



EB-2010-0232

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Enbridge Gas
Distribution Inc. for exemptions from section 2.2.4 of the
Affiliate Relationships Code for Gas Utilities.

BEFORE: Ken Quesnelle
Presiding Member

DECISION AND ORDER

Enbridge Gas Distribution Inc. ("Enbridge" or the "Applicant") filed an application dated November 8, 2010 (the "Application") seeking two exemptions from section 2.2.4 of the *Affiliate Relationships Code for Gas Utilities* (the "ARC"). The Board assigned file number EB-2010-0232 to the Application and issued a Notice of Application and Procedural Order No. 1 dated December 17, 2010 (the "Notice").

Section 2.2.4 of the ARC states the following:

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.

The first exemption relates to the sharing of emergency operational services with Gazifère Inc., an affiliate of Enbridge. The Applicant requested that the Board grant a permanent exemption in respect of the sharing of on-call emergency services between the two utilities.

The second exemption relates to the provision of certain communication and control services to Enbridge-affiliated wind farm operations in Ontario, as an extension of an exemption granted by the Board in 2008 (in proceeding EB-2008-0275) for the Kincardine, Ontario wind farm owned by Enbridge Renewable Energy Infrastructure Canada Inc. The new wind farm operations include the Talbot wind farm in Chatham and the Greenwich wind farm near Thunder Bay, both

owned by Enbridge Inc. Enbridge requested that the Board grant an exemption for Enbridge to provide communication and control services to both existing and future affiliated wind farm operations.

On November 26, 2010 the Board issued amendments to the ARC to keep pace with the fact that Ontario's largest gas utilities (i.e., Enbridge and Union Gas Limited) are now permitted to own and operate certain renewable electricity generation facilities (the "qualifying facilities"). The ARC amendments are specifically directed to the qualifying facilities which by definition are facilities less than 10 megawatts in capacity. The subject wind farm facilities are each about 99 megawatts which means that the ARC amendments are not applicable to this exemption application.

Canadian Manufacturers & Exporters ("CME") and the Industrial Gas Users Association ("IGUA") intervened in the proceeding.

Interim Exemption

In its Notice the Board granted an interim exemption for the control services at the Talbot wind farm so that it could commence operations before the end of 2010. The interim exemption carries an expiry date of March 31, 2011.

The Proceeding

Procedural Order No. 1 outlined a process for parties to ask interrogatories and make written submissions. Enbridge responded to the interrogatories of Board staff and CME on January 14, 2011. Board staff, CME and IGUA made written submissions and Enbridge filed its reply submission on January 28, 2011.

Board Findings

The Board will address and make findings on each of the exemptions separately.

Gazifère Exemption

The Gazifère exemption request is limited to the sharing of Enbridge customer information with Gazifère operational personnel specifically for the purposes of providing emergency on-call services. The types of emergencies to which on-call personnel may be required to respond include gas main/service breaks or damage, regulator station malfunction, fire, explosion, detection of strong gas fumes or odour, poor gas pressure, or no gas at a critical facility. Similarly, Enbridge personnel provide emergency on-call services to Gazifère. Because it is a "like for like" services exchange between the utilities, there is no exchange of funds between the

two utilities for the services. The Intercorporate Services Agreement (the "ISA"), filed in draft form with the pre-filed evidence, notes this exchange of services.

The Board observes that no party has objected to the relief sought by Enbridge, including the permanent feature of the Gazifère exemption.

Board staff and CME raised the question of how a possible material change in circumstance should be managed if it occurs. Board staff and CME both submitted that in the event of a material change, Enbridge should be required to file a formal application for approval. The parties also submitted that the executed ISA should be filed formally, as well as any updates at the time of the ISA expiry.

IGUA submitted that the Gazifère employees who have access to Enbridge customer information should be bound by the confidentiality provisions of the ISA in respect of such Enbridge customer information. IGUA also submitted that the approval be conditioned on the basis that Gazifère would not be providing any competitive energy services in Ontario.

The Board notes that Enbridge accepted the parties' suggestions for conditions to the exemption. The Board finds that as there is no disagreement regarding the Gazifère exemption and the proposed conditions, it will grant the exemption subject to the following conditions (the "Gazifère Conditions"):

1. Enbridge shall file on the public record the ISA governing the service arrangements between Enbridge and Gazifère immediately after the ISA is executed, and must also file an updated ISA in the event of any material change or renewal;
2. Enbridge shall file with the Board a new exemption request in the event of any material change in the facts or circumstances underlying the exemption;
3. Gazifère employees having access to Enbridge customer information shall be bound by the confidentiality provisions of the ISA; and
4. Gazifère does not provide any competitive energy services in Ontario.

Wind Farm Exemption

With respect to the exemption for the two new wind farms, the Board observes that the current exemption request is essentially the same as that granted by the Board for the Kincardine wind farm in late 2008 as part of Board proceeding EB-2008-0275. The exemption sought in this application would allow Enbridge operational control personnel to provide communications and

control services to the new wind farms, just as it has been doing in respect of the Kincardine wind farm. The control services consist of SCADA monitoring and data recording, emergency shut off procedures and communications to satisfy the requirements of the Independent Electricity System Operator (the “Control Services”). The 2008 Kincardine wind farm exemption was granted with no expiry date.

In this proceeding Enbridge is also seeking a “generic” exemption for Control Services for other affiliated wind farm operations and thereby avoid having to return to the Board for future ARC exemptions identical to the application herein. Enbridge indicated that, at this time, there are additional wind farms being contemplated. The generic aspect of the exemption sought by Enbridge is also without an expiry date.

All the parties commented on the both the nature of the exemption itself and the generic aspect of the exemption request. No party indicated a concern with the underlying nature of the Control Services exemption.

Intervenors, however, did express concerns about the generic aspect of the requested exemption and the fact that it carried no expiry date. IGUA submitted that given the wind power industry’s rapid growth in Ontario, there may be independent, market-priced control service providers that will emerge in the future. IGUA therefore submitted that the exemption be granted on a time limited basis of two years. Enbridge would then be free to apply for an extension, with evidence addressing the then state of the market for the provision of such services. CME also advocated a maximum two year exemption for the wind farms. While CME acknowledged the operational and regulatory efficiencies associated with the generic exemption, it also provided a note of caution. As a matter of general policy, CME said that the Board should be “very cautious when issuing generic exemptions that may apply to unknown future projects”. Board staff submitted that the generic exemption should not pose harm to the public interest, as long as it was restricted to the Control Services and that the affiliates in question were power generators.

Board staff and CME said that with respect to filing requirements, the ISAs should be filed as soon as they are executed and that an updated ISA should be filed if there are material changes or the ISA expires. Both parties submitted that a material change in circumstance relating to the exemption should require an application for approval. CME went further and submitted that when the generic exemption expires, Enbridge should be required to file an application for renewal of the existing ARC exemptions. This would provide an opportunity for the Board to ensure that the ARC exemptions continue to operate in the public interest.

Enbridge opposed the intervenors’ suggestion of a two year expiry date for the exemptions and argued that requiring a renewal application would not be a productive use of time and resources for anyone, including the Board, to again review the same exemption requests. Enbridge anticipated that such an application would simply state that there has been no material change

in the circumstances underpinning the exemption granted in this proceeding. Enbridge went on to state that if the Board is considering an expiry date, the Board should identify the public interest impact, and if there is any, set an expiry date of five years instead of two years.

The Board has considered the submissions and agrees with Enbridge that a two year expiry date on the generic exemption would impose an unnecessary regulatory burden. The Board, however, would be concerned if it granted a perpetual generic exemption without a monitoring mechanism to take account of material changes. Accordingly, the Board finds that it would be useful to require a new application when there is a material change in any circumstances underlying the granting of an exemption in this proceeding. Furthermore, the Board finds that requiring Enbridge to file the current version of the ISA on the public record will enable all parties to monitor the extent of the Control Services being provided by Enbridge to the wind farms. With respect to the perpetual nature of the exemption, the Board's view is that an expiry date is required to provide another level of regulatory support insofar as it would permit a re-examination of the exemption in an updated context. Accordingly, the Board has decided to impose an expiry date of six years. In addition, the Board finds that it would be in the public interest for Enbridge to provide on-going assurance that conditions underlying the exemption have remained unchanged. In this regard, the Board would be assisted by periodic affirmations from Enbridge that the facts and circumstances underlying this exemption grant remain unchanged. The Board believes that this could be satisfied if Enbridge files a letter of affirmation to this effect every two years.

The Board has considered the matter and will grant an exemption from the ARC section 2.2.4 subject to the following conditions (the "Wind Farm Conditions"):

1. Enbridge shall file the ISA governing the service arrangements between Enbridge and each affiliated wind farm on the public record immediately after the ISA is executed, and must also file the ISA in the event of any material change, renewal or expiry;
2. Enbridge shall file with the Board a new exemption request application in the event of any material change in the facts or circumstances underlying the exemption, or the passage of six (6) years from the date of this Decision and Order, whichever occurs first.
3. Enbridge shall, once every two (2) years from the date of this Decision and Order, file with the Board a letter of affirmation that the facts or circumstances underlying the exemption remain unchanged for each of the affiliated wind farms.
4. The exemption shall be restricted to the provision of Control Services and shall be applicable to affiliated wind power generators.

Costs

A decision regarding cost awards will be issued at a later date. CME and IGUA requested eligibility to claim an award of costs. The Board hereby grants to CME and IGUA eligibility to claim an award of costs. CME and IGUA shall file their cost claims as directed below.

THE BOARD ORDERS THAT:

1. Enbridge is granted the requested exemption from section 2.2.4 of the Affiliate Relationships Code for Gas Utilities in respect of its relationship with Gazifère Inc. subject to the Gazifère Conditions listed in this Decision and Order.
2. Enbridge is granted the requested exemption from section 2.2.4 of the Affiliate Relationships Code for Gas Utilities in respect of the Control Services rendered to it affiliated wind farms subject to the Wind Farm Conditions listed in this Decision and Order.
3. Enbridge shall copy all intervenors and any other person requesting a copy in respect of any filings referred to in this Decision and Order.
4. Parties eligible for a cost award shall submit their cost claims by March 7, 2011. A copy of the cost claim must be filed with the Board and a copy is to be served on Enbridge. Cost claims must be prepared in accordance with the Board's *Practice Direction on Cost Awards*.
5. Enbridge will have until March 14, 2011 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.
6. Any party whose cost claim was objected to will have until March 21, 2011 to make a reply submission as to why their cost claim should be allowed. One copy of the submission must be filed with the Board and one copy is to be served on Enbridge.
7. All filings to the Board must quote file number EB-2010-0232 and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.ontarioenergyboard.ca. Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found on the "e-Filing Services" webpage of the Board's website at www.ontarioenergyboard.ca.

If the web portal is not available you may email your document to BoardSec@ontarioenergyboard.ca .

DATED at Toronto, February 22, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary