



500 Consumers Road
North York ON M2J 1P8
Canada

Richard Lanni
Legal Counsel
Regulatory and Litigation
Tel 416-495-5904
Fax 416-495-5994
Email richard.lanni@enbridge.com

March 25, 2004

Via Facsimile and Courier

Paul B. Pudge
Assistant Board Secretary
Ontario Energy Board
P. O. Box 2319
2300 Yonge Street
Toronto, Ontario.
M4P 1E4

Dear Mr. Pudge:

Re: Proposed Amendments to Affiliate Relationships Code for Gas Utilities ("ARC") RP-2004-0140

Thank you for your letter to Marika Hare dated March 15, 2004, inviting comments on the Board's proposed amendments to the ARC. We have reviewed the proposed amendments and are forwarding to you with this letter, three hard copies and one electronic copy (in Word format) of Enbridge Gas Distribution's comments on the proposed amendments. We appreciate the opportunity that the Board has given to Enbridge Gas Distribution to provide comments. We also look forward to reviewing, and would welcome the opportunity to provide further comment on, the Board's proposed amendments as issued to the public. If you have any questions, please do not hesitate to contact us.

Yours truly,

(original signed)

Richard Lanni
Legal Counsel
Regulatory and Litigation

RL/kd
Att.

**ENBRIDGE GAS DISTRIBUTION INC. ("ENBRIDGE")
COMMENTS ON THE PROPOSED AMENDMENTS TO THE
OEB AFFILIATE RELATIONSHIPS CODE FOR GAS UTILITIES**

Purpose of this Code

Enbridge has no comment.

Definitions

Enbridge seeks further clarification with respect to the definition of "**fully-allocated cost**". It is unclear (in the way that the Board proposes to apply this definition in the revised ARC) how often, and to what level of detail, the Board would require utilities and affiliates to conduct a fully-allocated cost study to justify costs where no competitive market for the service exists. Enbridge recommends that the Board allow for the use of an inflationary indexing mechanism for a term of five years from the date a fully-allocated cost study (or other method of cost study satisfactory to the Board) is completed.

Enbridge also requests clarification from the Board with respect to the definition proposed for "**service**", especially as it relates to applications of proposed sections 2.3.6 and 2.3.7. Whereas the wording "... includes a corporate service", together with the Board's commentary on page 13, implies that the Board will view services provided by a corporate head office as individual, sections 2.3.6 and 2.3.7 could be interpreted to suggest that the noted thresholds apply to a contract for corporate services, as a group. Enbridge notes that utility contracts for corporate services are, in practice and by their nature, grouped together. To require separate contracting and possible bidding for such services would be impractical.

Enbridge further submits that, as a matter of policy, it would not be prudent or appropriate for the utility to outsource most, if not all, corporate services. As Enbridge submitted in its 2003 rates case, such services are based on a consistent management philosophy that corporate head office plays an integral role in the formation of corporate policy, and the operating units carry out operational functions. In this respect, the corporate services that Enbridge receives are not separate and discreet "services" *per se*, and they are not, by their very nature, appropriately tendered for public bid. Enbridge expects that it would therefore be necessary for it to apply to the Board for an exemption pursuant to section 1.6 of the ARC for at least some of the corporate services it receives. Given these observations, Enbridge requests that the Board communicate its understanding of how the applicable sections would apply to corporate services.

With regard to the definition of “**utility asset**”, Enbridge asks for the Board’s clarification of what type of “intangible assets” can be part of a utility’s rate base (i.e. is it Board’s intention simply to capture fully depreciated assets here?).

Interpretations

Enbridge has no comment.

To Whom this Code Applies

Enbridge has no comment.

Coming into Force

With respect to the in force date of the proposed amendments, Enbridge will likely require a period of greater than three months within which to implement the proposed amendments to the ARC. Enbridge believes that a transition period of six-months or longer may be more realistic. Enbridge also requests that a provision be added so that existing contractual relationships with affiliates are permitted to run (i.e. grandfathered) to the end of their terms.

Transfer Pricing

Term of Contracts with Affiliates

Enbridge is not opposed in principle to the Board imposing a ceiling on the duration of contracts between utilities and their affiliates. The Company does feel, however, there may be circumstances where a contract with an affiliate, with a term greater than 5 years, may present special or unique benefits to the utility and/or the ratepayer. Enbridge recommends adding the following qualifying words (in bold) to proposed section 2.3.1:

2.3.1 The term of a contract between a utility and an affiliate shall not exceed five years, **without prior approval by the Board.**

Utility's Internal Cost

Enbridge submits that it is not appropriate, as a general rule, for the Board to impose a price-cap, using historical costs, on affiliate outsourcing arrangements. In Enbridge’s experience, many outsourcing arrangements are considered in the context of a need to make additional expenditures to update or replace existing utility assets. For example, one premise of Enbridge’s outsourcing arrangement with Enbridge Operational Services Inc. (“EOS”) is that the utility avoided the need to invest in a new SCADA system because EOS was willing to do so on the utility’s

behalf. In a case such as this, basing the future costs of the outsourcing arrangement on the utility's historical costs would not accurately reflect the true costs of the service being provided.

Enbridge further submits that the proposed "utility's internal cost" price cap fails to account for the differentiated (i.e. value-added) services provided by affiliates and the value of the intangible benefits of those arrangements. Enbridge understands the Board's desire to ensure that utilities are applying an appropriate degree of scrutiny to their affiliate arrangements. However, Enbridge believes that requiring strict adherence to an historical price cap rule will unnecessarily discourage affiliate outsourcing that could otherwise benefit ratepayers. Enbridge therefore recommends that the Board consider replacing the proposed sections 2.3.2 and 2.3.3 with requirements similar to what the Alberta Energy and Utilities Board has instituted in this regard – i.e., that the utility undertake prior net present value analyses to demonstrate ratepayer benefits and conduct periodic prudence reviews of outsourcing arrangements.

Where a Market Exists

With respect to proposed sections 2.3.4 (and 2.3.9 - 2.3.11), Enbridge requests clarification on the use of the word "reasonably" as a qualifier to a "competitive market". Use of the qualifier raises the question 'what type of evidence would the Board require to be satisfied that a market is *reasonably* competitive?' Absent further direction from the Board in this regard, Enbridge recommends that the Board delete the word "reasonably" in the applicable sections.

Enbridge notes that the use of the phrase "market price" in section 2.3.4 of the revised ARC is problematic. That is, because relationships with affiliates are, by definition, non-arm's length, it would be technically impossible to be compliant with section 2.3.4 as worded. To remedy this, Enbridge suggests that the Board amend section 2.3.4 to the following:

2.3.4 ...a utility shall pay no more than a price equal to the market price when acquiring that service...

With respect to proposed section 2.3.5, Enbridge is concerned that both the proposed revisions and the Board's commentary are silent on whether the Board will consider the required competitive bidding process to be confidential in nature. In Enbridge's experience (from its last few rates cases), all parties benefit from knowing at the outset, or as early in the process as possible, whether requested documents will be held in confidence by the Board, or whether the Board will require that the documents be filed on the public record. By their very nature, competitive tender proposals contain commercially sensitive and proprietary information that, if disclosed, may cause financial harm to the proprietor and potentially others. In most cases, open public tenders are not nearly as meaningful or effective as confidential competitive tenders for soliciting attractive proposals.

Therefore, Enbridge recommends that the Board provide an explicit acknowledgement (preferably, in the ARC itself) that it will hold in confidence any documents related to a competitive bidding process that contain commercially sensitive and proprietary information, the disclosure of which will cause financial harm, including without limitation business and pricing proposals. By doing this, Enbridge believes that the Board will be facilitating a fair and open competitive bidding process by affording complete confidentiality to all bidders.

With respect to proposed sections 2.3.6 and 2.3.7, Enbridge directs the Board to its above comments on the definition of “service”.

Where No Market Exists

Enbridge requests that the Board clarify its commentary on page 12 of the background policy paper, that:

“the proposed cost-based pricing rule will not require affiliates to immediately pass on their efficiency gains. This means affiliates still have an incentive to pursue cost reductions.”

Enbridge’s current interpretation of proposed sections 2.3.10 and 2.3.11 is that the Board would indeed require that efficiency gains be passed on to ratepayers according to the cost-based pricing rule. Enbridge also refers the Board to its above comments on the definition of “fully-allocated cost” in this regard.

With regard to this issue, in general, Enbridge feels that utilities should be afforded guidance on the types of evidence that the Board would require to be satisfied that a competitive market *does not* exist.

Transfer of Assets

With regard to proposed sections 2.3.12 to 2.3.16 of the ARC, Enbridge questions the import of the Board’s related commentary on pages 19 and 20 of its background policy paper. The commentary appears to deal with the rate treatment of transfer of utility assets in general, and not to affiliates specifically. The Company believes that the discussion regarding general rates treatment of capital gains from the sale of utility assets is unnecessary and inappropriate in this context of a discussion paper about ARC revisions. In the Company’s view, what should be reflected in the amended Code is that the proposed new rules regarding transfer at the higher of market value or net book value are not to be taken as any indication of the treatment of capital gains as between ratepayer and shareholder.

Equal access to services

Enbridge has no comment.

Confidentiality of Information

With regard to this issue, Enbridge observes that if a utility has complied with all of the steps as required by proposed section 2.3 and, accordingly, has acquired affiliate services at a market price, then the Board's requirement for information should be satisfied. If the proposed section 2.3 hurdle is met, the affiliated service provider's cost is immaterial and there should not be any additional requirement for the affiliate to produce the information identified in proposed section 2.6.1.1(1)(i).

In any event, section 1.2 of the ARC defines "confidential information" as "information relating to a specific consumer, marketer other customer of a utility service..." Proposed section 2.6.1.1, on the other hand, relates to disclosure of information by affiliates. Therefore, Enbridge submits that it would be more appropriate to include this section with proposed section 2.3.10.

Record Keeping and Reporting Requirements

Enbridge has no comment.

Is the Definition of "Affiliate" Sufficiently Broad

In reference to the Board's commentary on page 23 of the Background Policy Paper, Enbridge requests further clarification of the phrase "economically related".