

**From:** Reed, G. Darryl [GReed@Sidley.com]

**Sent:** Monday, November 05, 2007 4:46 PM

**To:** Tom Pliura; Andrew Holstine; Craig R. Hedin; Donald Korte; Doris Grunloh; Elliott M. Hedin; Eric T. Ruud; James Adams; James V. Olivero; Janis Freetly; Janis Von Qualen; John L. Benjamin; Jon Robinson; Mark Maple; Mary Babb; Mercer Turner; Robert J. Beyers; Roy P. Farwell; Thomas J. Healey; William J. Holstine; William M. Hacker & Lorraine M. Hacker

**Cc:** joel.kanvik@enbridge.com; Ambrose, Gerald

**Subject:** RE: Enbridge Responses to Staff Discovery ENG 1.19 and JF 1.07

Notwithstanding your arguments, the ICC Staff received the information pursuant to the guarantees adopted by the Illinois General Assembly for parties appearing before the ICC (See, 220 ILCS 5/5-108). This provision does not apply to persons not employed by the Commission. Enbridge is well within its rights to seek similar protections from intervening parties.

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**From:** Tom Pliura [mailto:tom.pliura@zchart.com]

**Sent:** Monday, November 05, 2007 4:35 PM

**To:** Reed, G. Darryl; 'Andrew Holstine'; 'Craig R. Hedin'; 'Donald Korte'; 'Doris Grunloh'; 'Elliott M. Hedin'; 'Eric T. Ruud'; 'James Adams'; 'James V. Olivero'; 'Janis Freetly'; 'Janis Von Qualen'; 'John L. Benjamin'; 'Jon Robinson'; 'Mark Maple'; 'Mary Babb'; 'Mercer Turner'; 'Robert J. Beyers'; 'Roy P. Farwell'; 'Thomas J. Healey'; 'William J. Holstine'; 'William M. Hacker & Lorraine M. Hacker'

**Cc:** joel.kanvik@enbridge.com; Ambrose, Gerald

**Subject:** RE: Enbridge Responses to Staff Discovery ENG 1.19 and JF 1.07

Mr. Reed:

To begin with, neither I nor any of my intervening clients wish to disclose Enbridge's confidential information.

On the other hand, I believe your proposed draft "confidentiality agreement" goes way too far. As an example, what is the substantive difference between "Confidential Information", "Confidential and Proprietary Information", and "Highly Confidential Information"? It seems that Enbridge is the sole decider as to what constitutes confidential information.

Your Confidentiality Agreement includes, among other things, restricted methods of cross-examination when confidential information is being used. I think the first thing we need to determine is who gets to decide what constitutes "confidential information" or "highly confidential information." I have a bit of trouble agreeing to certain procedural aspects of this case without knowing what the specific information is. I believe it is more appropriate that the Administrative Law Judge (ALJ) should make rulings on what type of information constitutes "confidential information" or "highly confidential information." You have also included language that states parties must return information if Enbridge wishes to enforce portions of the agreement. I am not at all comfortable signing your draft Confidentiality Agreement. I cannot agree that I will not disclose something, simply because Enbridge chooses to label the information as "confidential." I think the ALJ should be making a determination as to what should be considered confidential information, as opposed to Enbridge making that decision. In my opinion, if Enbridge wishes that certain information should be treated as confidential, then Enbridge needs to provide said information to the ALJ for an *in camera* ruling. I simply will not agree to a blanket agreement whereby anything Enbridge labels as "confidential" is in fact "confidential. Your draft agreement mentions competitors of Enbridge who may be a party in this matter. I have no idea who Enbridge's competitors are and I certainly don't know any entity that could be considered as a competitor and is currently a party. It seems you might be worried that a potential pipeline competitor could intervene into the case and thereafter obtain confidential information. That seems like a valid concern, but I am not sure how this has been handled by the ICC in the past.

With all due respect to Enbridge, I think your client has an obligation to provide my intervening clients with the same information provided to the ICC staff. Very respectfully, if the ICC staff has received the information, then I wish to receive the information as well. The expert witnesses in this case need to receive the information as soon as possible so we can prepare our direct testimony. If need be, we can solicit the help of the ICC staff as to how these

types of matters have been handled in the past. I do not believe it is appropriate for Enbridge to provide ICC staff with staff responses yet not provide the same to the intervenors.

I look forward to hearing from you.

Tom Pliura

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**From:** Reed, G. Darryl [mailto:GReed@Sidley.com]

**Sent:** Monday, November 05, 2007 3:54 PM

**To:** Tom Pliura; Andrew Holstine; Craig R. Hedin; Donald Korte; Doris Grunloh; Elliott M. Hedin; Eric T. Ruud; James Adams; James V. Olivero; Janis Freetly; Janis Von Qualen; John L. Benjamin; Jon Robinson; Mark Maple; Mary Babb; Mercer Turner; Robert J. Beyers; Roy P. Farwell; Thomas J. Healey; William J. Holstine; William M. Hacker & Lorraine M. Hacker

**Cc:** joel.kanvik@enbridge.com; Ambrose, Gerald

**Subject:** RE: Enbridge Responses to Staff Discovery ENG 1.19 and JF 1.07

Pursuant to your request for the information submitted by Enbridge Pipelines (Illinois) L.L.C. ("Enbridge") in response to Staff Data Requests JF 1.01 and JF 1.05-1.07, information designated by Enbridge as Commercially Sensitive, Confidential and Proprietary, attached hereto is a copy of Enbridge's Confidentiality Agreement. Upon receipt of the executed documents, Enbridge will provide the requested information subject to the provisions of the Confidentiality Agreement.

G. Darryl Reed  
Sidley Austin LLP  
One South Dearborn  
Suite 3500  
Chicago, IL 60603  
(312) 853-7766 (V)  
(312) 853-7036 (F)

Dionne Kerney  
Administrative Assistant  
(312) 853-2201

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**From:** Tom Pliura [mailto:tom.pliura@zchart.com]

**Sent:** Saturday, November 03, 2007 4:55 PM

**To:** Reed, G. Darryl; 'Andrew Holstine'; 'Craig R. Hedin'; 'Donald Korte'; 'Doris Grunloh'; 'Elliott M. Hedin'; 'Eric T. Ruud'; 'James Adams'; 'James V. Olivero'; 'Janis Freetly'; 'Janis Von Qualen'; 'John L. Benjamin'; 'Jon Robinson'; 'Mark Maple'; 'Mary Babb'; 'Mercer Turner'; 'Robert J. Beyers'; 'Roy P. Farwell'; 'Thomas J. Healey'; 'William J. Holstine'; 'William M. Hacker & Lorraine M. Hacker'

**Subject:** RE: Enbridge Responses to Staff Discovery ENG 1.19 and JF 1.07

Mr. Reed:

I previously inquired as to why intervenors have not received any information related to responses that you label as "Proprietary and Confidential Information". I have not received a response from you. You have again included "Attachment H" without and disclosure of information. Very

respectfully, Intervenor need to have a response as to why you have not forwarded the responses to us. It is not acceptable for you simply not to respond to my inquiry. Time is short and we have an extremely aggressive schedule to meet. Any additional delays caused by you will surely prejudice our ability to prepare for this matter.

Again, very respectfully, Intervenor who I represent request that you respond to me by the close of business day, 5:00 PM, Monday, November 5, 2007. If I have not heard from you by that day, we will file a motion seeking to compel production of the information.

Thank you.

Tom Pliura

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**From:** Reed, G. Darryl [mailto:GReed@Sidley.com]

**Sent:** Friday, November 02, 2007 9:18 PM

**To:** Andrew Holstine; Craig R. Hedin; Donald Korte; Doris Grunloh; Elliott M. Hedin; Eric T. Ruud; James Adams; James V. Olivero; Janis Freetly; Janis Von Qualen; John L. Benjamin; Jon Robinson; Mark Maple; Mary Babb; Mercer Turner; Robert J. Beyers; Roy P. Farwell; Thomas J. Healey; Thomas J. Pliura; William J. Holstine; William M. Hacker & Lorraine M. Hacker

**Subject:** Enbridge Responses to Staff Discovery ENG 1.19 and JF 1.07

Please see attached files.

<<07-0446 11.2.07 Cover Letter.pdf>> <<07-0446 Burgess 11.2.07 Attestation.pdf>> <<ICC Staff Data Request No ENG 1 19.pdf>>  
<<Attachment I - Final R L Prombroin Economic Benefit Report for SA-Exten.pdf>> <<ICC Data Request JF-1 07.pdf>> <<07-0446  
Attachment H Cover.pdf>>

Sidley Austin LLP mail server made the following annotations on 11/02/07, 21:14:45:

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Sidley Austin LLP mail server made the following annotations on 11/05/07, 16:43:12:

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## Confidential Information

1. The undersigned, an attorney/consultant/employee **[circle one]** for \_\_\_\_\_ in the above-captioned proceeding, hereby acknowledges that I may receive in this proceeding certain information from Enbridge that has been or will be identified and marked as “Confidential” by Enbridge (“Confidential Information”). As a condition of this production, I agree on behalf of the above-named party that such information shall be subject to this Agreement.

2. Any person who has executed this Agreement shall use or disclose the Confidential Information only for purposes of preparation for and conduct of this proceeding, and then solely as provided herein, and shall take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Agreement. All Confidential Information produced or exchanged in the course of this proceeding shall be used solely for the purposes of this proceeding or any appeal arising therefrom and shall not be used for any other purpose. In the event a party intends to use any Confidential Information in testimony, exhibits, data request responses, cross-examination, briefs or other documents to be filed in this case, the Confidential Information shall be sealed and served only on the Commission and the persons granted access to such information pursuant to this Agreement. Cross-examination involving Confidential Information shall be conducted during proceedings which will be closed to all those who are not allowed access to the Confidential Information under this Agreement. The transcript of such proceedings shall be kept under seal.

3. If at any time another court, administrative agency, person or entity subpoenas, requests or orders production of Confidential Information or documents containing the same, the party receiving such a subpoena, request or order shall promptly notify Enbridge of that fact and provide Enbridge with an opportunity to seek appropriate remedies in order to prevent the release of any Confidential Information

4. All persons having Confidential Information or copies of documents containing Confidential Information (including but not limited to testimony, exhibits, transcripts, data responses and briefs) shall return all such materials to Enbridge within fifteen days after such Commission order becomes final and no longer subject to appeal. Persons receiving Confidential Information shall also destroy all notes, working papers and other documents containing Confidential Information and shall certify to Enbridge that such notes, working papers and documents have been so destroyed.

5. Should any person who has signed this Agreement violate or disregard any provision of this Agreement, Enbridge shall have the right to seek immediate and specific enforcement of this Agreement from the Administrative Law Judge, a court of competent jurisdiction, or any other appropriate tribunal, and to obtain any appropriate remedy for such violation. In the event Enbridge seeks enforcement of this Agreement, the undersigned agrees to return all copies of documents received pursuant to this Agreement to Enbridge within two business days following Enbridge’s filing for enforcement. Enbridge shall retain these documents until the dispute is resolved. In the event that the Administrative Law Judge, court of

competent jurisdiction, or other appropriate tribunal finds clear evidence that no violation of the Agreement occurred, Enbridge will return the documents to the affected person.

### Confidential and Proprietary Information

6. I acknowledge that, pursuant to this Agreement, I may receive in this proceeding certain information from Enbridge that has been or will be marked as “Confidential and Proprietary” by Enbridge (“Confidential and Proprietary Information”).

7. As a condition of the production of such Confidential and Proprietary Information, I agree on behalf of the party named in Paragraph 1 above that such Confidential and Proprietary Information and/or documents shall also be subject to and receive all the protections accorded Enbridge’s Confidential Information by Paragraphs 1-5 above, and be subject to all other provisions of this Agreement.

8. With respect to any competitor of Enbridge that is a party in the above captioned proceeding, Confidential and Proprietary Information shall only be disclosed to an attorney or consultant representing such competitor in the above captioned proceeding provided that such attorney or consultant has signed this Agreement. In no event shall Confidential and Proprietary Information be disclosed to an employee of a competitor of Enbridge regardless of whether such employee has signed this Agreement.

9. I agree that I will only use the Confidential and Proprietary Information for purposes of this proceeding and that I will not participate in any discussions or decisions involving or relating to Enbridge competitor’s marketing or other competitive efforts or strategy where the Confidential and Proprietary Information provided by Enbridge may be directly or indirectly useful to the competitor, regardless of whether such competitor is a party in the above captioned proceeding. Such Confidential and Proprietary Information shall not be disclosed to any employee, consultant or agent, or any officer or director of a competitor of Enbridge, or to any other individual or entity not granted access as a result of this Agreement. This Paragraph is without prejudice to Enbridge’s right to make objections as provided in Paragraph 15 below.

### Highly Confidential Information

10. I acknowledge that, pursuant to this Agreement, I may receive in this proceeding certain information from Enbridge that has been or will be marked as “Highly Confidential” by Enbridge (“Highly Confidential Information”).

11. As a condition of the production of such Highly Confidential Information, I agree on behalf of the party named in Paragraph 1 above that such Highly Confidential information and/or documents shall also be subject to and receive all the protections accorded Enbridge’s Confidential Information by Paragraphs 1-5 above, receive all the protections accorded Enbridge’s Confidential and Proprietary Information by Paragraphs 6-9 above, and be subject to all other provisions of this Agreement.

12. Highly Confidential Information shall only be disclosed to an attorney or consultant representing a party in the above captioned proceeding provided that such attorney or consultant has signed this Agreement. In no event shall Highly Confidential Information be disclosed to an employee of a party to the above captioned proceeding regardless of whether such employee has signed this Agreement.

13. I agree that I will only use the Highly Confidential Information for purposes of this proceeding. Such Highly Confidential Information will not be disclosed to any employee, agent, or any officer or director of a party to the above captioned Agreement, or to any other individual or entity not granted access as a result of this Agreement. This Paragraph is without prejudice to Enbridge's right to make objections as provided in Paragraph 15 below.

#### Miscellaneous

14. I agree that if Enbridge inadvertently produces information not marked "Confidential" or "Confidential and Proprietary" or "Highly Confidential" and Enbridge subsequently notifies me that such information is Confidential or Confidential and Proprietary or Highly Confidential, I will treat such information in accordance with the provisions of this Agreement.

15. This Agreement does not affect any party's right to make appropriate objections as to the relevancy, materiality or admissibility of any information requested, furnished or received as a result of this Agreement. Also, if as to any particular request, Enbridge reasonably believes that the confidential or proprietary nature of the requested information is such that additional protections should be afforded or that no disclosure should be made to one or more of the parties and/or their third-party experts, it may object to disclosure on such grounds and the issue will be dealt with through a Motion to Compel.

**I HAVE READ THIS AGREEMENT AND AGREE TO BE ABIDE BY ITS TERMS.**

**AGREED:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's  
Address: \_\_\_\_\_

Party  
Representing: \_\_\_\_\_

Date: \_\_\_\_\_