

Ontario Energy Board

**Application for an exemption from section
2.2.2 of the Affiliate Relationships Code for
Gas Utilities.**

Submissions of the Energy Probe Research Foundation

December 7, 2015

ENBRIDGE GAS DISTRIBUTION INC.
Application for an exemption from section 2.2.2 of
the Affiliate Relationships Code for Gas Utilities.
EB-2015-0233

ENERGY PROBE RESEARCH FOUNDATION
SUBMISSIONS

How these Matters Came before the Board

Enbridge Gas Distribution Inc. (EGDI) filed an application with the Ontario Energy Board, received on August 6, 2015 under section 19 and 44 of the *Ontario Energy Board Act, 1998*, seeking an exemption from section 2.2.2 of the *Affiliate Relationships Code for Gas Utilities* (ARC).

If granted, the exemption would enable EGDI to share Information Technology services on a consolidated basis with its corporate parent Enbridge Inc. The OEB has assigned the application File Number EB-2015-0233.

The OEB issued a Notice of Hearing (Notice) on August 28, 2015. Each of Building Owners and Managers Association, Greater Toronto (BOMA); Canadian Manufacturers & Exporters (CME); Union Gas Limited (Union), Energy Probe Research Foundation (Energy Probe) and Industrial Gas Users Association (IGUA) applied for intervenor status. BOMA, CME, Energy Probe and IGUA also applied for cost eligibility. No objection was received.

The Board Issued Procedural Orders 1, 2 and 3. Inter alia the latter addressed treatment of certain confidential Information and determined that the information should not be placed on the Record.

Interrogatories were filed and served on EGDI on or before November 25, 2015.

EGDI filed written responses by November 30, 2015

OEB staff and intervenors were ordered to file written submission with the OEB, and EGDI intervenors by December 7, 2015.

These are the written submissions on behalf of Energy Probe Research Foundation (Energy Probe)

THE APPLICATION

Enbridge Gas Distribution Inc. (“Enbridge Gas”) has applied for an exemption order from the Board from the application of section 2.2.2 of the *Affiliate Relationships Code for Gas Utilities* (the “Code” or “ARC”) in respect of the actions referenced in the Application.

Enbridge Gas has been receiving certain IT Shared Services (ITSS) services from the (Enbridge) Enterprise pursuant to the Regulatory Cost Allocation Methodology (“RCAM”) Intercorporate Service Agreement (“ISA”) with Enbridge, a copy of which is attached as Appendix A. Although some ITSS services have been in place since January 1, 2015, Enbridge Gas has been unable to fully participate and receive all of the anticipated benefits of ITSS because of ARC restrictions.

Under the ITSS model, Enbridge Gas employees and contractors would be consolidated within Enbridge and become Enbridge employees and contractors (“ITSS Contractors”). The ITSS Contractors would be shared amongst Enbridge affiliates. In the course of carrying out certain ITSS services, the ITSS Contractors would have limited and incidental access to “confidential information”¹ within Enbridge Gas’ information systems. There are no circumstances in which the ITSS Contractors will have direct access to Enbridge Gas IT databases that store customer information.

In order for Enbridge Gas to participate fully in ITSS, it is seeking an exemption from section 2.2.2 of the ARC which states, “Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate”.

Procedural Order No 3 and Decision states

The issue before the OEB is whether to grant an exemption from Section 2.2.2 of the ARC. *This is not a rates case*, (emphasis added) and benchmarking information showing how Enbridge Inc. and EGDI relate to their peers is not helpful to this analysis. In the OEB's view, the business case provides sufficient detail in respect of EGDI's proposal. Information contained in the Reports will have no bearing on determining the issues in the application. Therefore, the OEB has determined that these documents do not need to be filed in this proceeding. Accordingly a determination with respect to confidentiality is not necessary.

Enbridge Gas prepared a Business Case, attached as Appendix B to the application, to describe the structure and benefits of ITSS and how Enbridge Gas will ensure the continued security of customer information and *therefore compliance with the intent of section 2.2.2.*

EGDI's Business Case illustrates the financial and qualitative benefits of ITSS to Enbridge Gas. Enbridge Gas is expected to save approximately \$2 million annually by 2018. If the ARC exemption is not granted, Enbridge Gas would forgo approximately \$633,000 in annual RCAM related charges. Currently, Enbridge Gas is seeking to generate these additional efficiencies consistent with the objectives of its recently approved Custom Incentive Regulation Plan (EB- 2014-0276).

SUBMISSIONS: CONTEXT FOR THE APPLICATION

This Application is made under the requirements of ARC Section 2.2 Shared Services and is seeking an exemption under Section 2.2.3 specifically aimed at an exemption from the provisions protecting confidential consumer information

EGDI states that the IT Shared Services requiring the exemption fall under Section 2.2 of the ARC to relate to procurement of additional Corporate ITSS services from Enbridge Inc.,

However the Application is NOT requesting approval of the **Services Agreements under Section 2.2.1** or the supporting **Transfer Pricing and Cost Information Disclosure** under **Section 2.3**

It is also not requesting recovery of the Cost consequences from ratepayers under RCAM. [Exhibit I.CME.IR.3]

Please confirm that EGD will not be seeking recovery of any of the costs associated with ITSS consolidation during its current Custom IR. Specifically, please confirm that EGD does not consider any of the cost associated with ITSS to be an unforeseen event outside of management's control that could potentially be treated as a "z-factor".

RESPONSE

Confirmed. Enbridge Gas will not seek z-factor treatment of the costs associated with ITSS consolidation.

However this response does not address the issue of Earnings Sharing under the Current IRM Plan. Procuring Corporate Services from Enbridge Inc. will affect this. For example, ITSS could increase EGD's costs and provide EGD's shareholder with a reduction in its Corporate Costs.

RCAM is the Board-approved regulatory mechanism that determines those costs payable by Enbridge Gas to Enbridge Inc. for services received which are recoverable in rates. (as opposed to the unregulated CAM). With the full integration of ITSS, RCAM amounts will increase to reflect the additional services being received by Enbridge Gas from Enbridge Inc.

As noted above, RCAM adjusted amounts are one cost component used for the purposes of the annual Earnings Sharing Mechanism ("ESM") process. Enbridge Gas' actual O&M costs are a major component of the ESM process. Enbridge Gas claims that the net impact of costs to RCAM and O&M as a result of ITSS will benefit ratepayers. [Exhibit I.EGDI.IGUA.4 IRR Response.]

EP suggests this is not an issue that the Board can or must determine at this time but Earnings Sharing increases the scope of the review of this matter and cost consequences at the time of rebasing.

Accordingly, it is not clear to Energy Probe why EGDl has provided the Business Case or why it has made statements that

“Enbridge Gas will continue to apply the Board-approved RCAM methodology to appropriately allocate to Enbridge Gas its allocation of (Enbridge) ITSS service costs. No change or modification is required in respect of the RCAM methodology.”

This statement is particularly confusing.

Energy Probe accepts that in order to procure the ITSS services EGDl, claims it needs the requested ARC exemption, **but** in our view that does not mean that the Board should approve the additional ITSS services or the recovery of the cost consequences from ratepayers under RCAM.

To add to the potential confusion, EGDl talks about the charges for ITSS being under CAM and then provides proposed RCAM savings calculated as the difference between what the cost would be if the IT ISS Consolidation did not take place, and the estimated OPEX costs through RCAM with the IT ISS Consolidation.

As an example, in Appendix 5.2 found in Appendix B, the RCAM savings are calculated as follows for 2015:

ITSS Consolidation – RCAM (Excl. Depn) \$13,371,551
Status Quo (Ex. Depn) \$14,206,056
RCAM Savings \$ 834,505 [Exhibit I. EGDl. EP.6]

Enbridge claims the net impact of O&M costs under RCAM as a result of ITSS will benefit ratepayers. However, we submit EGDl must make its case at rebasing.

Under Incentive Regulation EGD is free to manage its costs, including the O&M costs related to Shared Corporate Services. During the term of the IRM Plan there will be changes to many costs within the Approved Base Revenue Requirement, including the O&M envelope and Shared Services.

To seek recovery of the new ITSS Costs under the RCAM (as opposed to CAM) EGD will need to satisfy the requirements for cost recovery in rates under RCAM. These Includes certain requirements for procurement (or provision of) Corporate Services as required by sections 2.2 and 2.3 of the ARC.

Just so the Board is clear about the claimed increase in Corporate ITSS and costs from 2014-2015 claimed under RCAM, EP calculates the amounts are \$6.6 million in 2014 and \$14.7 million in 2015. [Exhibit I.EGDI.EP.2 Attachment]

Enbridge Gas states it is now receiving all the services provided by ITSS.

In absence of the ARC exemption, contractors providing services, who have the potential to see customer information, are currently part of Enbridge Gas. The cost of these contractors is charged back to ITSS. Enbridge Gas' portion of the charges for the services is allocated to Enbridge Gas via CAM. Please refer to the CAM charges in Figure 2 found at Appendix B. [Exhibit I.EGDI.EP.4]

For all these reasons, it is not clear why EGD has provided a Business Case in support of its request. It states:

"These documents were submitted to the Board as part of the exemption filing in order to provide the Board with the context of the exemption request. As permitted by the ARC, Enbridge Gas considered its decision to participate in the ITSS a normal business decision not requiring prior Board approval. [EP IRR #1]

Accenture was engaged to provide a competitive cost assessment for potentially out-sourcing of the Enbridge Gas related Infrastructure services. Gartner was engaged by Enbridge Inc. to conduct a benchmarking of ITSS costs at an enterprise level. [Exhibit I.EGDI.EP.5]

As Procedural Order 3 states:

“this is not a rate case”.

Energy Probe submits that although EGDI is expected to track and report on Shared Services under RCAM, the review of Corporate ITSS costs and other Corporate costs during the IRM Plan is, in our view, part of the next rebasing Application. That review includes any impacts on Earnings Sharing during the term of the IRM Plan.

Merits of the Section 2.2.2 ARC Exemption Request

The Application states:

Under the ITSS model, Enbridge Gas employees and contractors would be consolidated within Enbridge and become Enbridge employees and contractors (“ITSS Contractors”). The ITSS Contractors would be shared amongst Enbridge affiliates. In the course of carrying out certain ITSS services, the ITSS Contractors would have limited and incidental access to “confidential information” within Enbridge Gas’ information systems. [emphasis added].

There are no circumstances in which the ITSS Contractors will have direct access to Enbridge Gas IT databases that store customer information. In order for Enbridge Gas to participate fully in ITSS, it is seeking an exemption from section 2.2.2 of the ARC which states, “Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate”.

The three ITSS service categories that may result in incidental access to confidential information by affiliates are Service Management, Productivity Services and Security Operations. Under Service Management, ITSS Contractors may incidentally view Enbridge Gas customer information while repairing hardware or troubleshooting a business application issue.

There is also the potential to inadvertently view customer information on IT repair and service tickets. Under Productivity Services, ITSS Contractors may incidentally view customer information while, for example, troubleshooting Microsoft Outlook for an Enbridge Gas employee. Under Security Operations, customer information may be contained in Microsoft Outlook, mobile devices, a hard drive, or a file share/Microsoft Share Point site from which ITSS Contractors are retrieving data pursuant to an Enbridge Gas forensic investigation.

The relevant Sections of the ARC are:

2.2.2 Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate. Access to a utility's information services shall include appropriate computer data management and data access protocols as well as contractual provisions regarding the breach of any access protocols. Compliance with the access protocols and the Services Agreement shall be ensured as necessary, through a review which complies with the provisions of section 5900 of the Canadian Institute of Chartered Accountants ("CICA") Handbook. The Board may provide direction regarding the terms of the section 5900 review. The results of any review shall be made available to the Board.

2.2.3 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.

A key consideration is the protocols currently in place and proposed go in place at Enbridge and EGD I to:

- a) prevent "inadvertent limited and incidental access to confidential information";
- and
- b) to audit whether inadvertent access has occurred and actions taken by EGD I.

The ARC refers "to appropriate computer data management and data access protocols (Pre-facto) as well as contractual provisions regarding the breach of any access protocols. Compliance with the access protocols and the Services Agreement shall be ensured as necessary, through a review which complies with the provisions of section 5900 of the Canadian Institute of Chartered Accountants ("CICA") Handbook." (Post-facto)

Interrogatory Responses

Interrogatories to EGD provided the following information:

The focus of ITSS personnel is on providing a timely response and remedy to IT system problems that are often of an urgent nature. Board Staff IRR #2
It would not be practical or productive to institute an additional process of requiring ITSS personnel to identify and record instances of customer information appearing when troubleshooting IT issues. Such a process would unnecessarily highlight the existence and nature of such information and would also increase ITSS access time to such information. This would be counter-productive to the services being provided and it is not clear what additional value would be gained. [Exhibit I.EGDI.STAFF.2]

A confidentiality undertaking is required at the beginning of an investigation by Enbridge Gas personnel and is executed by the security personnel. Confidentiality undertakings are only applicable to security personnel involved in an investigation. All security investigations are directed by the Chief Compliance Officer and restricted to only the individuals required for the investigation. [Board Staff IRR #5]

As to a primary concern- access to consumer's financial information:

Any "snapshot" of customer information will not include customer's personal financial information. [Exhibit I. Staff .3 (ii)]

Each ITSS contractor and employee will be required to execute the Statement of Business Conduct and undertake mandatory ARC training. Enbridge Gas is not concerned because ITSS contractors do not have access to customer financial data such as credit and debit card accounts. [Exhibit I.EGDI.EP.9]

Enbridge utilizes an industry leading Identity and Access Governance process and tool to protect customer data from unauthorized access and use. Access to CIS by enterprise or outsourced IT contractors is managed through SailPoint, our enterprise access request management system. This tool enables us to validate and enforce access policy during the access request process to prevent excess or inappropriate access, and captures a complete audit trail for access request decisions.

This system and process is audited by the Enbridge Internal Audit team on an annual basis to ensure conformity to the industry standard of least privilege for users of the systems.

All security access at Enbridge utilizes Sailpoint. The examples given in the interrogatory are in fact part of the main customer data repository at Enbridge and are protected through **Sailpoint**. [Exhibit I.EGDI.EP.9]

Submissions: Access to and Security of Customer Information.

There is no information provided about SailPoint, assuming this an Enterprise Solution, rather than an onsite Information Access Management (IAM) for EGDI. For example the security protocols for the servers with customer Information.

There is no information regarding how SailPoint complies with the intent of Section 2.2.2 of the ARC, including the provisions of section 5900 of the Canadian Institute of Chartered Accountants (“CICA”) Handbook.

If EGDI is relying on the Enbridge Enterprise Sailpoint, it should have provided supporting evidence on Sailpoint, and its relationship to the ARC, either in its prefiled evidence or Interrogatory Responses.

We have examined the SailPoint Website, but this does not answer these questions and in any event we are not expert in this area.

Reporting

In support of the ARC exemption request, Enbridge Gas undertakes to file with the OEB on an annual basis that the facts or circumstances underlying the exemption request remain unchanged. Enbridge Gas further undertakes to provide notice to the OEB if there is any material change to ISA between Enbridge Gas and Enbridge for the provision of IT Shared Services. [Application Section 16]

Summary and Recommendations

Context and Business Case

Energy Probe requests that if the Board grants the exemption Section 2.2.2 (having considered the merits) it explicitly state that in granting the exemption, it is not approving the ITSS services or the cost consequences of these, including earnings sharing and that a review of these and other Corporate Shared Services will be part of the next rebasing Rate Application following the end of the IRM plan.

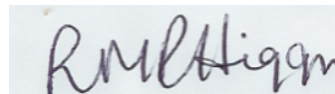
ARC Section 2.2.2 Exemption Request

Energy Probe recommends that the Board bring in an expert to advise it and Staff whether the consumer information protection protocols that EGDI proposes are appropriate in an ITSS environment. In particular, the expert should provide advice whether EGDI's reliance on SailPoint at the Enterprise level is appropriate.

Subject to that expert advice, Energy Probe accepts that the Board approve EGDI's request for the ARC Section 2.2.2 exemption with the appropriate conditions. These would include record keeping and reporting in order to ensure the safeguards claimed by EGDI are in place in compliance with the letter and spirit of protection of consumer information as required under the ARC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

December 7, 2015

A handwritten signature in dark ink, appearing to read "RM Higgin", is centered on a light blue rectangular background.

***Roger M.R. Higgin P. Eng; MBA; PhD.. SPA Inc.
Consultants to Energy Probe***