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DECISION AND PROCEDURAL ORDER No. 3

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

November 17, 2022



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1 OVERVIEW

The Ontario Energy Board (OEB) has initiated a proceeding on its own motion to consider the price paid by rate-regulated natural gas distributors for natural gas produced in Ontario.¹

In Procedural Order No. 2, the OEB established two jurisdictional questions and sought submissions on these questions from parties and OEB staff. The jurisdictional questions and the OEB's findings on these questions are as follows.

1. Section 36(1) of the *Ontario Energy Board Act, 1998* (OEB Act) provides that:

No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

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

The OEB finds 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.

2. The OEB's [Gas Distribution Access Rule](#) establishes certain conditions of access to gas distribution services provided by a gas distributor. Section 44 of the OEB Act provides that the OEB's chief executive officer may make, amend and revoke rules, and sets out the process to be followed.

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

The OEB finds 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.

¹ [Ontario Energy Board Notice](#), dated February 7, 2022

2 PROCESS

In Procedural Order No. 1, the OEB invited parties to make submissions on the draft issues list.² The draft issues list was:

Draft Issue 1: Is it appropriate for the OEB to fix or approve price(s) (or pricing formula(s)) that a distributor will be required to charge their system gas customers specifically for natural gas produced in Ontario and, if so, what should the price(s) (or pricing formula(s)) be?

Draft Issue 2: Alternately, is it appropriate for the OEB to provide direction on the principles it will consider when assessing whether the costs of natural gas produced in Ontario that a distributor proposes to pass on to system gas customers through the QRAM are reasonable? If so, what should those principles and related filing requirements be?

Canadian Manufacturers and Exporters (CME), Enbridge Gas Inc. (Enbridge Gas), Energy Probe, EPCOR Natural Gas Limited Partnership (EPCOR), Industrial Gas Users Association (IGUA), and School Energy Coalition (SEC) submitted that the draft issues list was appropriate. Enbridge Gas suggested minor modifications to each of the two issues for clarity.

The submissions of Ontario Petroleum Institute (OPI) identified another issue it wished to pursue in this proceeding.

In Procedural Order No. 2, the OEB noted that OPI wanted to see two broad issues addressed in the proceeding:

OPI concern 1: The current price its Ontario producer members are paid for the gas they sell to Ontario distributors, and

OPI concern 2: The terms and conditions that currently apply to those producers' access to the Ontario gas distribution system.

The OEB noted that OPI's concerns raised questions relating to the OEB's jurisdiction, as set out in the OEB Act. Therefore, in Procedural Order No. 2, the OEB established a process to address the two jurisdictional questions laid out above.³

² [Procedural Order No. 1](#), dated March 4, 2022

³ [Procedural Order No. 2](#), dated May 3, 2022

Procedural Order No. 2 set a procedural schedule for OPI to file submissions on the two jurisdictional questions by May 24, 2022, submissions by intervenors and OEB staff by June 21, 2022, and OPI's reply to the submissions of the other intervenors and OEB staff by July 12, 2022. All parties except EPCOR filed submissions on the two jurisdictional questions.

3 JURISDICTIONAL QUESTION NO. 1

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

Submissions

OPI noted that the OEB obtains its jurisdiction over matters from two sources: (a) by express grants of jurisdiction under the OEB Act and other statutes; and (b) by application of the doctrine of jurisdiction by necessary implication.

OPI submitted that the Ontario Legislature granted the OEB express jurisdiction under section 36 of the OEB Act to: (a) set the price that Ontario natural gas producers are paid for the gas they produce and provide to Ontario distributors; and (b) to establish rules to ensure fair and transparent access for gas producers to gas distribution systems in Ontario.

OPI submitted that, in the alternative, even if the OEB finds that it has not been granted express jurisdiction, the OEB has implied jurisdiction because such jurisdiction is necessary for the effective exercise of the OEB's mandate.

OPI submitted that the OEB's rate-making powers under section 36 of the OEB Act provide the OEB with jurisdiction to set the commodity price that Ontario natural gas producers are paid by Ontario distributors, because:⁴

- 1) Section 36 of the OEB Act has been broadly construed by the OEB itself – both in practice and pronouncements in its own decisions
- 2) Ontario courts have consistently recognized the OEB's broad jurisdiction over the energy sector as a whole, and rate-setting in particular
- 3) The OEB's statutory objectives related to the natural gas sector support the OEB's broad jurisdiction over the entire natural gas sector, including the price that Ontario producers are paid for their natural gas
- 4) The Ontario Legislature has given the OEB extensive jurisdiction over the activities of Ontario natural gas producers, including jurisdiction over:⁵

⁴ Submissions of OPI, May 24, 2022, page 7

⁵ Submissions of OPI, May 24, 2022, page 15

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- a) The recovery of gas and the drilling of wells, under the *Oil, Gas and Salt Resources Act* (Ontario)
 - b) The construction of gathering lines from wells, under the *Municipal Franchises Act* (Ontario) and the OEB Act
 - c) Determinations as to whether producer lines are taxable under the *Assessment Act* (Ontario)
 - d) The allocation of production from Ontario wells under the OEB Act
 - e) The pricing of Ontario gas supply through the OEB's rate-setting jurisdiction under section 36 of the OEB Act

OPI submitted that, in exercising its jurisdiction to set commodity and distribution pricing under section 36 of the OEB Act, the OEB must do so in a manner consistent with its objectives established by section 2 of the OEB Act, including: (a) to protect the interests of consumers in respect of prices, reliability, and quality of gas service; (b) to promote energy conservation and energy efficiency; and (c) to facilitate the maintenance of a financially viable gas industry.

OPI submitted that ensuring that the Ontario natural gas production industry is treated fairly and remains viable fulfills all these objectives. OPI submitted that locally produced natural gas:⁶

- 1) Provides reliability and economic benefits to Ontario consumers
- 2) Is more energy efficient, by reducing the need for the construction of additional distribution facilities (compressors, etc.) and fuel gas (i.e., reduction of carbon emissions)
- 3) Is in need of more appropriate pricing, reflective of production costs, and the price paid by Ontario consumers

OPI submitted that, "given the OEB's rate-setting jurisdiction and statutory objectives and the OEB's extensive statutory authority over the activities of Ontario gas producers, it would be extraordinary to suggest that the OEB cannot consider the price that producers get paid for their gas."⁷

⁶ Submissions of OPI, May 24, 2022, page 14

⁷ Submissions of OPI, May 24, 2022, page 16

In its submission, Energy Probe agreed with OPI that the OEB can set a price for locally produced natural gas. Enbridge Gas, SEC, CME, IGUA and OEB staff submitted that the OEB cannot directly set a price for locally produced natural gas. However, Enbridge Gas, IGUA and OEB staff submitted that the OEB could allow an Ontario gas distributor to recover the higher cost of a particular gas supply if the benefits of doing so are sufficient to justify the cost.

Energy Probe submitted that Enbridge Gas has a monopsony, which occurs when one buyer faces little or no competition from other buyers and can set a price that is lower than would exist in a competitive market. While low price may benefit consumers in the short run, it could result in putting Ontario gas producers out of business. Energy Probe submitted that the interests of consumers are best protected if Ontario gas production remains viable. Energy Probe submitted that the Ontario Legislature has instituted regulation as a substitute for competition. Energy Probe submitted that there is no competition in the price paid for Ontario produced natural gas and by regulating the price the OEB would be fulfilling the purpose intended by the Ontario Legislature.

Enbridge Gas submitted that the OEB's ratemaking jurisdiction governs the just and reasonable rates that an Ontario distributor can charge to its customers. Enbridge Gas agreed that the OEB has broad jurisdiction but submitted that the OEB's jurisdiction is not unlimited. Enbridge Gas submitted that, while the OEB approves rates that recover the amounts paid by the Ontario gas distributor to Ontario gas producers, that is different from setting the price that must be paid by the Ontario gas distributor to the Ontario gas producer.

Enbridge Gas submitted that although the OEB does not have jurisdiction to set the price that an Ontario gas distributor pays for local gas production, that does not mean that there is no opportunity for different prices to be paid to local producers in appropriate circumstances. However, it would be incumbent on the distributor to establish the reasonableness of any difference in price. This is because, where the OEB decides that certain third-party costs are not reasonable or prudent, those costs are not recoverable in rates. The Ontario gas distributor remains free to pay whatever amount it chooses to the third party and the impact of the OEB decision is that some of those costs may not be included and recovered in rates.

Enbridge Gas noted that the objectives established by section 2 of the OEB Act explicitly refer to transmission, distribution and storage but do not mention gas production.

CME disagreed with OPI's submission that the OEB's statutory objectives are engaged in this case as a result of the environmental, reliability and economic benefits to Ontario consumers. CME submitted that natural gas producers in Ontario are producing their product and selling it to Enbridge Gas at the price they can receive for it. Enbridge Gas uses that gas in its system and distributes it for Ontario consumers who are already benefiting from whatever environmental, reliability and other benefits may accrue from locally sourced natural gas.

IGUA noted that one of the five specific legislated authorities that OPI listed in its submission was "the pricing of Ontario gas supply through the OEB's rate-setting jurisdiction under section 36 of the OEB Act". IGUA submitted that the existence of such an authority is the very issue at hand, and this circular reference in support of such an authority should be disregarded. IGUA further noted that the other four specific legislative authorities granted to the OEB with respect to Ontario gas production underscores the fact that that the Ontario Legislature has turned its attention to OEB regulation of Ontario gas supply and determined not to grant the OEB authority with respect to pricing of that supply. IGUA submitted that, unless OPI can explain how the OEB not having the authority to set prices to be paid for Ontario gas supply undermines one or more of the other specific authorities legislatively granted to the OEB, there can be no "necessary implication" that such a price setting authority is legislatively intended and required.

SEC submitted that the OEB lacks jurisdiction to set the price that Ontario natural gas producers get paid for the gas they produce and sell. SEC submitted that the OEB's jurisdiction is limited to approving the rates for the sale of gas, by gas transmitters, distributors and storage companies, under subsection 36(2) OEB Act. SEC submitted that although subsection 36(1) of the OEB Act provides the OEB with the authority to regulate the activities of these entities regarding the sale of gas, interpreting this subsection to include the authority to set the price a distributor pays for their gas supply would be inconsistent with the role of the OEB as a monopoly regulator meant to protect the interest of customers, not gas producers.

OEB staff submitted that section 36 of the OEB Act does not provide the OEB with the jurisdiction to directly set the rates that local producers charge gas distributors. The OEB does have the jurisdiction to allow a utility to recover the costs that it incurs to procure gas for system supply customers through rates, provided those rates meet the "just and reasonable" test. However, the focus in setting "just and reasonable" rates is on the interests of consumers and of the gas distributor; it is not on the interests of third parties such as gas producers. The OEB should only consider allowing gas distributors

to pass on gas costs to their ratepayers that are in excess of a market rate, or creating special formulas for the same purpose, where there are demonstrated benefits to ratepayers for doing so.

In its reply, OPI submitted that most others' submissions took an overly narrow, technical approach to interpreting the OEB's jurisdiction.

OPI interpreted OEB staff's submission that the OEB should only consider allowing Gas Distributors to pass on gas costs to their ratepayers that are in excess of a market rate or creating special formulas for the same purpose "where there are demonstrated benefits to ratepayers for doing so" to suggest that the "demonstrated benefits" to ratepayers must be monetary. OPI submitted that Enbridge Gas's Low Carbon Energy Project⁸ demonstrates that benefits need not be monetary.

OPI submitted that the Low Carbon Energy Project established a rate-mechanism that resulted in certain Enbridge Gas ratepayers compensating others for blending hydrogen with existing gas supply. In its submission in the current proceeding, OEB staff stated that: "[t]he Enbridge Gas case was a small pilot program with very limited ratepayer costs, and the OEB noted that Enbridge Gas had provided customer survey results which indicated some support for initiatives to reduce carbon emissions." In effect, the OEB used its rate-setting jurisdiction to facilitate the achievement of non-monetary benefits for ratepayers. In doing so, it sought to overcome any cross-subsidy among ratepayers. OPI stated that this is exactly what it is requesting in this proceeding.

OPI submitted that the Low Carbon Energy Project being small with limited ratepayer costs is of no consequence – the OEB either had or did not have jurisdiction to approve the project. Further, the volume of Ontario gas production as an overall percentage of Ontario's consumption is also extremely small.

OPI submitted that the fact that these non-monetary benefits come to the OEB's attention solely through an application by an Ontario distributor is of concern because that cannot be the sole avenue for such initiatives. OPI submitted that Enbridge Gas is a monopoly utility, and it should not be solely up to Enbridge Gas to decide whether the benefits (monetary or otherwise) are reasonable and should be brought forward for the OEB's consideration and approval. OPI submitted Enbridge Gas should not be in a position of having the deciding (or even leading) voice in determining Ontario's natural gas supply mix. OPI submitted that it is the purview of the OEB, as an economic

⁸ Enbridge Gas Inc., Low Carbon Energy Project, EB-2019-0294

regulator, to (a) establish mechanisms to guard against the exercise of monopoly power and (b) minimize cross-subsidies in rates.

OPI submitted that, while Ontario-produced natural gas makes up a small percentage of total gas supply, Ontario-produced gas plays a vitally important role in ensuring the viability of the system. OPI submitted that the supply of Ontario-produced natural gas to the distribution system provides crucial environmental and economic efficiency benefits to the Ontario gas distribution system and its consumers.

Findings

The OEB finds that it does not have jurisdiction to set the price that Ontario natural gas producers get paid for the gas they produce and provide to Ontario distributors or any other purchaser.

The source of the OEB's authority to set rates with respect to natural gas is section 36 of the OEB Act:

36 (1) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

[...]

(2) The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.

(3) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.

[...]

(7) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates for the sale, transmission, distribution or storage of gas by any gas transmitter, gas distributor or storage company are just and reasonable, the Board shall make an order under subsection (2) and the burden of establishing that the rates are just and reasonable is on the gas transmitter, gas distributor or storage company, as the case may be.

Section 36 prohibits gas transmitters, gas distributors and storage companies from selling gas or charging for transmission, distribution or storage of gas except in accordance with an order of the OEB. Section 36 does not require gas producers to obtain an order from the OEB to sell their gas, nor does the OEB otherwise have the authority to impose such an order. Indeed, gas producers in Ontario have been selling their gas to Enbridge Gas and other parties without any order of the OEB for many years, which would not have been permitted if an order of the OEB was required under section 36.

If Enbridge Gas purchases gas from a producer and seeks to recover that cost from ratepayers, the OEB is not bound by the terms of any agreement between Enbridge Gas and the producer. Enbridge Gas will always bear the onus to prove that the cost it incurred was reasonable if it seeks to recover that cost from ratepayers.

In Ontario, the delivery of natural gas by a gas distributor to consumers is predicated on the existence of a competitive market for the commodity. A consumer can contract with a gas marketer directly for the commodity and pay Enbridge Gas separately to deliver that commodity, through rates set by the OEB.

Alternatively, a customer can choose to have Enbridge Gas both procure the commodity from the market on the customer's behalf and deliver it to the customer. Those customers are referred to as system supply customers. Under this arrangement, the system supply customer pays Enbridge Gas for both the commodity used by the customer and its delivery in rates set by the OEB.

In those rates, Enbridge Gas recovers the cost of the commodity it procures at the market price it paid, without markup, i.e., on a cost pass-through basis, subject to establishing the reasonableness of incurring that cost. The review regarding the reasonableness of gas supply costs occurs as part of the gas supply plan assessment process established in the OEB's Report on the Framework for the Assessment of Distributor Gas Supply Plan (Gas Supply Framework). The reasonable costs are passed through to customers through the QRAM proceedings, where the OEB sets the amount (i.e., the rate) that gas distributors are permitted to charge their system supply customers for gas.

Enbridge Gas procures gas on behalf of its system supply customers from a variety of sources, including a small amount from Ontario producers. Before authorizing the recovery of these costs from customers, the OEB must be satisfied that the resulting rates are just and reasonable.

The OEB agrees with Enbridge Gas that while the OEB approves rates that recover the amounts paid by Ontario distributors to Ontario producers, that is different from setting the price that must be paid by an Ontario gas distributor to an Ontario gas producer. The OEB notes that the Ontario gas distributors are responsible for gas supply procurement on behalf of its system supply customers. The Ontario gas distributor can bring forward system gas supply proposals for an OEB decision.

OPI submitted that the OEB used its rate-setting jurisdiction to facilitate the achievement of non-monetary benefits for ratepayers, referring to the OEB's approval of Enbridge Gas's Low Carbon Energy Project, arguing that this is exactly what OPI is requesting in this proceeding.

The OEB disagrees that the approval of the Low Carbon Energy Project decision is any precedent for the approval of Ontario produced gas supply pricing. Enbridge Gas's ability to pass on the cost of the hydrogen gas it procures for the project is limited to the market price of natural gas despite being more expensive than natural gas. Furthermore, the OEB approved a rate rider that provides a credit to Enbridge Gas's customers receiving blended gas to recognize the lower heat value of hydrogen gas compared to natural gas. This cost is currently absorbed by Enbridge Gas during its deferred rebasing period (i.e., is funded by Enbridge Gas's existing rates and are not being incrementally recovered from customers).

It is the Ontario gas distributor's responsibility to prove the reasonableness of its procurement decisions based on the guiding principles set out in the Gas Supply Framework.⁹ The gas distributor must demonstrate that the commodity cost incurred with respect to natural gas purchased on behalf of system gas customers results in rates that are just and reasonable, and is in accordance with the Gas Supply Framework, in order to justify to the OEB that cost recovery from those customers should be approved. It is not within the jurisdiction of the OEB to establish special treatment for gas on the basis that it happens to be produced in Ontario.

As noted by OPI, Ontario gas producers can sell their gas to Enbridge Gas under a Gas Purchase Agreement. Enbridge Gas relies on the Dawn market price to establish the price it will pay Ontario gas producers for their gas, on the basis that if it did not have access to Ontario produced gas it would instead procure those volumes from Dawn. If Enbridge Gas doesn't buy their gas, they can sell it at the Dawn Hub, using an M13

⁹ EB-2017-0129

contract with Enbridge Gas to transport their gas to Dawn. The Dawn Hub is a very liquid competitive trading market with many buyers and sellers.

In effect, OPI is seeking an outcome that would have Enbridge Gas often pay more than the market price for the gas supplied by Ontario gas producers. Given the existence of a competitive market, it is not clear on what basis Enbridge Gas would be able to justify paying more than the Dawn market price for the small amount of gas purchased from Ontario producers, given that it can always buy gas at the Dawn trading hub from other suppliers, at the Dawn market price.

For the OPI proposal to work, not only would the OEB have to set rates that would require ratepayers to often pay more than the market price for gas supplied by Ontario gas producers, Enbridge Gas would also have to agree to buy that gas to begin with, or be ordered to by the OEB.

This is inconsistent with section 36 of the OEB Act and the requirement for just and reasonable rates and the fact that the OEB only has jurisdiction over the distributor and not the Ontario producers.

In conclusion, the OEB finds that it does not have the jurisdiction to directly or indirectly set the price that Ontario natural gas producers get paid for the gas they produce and supply to Ontario gas distributors. As OEB staff submitted, the OEB does have the jurisdiction to allow a utility to recover the costs that it incurs to procure gas for system supply customers through rates, provided those rates meet the “just and reasonable” test. This finding disposes of the two issues that were set out on the draft issues list.

4 JURISDICTIONAL QUESTION NO. 2

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

Submissions

In its submission on the draft issues list, OPI identified an additional issue relating to fair and transparent access to the Enbridge Gas distribution system by Ontario gas producers. This issue gave rise to Jurisdictional Question 2.

In its submission on the two jurisdictional questions, OPI noted that Ontario producers have two options:

1. The producer can sell gas directly to Enbridge Gas through a standard Gas Purchase Agreement
2. The producer can transport gas to the Dawn natural gas storage hub through a M13 contract with Enbridge Gas, and then sell that gas at Dawn¹⁰

OPI noted that, in 2019, the wording in section 44 of the OEB Act was changed to transfer rule-making authority from “the Board” to “the chief executive officer.” However, OPI submitted that the OEB’s rate-setting jurisdiction (which OPI submitted is routinely and properly exercised by its Commissioners) is broad enough to encompass a gas distributor’s conditions of service (including fair and transparent access).

Further, given Enbridge Gas’s dominance in the sector, a determination by a panel of Commissioners in respect of Enbridge Gas’s conditions of service is nearly equivalent to an industry rule – and from Ontario gas producers’ perspective, the issues in this proceeding only pertain to Enbridge Gas.

CME agreed with OPI that a panel of Commissioners can set conditions of approval in a proceeding and thereby effectively establish rules to ensure fair and transparent access for gas producers to gas distribution systems in Ontario.

¹⁰ M13 service provides Ontario natural gas producers with a means to get their gas to Enbridge Gas's Dawn Hub where the gas can be sold to any number of market participants. The terms and conditions for M13 service may be found on the [Enbridge Gas website](#).

SEC submitted that a panel of Commissioners likely can establish rules to ensure fair and transparent access for gas producers to gas distribution systems in Ontario, but only if the purpose of the access is for the producer to transport gas.

Some parties submitted that only the OEB's Chief Executive Officer can make rules under section 44 of the OEB Act. However, a number of parties and OEB staff argued that there is some degree of overlap between the types of matters that can be addressed through a formal rule under section 44, and the types of matters that can be addressed through an order under section 36 of the OEB Act which is made by a panel of Commissioners or in some cases a delegated authority.

Enbridge Gas submitted that the OEB's powers to make new rules governing gas distributors are assigned to the Chief Executive Officer who is separate from the Commissioners. While the OEB as a whole has jurisdiction to make new rules the OEB Act makes clear that the power to make such rules does not sit with a panel of Commissioners.

IGUA submitted that the OEB's authority to make or amend rules, such as the [Gas Distribution Access Rule](#), in respect of gas distribution activities, now resides with the OEB's Chief Executive Officer, under section 44 of the OEB Act. More importantly, however, that authority carries with it notice provisions and the requirement to afford interested parties with an opportunity to make representations in respect of a proposed rule or amendment, pursuant to section 45 of the OEB Act.

In its reply submission, OPI agreed with the submissions of CME and SEC that a panel of Commissioners has jurisdiction to make rules in respect of an Ontario gas distributor's conditions of service – including fair and transparent access. OPI submitted that the OEB's rule-making authority being exclusively vested in the Chief Executive Officer by virtue of section 44 of the OEB Act is contrary to both the past practice of the OEB and its obligations to carry out its statutory mandate. OPI submitted that such an interpretation would have profound consequences.

For example, parties could argue that any issues going beyond “pure rates” are solely for the executive arm of the OEB to determine. OPI submitted that this cannot have been the intention of the Ontario Legislature in amending section 44 of the OEB Act.

Findings

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 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.

The OEB wants to better understand OPI’s concerns with respect to the terms and conditions associated with the M13 rate schedule or station fees associated with gas purchase agreements, and how these may impair fair and transparent access to the distribution system.

Therefore, the OEB is making provision for the filing of additional evidence in this proceeding by OPI, if OPI wishes to do so. To the extent that OPI’s concerns relate to the M13 fixed or variable rate itself (as opposed to the terms of service included in the rate schedule), the OEB will not address one rate in isolation. OPI may raise issues in relation to the M13 rate, such as cost allocation and rate design, in an Enbridge Gas rebasing proceeding.

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. Specifically, the OEB is prepared to consider:

1. Fair and transparent access to the utility’s system
2. Customer (producer) cost to connect to the utility’s system (such as station fees)
3. Proposals for changes to the terms associated with the M13 rate schedule

If OPI advises that it does not intend to file evidence, then this proceeding is concluded. Cost eligible intervenors may seek a cost award payable by Enbridge Gas and EPCOR.

In accordance with the OEB's [Cost Assessment Model](#), the OEB will apportion costs between Enbridge Gas and EPCOR based on customer numbers. The OEB will use the process set out in section 12 of its [Practice Direction on Cost Awards](#) to implement the payment of the cost awards.

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. Ontario Petroleum Institute shall notify the OEB by letter on whether it intends to file evidence and serve the letter on all parties by December 9, 2022. If OPI intends to file evidence, it shall provide a high-level description of the proposed evidence and when it will be filed.
2. If the Ontario Petroleum Institute does not intend to file evidence, cost eligible intervenors seeking cost awards shall file cost claims by December 16, 2022.

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](#).

- 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 and OEB Counsel, Michael Millar at michael.millar@oeb.ca.

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

DATED at Toronto November 17, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar