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October 23, 2007

VIA COURIER & E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli,

**Re: Proposed Amendments to Affiliate Relationships Code for Electricity Distributors
and Transmitters
Ontario Energy Board ("Board") File No: EB-2007-0662
Submission of Enbridge Gas Distribution Inc. ("Enbridge")**

This is in response to the Board's September 19, 2007 notice of proposal to amend a code and its invitation to make written submissions on the Board's proposed amendments to the Electricity Affiliate Relationship Code. Enclosed please find three hard copies of the submissions of Enbridge. An electronic copy in searchable PDF format is also being sent to the Board via email.

Yours truly,



Bonnie Jean Adams
Assistant Regulatory Coordinator

Enclosure

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998,
c. 15 (Sched. B)

AND IN THE MATTER OF the Ontario Energy Board's proposed
amendments to the *Affiliate Relationships Code for Electricity
Distributors and Transmitters*

SUBMISSIONS OF ENBRIDGE GAS DISTRIBUTION INC.

1. Enbridge Gas Distribution Inc. ("**EGD**") appreciates this opportunity to comment on the Board's proposed amendments to the *Affiliate Relationships Code for Electricity Distributors and Transmitters* (the "**Electricity ARC**", or the "**Code**"). As one of the largest gas utilities in Ontario, subject to similar affiliate rules, EGD has gained valuable experience within the past decade working with these rules that, as conveyed in these submissions, we hope will inform the Board's decision-making process.

2. EGD has been a consistent and active participant in the development of the Gas ARC and its predecessor policies. EGD has undergone several organizational changes involving extensive consideration and application of the affiliate rules. We routinely provide services to and receive services from affiliates, and therefore administer dozens of affiliate contracts on a regular basis. We commend to the Board, and attach for reference, our submissions on the Board Staff paper and wish only to make the following additional submissions identified under the headings below.

Sharing Employees

3. EGD supports the deletion of section 2.2.4 from the Electricity ARC, which prohibits the sharing of “employees that carry out the day-to-day operation of the utility’s transmission or distribution networks.” As we stated in our submissions on the Board Staff paper in July, we have found the equivalent provision in the Gas ARC difficult to interpret and apply in the context of the shared services model within which EGD operates (as approved by the Board), because of the overly broad wording used to describe this category of employees.

4. We have similar concerns with section 2.2.3, in that any utility employee may have access to confidential information (as defined in the Code). EGD believes that the other provisions of the Code respecting confidential information are sufficiently broad to achieve the protection of customer information objectives. We therefore recommend deleting these provisions in the Code, or in the alternative, limiting the sharing prohibition to “employees that are not directly involved in collecting confidential information,” to be more precise.

Sharing of Strategic Business Information

5. EGD is very concerned with the inclusion of the newly proposed section 2.6.4 in the Electricity ARC, especially if those same principles are being considered as also applicable to gas utilities. While we think we understand the Board’s objectives in proposing this section, we believe that the wording used falls short of that objective, and may have unintended consequences, as outlined below. EGD therefore recommends removal of section 2.6.4 at this time, and encourages the Board to conduct further consultations with stakeholders on this issue before implementing a rule of this nature. While we recognize that the Electricity ARC does not apply to EGD, EGD draws upon its own experience with the Gas ARC to offer a view that may also apply, in many cases, to electric

utilities. From our experience, we have the following comments as to how the rule may apply and be interpreted:

a) Overly Broad Language

6. It appears that, like the other provisions in the Code, section 2.6.4 is attempting to level the competitive playing field such that utility affiliates do not have a utility-inferred competitive advantage over other market players through information sharing, and specifically information of a strategic nature. The Board has attempted to define what type of information falls into this category, but in EGD's view, has cast the net so widely that practically any piece of information, including public information, could be captured. This would be severely constraining for a utility that is trying to understand how it must conduct its business in order to comply with the Board's rules. Speaking for itself, EGD would not be able to verify, for any specific item of information, whether section 2.6.4 applies, and whether that information could be shared with affiliates. We would benefit from others' views on this point, and further clarity from the Board.

7. We submit that it would be equally impossible for the Board, or a court, to enforce such broad and vague wording, and this would likely result in additional complaints to the Board that would be difficult to adjudicate upon, and prone to appeals, given the inherent interpretational uncertainties. To use an example from the Board's Notice (as applied to the gas utilities), the Board suggests that a utility cannot share information about distribution system development or reinforcement plans with an affiliate. What if an affiliate is a potential customer of the utility, and requires information from the utility in order to determine the terms and conditions pursuant to which the affiliate may be able to obtain utility services? Is the utility prohibited from sharing system expansion information with this potential new affiliated customer? In the normal course of business, a utility must discuss system expansion plans with third parties (including affiliates) in the context of customer additions, even though the disclosure of that information is

arguably providing that party with a business opportunity. EGD acknowledges that the Board likely did not intend section 2.6.4 to have this consequence, but submits that It may be interpreted as having this result.

b) Shared Corporate Services

8. This, then, begs the question what information would indeed be included in the Board's proposed definition of "strategic business information"? EGD provides human resources services to energy service provider affiliates. Does this provide the affiliate with a competitive advantage such that section 2.6.4 would be invoked? If so, then any utility's shared corporate services model would have to come under scrutiny, and could be considered to be non-compliant. In this way, section 2.6.4 appears to be contradictory with other Code provisions, such as those prescribing rules related to shared corporate services.

9. On the one hand, the Code permits the sharing of corporate services, including legal, finance, tax, treasury, pensions, risk management, audit services, corporate planning, human resources, health and safety, communications, investor relations, trustee, or public affairs. On the other hand, section 2.6.4 prohibits the sharing of information that can provide the recipient with a "business opportunity or other business advantage". Arguably, the ability to share services with an affiliate (and therefore to benefit utility ratepayers with cost efficiencies and effectively coordinated business operations), is a "business advantage" in and of itself.

10. In a shared services model, the utility must share business information with its affiliates, including information related to strategic planning, financial, legal, communications, and government relations, all of which some parties may reasonably interpret as falling within the definition of "strategic business information" proposed by the Board. The sharing of this information is absolutely critical to the cohesive functioning of a large corporate entity of which the utility is

an integral part. For example, Enbridge Inc. (one of EGD's "energy service provider" affiliates) provides certain Board of Director services to EGD, and this necessitates the sharing of non-public business plans and financial information between affiliates to enable proper and effective corporate governance, as mandated by the various Business Corporations statutes, and related legislation. While the Code would permit the sharing of the services, section 2.6.4 would render the services completely ineffectual. It is simply not clear what the Board is intending by section 2.6.4 with respect to shared services and inter-corporate communications.

11. Furthermore, the parent company of any utility must be fully informed about the business activities of its subsidiaries in order to effectively manage and govern the corporate entity. Likewise, the utility must be reasonably informed about the business plans of its affiliated companies, and vice versa, to enable the larger corporation to operate in a cohesive manner. Proper corporate governance depends upon the disclosure of many types of "strategic business information" between affiliated companies, and it would be impossible to govern companies properly without such disclosure.

12. By the same token, to comply with both American and Canadian securities legislation, investor-owned utilities are obligated to provide certain information to its shareholders (in EGD's case, this is Enbridge Inc.) that would appear to fall within the definition of "strategic business information". As a wholly owned investor-owned utility, it is through Enbridge Inc. that EGD has access to capital. For Enbridge Inc. to access this capital, it must comply with very prescriptive and onerous reporting requirements, which in turn, require a fairly detailed level of information disclosure from EGD. A broad interpretation of section 2.6.4 would seem to imply that a utility in this situation could not provide such information to an energy service provider affiliate, and this may be in contravention of securities and other federal and provincial legislation. EGD expects that the Board does

not intend this result, but we seek clarity on how these two positions would be reconciled for investor-owned utilities.

c) Leveling the Playing Field

13. EGD is also concerned that section 2.6.4 appears to unfairly inhibit an affiliate's ability to compete on a level playing field with other energy services providers in the same market. The Board's mandate is to serve as a proxy for, not an inhibitor of, competition. EGD submits that the blanket prohibition in section 2.6.4 could have the effect of paralyzing legitimate planning discussions with affiliates, rather than enhancing competition and protecting consumers. Section 2.6.4 could be interpreted to preclude the sharing of strategic business information with an affiliate, even if that same information were publicly available, or simultaneously shared with other market players. This puts the affiliate at a competitive disadvantage, because other market players are not similarly restricted in their communications with the utility.

14. Any energy market participant in a utility's franchise area would have to exchange information with that utility with respect to any element of current or planned businesses that the utility's services impact. Because of this, the utility must frequently discuss with third parties different business opportunities that may exist, both for those third parties, and potentially for the utility. Such discussions can range from information sharing of an exploratory nature, to strategic discussions regarding a specific project or venture, all of which may precede any kind of formal contract between the parties, or affiliate contract, as the case may be (except to deal with confidentiality obligations). Section 2.6.4 would effectively forbid utilities from having any such discussions with its energy service provider affiliates.

15. These affiliates would therefore be unable to communicate with the utility serving the market in which they wish to compete. It may be essential to seek

information from the utility in order to advance certain business plans to determine whether the business plan is viable, or whether the utility is willing to play any part in the particular business plan. The utility may equally need to share information about its business ideas with its affiliates and/or third parties, who have expertise in the relevant areas, in order to advance its own business activities. Our concern is that the wording of section 2.6.4 and the related definition are so broad and inflexible as to constrain market development to an unreasonable extent. Utility affiliates must have a fair opportunity to compete, and section 2.6.4 appears, in its application, to treat the utility affiliate in an unfair manner relative to other market participants. Although we expect that the Board did not intend this result, the current wording of section 2.6.4 causes EGD to reach this conclusion.

16. For all of these reasons, and to avoid the inevitable confusion this provision will create, EGD strongly urges the Board to remove section 2.6.4 from the Electricity ARC at this time, and if necessary, consult further with stakeholders regarding the Board's objectives with respect to this section.

We would be pleased to provide clarification of these submissions, upon request.

All of which is respectfully submitted.

Date: October 26, 2007

per: _____ [original signed] _____

Tania H. Persad
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Enbridge Gas Distribution Inc.