



**EB-2006-0034**

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc. for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2007.

**BEFORE:** Gordon Kaiser  
Presiding Member and Vice Chair

Paul Vlahos  
Member

Ken Quesnelle  
Member

#### **PROCEDURAL ORDER No. 4**

Enbridge Gas Distribution Inc. ("EGDI") filed an application dated August 25, 2006 with the Ontario Energy Board (the "Board") under the Section 36 of the *Ontario Energy Board Act*, requesting a rate increase effective January 1, 2007. On October 4, 2006, the Board issued Procedural Order No.1 which set out, amongst other things, the case timetable. On October 20, 2006 the Board issued Decision and Procedural Order No. 2 which included the Board's findings regarding the intervention and cost eligibility status of certain parties and Issues List matters. On November 6, 2006 the Board issued Procedural Order No. 3 regarding the hearing of the Low-Income Energy Network's Revised Notice of Motion filed on October 26, 2006.

By way of letter, dated November 13, 2006, the Board extended the deadlines for the filing of Intervenor Evidence to November 17, 2006, for the filing of Interrogatories on

Intervenor Evidence to November 24, 2006 and for the filing of Responses to the Interrogatories on Intervenor Evidence to December 8, 2006.

The Board's calendar requires a revision to the previously scheduled date for the commencement of the oral hearing. The revised case timetable for upcoming events is attached as Appendix "A".

On November 27, 2007, the Board received a letter from the Applicant requesting that certain interrogatory responses (the "Proposed Confidential Undertakings") be kept confidential pursuant to the Board's Rules of Practice and Procedure and its Practice Direction on Confidential Filings. A copy of this letter is attached as Appendix "B".

**THE BOARD ORDERS THAT:**

1. Any parties that object to confidential status being attached to the Proposed Confidential Undertakings must submit their objections in writing to the Board Secretary's Office by Monday, December 4, 2006 (please see the Practice Direction on Confidential Filings for guidance on filing any objections).
2. If any objections regarding the Proposed Confidential Undertakings are filed, EGDI will have until Wednesday, December 6, 2006 to file any reply submissions.
3. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board no later than 5:00pm on Tuesday January 9, 2007. The Board will sit on Friday January 12, 2007 at 9:30 a.m. to review the Settlement Proposal.
4. The evidentiary phase of the oral hearing will commence at 9:30 a.m. on Monday January 22, 2007 in the Board's Hearing Room, 25th floor, 2300 Yonge Street, Toronto, Ontario.

**DATED** at Toronto, November 29, 2006

ONTARIO ENERGY BOARD

*Original signed by*

Peter H. O'Dell  
Assistant Board Secretary

## APPENDIX "A"

### Enbridge Gas Distribution Inc. - 2007 Rates Case Timetable

(updated November 29, 2006)

<b>Event (remaining)</b>	<b>Date 2006</b>
Intervenor Conference	Dec 7
Responses to Interrogatories on Intervenor Evidence	Dec 8
Settlement Conference	Dec 11 to 19 (7 days)
File Settlement Proposal	Jan 9 (2007)
Settlement Proposal Hearing	Jan 12 (2007)
Oral Hearing	Jan 22 (2007) (15 hearing days)

**APPENDIX "B"**

**Enbridge Gas Distribution Inc. - 2007 Rates Case**

**David Stevens**

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November 27, 2006

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto, ON M4P 1E4

Dear Ms Walli:

**Re: Enbridge Gas Distribution 2007 Rates Application: EB-2006-0034  
Request for Confidentiality related to Interrogatory Responses**

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Earlier this month, Enbridge Gas Distribution Inc. ("Enbridge" or the "Company") served its Interrogatory Responses in this case. On November 16, 2006, after the Company served its Responses, the Ontario Energy Board (the "Board") issued its new Practice Direction on Confidential Filings.

The Company has already indicated in its filed Interrogatory Responses that it would like certain of these Responses to be treated confidentially. In light of the new Practice Direction and consequent changes to the Board's Rules of Practice and Procedure, the Company is now making a formal request, pursuant to Rule 10, that certain documents attached to the Interrogatory Responses be held confidential.

The Company's specific requests are as follow.

1. Board Staff Interrogatory No. 34 (Ex. I-1-34)

In this Interrogatory, Board Staff requested Enbridge's tax returns for 2005. The Company responded that "the requested information is, by definition, confidential in nature and content."

The Company submits that it is appropriate that its tax returns not be disclosed publicly. This is confidential financial information which the Company, like other private companies, does not disclose publicly. In any event, it is personal information to the Company. As noted in the Interrogatory Response, however, the Company would be prepared to distribute copies of its tax returns to representatives of parties (lawyers and experts not employed by the parties) who execute a Declaration and Undertaking in accordance with Section 6 of the Practice Direction that recognizes, among other things, that these representatives will not share the confidential information with anyone who has not executed the Declaration and Undertaking (which includes their clients).

For the Board's use, an un-redacted copy of the Company's 2005 tax returns is attached. Given that the request for confidentiality extends to the entirety of these documents, no redacted version is being supplied.

2. Board Staff Interrogatory No. 58 and IGUA Interrogatory No. 17 (Ex. I-1-58 and Ex. I-9-17)

In these Interrogatories, Board Staff and IGUA requested that Enbridge file all agreements between Enbridge and CWLP (CustomerWorks Limited Partnership), ECSI (Enbridge Commercial Solutions) or any other EI (Enbridge Inc.)-related entity related to the provision of customer care or CIS; the Program Agreement between CWLP and Accenture, including any amendments or revisions; financial statements for ECSI and CWLP (historical, bridge and test year); and the return analyses described in the EB-2005-0001 Decision. IGUA further requested that Enbridge provide the ECSI and CWLP financial statements and return analyses described in the Decision for the years 2002 to 2004 inclusive.

Enbridge responded that it has been advised by CWLP that the information requested is confidential to CWLP and its clients. Enbridge also indicated that CWLP will allow for the information to be provided to representatives of parties upon execution of a Confidentiality Agreement.

Enbridge submits that it is appropriate that the requested information be provided on a confidential basis only. As noted in Enbridge's Interrogatory Response, the owners of this information consider it to be confidential and have indicated that they will only consent to its disclosure on a confidential basis. Some of the financial information relates not only to CWLP, but also to Accenture Business Solutions for Utilities (ABSU), an unrelated entity. Moreover, in recent Rate Case proceedings involving the Company, the Board has allowed these type of documents to be filed on a confidential basis. In fact, the Program Agreement and related documents have been filed confidentially in at least the last two rate cases. As noted in the Interrogatory Response, the Company would not object to this information being provided to representatives of parties (lawyers and experts not employed by the parties) who execute a Declaration and Undertaking in accordance with Section 6 of the Practice Direction (the effect of which is described above). The Company understands that CWLP will also not object to the distribution of these documents to representatives of parties who have executed a Declaration and Undertaking.

The Company is in the process of obtaining the requested documentation. When the documents are received, the Company will forward un-redacted versions of the documents requested in these Interrogatories to the Board for the Board's use. Given that the request for confidentiality extends to the entirety of these documents and information, no redacted versions will be supplied.

3. Board Staff Interrogatory No. 65 (Ex. I-1-65)

In this Interrogatory, Board Staff asked whether the DLAI (Douglas Louth and Associates Inc.) Report related to benchmarking of customer care services would be filed in this proceeding.

In response, Enbridge indicated that it is currently in the process of a Request for Proposal process for the provision of customer care services and that the DLAI Report “contains information that may be able to influence the responses to the Company’s customer care RFP.” The Company’s response continued: “[t]hus, the information is commercially sensitive and will be provided upon the execution of a Confidentiality Agreement.”

As noted, if Enbridge were required to disclose the DLAI Report on a non-confidential basis, this could potentially harm Enbridge’s ability to obtain the best possible outcome from its current customer care RFP process. The Company is particularly concerned that potential bidders not be able to access the average cost per customer findings of the DLAI Report before the RFP process is complete. The Company submits, therefore, that its proposal to provide this report to representatives of parties (lawyers and experts not employed by the parties) only after they have executed a Declaration and Undertaking pursuant to Section 6 of the Practice Direction (the effect of which is described above) is appropriate.

Attached, for the Board’s use, is an un-redacted version of the DLAI report. Given the large amounts of competitive and sensitive information included throughout the DLAI report, the Company’s position is that the entire report is confidential, and no redacted version is being provided.

4. HVAC Interrogatory No. 16 (Ex. I-26-16)

In this Interrogatory, HVAC requested a copy of the market research referred to at Ex. D1-11-1, p. 4 of the pre-filed evidence. In response, Enbridge provided the relevant excerpts of the study, with third party company information redacted for confidentiality purposes.

Enbridge objects to the public disclosure of this market study, prepared by JC Williams Group, which contains sensitive market information as well as strategic recommendations made to Enbridge and Union Gas. Public disclosure of the entire study would be harmful to the Company’s strategic position and would unfairly gift participants in the HVAC industry with confidential information about their competitors. Typically, the terms of agreement between the Company and consultants such as JC Williams Group also contain limits upon the disclosure of resulting reports to third parties who might be able to use the reports for their own benefit. The Company would not object, however, to this report being provided to representatives of parties (lawyers and experts not employed by the parties) who execute a Declaration and Undertaking in accordance with Section 6 of the Practice Direction (the effect of which is described above). For greater certainty, in the case of HVAC, the Company would not object to the report being provided to counsel, but would object to the report being provided to anyone who is an owner or is employed by an HVAC contractor, including the persons whose evidence has been included in the HVAC evidentiary filing in this case.

Attached for the Board’s use is a confidential, un-redacted version of the market study. As noted above, the relevant extracts of the report, redacted to remove confidential



information, have already been provided to parties as part of the response to this Interrogatory.

5. HVAC Interrogatory No. 17 (Ex. I-26-17)

Part (c) of this Interrogatory requests that the Company provide details and file a copy of any agreement currently in place with any unregulated entity relating to bill insert distribution. Enbridge's responded by stating that "[a] standard bill insert agreement which has been used during the bill insert pilot is attached. ... There is currently 1 confidential agreement in place with one unregulated entity that is similar in form to Attachment 1."

Thus, while the Company has provided the form of agreement that is used for bill insert distribution, it has not provided a copy of the one actual agreement that is in place. The Company objects to publicly filing the actual agreement on the ground that it is a private business agreement with a non-related third party who has not agreed to the disclosure. The Company is concerned that forced disclosure of such agreements will make parties reluctant to do business with Enbridge in the future. The Company would not object, however, to the actual agreement being provided to representatives of parties (lawyers and experts not employed by the parties) who execute a Declaration and Undertaking in accordance with Section 6 of the Practice Direction (the effect of which is described above).

Attached for the Board's use is a confidential, un-redacted version of the actual agreement that is in place. The form of agreement that is appended as Attachment 1 to this Interrogatory Response contains the same non-confidential information as would be found in a redacted version of the agreement that is in place.

6. HVAC Interrogatory No. 7 (Ex. I-26-7)

This Interrogatory requests that the Company file the minutes of the June 8, 2006 Enbridge Industry Council Meeting. Enbridge's responded by stating that "[t]he Company stated in both meetings that the Energy Link™ presentation was a confidential item. As such, the attached meeting minutes do not contain minutes on Energy Link™."

As seen in this Interrogatory Response, no meeting minutes exist which contain the confidential information requested by HVAC. Therefore, there is nothing to disclose. Accordingly, while Enbridge is including this Interrogatory within the discussion in this letter out of an abundance of caution, no particular relief is required in respect of this Interrogatory.

7. HVAC Interrogatory No. 11 (Ex. I-26-11)

In this Interrogatory, HVAC requested details of the pricing of billing services provided by Enbridge or CWLP to DEEHS, as well as a detailed breakdown of all costs incurred by Enbridge or any affiliate to provide billing services to DEEHS. In response, Enbridge indicated that "DEEHS currently receives its billing services from CWLP. This information cannot be provided as it is confidential to CWLP and DEEHS."

As seen from the Company's response to this Interrogatory, the Company itself does not have the information requested. Therefore, there is nothing to disclose. Accordingly, while Enbridge is including this Interrogatory within the discussion in this letter out of an abundance of caution, no particular relief is required in respect of this Interrogatory.

Enbridge understands that its Rate Case is proceeding on a quick timetable. With this in mind, attached to this letter are a sufficient number of copies of the confidential documents related to the Interrogatories discussed above to enable the Board to circulate these documents to the appropriate representatives of any party who execute the required Declaration and Undertaking set out in the Board's Practice Direction. Enbridge will forward the confidential documents referred to in Board Staff Interrogatory #58 and IGUA Interrogatory #17 as soon as those documents are received.

We hope that the foregoing is acceptable.

Please contact me should you have any questions.

Yours very truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read "David Stevens", is written over the typed name. The signature is fluid and cursive.

David Stevens

DS/cr

Encl.