enbridge Gas acknowledged that it could provide better information related to market demand and injection pressure requirements for each season.

The OEB requires that the process for delivering this information to be addressed in the proposed procedures established during the settlement conference.

3.4 Establishing Purchasing Priority

Ontario Petroleum Institute

OPI alleged that Enbridge Gas treats local natural gas as “gas of last resort” and that it gives preference to natural gas sourced from outside Ontario. OPI suggested that Enbridge Gas is forgoing 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.³⁵

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 Enbridge Gas to operate its system in a way that maximizes local production.”³⁶

OPI clarified that its position is that the *connection* of Producers be prioritized (regardless of whether Enbridge Gas purchases the natural gas) and not *the purchase* of locally produced natural gas over other gas. OPI suggested that Enbridge Gas treat Producer connection requests on an expedited basis, 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.

³⁵ These economic and environmental benefits are discussed in OPI-Staff-6, OPI-IGUA-1, and OPI’s argument-in-chief at page 11.

³⁶ OPI argument-in-chief, page 11

Canadian Biogas Association

CBA agreed with OPI's submissions that the general system benefits associated with accepting locally injected natural gas supports a higher priority than other sources of supply.

Enbridge Gas

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.^{37, 38}

OEB Staff

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

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

³⁷ EGI-Staff-6; EGI-OPI-13

³⁸ 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).

agreements, and any related access and connection constraints caused by those terms or fees.

OEB staff submitted 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 this proceeding as established by the OEB. 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.

Findings

The OEB denies OPI's request for Producers to have priority connections. The OEB finds that, as a matter of fairness and non-discriminatory access, one class of customers should not be given priority over all other classes of customers when connecting to Enbridge Gas's system.

A documented procedure for connections will give Producers sufficient certainty to make investment decisions and operate their business without the need to establish a connection priority for Producers over all other customers.

4 NEXT STEPS AND IMPLEMENTATION

OEB staff submitted that the OEB should require Enbridge Gas, OPI and the CBA, to the extent the CBA chooses to participate, to work together outside of the OEB's hearing process. OEB staff did not recommend a settlement conference; however, suggested that a proposal be filed for the OEB's consideration. OEB staff stated that the settlement proposal should address Producer connection procedures, including timelines, contestability provisions, and shut-in processes.

OPI was mostly supportive of OEB staff's proposal, but offered the following suggestions for the OEB's consideration:

- a) OEB staff should facilitate the meetings with Enbridge Gas, OPI and CBA
- b) Timelines for submitting any proposal should be short
- c) If a settlement proposal cannot be reached by the timelines established, each party including OEB staff, should be entitled to submit its proposal for the OEB's determination
- d) If no settlement is reached, the OEB should decide the matter

Findings

Enbridge Gas, OPI and CBA are best positioned to draft a settlement proposal that addresses Producer connection procedures.

The OEB is making provision for a settlement conference to be attended by Enbridge Gas, OPI, CBA, OEB staff and a third-party facilitator. OEB staff can assist in this process by bringing the OEB's knowledge of the Distribution System Code and its implementation. Other intervenors are welcome to attend the settlement conference, but attendance is not eligible for cost awards.

As indicated in Section 3.1 of this Decision, the OEB requires Enbridge Gas to provide an initial draft of this connection procedure to the parties attending the settlement conference prior to the start of the settlement conference to expedite the discussion.

Enbridge Gas, OPI and CBA shall file any settlement proposal achieved. The OEB will consider the proposal and seek submissions from OEB staff and intervenors who were not party to the settlement proposal, on the settlement proposal. If parties are unable to reach any settlement, or reach only a partial settlement, the OEB will seek submissions on any unsettled matters.

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

5 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Intervenors that intend to participate in the settlement conference shall advise the OEB and all other parties no later than **November 2, 2023**.
2. Enbridge Gas shall provide an initial draft of a connection procedure to all parties to the settlement conference and OEB staff by **November 16, 2023**. This draft procedure shall address the Producer connection process and timelines, connecting station contestability, available market capacity and shut-in processes in accordance with this Decision. This draft procedure shall form the basis for discussions at the settlement conference.
3. A settlement conference will be convened on **November 23, 2023**, starting at 9:30 a.m. If necessary, the settlement conference will continue on **November 24, 2023**. This will be a virtual event and information on how to participate will be provided in advance of the conference.
4. OEB staff shall file a letter by **November 27, 2023**, informing the OEB of the status of the settlement discussions including whether a tentative agreement had been reached or if the parties propose to continue the settlement discussions.
5. If there is no settlement proposal arising from the settlement conference, OPI shall file a statement to that effect with the OEB by **November 29, 2023**. Otherwise, Enbridge Gas, OPI and CBA, shall file a joint settlement proposal by **December 6, 2023**.
6. OEB staff and intervenors not party to a full settlement proposal may file a submission on the settlement proposal to be filed with the OEB and served on all parties by **December 13, 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](#).

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- 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 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.

Email: registrar@oeb.ca

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

DATED at Toronto October 26, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar