



By E-mail

December 4, 2006

Kirsten Walli  
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Dear Ms Walli

**Enbridge Gas Distribution Inc. 2007 Test Year Rate Case**

**Board File No.: EB-2006-0034**

**Our File No.: 302701-000398**

We are writing in our capacity as the solicitors for the Industrial Gas Users Association ("IGUA") to object to the claims for confidentiality outlined in the letter to the Board dated November 27, 2006, from counsel for Enbridge Gas Distribution Inc. ("EGD").

IGUA objects to confidentiality protection being extended to any of the Interrogatory Responses listed in its counsel's November 27, 2006 letter to the Board for the following reasons:

- (a) There should be a heavy onus on EGD, as a public utility regulated by the Board, to justify a claim for confidentiality. All information pertaining to EGD's utility business should be available for scrutiny on the public record.
- (b) Anyone who directly or indirectly contracts to provide services which EGD requires in order to perform its utility functions should be deemed to accept the risk that information pertaining to their direct or indirect relationships with the utility is subject to examination on the public record.
- (c) Confidentiality protection should not be granted simply because a party seeking such protection asserts "prejudice". Absent a convincing and objective demonstration by the party claiming confidentiality protection of the manner in which disclosure of the information will actually cause prejudice, the confidentiality request should be denied.
- (d) Except in the clearest of cases, the Board should refuse to extend confidentiality protection to information pertaining to the performance of utility functions.

IGUA submits that the Board's regulation of EGD should be carried on in public. The in-camera processes conducted in prior years have not proven to be in the public interest.

Instead, they appear to have prompted EGD to broaden rather than narrow the ambit of claims made for confidentiality protection.

With respect to EGD's specific requests for confidentiality orders contained in its counsel's letter to the Board dated November 27, 2006, IGUA comments are as follows:

**1. Board Staff Interrogatory #34 (Ex. I-1-34)**

IGUA submits that EGD has made no objective demonstration of how or why disclosure of its income tax returns will result in prejudice.

IGUA submits that there is no good reason for the tax returns to be accorded confidentiality protection. IGUA believes that in prior proceedings before the Board (in particular, the proceedings pertaining to deferred taxes associated with equipment rental assets), the Board rejected EGD's claims for confidentiality protection for its income tax returns.

IGUA submits that these returns should not be granted confidentiality protection.

**2. Board Staff Interrogatory #58 (Ex. I-1-58) and IGUA Interrogatory #17 (Ex. I-9-17)**

There has been no objective demonstration of how or why the disclosure of all of the agreements in the chain of contracts whereby EGD acquires the CIS and Customer Care services it needs from Accenture Business Systems for Utilities ("ABSU") and the financial statements of its services provider, CustomerWorks Limited Partnership ("CWLP"), a related entity, will prejudice EGD or anyone else.

IGUA submits that the information requested is historic and is unlikely to materially prejudice any of the holders thereof. The time has come to conduct the examination of these materials and their impact on ratepayers on the public record.

The Board's general policy requiring that all records be open for inspection should now prevail. The Board should no longer accord confidentiality protection to any of the information requested in these Interrogatories.

**3. Board Staff Interrogatory #65 (Ex. I-1-65)**

As in prior cases, the Douglas Louth and Associates Inc. ("DLAI") Report is a study of historic information. To IGUA's knowledge, confidentiality protection has never been accorded to the DLAI studies in prior cases and there is no good reason to now extend confidentiality protection to the information in this case.

EGD has failed to make a persuasive and objective demonstration of how or why the analysis of the historic information contained in the DLAI Report will prejudice anyone.

This claim for confidentiality protection should be rejected.

4. **HVAC Interrogatory #16 (Ex. I-26-16)**

The information which EGD asks the Board to receive in confidence relates to EGD's role in the functioning of competitive markets. EGD and Union Gas Limited ("Union"), as providers of utility services, function as links between competitive market participants and consumers who require both utility services and products or services from suppliers operating in competitive markets.

IGUA submits that whatever information EGD obtains about the competitive market participants which depend upon EGD's provision of utility services should be available to everyone, including all of the participants in the competitive market.

Stated another way, neither EGD nor Union should be able to withhold any information they obtain as regulated utilities about any of the competitive markets which depend on the provision of utility services to support the products they provide to their customers.

Neither EGD nor Union should be treated as if they were competitive market participants. Whatever information they obtain in their regulated utility roles about the competitive markets which depend upon the provision of utility services, including information on the participants in such competitive markets, should be available to everyone.

EGD's request that this type of information be accorded confidentiality protection should be rejected.

5. **HVAC Interrogatory #17 (Ex. I-26-17)**

For the reasons already outlined in section 4 of this letter, information pertaining to actual bill insert agreements between EGD and any competitive market participant must be transparently available to everyone, including all competitive market participants. EGD's request that this information be accorded confidentiality protection should be rejected.

6. **HVAC Interrogatory #7 (Ex. I-26-7)**

IGUA understands that the Energy Link<sup>TM</sup> presentation referenced in this Interrogatory has already been filed in evidence in these proceedings so that, from a confidentiality order perspective, this item is now moot.

7. **HVAC Interrogatory #11 (Ex. I-26-11)**

The information requested in this Interrogatory appears to pertain to services CWLP provides to EGD to enable EGD to perform its utility functions. In its capacity as a services provider to EGD, CWLP is also providing a service to DEEHS, a participant in a competitive market which depends upon the provision of utility services by EGD.

IGUA submits that the information requested is clearly utility-related and must be disclosed. Confidentiality protection should not be accorded to this information.



The letter from EGD's counsel to the Board describes a willingness to disclose the information requested in each of the Interrogatories to lawyers and experts not employed by the parties, after they have executed a Declaration and Undertaking pursuant to Section 6 of the Board's Practice Direction on confidential filings.

In order to obtain immediate access to the information, we, as counsel for IGUA, will sign the Declaration and Undertaking forms, but we do so without prejudice to our position that the Board should reject each and every one of the requests for confidentiality protection made on behalf of EGD.

Yours very truly

A handwritten signature in black ink, which appears to read 'Peter C.P. Thompson', is written over a horizontal line.

Peter C.P. Thompson, Q.C.

PCT\slc

c. Interested Parties EB-2006-0034  
Peter Fournier (Industrial Gas Users Association)

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