



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2015-0233

ENBRIDGE GAS DISTRIBUTION INC.

Application by Enbridge Gas Distribution Inc. for an exemption from section 2.2.2 of the Affiliate Relationships Code for Gas Utilities.

BEFORE: Christine Long
Presiding Member

February 18, 2016

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1 INTRODUCTION AND SUMMARY

Enbridge Gas Distribution Inc. (EGDI) (the Utility) has applied to the Ontario Energy Board (OEB) for an exemption under section 2.2.2 of the Affiliate Relationships Code for Gas Utilities (ARC). Section 2.2.2 deals with protecting access to confidential information and states in part: "Where a utility shares information services with an affiliate, it must protect access to all confidential information¹ by an affiliate."

The Utility and its corporate parent, Enbridge Inc. (the Affiliate) are in the process of consolidating their information technology (IT) services, with the aim of improving efficiency and reducing costs. The consolidation allows, the Affiliate, (the parent company) and its related companies, including the Utility to share IT services. Accordingly, since 2014, the Utility has been receiving certain IT services from the Affiliate. However, the Utility has not been able to fully consolidate all of the IT services because of ARC requirements in section 2.2.2 that prohibit the access to confidential customer information of a utility by an affiliate.

As part of the consolidation, certain IT services such as troubleshooting and help desk support will be provided by the Affiliate's employees. In the course of providing such support, these employees will have limited and incidental access to confidential information of the Utility's customers. However, Section 2.2.2 of the ARC prohibits such access and requires that the Utility protect access to all confidential information by an affiliate.

The requested exemption from section 2.2.2 would allow IT employees of the Affiliate to carry out their duties and for consolidation of IT services to occur. The Utility submitted that the consolidation will result in \$2 million in savings by 2018 and that if the exemption is not granted it will forgo \$633,000 in charges under its cost allocation methodology. The Utility submitted that it has strict controls to ensure that customer information is protected from unauthorized use and that ratepayers will not be harmed if the exemption is granted.

The OEB has determined that it will grant the requested exemption under section 2.2.2 subject to certain conditions. The OEB also has also granted an exemption under section 2.2.3. The exemption under section 2.2.3 was not requested by the Utility, but is deemed necessary by the OEB.

¹ As defined in section 1.2 of the ARC which states: "confidential information" means information relating to a specific consumer, marketer or other customer of a utility service, which information the utility has obtained in the process of providing current or prospective utility services.

2 THE PROCESS

The Utility filed its application with the OEB on August 6, 2015 under section 19 and 44 of the Ontario Energy Board Act, 1998 (OEB Act). The OEB issued a Notice of Written Hearing on August 28, 2015 and directed the Utility to serve Notice on all parties in its last rates case. The OEB granted intervenor status to: the Building Owners and Managers Association, Greater Toronto (BOMA); Canadian Manufacturers & Exporters (CME); Energy Probe Research Foundation (Energy Probe); Union Gas Limited (Union); and the Industrial Gas Users Association (IGUA). OEB staff and intervenors submitted interrogatories on the evidence and the Utility provided complete responses to all interrogatories. The OEB also received detailed submissions from OEB staff and each of the intervenors except Union and a reply submission.

3 STRUCTURE OF THE DECISION

After reviewing the evidence and the submissions of parties, the OEB is of the view that it is required to make a decision on two issues:

1. Should the Utility be granted an exemption under section 2.2.2 of the ARC and what conditions, if any, should apply?
2. Should the Utility be granted an exemption under section 2.2.3 of the ARC and what conditions, if any, should apply?

The issues are addressed in the following sections of the Decision.

4 EXEMPTION FROM SECTION 2.2.2 AND SECTION 2.2.3 OF THE ARC

4.1 Should the Utility be granted an exemption under section 2.2.2 of the ARC and what conditions, if any, should apply?

Since 2013/2014, Enbridge Inc., the Affiliate and the parent company of the Utility, has been consolidating information technology (IT) services across its group of companies, in an effort to improve efficiency, eliminate duplication of services and reduce costs across the company. This consolidation has allowed the Enbridge affiliates to share IT services (IT Shared Services or ITSS).

As a result, since 2014/2015, the Utility has been receiving certain IT services from the Affiliate. However, the Utility has been unable to fully consolidate with the Affiliate all of the IT shared services because of ARC requirements in section 2.2.2, which prohibit the access to confidential customer information of a utility by an affiliate. Specifically, section 2.2.2 states:

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. [Emphasis Added]

In response to IGUA interrogatory No. 2, the Utility clarified its position and confirmed that it is only seeking exemption from the first part of section 2.2.2 (as highlighted above), and that the remainder of section 2.2.2 would continue to apply to the sharing arrangement under the Intercorporate Services Agreement (ISA).

As part of the consolidation process, the Utility's IT employees including contractors (referred to in evidence as ITSS Contractors) will become employees of the Affiliate and their services will be shared amongst Enbridge affiliates, including the Utility. In performing their duties, the IT employees (as Enbridge Inc. employees) will have access

to confidential information of the Utility's customers. Currently, section 2.2.2 prohibits access by an affiliate of a utility's confidential customer information. If the exemption is granted, the IT employees, as the Affiliate's employees, will be able to perform their duties such as troubleshooting applications and providing help desk support. The Utility has provided a detailed description of the types of services that the IT employees will be providing and situations where they will have access to confidential information. The OEB observes that the services are in the nature of troubleshooting applications, help desk support and support for forensic investigations. The Utility confirmed that at no time will the Affiliate's IT employees have direct access to the Utility's IT databases that store customer information and any access to customer information will be temporary and incidental.²

The Utility submitted that it has established safeguards that protect the confidentiality of information that is accessed. The Utility submitted that there is no harm to either ratepayers or the competitive markets resulting from the limited and incidental access to customer data.

The Utility estimated that the consolidation of services will generate savings of \$2 million by 2018 and stated that if the exemption is not granted it will forgo \$633,000 in charges under the cost allocation methodology. Further, the Utility proposed to "file with the OEB on an annual basis that the facts or circumstances underlying the exemption request remain unchanged" and "to provide notice to the OEB if there is any material change"³ to the ISA.

The OEB notes that all of the intervenors that filed arguments and OEB staff support the request for exemption provided it is subject to certain conditions and reporting requirements.

Parties also made some additional comments. CME submitted that the reporting requirements should be a condition of approval. BOMA submitted that the OEB's exemption order should specify the types of services to be provided, define the nature of access required, the authorization processes to be followed, the application of safeguards and that the Utility should highlight the savings realized in its next rate-rebasing application. Energy Probe submitted that the OEB's approval of the exemption should not include acceptance of the cost consequences, that the OEB hire an expert to evaluate the effectiveness of the Utility's protection protocols and suitability of the security application SailPoint. IGUA submitted that the exemption, if granted, should be accurately scoped to reflect that the remainder of section 2.2.2 requirements continue to

² Application, p.2, paragraph 4.

³ Application, p.8, paragraph 16.

apply, that the reporting requirements be combined with the reporting requirements related to ARC exemptions granted in EB-2010-0232 and that the Utility be directed to provide a copy of the annual report to parties in this proceeding.

Tidal Energy Marketing Inc.

IGUA also raised an issue with respect to the Utility's interpretation of retail energy services. In its application, at page 8, the Utility states, "As Enbridge does not offer any competitive retail energy services in Ontario...." Further, the Utility stated that its affiliate Tidal Energy Marketing Inc. (Tidal Energy) "conducts natural gas marketing activity in Ontario for industrial and wholesale customers. Tidal Energy buys, sells, transports and provides storage for natural gas. *Tidal Energy does not provide energy services in the retail energy market*". [Emphasis Added]

IGUA disagreed with the Utility's assertion that it is not active in Ontario's competitive energy services market. In response to IGUA interrogatory no. 1, the Utility explained its position stating that in asserting that it does not offer "retail" energy services in Ontario, it equates the term "retail" to low-volume consumers as defined by section 47 of the OEB Act.

IGUA submitted that the evidence is that Tidal Energy provides retail energy services in Ontario by engaging in the selling of gas to Ontario consumers and that it is an energy services provider as defined in the ARC. IGUA disagreed with the Utility's interpretation and submitted that it "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".⁴ Notwithstanding the above, IGUA submitted that the exemption should be granted.

Findings

The OEB will grant the Utility's requested exemption from section 2.2.2 subject to the application of certain conditions as set out in this Decision and Order.

While recognizing the importance of regulatory efficiency, in reaching its decision the OEB is guided by the purpose and intentions of the ARC as set out in section 1.1, which states:

⁴ IGUA Submission, p. 4, paragraph 23.

The purpose of the Affiliate Relationships Code is to set out the standards and conditions for the interaction between gas distributors, transmitters and storage companies and their respective affiliated companies. The principal objectives of the Code are to enhance a competitive market while, at a minimum, keeping ratepayers unharmed by the actions of gas distributors, transmitters and storage companies with respect to dealing with their affiliates. The standards established in the Code are intended to:

- a) minimize the potential for a utility to cross-subsidize competitive or non-monopoly activities;
- b) protect the confidentiality of consumer information collected by a transmitter, distributor or storage company in the course of provision of utility services; and
- c) ensure there is no preferential access to regulated utility services.

Specifically, the OEB has considered the request in the context of the intentions of the ARC to minimize cross-subsidization of competitive activities, protect confidential customer information and ensure regulated utility services do not receive preferential access.

While the evidence highlights the cost savings that will accrue to ratepayers because of the sharing of IT resources, the OEB is of the view that it is not the predominant consideration. The predominant consideration is whether adequate safeguards exist to ensure the protection of confidential information as the ARC has intended and whether ratepayers or the competitive market will be harmed by the limited and incidental access to confidential information, as set out in the application.

In that regard, the Utility has provided assurances that ratepayers or competitive markets will not be harmed if the exemption is granted. The Utility has also provided detailed evidence that describes the situations under which the Affiliate's IT employees will have access to its confidential customer information and safeguards to prevent misuse of confidential information that is incidentally accessed. The Utility has also undertaken to regularly report to the OEB on the status of the exemptions. The safeguards are set out paragraph 14 of the evidence and are noted below:

Safeguard	Description
Physical Measures	<p>Enbridge Gas (the Utility) will continue to build and manage all servers that store customer information.</p> <ul style="list-style-type: none"> • Enbridge Gas (the Utility) will maintain control over who has access to customer information. • ITSS Contractors (IT employees) will be physically separated from Enbridge Gas Customer Care.
RCAM Intercorporate Service Agreement	<p>Under the RCAM Intercorporate Service Agreement all services are required to be provided in compliance with the ARC and other OEB rules or orders.</p>
ITSS Training	<p>Enbridge Gas (the Utility) periodically provides training on IT security policies and privacy standards in order to ensure employees are aware of their obligations to protect confidential information. Employees are required to certify compliance with the following training:</p> <ul style="list-style-type: none"> • Mandatory ARC training including Frequently Asked Questions developed for ITSS Contractors to assist and reinforce the importance of protecting confidential information and complying with ARC. • Acceptable Use of Computing Assets Policy • Privacy training including the <i>Personal Information Protection and Electronics Act</i> • Statement on Business Conduct • The Security Operations personnel take specific training. Non-compliance with the training may result in discipline up to and including termination.
Records Management Policies and	<ul style="list-style-type: none"> • The Enterprise (the Affiliate, or parent company) has published an information classification standard on the intranet for all employees to follow to adequately protect various types of data. Consumer data is classified as

Training	"Confidential" and there are very specific guidelines and rules for processing and storing consumer data such as encryption, physical storage on locked containers, multifactor authentication, and access rights.
Physical Servers	<ul style="list-style-type: none"> • All Enbridge Gas (the Utility) servers are built and managed by Enbridge Gas (the Utility) employees. This ensures Enbridge Gas (the Utility) maintains control over who has direct access to customer data.
Auditing	<ul style="list-style-type: none"> • Enbridge Gas (the Utility) audits its Customer Information Systems to ensure that the application and access is only available to Enbridge Gas (the Utility) employees. • The security operations center is operated by Enbridge Gas (the Utility) internal audit and Deloitte to ensure to ensure compliance of ITSS Contractors (IT employees).

The OEB also notes that no party has objected to the granting of the exemption, provided the exemption is subject to certain conditions. While some intervenors have advanced the position that further conditions be attached to the granting of the exemptions, the OEB is of the view that the conditions as ordered by this Board are sufficient to ensure that confidential information is protected.

The OEB is satisfied with the assurances provided by the Utility that the proposed safeguards and conditions are adequate to protect confidential information and that ratepayers or the competitive markets will not be harmed. Accordingly, exemption from section 2.2.2 is granted subject to the following conditions:

- i. The exemption shall be restricted to part of section 2.2.2 that states: " Where a utility shares information services with an affiliate, all confidential information must be protected from access by the affiliate." and is granted in respect of the actions stated in the Utility's application. The remainder of section 2.2.2 shall continue to apply to the sharing arrangement, as set out in the related Intercorporate Services Agreement.
- ii. The Utility shall immediately implement all of the Safeguards set out in paragraph 14 of its evidence.

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- iii. The Utility shall maintain control over who has access to the Utility's customer information databases, shall continue to manage all servers that store the Utility's information and shall ensure that IT employees of the Affiliate are physically separated from Enbridge Gas Customer Care.
 - iv. The IT employees of the Affiliate shall under no circumstances have direct access to the Utility's IT databases that store customer information.
 - v. The IT employees of the Affiliate shall only have limited and incidental access to the Utility's confidential information⁵, as described in the Utility's application.
 - vi. The Utility shall ensure that training on IT security policies and privacy standards is provided periodically in order to ensure that IT employees of the Affiliate are aware of their obligations to protect confidential information.
 - vii. The Utility shall ensure that IT employees of the Affiliate certify compliance with the following training: Mandatory ARC training including Frequently Asked Questions developed for employees to assist and reinforce the importance of protecting confidential information and complying with ARC; .Acceptable Use of Computing Assets Policy; Privacy training including the *Personal Information Protection and Electronics Act*; Statement on Business Conduct; and relevant training for Security Operations personnel.
 - viii. The Utility shall notify the OEB in the event of any material change to the ISA governing the service arrangements that are the subject of the exemption.
 - ix. The Utility shall file with the OEB a new exemption request application in the event of any material change in the facts or circumstances underlying the exemption, or the passage of five (5 years) from the date of this Decision and Order, whichever occurs first.
 - x. The Utility shall, once every 12 months from the date of this Decision and Order, file with the OEB a letter confirming that the facts and circumstances underlying the exemption remain unchanged.

4.2 Should the Utility be granted exemption under section 2.2.3 of the ARC and what conditions, if any, should apply?

IGUA submitted that the Utility's exemption request is too narrow and that it requires a further exemption from section 2.2.3 of the ARC.

⁵ As described in section 1.2 of the ARC

Section 2.2.3 of the ARC 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.

In response to IGUA interrogatory no. 2 the Utility stated that an exemption from ARC section 2.2.3 is not required because there would be no sharing of Utility employees. On that understanding, IGUA disagreed with the Utility's position and noted that section 2.2.3 applies to shared employees regardless of which affiliated entity is the legal employer. IGUA referred to OEB Compliance Bulletin 200604, which states:

I do not consider that a person must have an employment relationship with both the distributor and the affiliate in order to be shared within the meaning of the Code. It is also my view that the ARC provisions relating to the sharing of employees are not limited in their application to persons that are employed by the distributor. The provisions refer simply to the sharing of employees, and do not specify whether the employee to be shared is the employee of the utility or of the affiliate. Therefore, for purposes of assessing compliance with the Code I consider that an employee of an affiliate that provides distribution services to the distributor is shared with the distributor. To do otherwise would allow the Code to be circumvented - and confidential information to be accessible to the affiliate for non-utility purposes - by the simple means of having distribution functions outsourced to affiliate employees.

No other party made submissions on this matter.

In reply submissions the Utility submitted that exemption from section 2.2.3 is not required because the Affiliates IT employees will not be directly involved in the collection of or have access to confidential information. The Utility further submitted that section 2.2.3 is not intended for the purposes that relate to the sharing of information services. With respect to OEB Compliance Bulletin 200604, the Utility submitted that the bulletin does not specifically refer to section 2.2.2 and is not intended to apply to situations such as those described in its request.

Findings

The OEB has determined that it will also grant the Utility exemption from Section 2.2.3 of the ARC. Section 2.2.3 states:

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.

Section 2.2.3 provides the criteria that would limit the sharing of employees between a utility and its affiliate. These criteria include a prohibition on sharing employees who: (i) are directly involved in collecting confidential information and (ii) or have access to confidential information. The Utility argues that section 2.2.3 does not apply because the IT employees are not the Utility's employees, the Affiliate's IT employees will not be directly involved in collecting confidential information and that their access to confidential information will be limited and incidental. The OEB disagrees. In the OEB's view, section 2.2.3 applies to any shared employee regardless of which affiliated entity is the employer. This view is consistent with Compliance Bulletin 200604. The evidence is clear that the IT employees that are subject of the application are to be shared between the Affiliate and the Utility.

The OEB also disagrees with the Utility's argument that exemption from section 2.2.3 is not required because the IT employees of the Affiliate will not be directly involved in the collection of or have access to the Utility's confidential information. The evidence is that the IT employees of the Affiliate will have incidental access to the confidential information of the Utility's customers.

It is the OEB's view that the intent of section 2.2.3 is to ensure that confidential information will not be accessible to an affiliate in a manner that might cause harm to ratepayers or to gain advantage in the delivery of unregulated services. In that regard and as noted earlier this Decision and Order, the OEB is satisfied that adequate safeguards exist to prevent the misuse of confidential information by the Affiliate's employees.

5 ORDER

THE BOARD ORDERS THAT:

1. The Utility's request for exemption from part of section 2.2.2 of the Affiliate Relationships Code for Gas Utilities is granted subject to the conditions listed in this Decision and Order.
2. The Utility is exempted from section 2.2.3 of the Affiliate Relationships Code for Gas Utilities and as qualified in this Decision and Order.
3. The Utility shall copy all intervenors and any other person requesting a copy in respect of any filings referred to in this Decision and Order.
4. Intervenors that are eligible to apply for costs shall submit their cost claims no later than 7 days from the date of issuance of this Decision and Rate Order.
5. Enbridge Gas Distribution Inc. shall file with the OEB and forward to all intervenors any objections to the claimed costs within 17 days from the date of issuance of this Decision and Rate Order.
6. Intervenors shall file with the OEB and forward to Enbridge Gas Distribution Inc. any responses to any objections for cost claims within 24 days from the date of issuance of this Decision and Rate Order.
7. Enbridge Gas Distribution Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

All filings to the Board must quote the file number, EB-2015-0233, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. 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.

DATED at Toronto February 18, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary