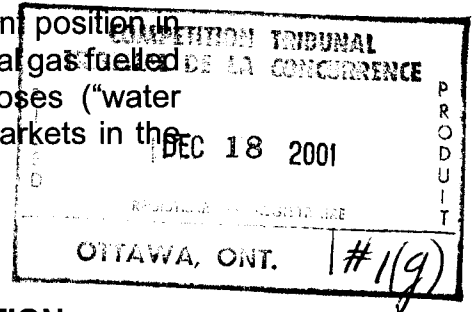


THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for a Consent Order pursuant to sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER OF certain practices of anti-competitive acts by Enbridge Services Inc. ("ESI") within certain markets in the province of Ontario;

AND IN THE MATTER OF an abuse of dominant position in the supply of conventional or power vented natural gas fuelled water heaters not used for commercial purposes ("water heaters") and related services within certain markets in the province of Ontario.



BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- AND -

ENBRIDGE SERVICES INC.

Respondent

DRAFT CONSENT ORDER

FURTHER TO the application of the Commissioner pursuant to sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 for a Consent Order prohibiting Enbridge Services Inc. ("ESI") (the "Respondent") from engaging in certain anti-competitive acts and from an order to redress the anti-competitive situation created by these acts.

AND UPON READING the Notice of Application dated December 17th, 2001, the Statement of Grounds and Material Facts, the Consent Order Impact Statement, the Draft Consent Order and the Consent of the parties, filed herein;

AND ON CONSIDERING THAT the Commissioner and the Respondent have reached an agreement which is reflected in the Draft Consent Order;

AND ON CONSIDERING THAT the Commissioner is satisfied that, on the basis of the considerations outlined in the Consent Order Impact Statement, the remedies provided herein, if ordered, will be sufficient to eliminate the substantial lessening or prevention of competition in the supply of conventional or power vented natural gas fuelled water heaters not used for commercial purposes (“water heaters”) and related services caused by the practice of anti-competitive acts, by the Respondent;

AND IT BEING UNDERSTOOD by the parties that the Commissioner has alleged certain material facts, and that, though the Respondent does not accept all of the facts alleged by the Commissioner, the Respondent does not contest the Statement of Grounds and Material Facts or the Consent Order Impact Statement for the purposes of this application or an any proceeding initiated by the Commissioner relating to this Consent Order, including an application to vary or rescind this Order under section 106 of the *Competition Act*;

AND ON THE HEARING of counsel for the parties in respect of this Application;

THE TRIBUNAL ORDERS THAT:

1. Definitions

- (a) For the purposes hereof, the term “*water heaters*” means conventional or power vented natural gas fueled water heaters not used for commercial purposes.
- (b) For the purposes hereof, the term “*effective date*” means the effective date of the issuance of the Consent Order.
- (c) For the purposes hereof, the term “*existing customers*” refers to customers renting water heaters from ESI prior to the implementation by ESI of the terms of this Consent Order.
- (d) For the purposes hereof, the term “*newcustomers*” refers to customers for whom ESI has installed new water heaters for rental purposes after the implementation by ESI of the terms of this Consent Order. For greater certainty, a customer ceases to be an existing customer and becomes a new customer for purposes hereof if ESI replaces the existing customer’s rental water heater

after the effective date with a new water heater and the customer signs a new rental water heater contract with ESI meeting the terms and conditions of this Consent Order.

2. General

- (a) Unless otherwise specified, the terms hereof shall apply to existing customers and new customers.

3. Disconnection and Return of ESI Rental Water Heaters

- (a) ESI shall not prevent others from disconnecting ESI rental water heaters or, if such water heaters are otherwise disconnected, from returning such water heaters.
- (b) ESI shall designate sites for the return of ESI rental program water heaters by others and these sites will include all ESI district Heating, Ventilation, Air Conditioning (hereinafter "HVAC") offices and the office locations of ESI's independently operated HVAC franchisees (the "Return Locations"), with returns permitted at a minimum for the hours between 8 a.m. and 6 p.m. Monday through Saturday. Schedule "A" contains a list of the current Return Locations.

ESI may change the Return Locations from time to time in the ordinary course of operating its business and may designate additional Return Locations, whether operated by ESI or on ESI's behalf by other parties.

- (c) Where a customer notifies ESI that he/she intends to return an ESI rental water heater, and there is a Return Location within 20 miles (32 km) of the customer's address then ESI will permit the customer to elect to either:
- (i) have a qualified, licenced third party disconnect the water heater and then return the water heater or have the water heater returned (at customer's expense) to a Return Location during its normal hours of operation; or
 - (ii) request ESI to disconnect and pick-up or pick-up the water heater from the customer's address, in which case ESI subject to subparagraph 3(e)(iii), may charge a disconnection and pick-up charge not to exceed \$75.00 dollars.

ESI may also offer the customer the option of keeping the water heater, in which case disposal will be the customer's responsibility. However, the customer is not required to accept this alternative.

- (d) Where a customer notifies ESI that he/she intends to return an ESI rental water heater, and there is not a Return Location within 20 miles(32 km) of the customer's address then ESI will permit the customer to elect either to:
- (i) have a qualified, licenced third party disconnect the water heater and then return the water heater or have the water heater returned (at customer's expense) to a Return Location during its normal hours of operation; or
 - (ii) request ESI to disconnect and pick-up or pick-up the water heater in which case ESI will not assess any disconnection and/or pick-up charge.

In any such case (i.e. where the nearest Return Location is more than 20 miles (32 km) from the customer's address) ESI may also offer the customer the option of keeping the water heater, in which case disposal will be the customer's responsibility. However, if the customer is unwilling to accept this alternative, ESI must pick-up the water heater (as provided for in subparagraph 3(d)(ii)).

- (e) Where ESI is requested by a water heater rental program customer to disconnect and pick-up or pick-up an ESI rental program water heater:
 - (i) ESI shall perform such service within two (2) weeks following receipt of such request;
 - (ii) ESI shall not assess water heater rental program customers additional rental charges after the charge for the month during which pick-up took place; and
 - (iii) If the pick-up is not conducted within two (2) weeks of the customer request, any \$75.00 dollar disconnect and pick-up or pick-up charge otherwise contemplated pursuant to paragraph 3(c)(ii) and further rental charges shall not be imposed.
- (f) Failure to comply with the time period set out in paragraph 3(e)(i) shall constitute an immediate breach of this Consent Order subject to ESI providing the Commissioner with adequate written explanation for the failure to comply.
- (g) Subject to subparagraph 3(c)(ii) hereof, if a customer or another third party returns a disconnected water heater, ESI shall not assess pick-up,

administration or other such charges to water heater rental program customers of ESI to disconnect or return water heaters.

4. Rental Water Heater Exit Charges, Fees and Penalties

- (a) Subject to paragraph 4(b), ESI shall allow existing customers to cease renting water heaters from ESI without paying any rental exit or cancellation charges, fees, or penalties (collectively “exit charges”), including but not limited to any installation cost recovery or administration charges.
- (b) In the case of existing customers who rent water heaters from ESI which were installed prior to the effective date, ESI may apply commercially reasonable and non-discriminatory exit charges until each such water heater is five (5) years old.
- (c) ESI shall allow existing customers covered by paragraph 4(b) to exit their water heater rental contract upon notification to ESI with no exit charges applying thereto after such water heater becomes five (5) years old.

- (d) ESI contracts with new customers may include an initial rental period of a maximum of five (5) years during which commercially reasonable and non-discriminatory exit charges may apply.

- (e) The terms of any contracts entered into in accordance with paragraph 4(d) hereof shall allow, following the completion of the initial five (5) year period or less, such customers to exit their water heater rental contract upon notification to ESI, with no exit charges applying thereto.

- (f) Exit charges (whether for existing or new customers) are not to exceed \$125.00 dollars for any water heater during year one, and are to be reduced by \$10.00 dollars after each year from the date of installation of the water heater.

- (g) During the period while any existing customer is subject to exit charges as provided for in paragraph 4(b), ESI may not increase the water heater rental charge for such customer other than through percentage increases (if any) reflecting inflation over the period since the last rental rate adjustment.

- (h) ESI contracts entered into in accordance with paragraph 4(d) with new customers shall contain pre-stated rental rates for the initial five (5) year or less contract period during which exit charges may apply. Such rate(s) shall be expressed as a single rate for the entire period or as different rates each to be effective during specified periods of time, or may be based on an expressly stated escalation formula to reflect inflation.

5. Buy-Out Price Schedule

- (a) ESI water heater rental contracts entered into with new customers shall include a fixed Buy-Out Price Schedule (“Schedule”) for the rented heaters. A model Schedule respecting new customers is attached hereto and marked as Schedule “B” and shall form an integral part of the Consent Order.
- (b) ESI shall provide existing customers with a Schedule for their rented water heaters. A model Schedule respecting existing customers is attached hereto and marked as Schedule “C” and shall form an integral part of the Consent Order. The Buy-Out Price for existing customers will be based on ESI’s current retail prices at the time the Schedule is produced and adjusted to eliminate the impact of inflation since the time of installation.

- (c) ESI shall not offer different rental rates or rental water heater Buy-Out Prices to new and existing customers that are renting water heaters of a similar model and age, except to the extent that such differences reflect legitimate differences in the cost of providing service to different groups of customers, based on such factors as location and water conditions.

6. Other Water Heater Terms, Conditions and Operations

- (a) ESI shall not enter into or withdraw from any arrangement, agreements or transaction in regards to water heaters or make any changes to their operations that would be contrary or inconsistent with the intended purpose of this Order, namely, to eliminate anti-competitive behaviour for the ultimate purpose of promoting and protecting competition in the markets affected.
- (b) Without limiting the generality of paragraph 6(a), ESI's other terms, conditions and operations with respect to the rental of water heaters will not erect undue barriers to entry and to competition in the market for water heaters.

(c) Without limiting the generality of paragraphs 6(a) and 6(b), ESI's rental water heater terms, conditions and operations relating to:

(i) the assessment and recovery of damage to returned water heaters; and

(ii) the limitation of ESI's liability with respect to the disconnection or the return of rental water heaters by others;

shall not create the above mentioned effects.

7. Commissioner's Approval

(a) This Consent Order evidences the Commissioner's acceptance of the terms and conditions applicable to contracts with new and existing customers, all as modified to give effect to the terms of this Consent Order. A copy of those terms and conditions are attached as Schedule "D" and form an integral part of the Consent Order. Any subsequent material changes to such terms and conditions, to the extent such terms and conditions materially affect the matters addressed by this Consent Order, shall be submitted to the Commissioner for approval in

advance of their implementation. The Commissioner shall respond definitively within thirty (30) days following the submission by ESI to the Commissioner of any such revised contractual terms and conditions proposed for the ESI water heater rental program.

- (b) Without limiting the generality of the foregoing, ESI shall submit to the Commissioner for approval the terms and conditions relating to the items referred to in sections 3 and 4 hereof.
- (c) Where the Commissioner's approval is sought pursuant to this Consent Order and such approval is not granted or if a decision of the Commissioner is unreasonably delayed or withheld, ESI may apply to the Tribunal for directions.

8. Implementation

- (a) Within forty-five (45) days of the effective date, ESI shall amend the terms and conditions applying to existing customers to comply with the Consent Order.

- (b) Within forty-five (45) days of the effective date, ESI shall amend the terms and conditions offered to new customers to comply with the Consent Order.
- (c) Within forty-five (45) days of the effective date, ESI shall modify its activities and operations to comply with this Consent Order.

9. Notification

- (a) Subject to paragraph 9(d), within forty-five (45) days following the effective date, ESI shall notify in writing all existing customers concerning the terms of the Consent Order, the terms of which notification shall be subject to consultation and joint agreement between ESI and the Commissioner.
- (b) Notification for paragraph 9(a) will be by way of bill inserts and press releases the terms of which shall be subject to consultation and joint agreement between ESI and the Commissioner.

- (c) ESI may amend the rental water heater terms and conditions for existing customers to implement or which are consistent with the provisions of the Draft Consent Order before the effective date.

- (d) Any amendments referred to in paragraph 9(c) shall immediately be notified to these customers before they are implemented. Notification will be by way of bill inserts and press releases the terms of which shall be subject to consultation and joint agreement between ESI and the Commissioner. The notification shall include an explanation of the reasons for these changes. Further notification shall be given as is required to give full effect to paragraphs 9(a) and 9(b).

- (e) Within forty-five (45) days following the effective date, ESI shall notify in writing all of ESI's affiliates, directors, managers, owners, officers, shareholders, agents and employees and to any of its subsidiaries, assignees and their agents and employees in writing of the terms of the Consent Order. The terms of such notification shall be subject to consultation and joint agreement between ESI and the Commissioner. In addition, a copy of the Consent Order shall be provided or made reasonably accessible to such persons. In addition, ESI shall direct such persons to operate and manage the business in accordance with the terms of the Consent Order.

- (f) Within sixty (60) days following the effective date, ESI shall provide to the Commissioner a certification by the president of ESI that such notifications and copies required in paragraphs 9(a), 9(b), 9(d), and 9(e) have been sent.

10. Application

- (a) ESI shall adhere to all the provisions of the *Competition Act* and in particular to strictly avoid any act that may be anti-competitive by the recreation of any undue barriers to entry with respect to the ESI water heater rental program as outlined in the aforementioned section 6.

- (b) (i) The Consent Order shall bind ESI, as well as, each and every of the present and future affiliates, directors, owners, officers, shareholders, agents and employees and to any of its successors, subsidiaries, assignees and their agents, employees or other person acting for or on behalf of ESI with respect to any matter referred to in this Consent Order.

- (ii) Without limiting the generality of the foregoing, the Consent Order governs any subsequent purchaser, owner or operator of ESI's water heater rental business, whether through purchase or restructuring or a joint venture partner with ESI.

- (iii) Any contract transferring ownership of ESI or any part thereof in relation to water heaters shall contain a specific written clause indicating the acceptance by such purchaser or joint venture partner of the terms of the Consent Order.

11. Communications

- (a) While all parties will be consulted on the contents and dissemination of any communications with the media such as press releases or to the public, the Commissioner shall retain the final decision on his communications. The Parties agree to review the confidentiality restrictions contained in any previous correspondence or discussions with a view to removing restrictions that are no longer appropriate.

12. Other Matters

- (a) Nothing in this Consent Order shall be construed as acceptance by the Commissioner of the terms and conditions in the agreements between ESI and its customers existing prior to the effective date and the legal enforceability of such terms and conditions.

- (b) ESI understands that the Commissioner has alleged certain material facts concerning ESI's water heater rental program. It is understood that ESI does not necessarily agree with all of the facts so alleged. However, ESI will not contest the Statement of Grounds and Material Facts or the Consent Order Impact Statement for the purposes of this application and any proceeding initiated by the Commissioner relating to this Consent Order, including an application to vary or rescind this Consent Order.

- (c) The parties shall be bound by the terms of this Consent Order for a period of ten (10) years following the effective date.

- (d) For the purpose of determining or securing compliance with the Consent Order, subject to legally recognized privilege, and upon written request on reasonable notice to ESI, ESI shall provide the Commissioner with:
- (i) information relating to the ESI water heater rental program in the possession or under the control of ESI. A signature, under oath, by a senior officer of ESI confirming that all available information, in respect of the above, has been provided to the Commissioner; and / or
 - (ii) upon five (5) days written notice to ESI and without restraint or interference from it, to interview directors, officers, managers or employees of ESI concerning ESI's water heater rental program. Such directors, officers, managers or employees may have counsel present at these interviews.
 - (iii) within three (3) months following the written request in paragraph 12(d) to ESI, the Commissioner shall notify ESI in writing of any objections the Commissioner may have with regard to any information in relation to paragraph 12(d).

- (e) ESI agrees to the issuance of a final Consent Order by the Competition Tribunal, on usual terms, covering the matters agreed to herein.
- (f) The Competition Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or ESI to rescind or vary any of the provisions of this Consent Order in the event of a change of circumstances or otherwise.
- (g) In the event of a dispute as to the interpretation or application of this Consent Order, including any decision by the Commissioner pursuant to the Consent Order or breach of this Consent Order by ESI, the Commissioner or ESI shall be at liberty to apply to the Competition Tribunal for a further Order.

13. Notice to the Parties

- (a) Notices, reports or other communications required or permitted pursuant to any of the terms of this Order shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties at the address or facsimile number below:

(b) **If to the Commissioner:**

The Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street, 21st Floor
Hull, Quebec
K1A 0C9
Facsimile: (819) 953-5013

(c) **If to ESI:**

David M. Purdy
Enbridge Services Inc.
500 Consumers Road
North York, Ontario
M2J 1P8
Facsimile: (416) 753-7336

William G. VanderBurgh
Aird & Berlis LLP
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario
M5J 2T9
Facsimile: (416) 863-1515

DATED at _____, this _____ day of December, 2001.

SIGNED on behalf of the Tribunal by the presiding judicial member.

SCHEDULE "A"**RETURN LOCATIONS****Enbridge Services - Water Heater Return Locations**

Barrie District 11 Warehouse 730	165 Ferris Lane Barrie, ON L4M 2Y1
Richmond Hill West District 09	United Thermo Group 20 Staffern Dr. #1 Conconrd, ON L4K 2Z7
Richmond Hill East District 10 Warehouse 728	64 Industrial Road Richmond Hill, ON L4C 2Y1
Durham West District 06 Warehouse 720	513 Westney Rd. S Ajax, ON L1S 6W8
Durham East District 07	Perry Mechanical 285 Bloor St. W. Oshawa, ON L1H 7L1
Kawarthas District 08 Warehouse 724	1 Consumers Place P.O. Box 658 Peterborough, ON K9J 6Z8
Ottawa West District 16 Warehouse 740	90 Bill Leathem Drive Nepean, ON K2G 6J2
Ottawa North Valley District 18 Warehouse 744	115 Woodcrest Drive Pembroke, ON K8A 6Y6
Ottawa East District 17	Climec Residential Inc. 645 Belfast Rd. #6 Ottawa, ON K1G 4V3
Commercial Mass Market District 80	6 Leswyn Rd. North York, ON M6A 1K2
Metro East District 05 Warehouse 718	50 Munham Gate Scarborough, ON M1P 2B4
Metro Northwest District 01 Warehouse 710	89 Carlingview Drive Toronto, ON M9W 5E4

Metro South Central District 03	Blue Flame Heating 37 Dufflaw Rd. North York, ON M6A 2W2
Metro South West District 02	Martin Air 75 Ingram Dr. North York, M6M 2L7
Mississauga South District 13 Warehouse 734	950 Burnhamthorpe Rd. W. Mississauga, ON L5C 3B4
Mississauga North District 14	JRL HVAC INC 278 Rutherford Rd. S. Brampton, ON L6W 3K7
Niagara District 20 Warehouse 748	3401 Schmon Pkwy. P.O. Box 1051 Thorold, ON L2V 5V8
Grimsby District 04 Warehouse 758	189 South Service Rd. Grimsby, ON L3M 4H6
Hamilton District 24	Greenal Heating & AC 67 Frid Street Unit 16 Hamilton, ON L8P 4M3
Halton District 21	Select Energy 4361 Harvester Rd. #27 Burlington, ON L7M 6M4
Caledon District 15	Bramton Sheet Metal 180 HWY #7 West Bldg. B. North Hall Brampton, ON L6V 1A1
Kitchener District 22	Columbia Mechanical 35 Durward Place Waterloo, ON N2L 4E5
London District 23	Complete Htg. & Clg. Ltd. 1112 Brydges St. London, ON N5W 2B6
Enbridge Business Services	Stannair Conditioning Inc. 2645 Skymark Avenue Mississauga, ON L4W 4H2

Selling Prices for Used Installed Residential Water Heaters

Use this table to find the buy-out price if you decide to purchase your rental water heater from Enbridge Home Services.

Simply find the column matching the size and type of your rental water heater and the age of your tank. The age of tank is determined based on the installation date shown on the installer's sticker on your water heater. The type of tank is indicated by the installer's initial at the top of the applicable column.

Prices shown do not include taxes. Applicable taxes will be added to the prices shown.

WATER HEATER TYPE AND SIZE					
AGE OF WATER HEATER (Years)	CV 40 (Conventional 40 Gallon)	CV 50 (Conventional 50 Gallon)	CV 60 (Conventional 60 Gallon)	PV 50 or DV 50 (Power vented or Direct vented 50 gallon)	PV 75 (Power vented 75 gallon)
0-1 Year (Starting Price)	\$514	\$547	\$566	\$891	\$1158
1-2	493	524	543	854	1110
2-3	469	499	517	814	1057
3-4	445	473	490	771	1001
4-5	418	445	461	725	942
5-6	391	415	430	677	880
6-7	361	384	398	626	813
7-8	330	351	363	572	743
8-9	297	315	327	514	668
9-10	262	278	288	453	589
10-11	224	239	247	389	505
11-12	185	197	204	321	416
12-13	143	152	158	248	322
13-14	99	105	109	171	223
14-15	52	55	57	90	117
Over 15 years	25	25	25	25	25

Starting Price

The price for water heaters less than one year old is equal to the Enbridge Home Services retail sale price for a comparable, installed water heater. This includes an amount to reflect our typical installation charge.

Age Discount

The buy-out prices shown are determined by amortizing the Starting Price over the expected useful life of the water heater.¹

Remember:

When you purchase your Enbridge Home Services water heater, our rental arrangement ends. You will be under no obligation to pay rent for subsequent months and you will be responsible for service and maintenance of the water heater.

Need Help?

The chart on this table shows prices for almost all types of Enbridge Home Services rental water heaters.² If your water heater is not covered, or if you are not sure what type of water heater you have or when it was installed, please call Enbridge Home Services at [1-800 ___ - ____].

Our rental specialists will also be pleased to answer any questions you may have about your water heater options.

¹ The amortization was based on a standard mortgage table with an interest cost of 5.8% and a 15 year term.

² The natural gas water heaters included in the buy-out schedule, CV40, CV50, CV60, PV50, DV50, and PV75, represent 1.15 million of ESI's 1.20 million rental water heaters. This represents 96% of ESI's installed rental water heater base.

SCHEDULE "C"**BUY-OUT PRICES [Existing Customers]****Selling Prices for Used Installed Residential Water Heaters**

Use this table to find the buy-out price if you decide to purchase your rental water heater from Enbridge Home Services.

Simply find the column matching the size and type of your rental water heater and the age of your tank. The age of tank is determined from the installation date shown on the installer's sticker on your water heater.

Prices shown do not include taxes. Applicable taxes will be added to the prices shown.

WATER HEATER TYPE AND SIZE					
AGE OF WATER HEATER (Years)	CV 40 (Conventional 40 Gallon)	CV 50 (Conventional 50 Gallon)	CV 60 (Conventional 60 Gallon)	PV 50 or DV 50 (Power vented or Direct vented 50 gallon)	PV 75 (Power vented 75 gallon)
0-1 Year (Starting Price)	\$ 514	\$ 547	\$ 566	\$ 891	\$ 1,158
1-2	475	505	523	824	1,070
2-3	440	468	484	762	990
3-4	413	439	454	715	929
4-5	386	410	425	668	868
5-6	351	373	387	609	791
6-7	318	338	350	552	717
7-8	290	308	319	503	653
8-9	256	272	282	444	577
9-10	222	236	244	385	500
10-11	184	196	203	320	415
11-12	145	154	160	252	327
12-13	106	113	117	184	239
13-14	69	73	76	120	155
14-15	34	36	37	59	77
Over 15 years	25	25	25	25	25

Starting Price

The price for water heaters less than one year old is equal to the current average Enbridge Home Services retail sale price for a comparable, installed water heater. This includes an amount to reflect our typical installation charge.

Age Discount

The buy-out prices shown are determined by adjusting the Starting Price to eliminate the effect of inflation from the date your water heater was installed.¹ The adjusted price is then amortized over 15 years (the expected useful life of the water heater).²

Remember:

When you purchase your Enbridge Home Services water heater, our rental arrangement ends. You will be under no obligation to pay rent for subsequent months and you will be responsible for service and maintenance of your water heater.

Need Help?

The chart on this table shows prices for almost all types of Enbridge Home Services rental water heaters.³ If your water heater is not covered, or if you are not sure what type of water heater you have or when it was installed, please call Enbridge Home Services at [1-800 ___ - ____].

Our rental specialists will also be pleased to answer any questions you may have about your water heater options.

¹ Discounting to take into effect the impact of inflation is done using the Ontario Consumer Price Index as determined by Statistics Canada.

² The amortization was based on a standard mortgage table with an interest cost of 5.8% and a 15 year term.

³ The natural gas water heaters included in the buy-out schedule, CV40, CV50, CV60, PV50, DV50, and PV75, represent 1.15 million of ESI's 1.20 million rental water heaters. This represents 96% of ESI's installed rental water heater base.

SCHEDULE "D"

Rental Water Heater Agreement Terms & Conditions

Our Commitment

The water heater you rent from us is backed fully by Enbridge Services Inc. Our commitment to you, our rental customer, is to provide a reliable, trouble-free water heater. Our commitment includes:

- Repair and maintenance of the water heater with no service charges or parts replacement charges except in the following circumstances:
 - (i) if you (or a third party not authorized by us) damage the water heater or if repairs are necessary because of use for which the water heater was not intended;
 - (ii) if the water heater requires de-liming, flushing or other repair due to water conditions (we cover only diagnostic work in these situations); or
 - (iii) where venting or piping requires cleaning, repair or replacement.
- Our 24-hour per day, 7 days per week emergency phone number.
- A rental arrangement that can be transferred to the next homeowner if you sell your home.
- A buy-out option under which you may elect to purchase your water heater at any time, for a price discounted to take into account the age of the water heater. (See details below.)
- A termination option allowing you to have your water heater removed (see details below).

Customer Commitment

We will honour our commitment over the useful life¹ of the water heater. In return, you agree that:

- You will pay your rental charges when due, together with interest on any late payments at interest rates we may set, acting reasonably.
- We may change our rental rates from time to time by announcing rate changes in advance in bill inserts. (During any periods while you are subject to removal charges (see below), your rate increases will not exceed a percentage corresponding to the cumulative rate of inflation in Ontario since our last rate increase.)
- You will use your water heater safely and responsibly, and in particular you will:
 - (i) ensure that no combustible, hazardous or flammable materials are used or stored near the water heater;
 - (ii) ensure that the water heater is not confined in a location where it is difficult to service or remove or where there is inadequate ventilation;
 - (iii) ensure that vents and openings are kept clear and clean; and
 - (iv) provide us with access to the water heater whenever reasonably required for purposes of inspection, repair or removal.
- It is your responsibility to ensure that the water heater is located in an area with sufficient drainage in the vicinity and that the drainage is open and unrestricted, and that we will therefore not be responsible for damage caused if the water heater leaks.

¹ Useful life of the rental water heater ends when Enbridge Home Services or its authorized service provider deems the rental water heater cannot be reasonably repaired. (For instance, when there is terminal failure of the internal lining of the tank or when the water heater requiring repair is greater than 15 years old.)

- Except as permitted by your buy-out option and termination option under this agreement, you will not permit anyone who has not been authorized by us to service, repair, modify, move or disconnect the water heater.
- You will be responsible for any damage to the water heater if caused by you or unauthorized third parties or by fire, flood, accident or other insurable risks.
- During the term of this agreement the water heater remains our property, does not become a fixture, and you will not tamper with any tag(s) or sticker(s) identifying the water heater as rented equipment.
- If you sell your home, you will advise the purchaser that the water heater is rented pursuant to this agreement. We will permit the purchaser to assume your rights and obligations under this agreement, effective from the date of sale, provided that (i) the purchaser is notified in the agreement of purchase and sale that the water heater is rented and is subject to these terms and conditions, and (ii) you advise us in advance of the purchaser's name and the intended date of sale. We may also accept performance of your obligations (including payment obligations) from other parties (such as tenants), but will not be required to do so.
- We may choose to retain a copy of this document in electronic form only.
- We may inquire about your credit history.
- You agree that we may terminate this agreement and remove the water heater if you fail to meet any of your commitments.
- At the end of the useful life of your present water heater, you are not obligated to rent and we are not obligated to supply replacement equipment, unless we mutually agree at the time.

Your Buy-out Option

- You may purchase your rental water heater at any time for the applicable age-reduced price shown on the buy-out schedule attached to this agreement. You may exercise your buy-out option by notifying us in writing or by calling an Enbridge Home Services rental specialist at [].
- When you exercise your buy-out option, you accept the water heater in "as is" condition, subject to the balance of any transferable manufacturer's warranty and you assume responsibility for the water heater and its repair and maintenance. You also agree to pay the buy-out price when invoiced by Enbridge Home Services.

Your Termination Option

- You may terminate your rental and return your rental water heater to us at any time by notifying us in writing or by calling an Enbridge Home Services rental specialist at []. Depending on the circumstances, there may or may not be charges associated with this termination of your rental as provided for below.
- If you terminate your rental less than five (5) years after the date your rental water heater was installed, you agree to pay a [removal charge/exit fee]. This charge is \$125.00 during the first year and declines by \$10.00 per year over the next four (4) years. After the fifth year there is no [removal charge/exit fee].
- If you terminate the rental during the useful life of your water heater and do not exercise your buy-out option, you agree to arrange for the safe return of the water heater to us. You have two alternatives:
 - (i) you may call us and arrange for Enbridge Home Services to disconnect and/or retrieve the water heater; or
 - (ii) you may have a qualified third party disconnect your rental water heater and then return it safely to a designated Enbridge Home Services location during return hours. (Call Enbridge Home Services for the nearest location for returns.)

- If you choose to disconnect and/or return the water heater yourself or through a third party, you do so at your own risk and you agree that you will accept responsibility for all damages or claims resulting from the disconnection, removal and return of the water heater.
- If you choose to have Enbridge Home Services disconnect, remove or retrieve the rental water heater, in most cases there will be a \$75.00 charge for these services. (There is no charge if you are more than 32 km. (20 miles) from an Enbridge return location or if we fail to retrieve your water heater within two weeks of your request or your water heater has been rented for 15 years or more.)
- Your rental (including your obligation to make rental payments for subsequent months) ends upon the return of the water heater in reasonable condition reflecting its age, normal use and local conditions. (If we fail to retrieve the water heater within two weeks of your request, we will not charge rent for subsequent months.)

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for a Consent Order pursuant to sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER OF certain practices of anti-competitive acts by Enbridge Services Inc. ("ESI") within certain markets in the province of Ontario;

AND IN THE MATTER OF an abuse of dominant position in the supply of conventional or power vented natural gas fuelled water heaters not used for commercial purposes ("water heaters") and related services within certain markets in the province of Ontario.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

ENBRIDGE SERVICES INC.

Respondent

DRAFT CONSENT ORDER

JOSEPHINE A.L. PALUMBO

Department of Justice

Competition Law Division

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