



EB-2008-0275

IN THE MATTER OF the *Ontario Energy Board Act* 1998, S.O.1998, c.15, Schedule B, as amended.

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an exemption from sections 2.2.2 and 2.2.4 of the *Affiliate Relationships Code for Gas Utilities*.

BEFORE: Gordon Kaiser
Presiding Member

Paul Sommerville
Member

DECISION

1. Introduction

1.1. The Application

Enbridge Gas Distribution (“Enbridge”, “EGD”, or the “Company”) filed an application on August 14, 2008 with the Ontario Energy Board (the “Board”) seeking approval for exemptions from sections 2.2.2 and 2.2.4 of the *Affiliate Relationships Code for Gas Utilities* (the “Code”), as set out below in Section 1.3. The Board has assigned File No. EB-2008-0275 to this proceeding.

Exemption to Section 2.2.2 of the Code (the “Gazifère Exemption”)

Enbridge shares a customer information system (“CIS”) and other systems with Gazifère Inc. (“Gazifère”), a gas distribution subsidiary of Enbridge, which serves a number of communities in southwestern Québec. During an internal audit, Enbridge

determined that certain Gazifère employees have unintended access to Enbridge customer information through the sharing of the CIS between the companies. As a result, Enbridge determined that it is not in compliance with section 2.2.2 of the Code, insofar as Enbridge customer information has not been prevented from being accessed by Gazifère.

Enbridge is in the process of replacing its current CIS, and Gazifère will be implementing its own new CIS separate from Enbridge in 2009. The Enbridge request is for a temporary exemption from section 2.2.2 of the Code until such time as the Gazifère CIS can operate on a stand alone basis.

Exemption to Section 2.2.4 of the Code (the “Wind Exemption”)

Enbridge Ontario Wind Power LP (“EOWP”) is an affiliate of Enbridge, and is required by the IESO to provide control personnel 24/7 to respond to IESO communications within 5 minutes (the “Control Services”). EOWP has requested that Gas Control personnel, who are employees of Enbridge provide it with the required Control Services.

1.2. The Proceeding

The Board issued a Notice dated September 29, 2008, indicating that it would proceed without a hearing. The Notice included an invitation to anyone who wished to object to this approach to do so in writing.

On October 7, 2008, the Board received a letter from the Consumer’s Council of Canada (“CCC”) objecting to proceeding without a hearing. CCC requested an interrogatory process to glean further information about the relationship between Enbridge and EOWP. The Canadian Manufacturers’ & Exporters (“CME”) and the Industrial Gas Users Association (“IGUA”) also filed letters requesting intervenor status and that certain other matters be heard. The Board accepted the CME, CCC, and IGUA as intervenors to this proceeding.

In response to the submissions made by the various parties, on October 17, 2008, the Board issued Procedural Order No. 1, making provision for a written hearing and other related procedural matters.

CCC filed interrogatories on October 24, 2008, and the CME filed interrogatories on October 27, 2008, which were answered in due course.

Enbridge filed its Argument-in-Chief on November 13, 2008. The CME filed its submissions on November 20, 2008. Enbridge filed its reply argument on November 27, 2008. On December 16, 2008, Enbridge filed an inter-corporate services agreement between itself and EOWP.

1.3. The *Affiliate Relationships Code for Gas Utilities*

Section 2.2.2 of the Code states that:

“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 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.”

Furthermore, section 2.2.4 states that:

“A utility shall not share with an affiliate that is an energy service provider any employee who controls the access to utility services, or directs the manner in which utility services are provided to customers, or who has direct contact with a customer of the utility service.”

2. Positions of the Parties

After receiving Enbridge’s responses to its interrogatories CCC indicated that it did not object to the relief being sought in this proceeding.

Similarly, in its submissions CME indicated that it did not object to the relief being sought in this proceeding. However, CME urged the Board to make any exemptions time-limited, with a defined end date. CME also urged the Board to encourage Enbridge to take whatever steps are available at the present time to safeguard confidential customer information. Finally CME urged the Board to impose a condition

on Gazifère that it not engage in any business other than the distribution of gas while the exemption is in effect.

The CME also raised two “issues of principle” with respect to the Wind Exemption. Firstly, it argued that Enbridge customers have a reasonable expectation that there will be timely disclosure of potential transactions involving affiliates and, secondly, that by virtue of a request for exemption, there is a need for a signed inter-corporate services agreement before any exemption to the Code is approved.

IGUA does not object to the relief sought in this proceeding and supported the request for the Gazifère exemption. However, IGUA requested that the exemption be granted on certain conditions, namely that employee protocols restricting access to Enbridge’s customer information to only certain Gazifère employees should remain in force and enforced, and that Gazifère continues to engage only in the distribution of gas within its service territory. IGUA also indicated that the exemption should remain in effect until the pending replacement of the Gazifère’s CIS system has occurred.

3. Position of the Applicant

Enbridge noted in its reply argument that no intervenor objected to the relief sought in this application. Enbridge proposed modifications to the two conditions submitted by IGUA. Firstly, that the exemption be provided until CIS systems are fully implemented which is expected to be in July 2011. Secondly, instead of stipulating that Gazifère be restricted to the business of the distribution of natural gas, Gazifère would undertake not to engage in any competitive energy services in Ontario while the exemption is in effect. Gazifère presently does not conduct any business in Ontario.

In response to CME’s submissions, Enbridge stated that it did not wilfully withhold information pertinent to the approval of the Wind Exemption and provided the details it thought would be necessary for the Board to consider its application.

Further, Enbridge cited that no other party was both willing and able to provide the intermittent services EOWP required, at which time Enbridge was approached to provide the services to EOWP. The Control Services provided are provided on a fully allocated cost basis.

Enbridge also responded that it was not made aware of the need for Control Services until it was contacted by EOWP in March 2008. Enbridge indicated it would draft and file an inter-corporate services agreement with the Board, and did so on December 16, 2008, setting out the terms and conditions of its arrangement with EOWP.

4. Board Findings

The Board notes that no party objected to any of the specific relief sought by Enbridge in its Application. The Board shall address below its findings on the two exemptions requested.

The Wind Exemption

The Board is in receipt of a duly signed inter-corporate services agreement between Enbridge and EOWP, and on this basis, the Board grants the Wind Exemption.

The Board also confirms that an inter-corporate services agreement is to be provided in evidence when filing for future exemptions. The Board's rules specifically require this agreement when considering requests for exemptions.

The Board accepts Enbridge's argument that EOWP personnel did not 'turn their minds' to how the IESO requirements would be met operationally until about March 2008 and then made this application thereafter.

In its responses to the interrogatories of the CME, Enbridge stated that the fully allocated cost of the Control Services required is approximately \$71,747 annually. The Board accepts Enbridge's submission that this amount is not material to Enbridge's overall revenue requirement. The determination of costs is on a fully allocated cost basis, which is consistent with existing affiliate revenues for similar services.

The Gazifère Exemption

The Board grants the Gazifère exemption, and hereby sets an expiry date for the exemption at July 31, 2011. The CME submitted that April 2009 should be the sunset date to the exemption, when the CIS system is online. However, Enbridge stated in its reply argument that the CIS system would not be fully implemented until July 2011.

The Board is satisfied that the existing inter-corporate services agreement provides for the safeguarding of shared customer information that is accessible by Gazifère from the Enbridge CIS. Under the circumstances here, and noted above, the Board finds the exemption period granted reasonable.

The Board finds that the Gazifère Exemption is granted on condition that Gazifère does not provide any competitive services in Ontario. Enbridge noted in its reply that Gazifère does not provide any competitive service in Ontario, and the establishment of this condition provides the Board with comfort that Gazifère will be diligent to ensure there is no misuse of shared customer information.

5. Costs

A decision regarding cost awards will be issued at a later date. The eligible parties shall submit their cost claims by **January 5, 2009**. A copy of the cost claim must be filed with the Board and one copy is to be served on Enbridge. The cost claims must be done in accordance with the Board's Practice Direction on Cost Awards.

Enbridge will have until **January 19, 2009** to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the party against whose claim the objection is being made.

The party whose cost claim was objected to, will have until **January 26, 2009** to make a reply submission as to why their cost claim should be allowed. Again, a copy of the submission must be filed with the Board and one copy is to be served on Enbridge.

THE BOARD ORDERS THAT:

1. Enbridge is granted the requested exemption from section 2.2.2 of the *Affiliate Relationships Code for Gas Utilities* in respect of its relationship with Gazifère. The exemption shall expire on **July 31, 2011**.
2. Enbridge is granted the requested exemption from section 2.2.4 of the *Affiliate Relationships Code for Gas Utilities* in respect of services rendered to EOWP.

DATED at Toronto, December 22, 2008

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary