



EB-2015-0233

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

DECISION AND PROCEDURAL ORDER No. 3

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*. If granted, the exemption would enable EGDI to share Information Technology (IT) services on a consolidated basis with its corporate parent Enbridge Inc.

In support of its application, EGDI has also filed reports for which it is seeking confidential treatment by Gartner Consulting, titled "IT Cost Optimization Support" and Accenture, titled "ISS Market Relative Assessment" (collectively, the Reports), accompanied by a letter requesting confidential treatment pursuant to Rule 10 of the OEB's *Practice Direction on Confidential Filings* (Practice Direction).

The OEB issued a Notice of Hearing on August 28, 2015.

On October 1, 2015, the OEB issued Procedural Order No. 1 which granted intervenor status to the 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).

On October 14, 2015, the OEB issued Procedural Order No. 2 in which it set out a process for parties to make submissions on EGDI's requests for confidential treatment of the Reports. The OEB also allowed Intervenors wanting to review the Reports to do

so after signing a copy of the OEB's Declaration and Undertaking with respect to confidential documents.

In response to Procedural Order No.2, OEB staff and IGUA filed submissions on October 26 and October 27, 2015, respectively. EGDI's reply submission was filed on October 30, 2015.

On November 16, 2015, EGDI filed a letter with the OEB requesting the dates set out in Procedural Order No.2 to be moved ahead to allow for implementation of the shared IT services as quickly as possible should the OEB approve EGDI's ARC exemption request. BOMA, CME, Energy Probe and IGUA are agreeable to EGDI's proposed dates.

Confidentiality

The OEB's general policy, as stated in its Practice Direction, is that all records should be open for inspection and that its proceedings should be open, transparent, and accessible. The OEB therefore generally places materials it receives on the public record. However, in order to receive full and complete disclosure of all relevant information, the OEB recognizes that in some cases information filed with the OEB may be of a confidential nature and should be protected as such. EGDI filed a letter dated August 6, 2015 requesting confidentiality treatment of the Reports.

In its letter, EGDI stated that the Reports contain commercially-sensitive information, which includes the internal cost of Enbridge Inc. providing certain IT services to its affiliates and the costs that a third party might charge to provide certain IT services. A brief description of the Reports is as follows:

- The IT Cost Optimization Support report is a benchmarking study that was prepared by Gartner Consulting for Enbridge Inc. in order to illustrate Enbridge Inc. and EGDI's cost position for IT infrastructure shared services relative to its peers.
- The ISS Market Relative Assessment report is a benchmarking study prepared by Accenture Inc. that illustrates third party pricing for IT infrastructure shared services relative to EGDI cost for providing IT shared services.

Accordingly, EGDI requests that the OEB treat the Reports in confidence, in their entirety, pursuant to Rule 10 of the OEB's Practice Direction.

Submissions

OEB Staff submitted that the Reports contain commercially-sensitive information which could prejudice a party's competitive position if released publicly, and should be considered confidential in accordance with the Practice Direction. OEB staff also submitted that extensive redactions would be required to place the documents on the public record, and EGDI's proposal to file only a summary is reasonable. OEB staff further observed that given the limited scope of this proceeding, the reports may not have any bearing on the OEB's decision to exempt EGDI from section 2.2.2 of the ARC. For the reasons mentioned, OEB Staff submitted that EGDI should be granted confidential treatment of the Reports, in their entirety, pursuant to Rule 10 of the Practice Direction.

IGUA did not object to EGDI's request for confidentiality, but submitted that EGDI had not adhered to the confidentiality process pursuant to section 5.1.4 (c) and section 5.1.5 of the Practice Direction. IGUA also disagreed with OEB staff's submission that extensive redactions would be required to segregate potentially confidential financial information from the balance of the information provided in the Reports. IGUA has requested that OEB staff and the OEB should extend the confidential treatment only so far as is necessary to maintain a process that is fair to EGDI, and no further.

EGDI's reply submission explained why there was procedural confusion regarding its confidentiality filings and reiterated its request for confidential treatment of the reports in their entirety. EGDI explained that despite the fact that the letter requesting confidentiality referenced the appropriate docket number, it was not linked to the application filing, which was an oversight in the filing process. EGDI further explained that redacting the reports would not meaningfully assist the parties and that the application contained significant summaries of the purpose, nature and results of the reports.

Findings

The OEB notes that EGDI has filed a detailed business case in support of its application and that the Reports appear as appendices to the business case. While the business case is on the public record, EGDI has requested that the Reports be held in confidence pursuant to Rule 10 of the Practice Direction for the reasons noted above.

Although the Reports provide some measure of contextual information, it is not clear to the OEB what relevance they have to the exemption application to be decided. 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, 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.

Further, the OEB has revised the case schedule in procedural order no. 2 in keeping with EGDI's request.

Parties are reminded to consult sections 26 and 27 of the Board's *Rules of Practice and Procedure* regarding required naming and numbering conventions and other matters related to interrogatories.

The OEB may issue further procedural orders from time to time.

IT IS THEREFORE ORDERED THAT:

1. The orders 4, 5, 6 and 7 made in Procedural Order No. 2 issued on October 14, 2015 are hereby rescinded and are superseded by the orders made herein and the dates associated with such orders.
2. OEB staff and intervenors shall request any relevant information and documentation from EGDI that is in addition to EGDI's evidence, and that is relevant to the hearing, by written interrogatories filed with the OEB and served on EGDI by **November 25, 2015**.

3. EGDI shall file with the OEB complete written responses to all interrogatories and deliver them to all intervenors by **November 30, 2015**.
4. Unless the OEB orders otherwise, OEB staff and intervenors may file a written submission with the OEB, and deliver it to EGDI and all intervenors by **December 7, 2015**.
5. Unless the OEB orders otherwise, EGDI may file a written reply submission with the OEB, and deliver it to intervenors by **December 11, 2015**.

All filings to the OEB must quote the file number, EB-2015-0233, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date. With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Ronak Mozayyan at Ronak.Mozayyan@ontarioenergyboard.ca.

ADDRESS

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DATED at Toronto, **November 24, 2015**

ONTARIO ENERGY BOARD

Original signed by

Kristen Walli
Board Secretary