

July 8, 2013

BY COURIER (2 COPIES) AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4
Email: BoardSec@ontarioenergyboard.ca

Dear Ms. Walli:

**Re: Environmental Defence Notice of Motion
EB-2012-0451 – Enbridge Gas Distribution Inc. (“Enbridge”)
GTA Pipeline Leave to Construct; EB-2012-0433, EB-2013-0074
Union Gas Ltd. (“Union”) – Parkway West and Brantford-Kirkwall
Parkway D Projects**

We write to file a Notice of Motion on behalf of Environmental Defence in the above proceeding. By this motion, Environmental Defence requests that Enbridge be ordered to place documentation indicating the cost of the segments of its project on the public record. This documentation has thus far been filed confidentially.

Environmental Defence requests that this motion be heard in writing. We submit that the issues are straightforward and do not require oral representations. Furthermore, a written hearing can proceed more expeditiously and cost-effectively than an oral hearing. We also believe that a written hearing would not impact the current Board-ordered schedule.

If the Board decides to proceed by way of a written hearing, Environmental Defence requests an opportunity to provide a reply to the submissions of Enbridge. We believe a

reply is required as Enbridge has not fully explained why it has filed certain information confidentially. We would require at most one week to provide our reply submissions.

Please advise if anything further is required.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'W' followed by a long, sweeping horizontal line that extends to the right.

W. Cory Wanless

cc: Applicant and Parties

ONTARIO ENERGY BOARD

EB-2012-0451

EB-2012-0433

EB-2013-0074

IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for: an order or orders granting leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton, City of Markham, Town of Richmond Hill, City of Brampton, City of Toronto, City of Vaughan and the Region of Halton, the Region of Peel and the Region of York; and an order or orders approving the methodology to establish a rate for transportation services for TransCanada Pipelines Limited;

AND IN THE MATTER OF an application by Union Gas Limited for: an Order or Orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Parkway West site; an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the Town of Milton; an Order or Orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Brantford-Kirkwall/Parkway D Compressor Station project; an Order or Orders for pre-approval of the cost consequences of two long term short haul transportation contracts; and an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the City of Cambridge and City of Hamilton.

NOTICE OF MOTION

Environmental Defence will make a motion to the Ontario Energy Board (“Board”) in writing or on a date fixed by the Board, at the offices of the Board, 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

Environmental Defence proposes that this motion be heard in writing. We submit that the issues are straightforward and do not require oral representations. Furthermore, a written hearing can proceed expeditiously, cost-effectively, and without impacting the current Board-ordered schedule.

THE MOTION IS FOR:

1. An order that Enbridge Gas Distribution Inc. (“Enbridge”) place the following documentation, which relates to the costs of the components of its proposed project, on the public record:
 - a. A response to Environmental Defence Interrogatory No. 37 (Exhibit I.A3.EGD.ED.37);
 - b. The response to Energy Probe Interrogatory No. 14 (Exhibit I.A3.EGD.EP.14); and
 - c. Material filed confidentially by Enbridge that provides a breakdown of the costs of the component parts of its project.

THE GROUNDS FOR THE MOTION ARE:

2. Environmental Defence seeks to have documentation detailing the costs of the parts of Enbridge’s proposed project placed on the public record on the following grounds:
 - a. Confidential treatment of this information will potentially disrupt and delay the hearing;
 - b. The relevant cost information is highly important for public transparency and for Environmental Defence’s case;
 - c. The Board’s policy is that “proceedings should be open, transparent, and accessible”;
 - d. No proper request for confidentiality was made in accordance with the Board rules; and
 - e. Enbridge has not established that confidential treatment is warranted.

Board policy requires that proceedings be open, transparent, and accessible

3. The filing of confidential information is governed by the *Practice Direction on Confidential Filings* (the “*Practice Direction*”) and Rule 10 of the *Rules of Practice and Procedure* (the “*Rules*”). According to the *Practice Direction* and the *Rules*:
 - a. Proceedings should be open, transparent, and accessible;
 - b. The presumption is that information will be placed on the public record;
 - c. Confidential treatment must be specifically requested by an applicant (except in the specific circumstances in section 4 of the *Practice Direction*, which do not apply here); and
 - d. The Applicant has the burden of justifying confidentiality.
4. The following key passages highlight the high degree of importance placed on disclosure and transparency by the Board’s *Practice Direction on Confidential Filings*:

The Board’s general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board’s view that its **proceedings should be open, transparent, and accessible**.

Practice Direction on Confidential Filings, p. 2

The approach that underlies this Practice Direction is that **the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality** to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

Practice Direction on Confidential Filings, p. 2

4.1.3. In the absence of a request for confidentiality, all information that is not indicated on a template or in a filing guideline as being confidential will be included on the public record. An applicant that wishes information that would normally be included on the public record to be held confidential must follow the procedure set out in Part 5, and the Board will determine the request in accordance with Part 5.

Practice Direction on Confidential Filings, p. 5

It is also the expectation of the Board that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations

of confidentiality or non-disclosure, and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record.

Practice Direction on Confidential Filings, p. 7

5. The above principles support public disclosure of the cost information in question.

The relevant cost information is important for public transparency and for Environmental Defence's case

6. The relevant cost information at issue in this motion is of such a basic nature that its disclosure is necessary for public transparency. Environmental Defence is simply requesting that Enbridge publicly disclose, at a high level, the cost of the component parts of its proposed \$604 million project. For example, Environmental Defence Interrogatory No. 37 (b) requested the following basic information:

What is the estimated total present value cost of (i) the Bram West Interconnect to Albion portion of Segment A, (ii) the Parkway West Gate Station portion of Segment A, and (iii) Segment B, as those portions of the project are defined in exhibit A, TAB 3, schedule 1, page 3.

Exhibit I.A3.EGD.ED.37

7. Enbridge refused to place a response to the above interrogatory on the public record. Enbridge cannot be said to be open or transparent if it does not disclose this very high-level cost information, especially seeing as it is asking ratepayers to fund a \$604 million project.
8. Furthermore, this information is particularly important to Environmental Defence's case, which focuses on whether all or part of Enbridge's project can be avoided or deferred through increased Demand Side Management ("DSM"). The cost figures for the component parts are relevant as it may be the case that DSM can avoid a significant part of the project, but not the entire project. The cost of the part or parts of the project that can be avoided is key to making the case for DSM as an alternative. For example, this cost information is required for a costs/benefit analysis between potential alternatives.

9. The requested information is highly important for public transparency and for Environmental Defence's case.

Confidentiality will potentially disrupt and delay the hearing

10. Confidential treatment of this cost information may be highly disruptive to the hearing and require onerous double-filing of documentation. In assessing DSM as an alternative, the parties will wish to refer to the cost of the components of the project that can potentially be avoided through DSM. This would require continually going *in camera* during the hearing. It will also require that two versions of written submissions or other materials be filed – one confidential and one non-confidential. This will be disruptive and inefficient.

No proper request for confidentiality was made

11. It appears that Enbridge has not made a formal request for confidentiality in accordance with Rule 10 and the *Practice Direction on Confidential Filings*.
12. Under section 4.1.3 of the *Practice Direction*, “in the absence of a request for confidentiality, all information that is not indicated on a template or in a filing guideline as being confidential will be included on the public record.” Under section 5.1.4 of the *Practice Direction*, a request is to be made in a cover letter “indicating the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental.” Under section 5.1.5 of the *Practice Direction*, the cover letter is to be served on the parties.
13. No such cover letter indicating the reasons for the confidentiality request was provided to the parties in relation to the material in question. Contrary to the *Practice Direction*, Enbridge excluded certain information from the public record without formally requesting confidentiality in accordance with procedures set out in section 5 of the *Practice Direction*.

14. Given that Environmental Defence has not yet been provided with Enbridge's complete justification for deeming certain information to be confidential, Environmental Defence requests an opportunity to respond should Enbridge make further submissions regarding the need for confidentiality.

Enbridge has not established that confidential treatment is warranted

15. Enbridge has not established that confidential treatment is warranted. During the technical conference, Enbridge provided the following brief justification for the confidential treatment of the response to Environmental Defence Interrogatory No. 37:

We've yet to go through a formal procurement process, and it could undermine the procurement process.

Technical Conference Transcript, June 13, 2013, p. 89, lns. 16-18.

16. However, Enbridge has not explained why such high-level, aggregate information could possibly prejudice their procurement processes. Environmental Defence requested the cost, at an aggregate level, of the major components of Enbridge's project. It seems unlikely that this aggregated data would be harmful to Enbridge's commercial position, or that any potential prejudice would be sufficient to override the goals of transparency, openness, public accountability, and efficiency of the hearing process.
17. It is not clear how an estimate provided in this proceeding would interfere with a procurement process. If the procurement process is competitive, it is the competition between bidders that will ensure the lowest price. Simply stating an estimate will not interfere with the incentive for bidders to provide the lowest bid to win the contract. Even if the procurement process is not competitive, the estimate provided in this proceeding will not be binding on Enbridge in future price negotiations.
18. Enbridge has not established that confidential treatment is needed, let alone provided reasons for confidentiality that would outweigh the disruption and delay that would result from confidential treatment. Enbridge also has not established

that a departure from the normal practice of transparency, openness, and accessibility in Board proceedings is warranted in these circumstances.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a. The response to Environmental Defence Interrogatory No. 37 (Exhibit I.A3.EGD.ED.37);
- b. The response to Energy Probe Interrogatory No. 14 (Exhibit I.A3.EGD.EP.14);
- c. The *Ontario Energy Board Practice Direction on Confidential Filings*;
- d. The *Ontario Energy Board Rules of Practice and Procedure*; and
- e. Any further evidence as counsel may advise and the Board may permit.

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Lawyers for Environmental Defence

TO: The Applicants, Board Staff, and Parties per Procedural Order No. 2