

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Enbridge Pipelines (Illinois), L.L.C.,)	
)	
Application Pursuant to Section 8-503, 8-509 and)	07-0446
15-401 of the Public Utilities Act/The Common)	Upon Reopening
Carrier by Pipelines Law to Construct and Operate)	
a Petroleum Pipeline and When Necessary to Take)	
Private Property As Provided by the Law of)	
Eminent Domain.)	

PLIURA INTERVENORS
MOTION TO REOPEN DISCOVERY AND MOTION TO COMPEL STAFF
RESPONSES TO DATA REQUESTS

NOW COME the Intervenor herein who throughout these proceedings for convenience purposes have been identified as “Pliura Intervenor”, by and through their mutual counsel, Thomas J. Pliura, M.D., J.D., and respectfully move the Honorable Administrative Law Judge for an Order reopening discovery and compelling Staff to answer data requests previously submitted by Pliura Intervenor but refused by Staff. In support of said motion, Pliura Intervenor respectfully state as follows:

1. On July 28, 2014, the Hon. ALJ entered a scheduling order that included the following provision:

“...the due date for filing of Staff and Intervenor testimony and exhibits is August 27, 2014. In order to facilitate this scheduling element, Enbridge shall respond to data requests (“DRs”) and similar discovery requests within 14 days after receipt thereof, unless the requester agrees to a longer response period. The due date for the filing of Enbridge rebuttal testimony and exhibits is September 3, 2014. Thereafter, an evidentiary hearing will be held on September 10, 2014, or on some other day during the week of September 8 or September 15, 2014.”

2. Unbeknownst to Pliura Intervenors at that time, Staff, Counsel for Staff and Counsel for Applicant had previously engaged in various *ex parte* communications related to the 07-0446, 13-0446 and 07-0446 (reopened) proceedings. Those *ex parte* communications were the subject of various motions, certain testimony at the evidentiary hearing, and certain limited and incomplete staff disclosures.
3. Staff has taken the position that none of the *ex parte* communications were improper. This issue remains disputed and unresolved. But irrespective of whether they were properly conducted and documented, Staff has never identified a basis for the communications being confidential.
4. However, the information disclosed to date on this subject of critical importance is obviously incomplete on its face. For example, a disclosed email communication from Staff Counsel John Feeley dated Wednesday, April 30, 2014 addressed to counsel for Applicant includes the phrase "...we mentioned to Jerry..." yet there has been no disclosure of any communication with Applicant Counsel Gerald "Jerry" Ambrose to which this statement likely applies. Similarly, the email asked for a "preview of the filing" but Staff has never disclosed any documents related to such "preview of the filing".
5. Attached hereto and incorporated herein as **Exhibit A** is a data request submitted to Staff by Pliura Intervenors on September 16, 2014, seeking all information and documents related to the *ex parte* communications.
6. On or about September 22, 2014, Staff Counsel indicated via email message that "We received your data requests dated September 16, 2014. The time for discovery/data requests in this reopened matter is over. Staff will not be responding to your September

16, 2014 data requests.” A copy of said email communication is attached hereto as **Exhibit B**.

7. Staff’s position related to these *ex parte* communications is contrary to 83 Ill. Adm. Code 200.340, which states, in pertinent part, “It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information...”
8. The record in this case, the unusual nature of the proceedings, the unusual circumstances of the *ex parte* communications and lack of candor by Applicant and Staff as to these *ex parte* communications, all support a determination that Pliura Intervenors have exercised due diligence in seeking this information and are not seeking it for harassment or to cause delay or prejudice.
9. A full and fair adjudication of the instant matter requires complete disclosure of the requested information.
10. Because the ICC is a public entity subject to the Freedom of Information Act, some of the information is likely available through a FOIA request. Attached hereto and incorporated herein as **Exhibit C** is a FOIA request made September 23, 2014 seeking documents related to the *ex parte* communications.
11. However, the availability of some of the same documentation through a FOIA request does not justify or excuse Staff’s refusal to make full disclosure of this relevant information through the appropriate discovery provisions of the Regulations. The FOIA

request is merely an effort by Pliura Intervenors to mitigate Staff's refusal to provide proper disclosure.

WHEREFORE, Pliura Intervenors respectfully pray for an order reopening discovery for the purposes of obtaining full disclosure of information related to the *ex parte* communications between Staff and Applicant and for an order compelling Staff to answer the data requests attached hereto as Exhibit A.

Respectfully submitted this 24th day of September, 2014.

s/THOMAS J. PLIURA, M.D., J.D.
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PROOF OF SERVICE

The undersigned certifies that on this 24th day of September, 2014 he served a copy of the foregoing document upon the individuals on the attached service list, by electronic mail.

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