

By Electronic Filing and By E-mail



November 20, 2008

Kirsten Walli
Board Secretary
Ontario Energy Board
27th floor - 2300 Yonge Street
Toronto ON M4P 1E4

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa ON K1P 1J9
tel.: (613) 237-5160 fax: (613) 230-8842
www.blgcanada.com

VINCENT J. DEROSE
direct tel.: (613) 787-3589
e-mail: vderose@blgcanada.com

Dear Ms Walli,

Enbridge Gas Distribution Inc. ("Enbridge") - ARC Exemption

Board File No.: EB-2008-0275

Our File No.: 339583-000022

We are writing to provide submissions on behalf of Canadian Manufacturers and Exporters ("CME") on Enbridge Gas Distribution's ("EGD's") Application seeking exemptions from sections 2.2.2 and 2.2.4 of the Affiliate Relationships Code for Gas Utilities ("ARC"). In preparing these submissions, CME has had discussions with the Consumers Council of Canada ("CCC"), and has also had the benefit of reviewing CCC's draft submissions.

EGD is seeking two (2) separate ARC exemptions. The first is an exemption from section 2.2.2 with respect to the sharing of certain information services with Gazifère Inc. ("Gazifère"). CME does not oppose this exemption. In taking this position, CME relies upon EGD's representation that even for shared emergency services Gazifère personnel will have no need or ability to access EGD customer information directly once its new Customer Information System ("CIS") is functioning. We understand that EGD's new CIS is expected to be up and running by April of 2009.

The second exemption sought by EGD is from the application of section 2.2.4 of ARC with respect to providing certain operational control services to Enbridge Ontario Wind Power LP ("Wind Power"). As set out in EGD's response to CME's Interrogatory No. 4 (Exhibit I, Tab 2, Schedule 4, Attachment 1, page 1 of 1), the value of the services to be provided by EGD to Wind Power is \$71,747 a year. On the basis that this will have no material impact on rates, CME does not oppose EGD's request for the ARC exemption.

While CME does not oppose the exemptions sought, there are two (2) issues of principle which EGD's Application raises. The first pertains to the obligation of utilities, such as EGD, to make timely disclosure of potential transactions involving affiliates. The second pertains to the prerequisite of a duly executed inter-corporate services agreement before any application for ARC exemptions is granted.

The evidence indicates that it was in April of 2006, more than two (2) years before EGD filed this ARC exemption application, that EGD's affiliate, Wind Power, became aware of its need to have operational control personnel available 24 hours a day 7 days a week in order to provide responses to communications from the Independent Electricity System Operator ("IESO") within five (5) minutes. (Exhibit I, Tab 2, Schedule 3, page 1 of 1)

In these circumstances, it should be inferred that the Enbridge organization, which includes EGD and Wind Power, knew long before the autumn of 2006, when this Application was filed, that Wind Power would need services from EGD to comply IESO requirements. We submit that the existence

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of the potential affiliate relationship between EGD and Wind Power should have been disclosed much earlier than the autumn of 2008, regardless of its potential rate implications for utility customers.

We submit that, as a matter of principle, utilities, such as EGD, should be required to make timely disclosure of potential transactions with its affiliates, regardless of their potential utility rate implications. Stated another way, utilities and their affiliates should not be permitted to justify their failure to make timely disclosure of potential affiliate relationships on the grounds that they perceived the impact on rates to be immaterial.

The issue of timely disclosure was recently addressed by the Board in a Decision and Order dated November 19, 2008, in EB-2008-0034, an Application by Westcoast Energy Inc. ("Westcoast") and Union Gas Limited ("Union") for approval of a proposed re-structuring of Union. In addressing the obligation of utility to disclose material facts in a timely manner, the Board stated at page 11 of the Decision and Order as follows:

"A publicly regulated corporation is under a general duty to disclose all relevant information relating to Board proceedings it is engaged in unless the information is privileged or not under its control. In so doing, a utility should err on the side of inclusion. Furthermore, the utility bears the burden of establishing that there is no reasonable possibility that withholding the information would impair a fair outcome in the proceeding."

We submit that any potential relationship between a utility and its affiliate requiring an ARC exemption should be regarded as material so that the obligation to disclose the potential relationship arises when the organization, of which the utility and the affiliate are members, first become aware that utility resources will be needed to support the business activities of the affiliate. We urge the Board to reiterate this timely disclosure principle when rendering its decision in this case.

The second issue of principle pertains to the need for a duly executed inter-corporate services agreement between the utility and the affiliate before any ARC exemption is granted. We submit that the Board should encourage utilities, such as EGD, to submit a duly executed inter-corporate services agreement when they submit Applications for ARC exemptions. The process EGD has elected to follow of awaiting the outcome of the Application before finalizing contractual commitments with its affiliate Wind Power should be discouraged (see EGD response to CME Interrogatory No. 5, Exhibit I, Tab 2, Schedule 5, page 101). In this context, CME supports CCC's submission that, as a pre-condition to approval, EGD should submit its draft service level agreement with Wind Power for review by the Board.

CME requests an award of its reasonably incurred costs in connection with this application.

Please contact me if there are any questions about the contents of this letter.

Yours very truly



Vincent DeRose/Peter C.P. Thompson, Q.C.

VJD/kt/slc

- c. Norm Ryckman (EGD)
- Tania H. Persad (EGD)
- Robert B. Warren (CCC)
- Julie Girvan (CCC)
- Paul Clipsham (CME)

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