

April 11, 2023

BY EMAIL AND FILED VIA RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc. ("Enbridge Gas")
EB-2022-0200 – 2024 Rates Application
Motions Day - Response from Enbridge Gas**

We are counsel for Enbridge Gas Inc. ("**Enbridge Gas**").

Pursuant to Procedural Order No. 1 dated December 16, 2022, the OEB set Thursday April 13, 2023 to hear any motions that have been filed in this proceeding. Pursuant to Procedural Order No. 4 dated April 5, 2023, any party wishing to raise specific matters at the hearing was to file a letter with the OEB on or before April 10, 2023 indicating the relief sought and provide a summary of the argument supporting the relief. This Procedural Order provided that Enbridge Gas could file a written response on April 11, 2023 in advance of Motions Day.

The School Energy Coalition ("**SEC**") and Environmental Defence ("**ED**") both filed letters dated April 10, 2023 requesting that the OEB order Enbridge Gas to produce certain documentation and/or information as set out in the letters. The SEC and ED letters identify three areas where additional information/documentation is the subject of their motions.

In addition, both SEC and ED forwarded emails to Enbridge Gas requesting additional information/clarification in respect of several undertaking responses.

In summary, Enbridge Gas will, as noted in greater detail below, respond to each of the areas which are the subject of the SEC and ED motions and their requests for clarification with the exception of one.

This letter will first provide the submissions of Enbridge Gas in respect of the interrogatory response/undertaking which is in dispute. The letter will then confirm Enbridge Gas's commitment to provide responses for the two remaining requests which are the subject of the SEC and ED motions and the several additional requests for clarification by SEC and ED.

Submission on Interrogatory I.1.2-SEC-77 (CGA/AGA Benchmarking Information) and Undertakings Response JT 1.7

SEC asked in its interrogatory request for a copy of all third party benchmarking analysis, studies, reports and/or similar documents, undertaken for or including Enbridge, since 2017, that are not already included in this Application, regarding any aspect that directly or indirectly relates to a material aspect of Enbridge's business.

Enbridge Gas' response to the interrogatory is attached at **Exhibit 1** to the submission.

Enbridge Gas responded, in part by identifying that it participates in annual benchmarking studies through its membership in the Canadian Gas Association ("**CGA**") and American Gas Association ("**AGA**") (jointly "**Associations**"). The response notes that both the CGA and AGA have Confidentiality Agreements in place which require member utilities to request permission to distribute their work. Enbridge Gas requested permission to disclose the reports and both the CGA and AGA declined. Attached at **Exhibit 2** is a copy of the applicable provisions of the AGA Confidentiality Agreement and the AGA's and CGA's denial responses.

At the Technical Conference, counsel for SEC once again requested production of the AGA and CGA reports. In response, Enbridge Gas advised that it stood by the position taken in the interrogatory response.¹ SEC then requested that Enbridge Gas provide a list of what has been benchmarked and an undertaking was given to determine if Enbridge Gas was in a position to respond with such details. In its response to JT 1.7, Enbridge Gas stated that it was unable to provide the list of what is included in the annual benchmarking studies, including details of the contents of the studies. CGA however advised that there is a subset of data available in the public domain which is available on the CGA website. The undertaking response provided a link to this website. A copy of the undertaking response is attached at **Exhibit 3**.

Enbridge Gas submits that for the reasons set out below, SEC's request for the production of these benchmarking studies should be denied.

It is important to note that the AGA and CGA reports were not prepared at the request of or for Enbridge Gas. Enbridge Gas has no control over how these Associations collect data from other member utilities, how they collate the data and generate the results included in the reports. No one from Enbridge Gas can speak to the methodology used and the findings set out in the reports. None of the OEB, OEB Staff and intervenors will have any ability to test the results set out in the reports. Enbridge Gas therefore submits that there are issues around the probative value of the reports and the OEB's ability to rely on same for the purposes of making any decisions in this proceeding.

¹ 1 TC Tr.67.

In EB-2021-0312 in its Decision on Motion dated February 3, 2022, the OEB stated:

“The OEB has considered many motions² where a party requested the production of information or documents, usually related to disputed interrogatory responses after the discovery stage. The OEB strives to achieve effective and efficient review processes by ensuring that only information that is relevant to the matters within the scope of the proceeding is required to be made available. The OEB will not compel the production of evidence unless the evidence is considered relevant and necessary to make determinations in the case before it.”³

It is noteworthy that in SEC’s April 10, 2023 submission, it makes no attempt to state how the AGA and CGA reports are relevant or how the contents of such reports might have any bearing on the determinations to be made on this proceeding.

The fact is that Enbridge Gas, like other member utilities of the two Associations, participates in the annual studies and receives the reports as a benefit of membership. The reports are not being relied upon by Enbridge Gas for the purposes of any relief sought in this proceeding and Enbridge Gas has agreed, as a condition of its membership, to seek the permission from the two Associations before releasing the reports. This permission was requested, but was not granted. It is arguable that producing the reports in such a situation could be considered unlawful from the perspective of the two Associations or refuse membership to Enbridge Gas.

The OEB should be aware of the possible consequence of ordering production. This could discourage the CGA from undertaking future benchmarking exercises and may disincite other utilities from participating. The AGA may decline to include Canadian utilities in its future exercises.

Enbridge Gas submits that the references made by SEC in its April 10, 2023 submission to several OEB decisions are distinguishable and not applicable to the AGA/CGA reports. First, the OEB has consistently held that production will only be made where the documentation requested is relevant to the proceeding. Second, the prior decisions of the OEB relate to a Confidentiality Agreement entered into between a regulated utility and a “service provider”⁴ or private agreements amongst utilities or third parties.⁵ In the case of the AGA and CGA, the requirement to obtain their permission to release the reports is a condition imposed on Enbridge Gas by its membership with the Associations. Neither Association is a service provider nor a third party in the sense intended by the OEB.

In the alternative, should the OEB determine that the benchmarking studies of the AGA and CGA should be produced, Enbridge Gas submits that the reports should be filed in confidence and a request for confidentiality is made in such circumstances. Enbridge Gas submits that confidential

² See, for example, EB-2018-0082, Erie Thames Powerlines Corporation and West Coast Huron Energy Inc. Application for approval to amalgamate, Decision on Motion and Procedural Order No.5, September 19, 2018 at page 6.

³ EB-2021-0312 (MAADs proceeding re North Bay Hydro and Espanola Hydro), Decision on Motion, February 3, 2022, at page 2.

⁴ EB-2013-0416, August 25, 2014 page 5.

⁵ EB-2013-0115, March 19, 2004 page 3.

treatment is appropriate given that the disclosure could cause potential harm to each of the Associations and their members broadly as noted above. Enbridge Gas further submits that only those reports dealing with the years following the merger of the legacy utilities (2019 to current) should be produced. Should the OEB order production of the benchmarking studies, Enbridge Gas requests the opportunity to make further submissions on confidentiality, after consulting with the Associations.

Matters where Enbridge Gas will provide Further Responses

A. Interrogatory I.2.6-SEC-19(a)/Undertaking Exhibit JT 3.16 (community expansion project information)

On this item, SEC repeats its request for Enbridge Gas to provide, subject to data availability, responses to portions of this interrogatory that were previously declined. Enbridge Gas will provide a response. If particular data is unavailable, Enbridge Gas will explain where and why that is the case.

B. Request for estimate of Test-Year System Access Spending assuming customer attachment forecast of five years and a maximum revenue horizon of 15 years (5 TC Tr. 79)

On this item, ED requests that Enbridge Gas answer a question that was declined at the Technical Conference related to providing an estimate of system access spending using different assumptions for customer connections. While Enbridge Gas does not agree with the premise of ED's position for why this information is sought, the Company will provide the requested information. Where necessary, Enbridge Gas will indicate simplifying assumptions made to complete the request.

C. Additional Clarification Requests from ED and SEC

In emails sent to Enbridge Gas on the same day as the motions letters, ED and SEC requested that Enbridge Gas provide clarifying or additional information in relation to several undertakings: Exhibits JT3.5; JT4.17; JT5.20; JT6.14 and JT8.4. Enbridge Gas confirms that it will provide updated responses to each of these undertakings, addressing the requests from ED and SEC.

Timing

Enbridge Gas will work diligently to provide all of the responses noted under the three headings above. The Company anticipates being able to provide most of the responses by Tuesday April 18th, though the work to complete item (A) above will likely take until early May. In this regard, we note SEC's comment that extra time for that response is acceptable, so long as the answer is provided before the Settlement Conference.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary
DMO/vf

c: All parties registered in EB-2022-0200

EXHIBIT 1

ENBRIDGE GAS INC.

Answer to Interrogatory from
School Energy Coalition (SEC)

Interrogatory

Reference:

1

Question(s):

Please provide a copy of all third-party benchmarking analyses, studies, reports, and/or similar documents, undertaken for, or include Enbridge, since 2017, that are not already included in this application, regarding any aspect that directly or indirectly relates to a material aspect of Enbridge's business.

Response:

Enbridge Gas describes its continuous improvement philosophy and benchmarking in Section 6 of its Utility System Plan, provided at Exhibit 2, Tab 6, Schedule 1.

Enbridge Gas participates in annual benchmarking studies through its membership in the Canadian Gas Association (CGA) and American Gas Association (AGA). The AGA also addresses special topic areas, which have included: Contractor Oversight, Transmission Integrity, ROW Encroachment and Permitting, System Collection and Maintenance of As-Builts, QC and Training, DIMP, Emergency Response and Preparedness, Main and Service Construction, System Regulation and OPP, Carbon Emission Reduction, Leak Repair, Damage Prevention, Gas Control and Gas Compliance.

Both the CGA and AGA have confidentiality agreements in place which require signatories to request permission to distribute their work. CGA and AGA did not grant Enbridge Gas this permission and as such, Enbridge Gas cannot provide the reports.

Additionally, Enbridge Gas participated in customer satisfaction benchmarking studies: Mastio 2022 Transportation Customer Value/Loyalty Benchmarking Study and JD Power 2019 Gas Utility Residential Customer Satisfaction Study.

The Mastio Study is a customer satisfaction and loyalty benchmarking study covering North American pipelines (transportation market). Mastio did not give Enbridge Gas

permission to share the study, however a press release for the 2022 study is available online¹

The JD Power Study is focused on residential customer satisfaction with natural gas, electric and hybrid utilities in the United States, however EGD opted to participate. The results of this study do not include Union or Enbridge Gas, and relate only to 2018. The report was provided on a confidential basis.

Finally, Enbridge Gas subscribes to ESource, which is a subscription-based consulting, data and advisory service provided to North American utilities. The main topics it covers are: electric vehicles, AMI implementation, electrification, batteries, energy equity, customer experience, grid and asset optimization, demand response, and program design. Enbridge Gas was included in the following benchmarking studies:

- 2019 Website Benchmark Study
- 2021 Website Benchmark Study
- 2021 Digital Metrics Service Requests Study
- 2021 Digital Metrics Bill Pay Study
- 2022 Customer Experience Study
- 2021 Utility Social Media Study
- 2018 Utility Social Media Study (Union Gas)
- 2021 Account Management Assessment

ESource granted permission to list the benchmarking studies, but did not grant permission to share the reports.

¹ https://www.mastio.com/files/ugd/43ede9_733cd1117d574e6fa5dbf06fc8e7a32c.pdf.

EXHIBIT 2

2020 GAS UTILITY OPERATIONS BEST PRACTICES PROGRAM
PARTICIPATION AGREEMENT FORM

◆◆◆ One Agreement Form Per Company ◆◆◆

On behalf of my company, I hereby apply to participate in the 2020 Operations Best Practices Program of the American Gas Association (AGA), and agree to submit data and other pertinent, requested information to AGA in accordance with the approved schedule.

In return for the data my company furnishes, my company and other program participants will get specific detailed information generated during the program, including program summary reports, attendance at roundtable sessions, and roundtable notes (collectively the "Work").

To help ensure the confidentiality of the participants' data and the Work, my company understands and agrees that:

- The Work we receive is the original, creative and copyrighted work of AGA and AGA grants my company permission to use the Work for internal company purposes alone. My company may not use it for any other purpose(s) nor reproduce, distribute or make derivative works from it without the specific written consent of AGA. The Work may not be used in rate cases or shared with regulatory commissions or other agencies.
- The Work is confidential and proprietary information of AGA. My company will maintain the confidentiality of the Work, including data provided by the participants and any coding that identifies participants, in the same manner and with the same safeguards as its internally generated confidential and proprietary information.
- In the event a governmental regulatory agency, public utility commission or any party to legal or regulatory proceedings requests a copy of the Work through a subpoena or document request, my company agrees to notify AGA, request permission to distribute and/or copy the Work, or any portion thereof, and take reasonable steps to safeguard confidentiality by requesting a confidentiality agreement, protective order, or similar protection.
- My company would receive copies of the benchmarking data reports *only* for the benchmarking topics for which my company submitted data.
- My company has reviewed the AGA Antitrust Compliance Guidelines and shall not discuss or disseminate information that violates those Guidelines.

Note: If submitting data for subsidiaries under your parent company, you are only required to submit one participation agreement for the parent company for each Program.

Company and Contact Information

PRIMARY PROGRAM CONTACT - The Company Representative primarily responsible for managing the submittal of data to the Gas Utility Operations Best Practices Program, distribution of program announcements, materials, reports and coordinating company representative attendance at the various Best Practices Meetings.

<u>Enbridge Gas Inc.</u> Company	<u>Stephanie Fife</u> Contact Name
<u>Manager, Performance and Compliance</u> Title	<u>50 Keil Dr. N</u> Street Address
<u>Chatham ON N7M5M1</u> City, State, Zip	<u>Canada</u> Country (if other than USA)
<u>Stephanie.Fife@Enbridge.com</u> Email Address	<u>519 436 4100 x 5002321</u> Phone

Dennis O'Leary

From: Murray, Michael <MMurray@aga.org>
Sent: February 22, 2023 6:59 PM
To: Kate Segriff; General Counsel
Cc: Stephanie Fife; Buys, Kenneth; Gray, LaMona
Subject: RE: [EXTERNAL] clarification needed

CAUTION! EXTERNAL SENDER

Were you expecting this email? TAKE A CLOSER LOOK. Is the sender legitimate?
DO NOT click links or open attachments unless you are 100% sure that the email is safe.

Ms. Segriff,

On behalf of Enbridge ("Company") and pursuant to a written confidentiality agreement between AGA and Company and other binding legal limitations, you have asked us for permission to distribute the AGA authored work or documents related to benchmarking analysis in response to a specific Data Request to which the Company believes the authored work or documents may be responsive.

Each operator serves a unique and defined geographic area and their system infrastructures vary widely based on a multitude of factors, including, condition, engineering practices and materials. Each operator will need to evaluate any practices in light of system variables. Not all highlighted practices will be applicable to all operators due to the unique set of circumstances that are attendant to their specific systems. Each operator needs to evaluate actions in light of system variables. Any benchmarking results are not standards or necessarily the best practice for any particular company.

As the Company is aware as an AGA member, AGA is a nonprofit tax-exempt 501(c)(6) membership organization that is incorporated and conducts business at Suite 450, 400 N. Capitol St., N.W., Washington, DC, 20001. One of AGA's purposes as an association is to serve its members' collective interests and not the interests of any single member. As such, many documents are aimed, among other things, at improving operational excellence, safety, security and efficiency throughout the natural gas distribution industry. These publications are copyrighted and a valued benefit of membership in the association.

Certain AGA documents are for public distribution while others are confidential and proprietary and distributed through the password-protected members only side of the AGA web site at www.aga.org, a third-party contractor's password protected website, or limited hard copy or email distribution and/or subject to a confidentiality agreement between AGA and the members participating in the development of the document. The documents you indicate may be responsive to the data request are of the confidential and proprietary type and AGA uses the measures noted to safeguard that confidentiality.

For the reasons stated above and because the authored work and documents are confidential and propriety to AGA, distributed solely to AGA members, copyrighted to AGA, and subject to a confidentiality agreement between AGA and the members participating in the development of the documents, including the Company, and other binding legal limitations, AGA cannot grant the permission you request.

Respectfully yours,

Michael Murray | General Counsel
American Gas Association
400 N. Capitol St., NW | Washington, DC | 20001
P: 202-824-7071 | mmurray@aga.org

From: Derek Chan <DChan@cga.ca>
Sent: Monday, February 27, 2023 9:10 AM
To: Kate Segriff <Kate.Segriff@enbridge.com>
Cc: Deborah Pfeil <DPfeil@cga.ca>
Subject: [External] RE: Urgent request

CAUTION! EXTERNAL SENDER

Were you expecting this email? TAKE A CLOSER LOOK. Is the sender legitimate?
DO NOT click links or open attachments unless you are 100% sure that the email is safe.

Hi Kate,

Just a reminder that there is a public facing document for the Corporate Profile available on the CGA website here: <https://www.cga.ca/resources/publications/corporate-profile/>. Granted it is only a subset of the information that companies like Enbridge submit to us, this information is in the public domain.

Having said that, the statement that I would use comes from the second page of the document itself:
"INFORMATION CONTAINED IN THIS REPORT IS NEITHER AUDITED NOR WARRANTED, IS NOT SUBJECT TO PEER REVIEW & IS NOT INTENDED FOR USE IN REGULATORY OR FINANCIAL FILINGS. NO GUARANTEES ARE MADE REGARDING REFLECTING HISTORICAL REVISIONS OR CORRECTIONS"

Hope this helps. Let me know if you have any other questions.

Regards,

Derek Chan, P.Eng
Manager, Data Analytics and Operations
Canadian Gas Association
P: 613-748-0057 ext. 315 | M: 519-381-3354
dchan@cga.ca



From: Kate Segriff <Kate.Segriff@enbridge.com>
Sent: February 24, 2023 10:54 AM
To: Derek Chan <DChan@cga.ca>
Cc: Deborah Pfeil <DPfeil@cga.ca>
Subject: Urgent request

EXTERNAL EMAIL: Verify sender, proceed only if safe.

Hi Derek.

Can you please outline in a paragraph or so why we cannot share the CGA Company Profile data from other member companies or anything we benchmark with our Financial Regulator like QSS's etc? They are looking to hear it from the source, not just us, we had to do the same thing with the AGA.

EXHIBIT 3

ENBRIDGE GAS INC.

Answer to Undertaking from
School Energy Coalition (SEC)

Undertaking

Tr: 68

With Mr. O'Leary's caveats to the inquiry, to provide a copy of the annual benchmarking studies from the CGA and the AGA, as well as those listed; to provide a list of what is benchmarked, what is actually the contents of those benchmarking studies.

Response:

As outlined in response at Exhibit I.1.2-SEC-77, Enbridge Gas is unable to provide the list of what is included in the annual benchmarking studies, including details of the contents of the studies. The AGA did not grant Enbridge Gas permission to provide the list of what is benchmarked as all of the information in the program is covered by a confidentiality agreement. The CGA indicated that there is a subset of data available in the public domain that can be found on the CGA website¹. The remainder of the information in the CGA Program is covered by a confidentiality agreement.

¹ Corporate Profile 2021 Final Report. 2022. <https://www.cga.ca/wp-content/uploads/2022/10/Corporate-Profile-2021.pdf>