Enbridge Gas Distribution
500 Consumers Road
North York, Ontario M2J 1P8
Canada

November 30, 2015

R. Bruce Reynolds
Bordner Ladner Gervais LLP
Scotia Plaza, 40 King St W
Toronto, ON M5H 3Y4

Dear Mr. Reynolds,

Re: Review of the Construction Lien Act

With a history of community service dating back to the incorporation of The Consumers' Gas Company of Toronto in 1848 as a street lighting company, Enbridge Gas Distribution Inc. ("Enbridge") is Ontario's largest natural gas distribution utility and is regulated by the Ontario Energy Board. When the Ontario Energy Board is setting the rates that will be paid by Enbridge's 2.1 million ratepayers across the province (including residential, commercial and industrial customers), Enbridge's costs of doing business, including construction costs, are an important consideration.

While Enbridge supports the need to update the province's construction lien legislation; we had a number of concerns with the previously presented Bill 69. During the legislative committee process, Enbridge endorsed the reservations raised by many stakeholders including, without limitation, concerns pertaining to:

- The nature of amounts that may be invoiced by contractors ("reasonable estimates" and services and materials that "will be provided");
- The timing provisions related to review of and objection to payment applications and the payment of invoices;
- The inability to contract into payment and withholding/reserve structures that meet the needs of the project;
- The consequences of non-payment;
- Inconsistencies with existing legislation (i.e. the Construction Lien Act); and
- Increased uncertainty and costs.

In addition, as a reporting issuer under provincial securities legislation, any requirement to disclose financial information in addition to information that is already publicly disclosed would be onerous and, in the case of requests for updated information that has not been disclosed to the public, potentially problematic.

In the same way that municipalities and municipally-owned electric distribution companies deliver the services that Ontarians require to go about their daily lives through a system of pipes and wires, Enbridge delivers the energy to heat their homes and water. Due to the importance of the services that we provide, Enbridge and other utilities receive significant oversight via the Ontario Energy Board. Through the leave to construct process, the Ontario Energy Board approves Enbridge's large pipeline construction projects and, as a regulated utility, Enbridge must meet a prudency test in its construction expenditures.

In addition to the standard required hold-back under the Construction Lien Act Enbridge has separate and additional contractual holdbacks that relate to agreements to ensure that specific items are dealt with before final payments are made.

That said, any changes to hold-backs, such as phasing-in or phased-released of holdbacks, should not affect Enbridge's ability to use these holdbacks to ensure these above items are completed for critical safety issues, maintenance and operational purposes. Without these holdbacks there may be unintended consequences.

The hold-backs that Enbridge contracts for are of significant importance as they allow us, as a utility, to ensure that we have all documentation necessary to operate our infrastructure and built facilities and do so in a safe manner. Without such hold-backs it is very difficult to ensure that important documentation is received in a timely manner. Specifically, hold-backs ensure that upon construction completion Enbridge receives:

- All the as-built documentation including manuals and warranties;
- All necessary documentation required to file for LEED certification status on new facilities, including evidence necessary indicating that increased costs ensured that construction occurred in a specific manner;
- Final copies of all as-built construction drawings which are critical to a large underground infrastructure owner such as Enbridge as damage to our infrastructure is a significant safety hazard. That said, Enbridge's ability to identify the location if its underground infrastructure in an emergency is of paramount importance, not to mention our provincially legislated requirement to identify any and all infrastructure within a 5-day window to ensure general dig safety.

Another issue of importance to Enbridge as a large utility and underground infrastructure owner is our current ability to negotiate performance based compensation agreements. Our ability to negotiate performance based compensation is necessary as it is important for Enbridge to have the time required to validate completed construction and ensure that all as-built infrastructure operates properly. These agreements must ensure the ability of the payer to make payment after performance, after work is completed appropriately. Pipelines, such as our GTA pipeline reinforcement project, may cost several hundred million dollars, require over a year to complete and construction may occur in a segmented manner. Projects like these take time to validate and test.

Enbridge appreciates the opportunity to raise the issues of specific importance to our ratepayers and our business in this review process. We also look forward to further conversations to discuss the issues raised above and others.

If you would like further clarification or have follow up questions, please contact our government relations team at: 416-758-7966.

Sincerely,

Frank R. Smith
Director, Construction
Enbridge Gas Distribution Inc.