



## FRASER MILNER CASGRAIN LLP

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### **VIA E-MAIL & COURIER**

October 12, 2007  
Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, ON  
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.;**  
**Request for Confidentiality Filing;**  
**Ontario Energy Board File No. EB-2007-0615**

### **Introduction**

We are writing on behalf of Enbridge Gas Distribution Inc. ("EGD") pursuant to Rules 10.01 and 10.02 of the *Rules of Practice and Procedure* (the "Rules") and s. 5.1 of the *Practice Direction on Confidential Filings* (the "PD") to request that a number of documents be filed on a confidential basis. These documents may be responsive, in whole or in part, to certain questions raised by the School Energy Coalition ("SEC") during the Technical Conference on October 4, 2007.

In accordance with s. 5.1.4 of the PD, EGD hereby attaches the confidential and redacted versions of the pertinent documents. In doing so, EGD wishes to make it clear that it does not object to counsel receiving copies of the confidential documents (or the relevant portions thereof), provided counsel complies with s. 6 of the PD and, in the case of (a) below, also complies with the additional conditions specified therein. EGD is concerned that the confidential documents, and the specific confidential information contained therein, not be made otherwise public, as EGD believes that such public disclosure would result in serious and irreparable harm to EGD shareholders, ratepayers and contractors, for the reasons stated below.

**The Specific Documents and Reasons for the Confidentiality Requests**

***(a) Four Third Party Service Contracts (the “Contracts”)***

The issue<sup>1</sup> arises in the context of EGD’s pre-filed evidence [B/1/1/10] and SEC Interrogatory #42, which relate, generally, to the challenges EGD will face as a result of Incentive Regulation (“IR”). The specific issue relates to expected cost increments in relation to the Contracts during the period of the IR Plan. The Contracts, which are fixed unit price contracts, relate to customer attachment and distribution network services. The Contracts will expire early in the IR Plan and EGD’s evidence is that the costs of the services covered by the Contracts are currently expected to increase at a rate greater than inflation.

As EGD explained in its response to Undertaking JTB.17, the Contracts in issue are with four separate and independent contractors, and each is subject to strict confidentiality requirements. EGD has consulted with the contractors in order to obtain permission to file the Contracts with the Board, and explained the Board’s confidential filing process to them.

The result of these consultations is that all four contractors have given their permission for EGD to file the Contracts on the public record, with the exception, however, of the pricing schedules appended to the Contracts. More particularly, one of the four contractors (“Contractor 1”) has given permission to file its pricing schedules with the Board, but only on the condition that the strict confidential terms outlined below are satisfied. The other three contractors have refused to voluntarily consent to the filing of their respective pricing schedules with the Board.

EGD asks that the Board hold in confidence the enclosed pricing schedules of Contractor 1 because the information contained therein is highly sensitive to the commercial operations of this contractor, and by inference, to the other contractors as well. As the evidence states, EGD is currently commencing the process of issuing a request for proposal for the work that is the subject matter of the Contracts for future years, and any disclosure of the current pricing information, whether directly or indirectly, would likely seriously jeopardize the anticipated bidding process and, consequently, the ability of the contractors to effectively compete in the highly competitive construction and services industry.

EGD is similarly concerned that any such disclosure would also completely undermine the bidding process, which is absolutely critical to EGD’s ability to maintain a safe and reliable distribution system, and a positive working relationship with the contractor community at large. Therefore, and at the express request of Contractor 1, EGD is prepared to file the Contractor 1 pricing schedules (the “Schedules”) only on the following conditions that must supplement the Board’s form of Undertaking of Non-Disclosure:

- 1) The Schedules will be provided in enumerated hard copies only, and returned immediately at the conclusion of this proceeding;
- 2) The Schedules will be kept in an appropriately secure location, such as a locked cabinet, at all times;

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<sup>1</sup> See Hearing Transcript, October 4, 2007, p. 87, line 11ff.

- 3) The Schedules will only be provided to legal counsel, on a “need to know basis” for the purposes of this proceeding, and on condition that counsel expressly acknowledges that he or she has or represents no interest that is adverse to that of the contractor.
- 4) All recorded enquiries about the Schedules during the proceeding will be conducted in strict confidence.

**(b) *Enbridge East 2008 Budget***

During the Technical Conference<sup>2</sup>, counsel for SEC requested a copy of the corporate budget submitted on “Monday” [October 1, 2007] to Enbridge Inc. (“EI”) for consideration. Counsel for SEC acknowledged that “maybe some parts of it may have to be in confidence, given that it’s a public company”.

A copy of the Enbridge East 2008 confidential budget is attached. It contains budget information for EGD as well as a number of EGD’s affiliates and subsidiaries. As portions of the budget do not relate to EGD (but to the other companies), this information has been redacted as it is not relevant to this proceeding (although it, too, is confidential). The remainder of the information pertaining to EGD is marked as confidential and it is this information that EGD wishes to protect from public disclosure for the reasons already acknowledged by SEC’s counsel on the record. Moreover, the information contained in the budget is in draft form only and has not been approved by EGD’s Board of Directors. In any event, disclosure of this type of sensitive financial information, whether in draft or final form, would be harmful to EGD and EI shareholders.

**(c) *Enbridge East 2007 Strategic Plan***

Pertinent to the requested information in item (b) above, we also attach a copy of the Enbridge East 2007 Strategic Plan (otherwise known as the 2007 Long Range Plan (“LRP”)). Similar to the corporate budget, the LRP contains information in regards to EGD, as well as a number of EGD’s affiliates and subsidiaries. As portions of the LRP do not relate to EGD (but to the other companies), this information has been redacted as it is not relevant to this proceeding (although it, too, is confidential). The remainder of the information pertaining to EGD is marked as confidential and, as with the budget, it is this EGD forecast information that EGD wishes to protect from public disclosure, for the same reasons given in item (b) above.

**Conclusion**

For all of these reasons, EGD respectfully seeks an order under s. 5.1.10 that the confidential documents shall not become part of the public record, provided however that they may be made available to counsel under the protections and provisions in s. 6 of the PD, as well as outlined in this letter.

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<sup>2</sup> See Hearing Transcript, October 4, 2007, p. 121, line 5ff.

Yours very truly,

  
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Attchs.

*For the Board only:*

- 1) Unredacted confidential documents, in respect of which protection is being sought, pursuant to s. 5.1.4(b) of the PD
- 2) Redacted copies of the documents (or sections of documents) sent to the Board pursuant to s. 5.1.4 (c) of the PD