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DELIVERED VIA ELECTRONIC MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

(collectively called the "**Authorities**")

c/o:
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Dear Sirs/Mesdames:

Re: Comment Letter CSA Multilateral Notice and Request for Comment Proposed Multilateral Instrument 91-101 *Derivatives Product Determination* and Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*

Enbridge Inc. together with its affiliates, subsidiaries and related entities (collectively "**we**" or "**Enbridge**") hereby respectfully submits these comments in response to the Authorities' request for comments in connection to the Canadian Securities administrators ("**CSA**") Multilateral Notice and Request for Comment Proposed Multilateral Instrument 91-101 *Derivatives Product Determination* (the "**Scope Rule**"); Proposed Companion Policy 91-101CP the "**Scope CP**"); Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "**TR Rule**") and the Proposed Companion Policy 96-101CP (the "**TR CP**") (collectively the "**Proposed Instruments**"). The Proposed Instruments were published on January 21, 2015, and outline the Authorities' proposals related to, among other things, derivative product determination and derivatives transaction data reporting.

Enbridge appreciates the opportunity to comment on the Scope and TR Rules and commends the Authorities' efforts to address some of the concerns raised by Enbridge and other market participants regarding the Rules 91-506 and 91-507 currently in effect in Ontario, Quebec and Manitoba.

However, while Enbridge supports the Authorities' general intentions espoused by the CSA to "protect participants in the derivatives markets from unfair, improper and fraudulent practices; protect the soundness of Canadian financial markets and reduce risks, including systemic risks, resulting from the derivatives activities of key market participants", Enbridge is very concerned that despite the Authorities specific proposals that differentiate the Scope and TR Rules from Rules 91-506 and 91-507, some of the key requirements the Authorities are proposing to impose in the Scope and TR Rules on derivatives market participants are over reaching; does not square with economic reality and should not be imposed on market participants such as Enbridge who enter into derivatives transactions for purely commercial hedging purposes.

In addition, as these proposals in the Scope and TR Rules are part of the mechanisms the Authorities are recommending to put in place to establish a regulatory regime for the over-the-counter ("**OTC**") derivatives market in their provincial jurisdictions to support Canada in meeting its G-20 commitments, Enbridge respectfully submits that some of these proposals are not consistent with the regulations being adopted in the United States (the "**U.S**."), the most important partner to Canadian energy market partners in cross-border derivatives trading. As a result, if these proposals are adopted, entering into derivatives transactions with Canadian energy market participants would become onerous, burdensome and most importantly very costly, thereby putting Canadian energy market participants at a competitive disadvantage and would cause a freeze in the liquidity available in the Canadian OTC derivatives marketplace, which would increase systemic risk in Canada.

Enbridge operates the world's longest and most complex crude oil pipeline system, delivering on average of more than 2.2 million barrels per day to Canada and in the U.S. Enbridge is moving rapidly to access new markets for Canadian and U.S. crude through a suite of commercially secured growth projects being rolled out through 2017. We are currently aiming to open North American markets for up to 1.7 million barrels per day of new production. That includes connecting Canadian oil sands product to refineries in the Houston area through our Gulf Coast Access program; and connecting light oil supply from the Bakken and western Canada to premium markets in the U.S. Midwest, Ontario, and Quebec through our Eastern Access and Light Oil Market Access initiatives. In addition, we are expanding capacity in the Canadian oil sands where Enbridge is the region's leading pipeline operator.

Liquids Pipelines

Enbridge's mainline system is the largest conduit of oil into the United States. We transport 53% of U.S.-bound Canadian production, which accounts for 15% of total U.S. imports.

Gas Pipelines + Processing

Enbridge has extensive natural gas systems both onshore in Canada and the United States, and offshore in the Gulf of Mexico, that transport approximately 45% of the natural gas produced in the deepwater Gulf. We also have midstream processing facilities in both Canada and the U.S., as well as joint-venture interests in the Alliance Pipeline, the Vector Pipeline and the Aux Sable fractionation plant near Chicago.

Gas Distribution

Enbridge is the largest natural gas distributor in Canada. Today, Ontario-based Enbridge Gas Distribution is delivering affordable, clean-burning natural gas to over 2 million residential, commercial and industrial customers.

Power Generation + Transmission

Enbridge's power generation interests are made up of renewable assets in Canada and the U.S. with the capacity to generate more than 1,800 megawatts (MW) of emissions-free energy— enough to power approximately 600,000 homes. Our first power transmission project went into operation in 2013 and we're currently evaluating additional investment opportunities in this area. We have interests in wind, solar, geothermal, a fuel cell and waste heat recovery facilities with a total generating capacity of more than 1,800 MW of emissions-free energy. Enbridge is Canada's largest solar energy and second largest wind power producer.

Energy Services

Energy Services provides energy supply and marketing services to North American refiners, producers and other customers. Crude oil and NGL marketing services are provided by Tidal Energy (a wholly-owned subsidiary of Enbridge Inc.) which transacts at many North American market hubs.

Like many other "end-users", Enbridge transacts in derivatives to hedge the risks associated with its core business of transporting and processing energy commodities, where it is "economically appropriate to the reduction of risks in the conduct and management of its commercial enterprise"[1] where the risks arise from numerous sources including risk associated with energy commodities as well as interest rate and foreign exchange risks. Enbridge transacts in derivatives on its own behalf, which clearly is meant to mitigate its own risks.

Enbridge is a member of the Canadian Energy Derivatives Working Group; the International Energy Credit Association ("**IECA**") Contracts & Legal Education Group; and the IECA's Canadian Derivatives Regulatory Working Group ("**IECA Canadian Working Group**") and fully supports the comments submitted by the IECA Canadian Working Group with respect to the Scope and TR Rules.

In your request, you have encouraged comments on all aspects of the Proposed Instruments, and you are also seeking comments on specific aspects of the Scope Rule; the Scope CP; the TR Rule and the TR CP. Where they are applicable to Enbridge, we would endeavor to answer some of the questions you have posed on certain aspects of the Proposed Instruments within our comments on aspects of the Proposed Instruments that are of great concern to Enbridge.

I. <u>ENBRIDGE'S SPECIFIC COMMENTS ON THE TR RULE</u>

1. Inter-Affiliate Derivatives

The Authorities do not differentiate between outward-facing derivatives (i.e. market-facing derivatives) and inter-affiliate derivatives in the TR Rule. We believe that the Authorities have not considered the costs to be incurred by end-users such as Enbridge to report inter-affiliate derivatives We have scoured the market to get an estimate of what it would cost Enbridge to secure and maintain a system to report inter-affiliate derivatives. These costs below were presented to Enbridge by builders of reporting systems. These costs are based on one of three possible implementation options.

[1] See the CFTC's Final Rule on *End-User Exception to the Clearing Requirement for Swaps* published in July of 2012.

Cost Type	Amount
License/Subscription	$120,000
Software Configuration	$75,000
In house Cost	$67,200
Total	$262,200

Ongoing Yearly Costs	Amount
Vendor Maintenance	$120,000
MRM and Other Support/Maintenance	$53,760
DTCC Annual Fee	$10,000
Estimated DTCC Maintenance Fee	$1,930
Estimated ICE eConfirm Data Load	$1,728
Estimated ICE Trade Vault Fee	$12,000
Additional Internal ICE Support Costs	$26,880
	$226,298

We strongly urge the Authorities to weigh the high costs to market participants of reporting inter-affiliate derivatives versus the perceived benefits for the Authorities.

In the U.S., the Commodity Futures Trading Commission (the "**CFTC**"), after considering end-users concerns, decided on April 5, 2013 that it did not consider the reporting of inter-affiliate trades to be of benefit to the public interest and as such inter-affiliate trades under certain conditions, are not required to be reported.

Though the Authorities do not specifically address inter-affiliate derivatives in the TR Rule and accordingly under the TR Rule, all derivatives transactions involving a local counterparty will be required to be reported to a recognized trade repository ("TR") or, in limited circumstances, to the relevant Authority, the Authorities do however, recognize and differentiate inter-affiliate derivatives transactions from market-facing derivatives transactions in the context of pre-existing transactions[2] and public dissemination of data[3]. By excluding inter-affiliate derivatives from the requirements of public dissemination of derivatives transactions data, the Authorities have established that it is not prejudicial to the public interest rather it would be damaging to the public interest as publicly disseminating derivatives and pricing data between affiliated entities would not enhance price discovery, as such derivatives transaction and pricing data would already have been publicly disseminated in the form of the related market facing derivative.

The Authorities not distinguishing between market-facing derivatives transactions and inter-affiliate derivatives transactions would mean all end-users will have to report data to a TR in the same form and manner for both market-facing derivatives and inter-affiliate derivatives. This means that even if an end-user is not a reporting counterparty for its market-facing derivatives, and therefore is not required to report derivatives data to a TR, it would nonetheless still be a reporting counterparty with respect to its inter-affiliate derivatives and would have to report inter-affiliate derivatives data to a TR. In other words, many

[2] Inter-Affiliate data field in Appendix A
[3] Subsection 39(6) of the TR Rule.

end-users such as Enbridge would become reporting counterparties solely because they use inter-affiliate derivatives as part of a prudent risk management program. The Authorities by differentiating some of its reporting requirements from the requirements in Rule 91-507 including the changes in the reporting hierarchy contained specifically in OSC Rule 91-507, suggests to us that the Authorities intend to lessen the burden of reporting derivatives data for end-users by limiting the situations in which an end-user is the reporting counterparty for market-facing derivatives. However, the lack of a differentiation in the TR Rule between market-facing derivatives and inter-affiliate derivatives prevents the reporting burden from being lessened for end-users that employ inter-affiliate derivatives; rather it increases the burden with high costs that derivatives dealers and Canadian Financial Institutions ("**CFIs**") do not have to bear as they already have systems in place for reporting purposes.

Enbridge knows that compliance with the TR Rule for inter-affiliate derivatives is going to prove very time-consuming, onerous and costly for Enbridge as Enbridge does not have the resources and dedicated staff that derivatives dealers and CFIs have to comply with the TR Rule. We believe that regulation of inter-affiliate derivatives should square with economic reality as inter-affiliate derivatives transactions do not increase systemic risk either by creating counterparty credit risk or increasing interconnectedness between major CFIs. We have heard the Authorities justify the requirement for reporting inter-affiliate derivatives as part of your future market surveillance efforts to have market oversight over the Canadian derivatives market. In that regard, we urge the Authorities to consider the underlying rationale behind the G20 nations' commitments made in 2009, imposing a costly burden on end-users who use inter-affiliate derivatives for prudent risk management purposes; the CFTC coming to the realization that there is no benefit for inter-affiliate derivatives to be reported inter-affiliate derivatives and reconcile all these factors with its justification for requiring inter-affiliate derivatives reporting. Requiring inter-affiliate derivatives reporting in Canada, when similar transactions entered into within corporate groups in the U.S. do not have to be reported, would make it more expensive to do the same transactions within corporate groups in Canada and put Canadian market participants at a competitive disadvantage.

Inter-affiliate derivatives are used by end-users such as Enbridge to transfer risk within a corporate group in order to manage it more effectively. The negotiation of the master agreements required to transact derivatives is complex and time consuming (sometimes taking months or years). It is more effective for a large corporation with a complex organizational chart to have a handful of market facing entities and to sleeve the derivative transactions to the internal entity that has the exposure that requires hedging. The credit risk associated with the sleeving of the derivatives is always borne by the entity itself (if it has an external credit rating) or by the entity that provides financial assurances to the external counterparty to support the transactions with the market-facing entity. For credit risk to be created by the internal entities receiving the sleeved transactions, the entity providing the financial assurances (which would be the entity with the external credit rating, most likely the parent company) would have to be insolvent. Requiring Enbridge and other end-user participants to comply with the same reporting requirements for both external derivatives and inter-affiliate derivatives would create costs without any corresponding benefit (as the trades are simply passed through the external facing Enbridge entity) and place substantial burdens on end-users and consumers.

Further, the data fields required to be reported under the TR Rule when multiplied by the number of inter-affiliate derivatives creates a drain on the internal resources of end-users such as Enbridge. For example, Enbridge has calculated that the submission of all its internal derivatives data to a TR would require its internal systems to account for 54 minimum data fields as listed in Appendix A. While many fields would be "not applicable" or left blank, the required coding nonetheless will have to account for all fields, regardless of whether all fields actually apply to inter-affiliate derivatives.

To give you some context regarding the CFTC's decision of April 5, 2013, to grant the conditional permanent no-action relief for "swaps between affiliated entities", the CFTC had received multiple requests from market participants to provide no-action relief from swap data reporting obligations provided in parts 45 and 46 of its regulations and the reporting requirements related to the end-user exception from required clearing under its regulation 50.50(b), for swaps between affiliates within the same corporate group ("**Intra-group Swaps**"). Market participants like Enbridge had submitted to the CFTC that such Intra-group Swaps are used only for managing risk within a corporate group, and therefore do not increase overall systemic risk or warrant the same reporting requirements as external swaps (i.e., swaps with unaffiliated entities) ("outward-facing swaps"). In addition, certain market participants had reported that compliance with parts 45 and 46 of the Commission's reporting rules for intra-group swaps was proving difficult and extremely costly for market participants that lack the resources and dedicated staff of more sophisticated financial entities such as swap dealer ("**SDs**") and major swap participants ("**MSPs**") and large hedge funds.

The CFTC granted the permanent no-action relief[4] granting conditional no-action relief to certain entities other than SDs or MSPs from certain reporting obligations under Part 45 and Part 46 of the its regulations and the reporting requirements related to the end-user exception from required clearing under regulation 50.50(b) with respect to certain Intra-group Swaps.

In relation to the CFTC's no-action relief from its reporting requirements for intra-group swaps, Enbridge meets the conditions imposed by the CFTC to avail itself of this permanent conditional no-action relief and as a result, its U.S. affiliates and sponsored investments do not have any reporting obligations vis-à-vis their inter-affiliate swaps.

Finally on this issue, Enbridge is of the opinion that its inter-affiliate derivatives transactions data will not be useful to the Authorities since it is used only for managing its corporate group's internal risk (by among other things allowing for the netting and set-off of all transactions between parties), and, indeed, could distort the market picture for derivatives. For example, many end-users book inter-affiliate foreign exchange transactions at daily or period-ending accounting rates which they also use for other inter-affiliate cross-currency transactions and company-wide financial statement translation. The inclusion of such inter-affiliate derivatives data with these rates in the TR could distort the data when comparing to other market-facing derivatives and will make it that much harder for the Authorities to have a true picture of what is taking place in the market. As a result, Enbridge strongly urges the Authorities to exclude or exempt inter-affiliate derivatives transactions from the reporting requirements as derivatives that are exactly mirrored from an entity's outward-facing derivatives which would mean double counting of a market-facing derivative that has already being reported by a derivatives dealer or a CFI. Any argument that the inter-affiliate reporting should be retained for harmonization purposes should be considered to be moot given that the TR rules in the various jurisdictions (Manitoba, Quebec, Ontario) have already deviated from each other. The most efficient and cost effective rule should be enacted for end-users and others who do not create systemic risk in the market and who did not cause the financial crisis in 2008.

2. Exclusions in Part 5

In Part 5, Section 40, the Authorities have proposed two different options to exclude otherwise reportable commodity derivatives. Option #1 seems the most appropriate for the end-user community as it excludes any transactions between two end-users that are below the $250,000,000 threshold. There are a few issues with section 40(c) that need to be clarified or amended.

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[4] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-09.pdf

(a) Enbridge has a concern with the requirement that the reporting counterparty "know" what their counterparty has, at the time of the transaction, for outstanding commodity transactions. There is no way for parties to confirm this without assistance from their counterparty and it will be difficult to obtain that information at the time of the transaction. This requirement is unworkable;

(b) Enbridge understands that the $250,000,000 threshold would be a daily rolling amount. Practically speaking, there needs to be more clarity on how this threshold and the associated reporting would be handled by parties. Do all amounts under commodity agreements have to be converted to Canadian currency? At what exchange rate? As of the transaction date? If transactions needed to be reported one month because the entity exceeded the threshold, and then new transactions were excluded the next month because the entity fell under the threshold, how would parties manage this in their internal reporting systems? If an automatic notification or a report was required to be generated, this would require an additional expenditure by end-users on their IT systems as they currently are not as sophisticated as other parties (for example, CFIs).

(c) A $250,000,000 threshold is too small and will require too many smaller energy companies to report. In the U.S. the *de minimis* threshold is 8 billion U.S. dollars. This is the threshold that applies to Canadian energy companies with U.S. affiliates. As a result, transactions that are not reportable in the U.S. are reportable in Canada. Enbridge would suggest that a threshold of a minimum of $1 billion Canadian dollars would be more appropriate.

(d) Enbridge urges the authorities to allow netting when a party is determining if it is breaching the threshold in Section 40. All industry standard commodity trading agreements (including the GasEDI, NAESB and various crude oil and NGL general terms and conditions) allow the parties to net their exposures to each other for both payment purposes and in default scenarios.

(e) Section 40 does not contemplate that commodity derivatives may be traded on an exchange or a clearinghouse and as a result already reported by the exchange or the clearinghouse to the Authorities. Any commodity derivatives traded in such a manner should be excluded from the threshold calculation as they have already been reported.

3. Reporting Waterfall

The reporting waterfall as set out in the TR Rule is appropriate as it gives responsibility for reporting to the entities that are most capable of providing that information in a timely and accurate manner (being the derivatives dealers and CFIs). One concern though is with the current definition of "derivatives dealer". As an example, if an Alberta energy company was dealing with a foreign bank, if the foreign bank does not fall under the definition of "derivatives dealer" then the Alberta energy company (with the less sophisticated reporting systems or none at all apart from its booking transactions through its accounting system) would end up reporting the transaction instead of the foreign bank unless the Alberta energy company could convince the foreign bank to be the reporting party under a written agreement. This adds not only to the burden of the Alberta energy company, but to the foreign bank to execute written agreements with all its counterparties instead of the rules mandating that the foreign derivatives dealer report. A possible solution would be to amend the definition of "derivatives dealer" to include the jurisdiction in which an entity is engaging in the business of trading derivatives. There should be consistency across jurisdictions with respect to the definition of "derivatives dealer" so parties can be confident that a derivative dealer in one jurisdiction in Canada is a derivative dealer in all jurisdictions.

4. Section 37(3)

The use of the words "best efforts" in this section is problematic as Canadian courts have interpreted "best efforts" to mean using efforts that may impact a party's economic interests to fulfil the obligation. Enbridge would suggest that in Canada, the use of "reasonable efforts" is more appropriate and would request that this section be amended by the Authorities. Without further clarification in the TR CP, parties may have to go beyond what would be considered reasonable from a commercial perspective. In addition, if the TR refuses, what further actions could the reporting counterparty pursue to force the TR to provide the information? It may be that this section should be removed and the Authorities can address this issue with the TRs as they apply for recognition or approval from the Authorities.

5. Section 38(4)

This section would override any confidentiality agreement or section within an agreement between the parties. Enbridge would suggest that the Authorities provide a safe harbour for parties similar to the U.S.[5]

6. Local Counterparty Definition – "responsible for the liabilities"

The wording in the local counterparty definition of "responsible for the liabilities" is in the Rule 91-507 and it remains problematic. This requires a subjective analysis of the relationship between the affiliated entity and the counterparty, which may change over time and is very dependent on the facts and circumstances of the moment when the counterparty is called upon to take on the liabilities of the affiliated entity. The Authorities should put some parameters around this wording, such as, "being responsible for the liabilities related to derivative trading" which would change this section from a subjective test to an objective one, and would be easily understood by market participants.

7. Implementation

Providing for staged implementation and a transition period would be ideal for all parties. Enbridge understands that the proposed date for implementation and compliance will be sometime in 2016, provided the effective date of the TR and Scope Rules is in 2015. This would provide sufficient time for parties to execute reporting agreements with their counterparties, be on-boarded with the various TRs, set-up internal reporting systems and resource those positions. Enbridge believes that a 6 month time period (at a minimum) from the effective date of both the final TR Rule plus the recognition of the TRs in each jurisdiction (to allow for an orderly on-boarding process) is appropriate. In addition, parties will require time to negotiate reporting agreements with potentially hundreds of counterparties depending on their counterparty list. This will take time and resources, even if there is an industry standard document that does not require much modification. This would be similar to the experience in the U.S. with the ISDA Dodd Frank Protocols and the IECA end-user friendly agreements executed between end-users and swap dealers to comply with the August 2012 and March 2013 ISDA Protocols and should be taken into account when deciding on an appropriate transition period.

II. ENBRIDGE'S SPECIFIC COMMENTS ON THE SCOPE RULE

1. Embedded Optionality in Commodity Transactions

Enbridge urges the Authorities to clarify that if the embedded option in a commodity agreement is for a zero or a nominal amount that the commodity agreement shall be excluded as an '*Excluded Derivative*'

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[5] http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook053112.pdf

under Section 2(d) of the Scope Rule. There may be practical commercial reasons why a commodity agreement includes an option for a zero or nominal volume (e.g. peaking supply contracts with a natural gas utility that allow for quantities from zero to a maximum daily volume which allow the utility to call on additional natural gas supply on days when there is an additional requirement for heating or cooling) and the commodity agreement should not be considered to be a derivative solely because it contains an option for a zero or nominal volume without reviewing all facts and circumstances.

2. Determination of what derivatives would be excluded under Paragraph 2(1)(c) and Paragraph 2(1)(d) of the Scope Rule

Enbridge commends the Authorities for providing some guidance in the Scope CP on paragraph 2(1)(d) of the Scope Rule that excludes commodity contracts that is intended by the counterparties at the time of the execution of the transaction, to be settled by delivery. End-users require optionality in their agreements to ensure they are managing their risks effectively as not all risks are known or quantifiable at the time of execution of an agreement. The assessment of the intention of the parties using not only the terms of the agreement but also the facts and circumstances is appropriate.

However, as the Authorities could not possibly provide an exhaustive menu of derivatives that could fall under this exclusion or list a panoply of factual scenarios that would be deemed not to negate the intention to deliver, Enbridge urges the Authorities to copy the U.S. regulatory agencies the CFTC and the Securities Exchange Commission ("**SEC**") in further defining a derivative to provide a clear interpretation regarding the applicability of the exclusion in Paragraph 2(1)(c) and paragraph 2(1)(d) from the derivative definition in their particular province with respect to currency exchange contracts and commodities contracts.

In addition, Enbridge encourages the Authorities to make it possible for any entity that is not sure if certain of its currency exchange or commodity contracts may be subject to the exclusion in paragraph 2(1) (c) and paragraph 2(1) (d) of the Scope Rule to be able to submit a request to the applicable Authority to provide an interpretation of whether a particular agreement, contract, or transaction (or class thereof) is a derivative. Under the U.S. final rules, it is possible for a person to make a request jointly from the CFTC and the SEC. In making such a request, the requesting party in the U.S., must provide: all material information; a statement of the economic characteristics and purpose of the transaction; the requesting party's determination as to whether the transaction should be characterized as a swap, a security-based swap, or a mixed swap and the basis for such determination; and any other information requested by either the CFTC or the SEC. In turn, the CFTC and the SEC under the rules, are obliged if they decide to make a joint determination, to issue an interpretation within 120 days after receipt of a complete submission requesting a joint interpretation. The CFTC and the SEC may seek public comment with respect to such a joint interpretation; if they do, the 120-day deadline will be stayed during the comment period, but will recommence the business day after the public comment period ends. If they do not issue a joint interpretation within the prescribed time period, the rules require each of them to publicly provide the reasons for not having done so.

This would give market participants an opportunity to seek determination from the Authorities where there is uncertainty.

III. CONCLUSION

Enbridge thanks the Authorities again for the opportunity to submit our comments on the Proposed Instruments and sincerely hope the Authorities would consider our comments and recommendations as the Authorities draft its final rules to establish a regulatory regime for the OTC derivatives market in the multilateral jurisdictions We would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact the undersigned.

Respectfully submitted,

Enbridge Inc.

Kari Olesen, Legal Counsel