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**BY E-MAIL**

December 14, 2017

Andrew Mandyam  
Director, Regulatory Affairs and Financial Performance  
Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York ON M2J 1P8  
andrew.mandyam@enbridge.com

Dear Mr. Mandyam:

**Re: Enbridge Gas Distribution Inc.  
2018 Cap and Trade Compliance Plan  
Ontario Energy Board File Number: EB-2017-0224**

On November 9, 2017, Enbridge Gas Distribution Inc. (Enbridge Gas) filed its 2018 cap and trade Compliance Plan with the Ontario Energy Board (OEB) (EB-2017-0224). In accordance with the OEB's Report: Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (EB-2015-0363) ([Cap and Trade Framework](#)), Enbridge Gas has requested that various portions of its Compliance Plan be classified as strictly confidential. Enbridge Gas has made reference to the areas of its application which it deems confidential in Exhibit A, Tab 3, Schedule 1, pages 5 – 7 of its application.

As a general rule, and consistent with the OEB's Rules of Practice and Procedure ([Rules](#)) and Practice Direction on Confidential Filings ([Practice Direction](#)), the OEB places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. This reflects the OEB's view that its proceedings should be open, transparent, accessible and that placing material on the public record is the rule and confidentiality is the exception. That said the OEB recognizes that certain disclosures are prohibited by law and will not be made available to any parties other than OEB staff participating in this proceeding and the OEB panel deciding the application.

The *Climate Change Mitigation and Low-Carbon Economy Act, 2016* (Climate Change Act) outlines limitations on the disclosure of certain information.<sup>1</sup> These restrictions are also reflected in section 4 of the Cap and Trade Framework.<sup>2</sup>

The Cap and Trade Framework indicates that there are three forms of information that may be included within a natural gas utility's Compliance Plan: public information, confidential information and strictly confidential information. Two categories of strictly confidential information arise out of the Climate Change Act and Regulations<sup>3</sup> namely, auction confidential and market sensitive information. Auction confidential information is "information related to participation at auctions for emissions allowances".<sup>4</sup> "Market sensitive" information is defined in the Cap and Trade Framework as "information relating to transactions of emissions units on secondary or tertiary markets or offset credits" and "information relating to compliance instruments used by a Utility to meet its GHG obligations" and is based on the Climate Change Act restriction on disclosure of non-public information.<sup>5</sup>

The Cap and Trade Framework notes that while certain information included in an application may not be strictly confidential it may nevertheless need to be considered confidential on other grounds. For example, it may be strategically or commercially sensitive information.<sup>6</sup> In those circumstances, the OEB requires applicants to file both an un-redacted, confidential version and a non-confidential, redacted version of the document from which information that is the subject of the confidentiality request has been deleted or stricken. The OEB will then determine whether access to such information may be allowed to third parties in accordance with the provisions of the Rules and Practice Direction and may also initiate a process to determine whether the information over which confidentiality is requested is confidential or should be placed on the public record.

Given that strictly confidential information is not accessible by any parties other than OEB staff participating in this proceeding and the OEB panel assigned to decide the

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<sup>1</sup> *Climate Change Mitigation and Low-carbon Economy Act, 2016*, S.O. 2016, CHAPTER 7 (Climate Change Act) sections 28 and 32

<sup>2</sup> EB-2015-0363 Report of the Board - Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (Cap and Trade Framework) defines "market sensitive" as "information relating to transactions of emissions units on secondary or tertiary markets or offset credits" and "information relating to compliance instruments used by a Utility to meet its GHG obligations".

<sup>3</sup> Ontario Regulation 144/16, *The Cap and Trade Program (Cap and Trade Regulation)*

<sup>4</sup> Climate Change Act section 28 and Cap and Trade Framework, page 10

<sup>5</sup> Ibid

<sup>6</sup> Cap and Trade Framework, pages 13-14

application,<sup>7</sup> it is even more important that the material for which strictly confidential treatment is sought be clearly prohibited from disclosure pursuant to the Climate Change Act.

Having reviewed both the public and confidential versions of Enbridge Gas's application, the OEB notes that portions of Enbridge Gas' evidence are filed strictly confidentially in their entirety, rather than being redacted.

OEB staff is of the view that certain portions of the strictly confidential version of the application are not clearly prohibited disclosures according to the Climate Change Act or the Cap and Trade Framework and should be reconsidered by Enbridge Gas for inclusion in the public version of the application material.

OEB staff believes that there is value in placing on the public record some of the general or publicly available background information that is embedded in portions of the strictly confidential version of the application.

OEB staff believes that some of the redacted information could be placed on the public version of the application for a number of reasons, including:

- Portions of documents referring to Enbridge Gas' 2018 Compliance Plan that do not contain information that can be characterized as auction confidential or market sensitive could be on the public version of the application
- Portions of the consultants' reports for which confidentiality is claimed contain general market information, compliance options, political and regulatory context that is publicly available and could be un-redacted and added to the public version
- Disclosure of additional non-confidential portions of the application material could provide useful context to other participants and the general public to increase public knowledge and understanding of Enbridge Gas's cap and trade compliance obligation and resulting rates
- Disclosure of additional non-confidential portions may reduce the amount of interrogatories and cross-examination by parties seeking general understanding and thereby contribute to regulatory efficiency
- Portions of the application material for which confidentiality is sought are very similar to information contained in the public version of the application and it is not clear what the rationale is for the distinction
- Certain redacted information that is directly related to amounts to be recovered from ratepayers should be publicly disclosed

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<sup>7</sup> Cap and Trade Framework, pages 9-13

- Portions of the application material related to general discussion about the OEB Cap and Trade Framework should be un-redacted if there are no prohibited disclosures

**Exhibit C – Tab 2 – Schedule 1 (Compliance Plan – Strategy Overview)**

Page 1 - Paragraphs 1 - 3

Page 4 - Paragraph 11

Page 4 - Paragraph 13, first and third sentences

Pages 5 - 7, Paragraph 14 and following portions of Table 2:

- Bullets 1, 2, 3, 8 in Cost-effectiveness
- Bullet 1 in Rate Predictability
- Bullets 1 and 3 in Cost Recovery
- Bullets 1, 2 and 5 in Transparency
- Bullets 1, 2, 3 in Continuous Improvement

**Exhibit C – Tab 3 – Schedule 1 (Allowance Procurement Strategy)**

Page 8 - Paragraph 23, Table 4 and paragraph 24

Page 9 - Paragraphs 25 - 26

**Exhibit C – Tab 4 – Schedule 1 – Appendix A (Offset Procurement Strategy)**

Page 3 (Table of Contents) – Annex I to Annex IX excluding Annex VI and VIII and **excluding** Annex VI and VIII

Page 16 - Paragraphs 1, 4, 5 **excluding** footnote 8

Page 17:

- Fixed Price paragraph up to the words “finance the project”
- Floating Price paragraph up to words “rising prices” but **excluding** footnote 9
- Combination paragraph up to the words “options above”

Page 18 - Entire page

Page 22:

- First and second paragraphs ending in words “... all projects included”
- Third paragraph ending with words “somewhere in-between”
  - First bullet point **excluding** footnote 12
  - Second bullet point up to the words “affect the carbon market”

- Third bullet point first sentence
- Last paragraph starting with words “A carbon fund” and continuing on top of page 23

Page 23 - First full paragraph starting with “In WCI”

Page 24 - Last paragraph under heading “Linkage of Ontario with the WCI market”

Page 25 - Entire page

Page 33 - Annex I - entire page

Pages 34 - 38 - Annex II

Pages 39 - 40 - Annex III

Pages 41 - 44 - Annex IV

Page 47 - Entire page (data from ICE)

Page 48 - First paragraph and chart

Page 50 - Annex V – entire page

Page 53 - Annex VII – entire page

Page 57 - Annex IX – not clear whether this is ClearBlue’s proprietary data or publicly available data

**Exhibit C – Tab 6 – Schedule 1 (Risk Management)**

Page 6 - Paragraph 20

Page 7 - Paragraphs 21 - 23

Page 9 - Paragraphs 30 and 31

Page 10 - Paragraphs 33, 35, 36, 37

**Exhibit C – Tab 6 – Schedule 1 – Appendix A**

Pages 2 - 4 ending with the words “will be necessary” on top of page 4

**Exhibit C – Tab 7 – Schedule 2 – Appendix A**

Page 1 - Total actual compliance plan cost (line 9)

## Conclusion

The OEB requests that Enbridge Gas review the confidential version of the application material and portions referenced in this letter and file updated redacted versions of the documents. If Enbridge Gas objects to public disclosure of any sections it should provide written explanations as to why these sections of the evidence should not be on the public record. The OEB requires Enbridge Gas to **respond accordingly by January 3, 2018.**

OEB staff and legal counsel are available for a confidential telephone conference to discuss any concerns that Enbridge Gas or its legal counsel has with respect to providing the above-noted information on the public record of this proceeding.

This letter and the re-filing of any materials by Enbridge Gas will not preclude any further OEB-initiated process for determining whether confidentiality requests will be granted or whether the information will be required to be placed on the public record.

Yours truly,

*Original signed by*

Kristi Sebalj  
Registrar  
Office of the Registrar

C: Ms. F. Oliver-Glasford, Enbridge Gas  
Mr. D. O'Leary, Aird & Berlis LLP  
Mr. D. Stevens, Aird & Berlis LLP