

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Distribution Inc.,  
under sections 19 and 44 of the Act, for an exemption under section 2.2.2  
of the *Affiliate Relationships Code for Gas Utilities*.

**FINAL SUBMISSIONS**

of

**INDUSTRIAL GAS USERS ASSOCIATION (IGUA)**

**Background & Summary of IGUA Position**

1. Enbridge Gas Distribution Inc. (EGD) has applied for an exemption from the application of section 2.2.2 of the *Affiliate Relationships Code for Gas Utilities* (ARC) in order to further consolidate its information technology (IT) services within the IT Shared Services (ITSS) structure of its parent company, Enbridge Inc.
2. In particular EGD seeks this ARC exemption so that EGD employees and contractors delivering IT service desk services to the utility can be consolidated within Enbridge Inc. and become Enbridge Inc. employees and contractors, providing services across the Enbridge group of companies, including to EGD.
3. EGD has provided extensive description of the service desk services to be provided to EGD by the ITSS group housed within Enbridge Inc. The services are essentially trouble shooting, “help” call response and support for investigations involving IT systems and/or data.
4. EGD has stated that in the course of the provision of these service desk services:
  - (a) there are no circumstances in which ITSS staff and contractors would have direct access to EGD IT databases that store customer information<sup>1</sup>; and

---

<sup>1</sup> Application, page 2, paragraph 4.

- (b) any access to customer information in the provision of ITSS service desk services would be temporary and incidental<sup>2</sup>.

IGUA believes that the evidence supporting these assertions is clear and comprehensive.

5. EGD has also provided evidence of safeguards that will be put in place in order to protect the ultimate confidentiality of any customer information incidentally accessed.<sup>3</sup>
6. EGD has also filed evidence of a business case which indicates annual O&M cost savings (on a regulated cost allocation model (RCAM) basis) of approximately \$633,000 resulting from the proposed ITSS service desk consolidation.<sup>4</sup> IGUA believes that the evidence supporting this assertion is also clear and comprehensive.
7. In the context of this ARC exemption application, this evidence goes to the rationale for, and reasonableness of, the ARC exemption request (as opposed to determinations regarding any rate or earnings sharing impact).
8. In the circumstances presented in this application, IGUA endorses the efficiency quest by EGD in completing the consolidation of its IT services with the balance of the Enbridge Inc. ITSS undertaking.
9. The comprehensive evidence provided by EGD indicates that the exemption request is minimal, necessary to realize further IT service efficiencies, and poses no material risk of harm to ratepayers or energy services competitors.
10. Subject to appropriate definition of the scope of the required exemption, as outlined following, ***IGUA believes that the exemption requested should be granted, on the conditions offered by EGD that:***
  - (a) ***It will file with the Board annual confirmation that the facts and<sup>5</sup> circumstances underlying the exemption request remain unchanged.***
  - (b) ***It will provide notice to the Board if there is any material change to the ISA between EGD and Enbridge Inc. for the provision of ITSS services.***
11. EGD has clarified in its response to IGUA interrogatory 2<sup>6</sup> that:
  - (a) It is not proposing to eliminate the section 2.2.2 need for protective access protocols (including data management, data access and contractual

---

<sup>2</sup> Application, page 2, paragraph 4.

<sup>3</sup> Application, page 6, paragraph 14, and supporting evidence.

<sup>4</sup> Application, page 2, paragraph 6, and extensive supporting evidence.

<sup>5</sup> Application, page 8, paragraph 16. EGD uses the disjunctive "or" in its application, but IGUA believes that the conjunctive "and" should be used in wording of the condition of approval.

<sup>6</sup> Ex. I. EGD I. IGUA.2, parts (a) and (b).



provisions) for those shared employees who will provide the subject ITSS services to EGD.

- (b) It is not proposing to eliminate the section 2.2.2 requirement to ensure compliance with such access protocols and contractual provisions through a review which complies with the provisions of section 5900 of the CICA Handbook.
  - (c) The balance of ARC section 2.2.2 would continue to apply to the proposed incremental employee sharing arrangement.
12. ***Accordingly, IGUA submits that the scope of the Board's order in this proceeding should be expressly limited to the precise exemption which EGD seeks, rather than providing a blanket exemption from section 2.2.2 of the ARC.*** EGD seeks exemption from section 2.2.2 of the ARC in order to allow minimal and incidental access by ITSS personnel to customer information in the course of carrying out IT service desk response work or supporting investigations involving incidental and temporary IT access to customer information.
13. EGD currently enjoys another ARC exemption, previously granted by the Board, under which it reports annually.<sup>7</sup> ***IGUA submits that the Board should direct that the reporting offered by EGD in this application be combined with the extant reporting under that earlier ARC exemption, such that one annual ARC exemption report is provided to the Board.***
14. ***IGUA submits that the Board should specify that EGD shall provide a copy of that annual report to the parties to this proceeding (as it does to parties to the earlier ARC exemption proceeding as was directed in that earlier proceeding<sup>8</sup>).***
15. IGUA does have 2 concerns with EGD's application:
- (a) That the assertion by EGD that Enbridge is not active in Ontario's competitive energy services marketplace is inaccurate (though, in the circumstances of this application, IGUA does not believe that this inaccuracy should impact the granting of the requested exemption).
  - (b) That EGD also requires exemption from section 2.2.3 of the ARC (which additional exemption IGUA believes should be granted, for the same reasons as the exemption that was requested by EGD should be granted).

---

<sup>7</sup> Exhibit I.EGDI.IGUA.3; see EB-2010-0232.

<sup>8</sup> EB-2010-0232, Decision and Order dated February 22, 2011, page 6, ordering paragraph 3.

## Competitive Considerations

16. EGD asserts that, “[a]s Enbridge does not offer any competitive retail energy services in Ontario, its employees can gain no foreseeable business advantage from having [ ] incidental access to customer information”.<sup>9</sup>
17. IGUA disagrees with the first part of this statement. Though IGUA does not believe that this inaccuracy should affect the relief claimed in this application, IGUA does feel it is important for the analysis of EGD’s exemption request, and for future reference, to highlight and consider this misstatement.
18. EGD has indicated that it has an affiliate – Tidal Energy Marketing Inc. (Tidal Energy) – that “conducts natural gas marketing activity in Ontario for industrial and wholesale customers”. EGD’s evidence is that “Tidal Energy buys, sells, transports and provides storage for natural gas”.<sup>10</sup>
19. This evidence clearly indicates that Tidal Energy does in fact provide competitive “retail” energy services in Ontario.
20. Tidal Energy “retails” – i.e. sells – gas and related services to Ontario gas customers. This is clearly a competitive activity in Ontario, precisely as contemplated in the express objective of the ARC<sup>11</sup> to “minimize the potential for a utility to cross-subsidize competitive or non-monopoly activities”.
21. Tidal Energy is an “energy service provider” as that term is defined in the ARC, being an entity involved in the supply of gas and related activities, specifically including marketing natural gas.
22. EGD explains in its response to an IGUA interrogatory<sup>12</sup> that in asserting in its application that it does not offer any competitive “retail” energy services in Ontario, it equates the term “retail” to low-volume consumers as defined in the legislative framework governing competitive retail gas services in Ontario.
23. IGUA does not believe that the definitions dictating the scope of the OEB’s jurisdiction to directly regulate the activities of gas marketers should be imported into interpretation of the ARC. IGUA believes that the competitive protection which the ARC intends as an objective is broader than protection of competition only in respect of low-volume customer gas services.
24. Nonetheless, the fact that Tidal Energy is an “energy services affiliate” and provides competitive retail (in the conventional sense of the word) energy services

---

<sup>9</sup> Application, page 7, paragraph 15.

<sup>10</sup> Application, page 8, paragraph 15 and footnote 2.

<sup>11</sup> ARC section 1.1, paragraph (a)

<sup>12</sup> I. EGDI. IGUA.1



should not impact the consideration by the Board of EGD's ARC exemption request in the circumstances presented on this application.

25. These particular circumstances include the facts that the scope of EGD's exemption application does not include sharing of employees who; i) control access to utility services; ii) direct the manner in which utility services are provided to customers; or iii) have direct contact with a customer of the utility service.<sup>13</sup>
26. In these circumstances, the incidental access by the shared ITSS staff to customer information as comprehensively described in the application materials could not reasonably present Tidal Energy with material competitive advantage in the Ontario competitive energy services marketplace.

### **Additional ARC Exemption Requirement**

27. IGUA submits that EGD's exemption request is too narrow. EGD requires a further exemption from ARC section 2.2.3 in respect of shared ITSS service desk personnel, to allow the further ITSS service consolidation sought.
28. ARC section 2.2.3 provides:

*A utility may share employees with an affiliate provided that the employees to be shared are not directly involved in collecting, or have access to, confidential information.*
29. Clearly the ITSS service desk personnel in issue in this application will have access to confidential (i.e. utility customer) information. This is precisely why EGD has sought an exemption from section 2.2.2 of the ARC.
30. EGD indicates in response to IGUA interrogatory 2 that exemption from ARC section 2.2.3 is not required because there would be no sharing of EGD employees.<sup>14</sup> IGUA assumes that the meaning of this response is that because the shared employees are not EGD employees, section 2.2.3 of the ARC does not apply.
31. IGUA disagrees. Section 2.2.3 of the ARC applies to shared employees regardless of which affiliated entity is the legal employer. (See July 10, 2006 OEB Compliance Bulletin 200604, page 3, 4<sup>th</sup> full paragraph.)
32. IGUA therefore submits that, in addition to the ARC section 2.2.2 limited exemption requested by EGD, EGD should have also asked for exemption from section 2.2.3

---

<sup>13</sup> See ARC section 2.2.4 regarding the sharing of employees with an affiliate which is an "energy service provider".

<sup>14</sup> Exhibit I. EGDI. IGUA.2, part (c).

of the ARC in respect of the ITSS service desk employees discussed in this application.

33. IGUA submits that, for the same reasons summarized above that make it appropriate for the Board to grant EGD the limited ARC exemption which it did request, ***it would be appropriate for the Board to grant EGD a further exemption from section 2.2.3 of the ARC in respect of the ITSS service desk employees discussed in this application.***

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:

  
\_\_\_\_\_  
GOWLING LAFLEUR HENDERSON LLP, per:  
Ian A. Mondrow  
Counsel to IGUA

TOR\_LAW\ 8841678\1