J. Richard Bird
Executive Vice President,
Chief Financial Officer & Corporate Development

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July 15, 2008

Advisory Panel on Canada's System of
International Taxation Submission
Attn: David Messier
333 Laurier Avenue West, 15th Floor
Ottawa ON K1A 0G5

Dear Panel Members:

On behalf of Enbridge Inc., I support and applaud the efforts of your Advisory Panel. I agree with your overall mandate as set forth by the Minister of Finance to review Canada's international tax policy framework. Along with many other companies in Canada, I look forward to your recommendations designed to "improve the competitiveness, efficiency and fairness of Canada's system of international taxation". Enbridge is pleased to have the opportunity to contribute to the consultation and debate through this submission.

As a result of the significant volume of outstanding draft tax legislation and related comfort letters affecting foreign affiliates, planning by Canadian businesses for foreign expansion has become subject to great uncertainty and tax reporting for foreign operations has become very complex. Since Enbridge is a global Canadian company, Enbridge supports an international tax policy that provides certainty and simplicity.

Enbridge also supports a policy that encourages Canadian companies to invest beyond Canada's border, thereby strengthening their competitiveness and contribution to economic efficiency. While the recently enacted gradual corporate tax rate reductions will serve as a first step in enhancing the competitiveness of companies doing business in Canada and attracting inbound investment, Enbridge supports further steps to facilitate external investment by Canadian companies, such as a broadening of the exemption system to all active business income of foreign affiliates, simplification of foreign accrual property income ("FAPI") rules, further reduction in withholding taxes, and introduction of check-the-box concepts. As further described below, such initiatives would facilitate Canadian company expansion.

Enbridge believes Canada's current exemption system should be broadened to cover *all* active business income earned by foreign affiliates of Canadian companies. Such an expansion might be designed to exclude active business earned in specifically identified tax haven countries or countries with no taxes or very low taxes according to established guidelines, such as those set out by the OECD for tax havens. Currently, only active business income earned by foreign affiliates in treaty countries and countries with which Canada has a tax information exchange agreement ("TIEA") is automatically free of Canadian tax when earned and on repatriation. Broadening the exemption system and basing it on the determination of active business income would enhance the competitiveness of Canadian business by curing reliance on and uncertainty around TIEAs and treaties. As you may know, Enbridge has put forth an aggressive Canadian business expansion program designed to significantly increase Enbridge's footprint in Canada. Such a broadening of exemption policy would facilitate funding this business expansion, and enhance Enbridge's ability to compete in the global marketplace. As well, it would simplify and reduce the cost of administration associated with maintaining complex surplus pool calculations. With Canada's declining tax rates, taxable surplus earned in many non-treaty countries has/will have sufficient associated underlying foreign tax to be repatriated free of Canadian tax anyway. An expanded exemption system would be easier to administer than a credit system.

While the overall framework of FAPI provides an effective system, Enbridge believes the system can be simplified. One such simplification would be to exempt from FAPI all passive income earned in countries that impose tax rates that are higher than the Canadian rate. Such an initiative is more reasonable now that the Canadian tax rate has been reduced. The original objective of FAPI, to capture passive income earned in low-tax jurisdictions, would be preserved. Enacting this high-tax exception would simplify compliance and cash management efforts for many Canadian companies, such as Enbridge, that have many foreign affiliates operating in the U.S. and other jurisdictions that impose significant levels of tax. Another FAPI-related initiative that Enbridge would support is the elimination of overlap between the new foreign investment entity ("FIE") rules and the foreign affiliate regime.

Although Enbridge has projected significant growth in Canada, Enbridge is a global company with extensive foreign business activities, predominantly in the U.S. While the amendments to the Canada-U.S. Income Tax Convention proposed under the Fifth Protocol to the U.S. Treaty have provided for decreased withholding tax on interest payments between the two jurisdictions, further reductions, particularly with respect to dividends, including related party dividends, would facilitate business expansion. Consideration should be given to amending domestic legislation to eliminate withholding tax on dividends paid by Canadian companies in an effort to encourage reciprocal elimination of the U.S. domestic withholding tax on dividends paid to Canada. This would encourage the repatriation of earnings from U.S. subsidiaries to their Canadian parent corporations.

Due to inflexibility in Canada's foreign affiliate system, Enbridge has encountered foreign expansion difficulties surrounding entity classification. The legal and tax classification of business structures in foreign jurisdictions do not always match the classifications in Canada, producing unexpected and uneconomical tax results. For instance, a trust may be treated and/or taxed as a corporation in a foreign jurisdiction, but no provision is available in Canada to allow for its treatment as a foreign affiliate. Only corporations are eligible. Consideration should be given to broadening the scope of legal entities qualifying for foreign affiliate treatment under Canada's tax regime, perhaps through the introduction of rules similar to the U.S.'s check-the-box provisions. Such provisions would further encourage foreign expansion of Canadian business.

In summary, Enbridge believes the foundation of Canada's international tax policy is sound, but steps could be taken to improve competitiveness that would facilitate Canadian growth. Given the maturity and relatively small size of the Canadian economy, recognition that growth opportunities for many Canadian companies, like Enbridge, lie outside of Canada is in alignment with the panel's mandate.

Enbridge also wishes to indicate that it appreciates and supports the clarifications provided by the Minister of Finance back in May 2007, which reconfirmed the general deductibility of interest expense incurred by Canadian corporations to fund international share investments. Enbridge encourages the Advisory Panel to recommend that this position be upheld as, for Canadian corporations to position themselves as global leaders, it is critical that they be able to compete with other foreign investors residing in OECD countries that are generally able to deduct interest expense incurred by them to finance their foreign investments. If necessary, rather than complete denial of interest expense related to a particular use and cash damming/tracing requirements, Enbridge would prefer that some form of modified thin cap and/or interest stripping-type rules be introduced to limit a corporation's overall debt-to-equity levels to a commercially reasonable level.

Finally, it is important to Canadian companies that any change made produce a fair result and that such policy is clear. Canadian companies should not be disadvantaged as compared to foreign companies investing in Canada. It would be nonsensical for foreign owned businesses to unduly benefit from the Canadian tax system in structuring their investment.

I appreciate the opportunity to contribute to your efforts and look forward to your recommendations.

Sincerely,

J. Richard Bird