

July 17, 2020

Christine Long  
Registrar and Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Potential Projects to Expand Access to Natural Gas Distribution  
Request for Confidential Treatment  
Ontario Energy Board File No. EB-2019-0255**

Further to the pending submission of project proposals by Enbridge Gas Inc. (“Enbridge Gas”) in response to the Ontario Energy Board’s (the “OEB”) Final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution (the “Guidelines”), this letter is to request that the OEB order that all information related to projects proposed by Enbridge Gas and any other proponent be kept confidential and not be posted on the OEB’s website or made available pursuant to declarations and undertakings as currently contemplated by the OEB<sup>1</sup>.

Enbridge Gas acknowledges that the OEB had sought submissions regarding confidentiality as part of its consideration of the Guidelines. However, there is no prejudice to any party to the making of these submissions at this time as it relates to the post-submission treatment of the project information and not the project information itself, which proponents are currently preparing.

The submission of the project information by proponents in response to the Guidelines is not the typical OEB process and, therefore, the OEB must take into account the broader context when considering confidential information requests. The project information is not provided as part of an application on which the OEB must provide public notice to affected parties or reach a determination by way of a hearing under Section 21(2) of the *Ontario Energy Board Act* (the “OEB Act”). Instead, the information is being provided to the OEB as part of a response to a question posed by the Minister of Energy, Northern Development and Mines (the “Minister”) under Section 35 of the OEB Act in conjunction with the Ontario government’s Natural Gas Expansion Program.

As stated by the OEB, the requirement in the Minister’s December 12, 2019 letter (the “Section 35 Letter”) is for the OEB to analyze the proposed projects with a focus on assessing whether they can be implemented substantially as proposed, including a demonstrated commitment by the proponent that it would be willing to be held to the project costs, timelines and volume forecast set out in their proposal<sup>2</sup>. The OEB has indicated that the Section 35 Letter did not ask for a ranking of proposed projects, and the OEB does not intend to provide a ranking. Unlike the adjudication of an application, the publication of project information is not required for the OEB to fulfill the object, scope and purpose of the Minister’s request and, as indicated below, such

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<sup>1</sup> Final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution, page 15

<sup>2</sup> Final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution, page 1

disclosure will be prejudicial to the Ontario government's discretion, to future processes undertaken by the Minister under the Natural Gas Expansion Program, to proponents in the current process, to the privacy of potential natural gas customers and to the safe operation of distribution systems.

The current OEB process is an information gathering exercise only and is undertaken for the sole benefit of the Minister for his use in the exercise of his discretion in assessing the project information and any future amendment to the regulations to advance the access to natural gas under the Natural Gas Expansion Program. The Minister's desire to assess projects to provide access to natural gas through the selected projects is similar to the process that was employed pursuant to the former Natural Gas Grant Program that informed the Minister's decisions about projects suitable for Phase I of the Natural Gas Expansion Program. The exception is that the OEB has refined the application requirements through the information to be provided based on the Guidelines.

The OEB process is only one part of an ongoing program where the discretion to select the funded projects remains fully with the Ontario government as it is the Ontario government's program and the information once received is to be used as the Ontario government sees fit towards the intended goal of access to natural gas. To date, under the Natural Gas Expansion Program, project information has remained confidential until the successful projects were announced by the Minister. The publication of project information may diminish the Ontario government's discretion to determine the ranking and geographic distribution of projects. The Section 35 Letter did not authorize or direct the OEB to amend the parameters of the program to make submissions public.

From the perspective of a proponent, it is important to note that not all projects submitted in response to the Guidelines by a proponent and to the Minister by the OEB will be selected as eligible for funding. The public disclosure of project information by the OEB will prejudice the participation by proponents in future expansion efforts by the Ontario government and otherwise. Proponents in the current process have undertaken substantial effort and incurred costs to develop project proposals. If public disclosure occurs, other parties can use that public information to pursue those projects not selected or for other unintended purposes, without incurring comparable efforts or providing due compensation to the original proponent. In this regard, Enbridge Gas believes that the project information is proprietary. Public disclosure of the project information would be unfair and prejudicial. If parties could potentially "free ride" on disclosed project information, then future participation in the program with respect to new and not previously disclosed initiatives is diminished. Enbridge Gas submits that the public disclosure of any of the information from its proposed projects will prejudice our competitive position in Ontario's energy market with respect to possible future development projects.

Enbridge Gas also submits that the disclosure of project information raises privacy concerns. Because many of the projects in question are intended to serve a discrete number of customers in a limited area, details of the location of existing or proposed gas distribution and transmission facilities can indirectly reveal customer information which would normally be protected from public disclosure by the OEB. Where there is a proposal to locate gas distribution or transmission facilities in a particular right of way or area (particularly in more isolated areas), the residents and businesses in that area are identifiable and would allow customer-specific information to be compiled with reasonable accuracy when combined with other publicly available information from other sources.

Although Enbridge Gas has not revealed customer names and addresses as part of its project proposals, some support material provided by municipalities and submitted by Enbridge Gas includes names and addresses of residents that have expressed an interest in receiving gas distribution services.

Enbridge Gas also believes that the public disclosure of specific locations of existing and proposed gas distribution and transmission facilities poses both a safety and a security risk. Public access to this kind of information may allow third parties to determine gas system configurations and points of sensitivity or vulnerability that may expose Enbridge Gas to security risks. Further, persons planning developments or excavation projects may attempt to use the facilities information obtained from other sources in substitution for required facilities locates, notwithstanding the fact that obtaining locates is required by law.

Outside of a specific OEB application, Enbridge Gas does not typically share maps that show specific locations of existing or proposed gas distribution and transmission facilities with third parties since this information is considered by Enbridge Gas to be confidential and proprietary information. When Enbridge Gas does share facilities-related information with third parties, it does so pursuant to a confidentiality undertaking or license to use the information for restricted purposes and to treat the information as confidential. For example, Enbridge Gas may share information regarding facilities locations with municipalities, Ontario One Call and operations service providers for limited purposes. Enbridge Gas notes that its distribution and transmission facilities maps are subject to change on a frequent basis and a static map may only be valid for a short period of time.

If the OEB concludes that the project information should remain confidential and not be disclosed on its website, Enbridge Gas further submits that the OEB should not apply its typical process of allowing parties to view the information following the completion of an undertaking to the OEB. The information is provided to the OEB as part of a proponent's participation in the Ontario government's Natural Gas Expansion Program. In this circumstance, other than the proponent, no other party's rights or interests are affected or subject to consideration by the OEB and, as such, there is no legal or administrative purpose in permitting access to the information via an undertaking. Other than fulfilling its obligation under the Section 35 Letter, the OEB is rendering no decision as to the merit or completion of a specific project. For approved projects, there will be an opportunity for interested parties to participate in future OEB proceedings related to the projects, such as leave to construct and rates proceedings. Because the information is proprietary, and given the foregoing context, the prejudice from disclosure significantly outweighs any administrative benefit of disclosure even by way of undertaking.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

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