

ONTARIO ENERGY BOARD

EB-2017-0224

EB-2017-0255

EB-2017-0275

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S. O.
1998, c. 15, Schedule B;

AND IN THE MATTER OF an applications for approval of the cost
consequences of cap and trade compliance plans

**ENVIRONMENTAL DEFENCE COMPENDIUM
RE UNION GAS CONFIDENTIALITY REQUESTS**

Elson Advocacy

160 John Street, Suite 300
Toronto, Ontario M5V 2E5

Kent Elson

Tel: (416) 906-7305

Fax: (416) 763-5435

Kent@ElsonAdvocacy.ca

Lawyer for Environmental Defence

April 20, 2018

BY EMAIL, COURIER & RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
Toronto, Ontario
M4P 1E4

RE: EB-2017-0255 – Union Gas Limited 2018 Cap-and-Trade Compliance Plan – Updates to Technical Conference Undertakings

Dear Ms. Walli,

On April 16, 2018, Union Gas Limited (“Union”) filed its responses to the undertakings received during the 2018 Cap-and-Trade Compliance Plan technical conference held on April 9, 2018.

Union wishes to submit updates to the following undertakings:

- JT1.1 – Updated to note that the California Carbon 2030 Carbon Price Forecast has been filed confidentially with the OEB
- JT1.9 – Updated to include a more detailed overview of Union’s RNG Procurement and Funding model
- JT1.31 - Upon further review of the technical conference transcript, updated to more fully address the substance of the request posed by Mr. Rubenstein. There have been no updates to Exhibit JT1.31, Attachment A.

For clarity, the JT1.31 undertaking wording has also been adjusted to accurately reflect the substance of the request accepted. The adjusted wording is provided below.

Undertaking	Per Transcript	Adjusted
JT1.31	TO PROVIDE THE RESEARCH AND/OR RELATED DATA FOR PHASE 1 AND PHASE 2 MICRO-GENERATION INITIATIVES; AND IF NOT, TO ADVISE WHY NOT	TO PROVIDE THE RESEARCH AND/OR RELATED DATA FOR PHASE 1 AND PHASE 2 MICRO-GENERATION INITIATIVES (EVEN IF THEY DO NOT CONTINUE TO STAGE 3) AND ADVISE WHETHER UNION INTENDS TO PUBLICLY DISCLOSE SUCH RESEARCH AND/OR RELATED DATA; AND IF NOT, TO ADVISE WHY NOT.

UPDATED: 2018-04-20
EB-2017-0255
Exhibit JT1.1

UNION GAS LIMITED

Undertaking of Mr. Dantzer
To Mr. Elson

Reference: Tr.1, p.8

TO PROVIDE ANY CARBON PRICE FORECASTS IN UNION'S POSSESSION THAT COVER YEARS BEYOND 2028.

Response:

Union does not have in its possession any publicly available forecast of carbon prices that extends beyond 2028.

Union does have in its possession a California Carbon 2030 Carbon Price Forecast, but does not have permission to disclose the forecast publicly.

Union has not been granted permission to file this forecast publicly as it contains commercially sensitive materials and proprietary information. Accordingly, Union has provided the requested information (Exhibit JT1.1, Attachment A) to the Board in confidence under separate cover in accordance with the Board's Practice Guidelines on Confidential Filings and Rule 10 of the Board's Rules of Practice and Procedures.

Filed: 2018-04-16
EB-2017-0255
Exhibit JT1.12

UNION GAS LIMITED

Undertaking of Ms. Flaman
To Mr. Elson

Reference: Tr.1, p.67

TO FILE THE COMPLETE VERSION OF ATTACHMENT B TO B.ED.21, IF POSSIBLE
(SUBJECT TO CONFIDENTIALITY).

Response:

This presentation was created by a third party consultant ICF. Union has not been granted permission to file this presentation publicly by ICF International as it contains commercially sensitive materials. Accordingly, Union has provided the requested presentation (Exhibit JT1.12, Attachment A) to the Board in confidence under separate cover due to commercial sensitivity in accordance with the Board's Practice Guidelines on Confidential Filings and Rule 10 of the Board's Rules of Practice and Procedures.

Filed: 2018-04-16
EB-2017-0255
Exhibit JT1.35

UNION GAS LIMITED

Undertaking of Ms. Flaman
To Mr. Brett

Reference: Tr.1, p.182

SUBJECT TO CONFIDENTIALITY, TO FILE A COPY OF THE ATTRIBUTION
AGREEMENT BETWEEN UNION AND THE GOVERNMENT.

Response:

Before filing this agreement, Union would need permission from the counterparty, the Ministry of Energy (“MOE”). Union has requested this permission. If permission is granted, Union will update its response to this Undertaking to provide a copy of the requested agreement as Exhibit JT1.35, Attachment A.

An unredacted copy of the requested agreement will be provided to the Board in confidence under separate cover due to commercial sensitivity in accordance with the Board’s Practice Guidelines on Confidential Filings and Rule 10 of the Board’s Rules of Practice and Procedures.



ONTARIO ENERGY BOARD

Practice Direction

On

Confidential Filings

Revised October 13, 2011

ONTARIO ENERGY BOARD

PRACTICE DIRECTION ON CONFIDENTIAL FILINGS

1. INTRODUCTION AND PURPOSE

The purpose of this Practice Direction on Confidential Filings is to establish uniform procedures for the filing of confidential materials in relation to all proceedings that come before the Ontario Energy Board. This Practice Direction is also intended to assist participants in the Board's proceedings in understanding how the Board will deal with such filings.

The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible. The Board therefore generally places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

The Board and parties to a proceeding are required to devote additional resources to the administration, management and adjudication of confidentiality requests and confidential filings. In this context, it is particularly important that all parties remain mindful that only materials that are clearly relevant to the proceeding should be filed, whether the party is filing materials at its own instance, is requesting information by way of interrogatory or is responding to an interrogatory. Parties are reminded that, under the Board's *Rules of Practice and Procedure*, a party that is in receipt of an interrogatory that it believes is not relevant to the proceeding may file and serve a response to the interrogatory that sets out the reasons for the party's belief that the requested information is not relevant. This process applies to all interrogatories, and is of particular significance in relation to confidential filings given the administrative issues associated with the management of those filings.

The Board's *Rules of Practice and Procedure* govern the conduct of all proceedings before the Board. Those *Rules* require compliance with this Practice Direction.

5. GENERAL PROCESS FOR CONFIDENTIALITY IN MATTERS BEFORE THE BOARD

The processes set out in this Part and in Part 6 are intended to allow for the protection of information that has been properly designated as confidential. The onus is on the person requesting confidential treatment to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

It is also the expectation of the Board that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure, and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record. This will provide parties with a fair opportunity to present their cases and permit the Board to provide meaningful and well-documented reasons for its decisions.

The processes set out in this Part and in Part 6 contemplate that the Board will play a central role in directing and managing the exchange of confidential filings and related materials (such as the Declaration and Undertaking). A party that independently serves other parties with documents containing confidential information other than through or at the direction of the Board does so at its own risk.

5.1. Process for Confidentiality Requests

5.1.1. All filings must be made in accordance with the Board's *Rules of Practice and Procedure*, specifically, Rule 10 of the *Rules of Practice and Procedure*, which deals with confidential documents before the Board.

5.1.2. In accordance with Rule 10.01 of the Board's *Rules of Practice and Procedure*, a party may request that all or part of a document be held confidential.

5.1.3. A request for confidentiality must be addressed to the Board Secretary.

5.1.4. A request for confidentiality must include the following items:

- (a) a cover letter indicating the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental;
- (b) a confidential, un-redacted version of the document containing all of the information for which confidentiality is requested. This version of the document should be marked "confidential" and should identify all portions of document for which confidentiality is claimed by using shading, square brackets or other appropriate markings. If confidential treatment is

requested in relation to the entire document, the document should be printed on coloured paper; and

- (c) either:
 - i. a non-confidential, redacted version of the document from which the information that is the subject of the confidentiality request has been deleted or stricken; or
 - ii. where the request for confidentiality relates to the entire document, a non-confidential description or summary of the document.
- 5.1.5. A copy of the cover letter requesting confidentiality, together with the non-confidential version or non-confidential description of the document (as applicable) must be served on all parties to the proceeding, and will be placed on the public record. The confidential, un-redacted version of the document will, subject to section 5.1.6, be kept confidential until the Board has made a determination on the confidentiality request.
- 5.1.6. A party to the proceeding may object to the request for confidentiality by filing an objection with the Board Secretary within the time specified by the Board. The objection must be served on all other parties to the proceeding, including the party that made the confidentiality request. Where the party requires access to the confidential version of the document in order to submit its objection, the party may request that the Board allow access for that purpose under suitable arrangements as to confidentiality. Such request shall be made in writing to the Board Secretary or, where the request is made during an oral hearing, directly to the Board. The party that made the confidentiality request may object to the request for access within the time and in the manner specified by the Board.
- 5.1.7. An objection to a request for confidentiality must address the following:
- (a) the reason why the party believes that the information that is the subject of the request for confidentiality is not confidential, in whole or in part, by reference to the grounds for confidentiality expressed by the party making the request for confidentiality; and
 - (b) the reason why the party requires disclosure of the information that is the subject of the request for confidentiality and why access to the non-confidential version or description of the document (as applicable) is insufficient to enable the party to present its case.
- 5.1.8. The party requesting confidentiality will have an opportunity to reply to the objection. The replying party must file its reply with Board Secretary and serve it on all parties to the proceeding within the time specified by the Board.

Appendix A

Considerations in Determining Requests for Confidentiality

The final determination of whether or not information will be kept confidential rests with the Board. The Board will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information. Some factors that the Board may consider in addressing confidentiality of filings made with the Board are:

- (a) the potential harm that could result from the disclosure of the information, including:
 - i. prejudice to any person's competitive position;
 - ii. whether the information could impede or diminish the capacity of a party to fulfill existing contractual obligations;
 - iii. whether the information could interfere significantly with negotiations being carried out by a party; and
 - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;
- (b) whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board;
- (c) whether the information pertains to public security;
- (d) whether the information is personal information;
- (e) whether the Information and Privacy Commissioner or a court of law has previously determined that a record should be publicly disclosed or kept confidential;
- (f) if an access request has previously been made for the information under FIPPA, whether the information was disclosed as a result of that request;
- (g) any other matters relating to FIPPA and FIPPA exemptions;
- (h) whether the type of information in question was previously held confidential by the Board; and

- (i) whether the information is required by legislation to be kept confidential.

Information that is in the public domain will not be considered confidential.

Appendix B

Types of Information that Have Previously Been Held Confidential

This Appendix contains an illustrative list of the types of information previously assessed or maintained by the Board as confidential, and parties may anticipate that the Board will accord confidential treatment to these types of information in the normal course.

1. Individual Personal Records

Personal records of employees or other members of entities seeking licenses that are either filed with the Board or otherwise obtained have previously been held confidential. Individual personal records include police, tax, CPIC, and other personal records.

2. Credit Checks

Personal credit checks. These are credit checks filed with the Board, or obtained by the Board, from a variety of commercial sources including Dunn & Bradstreet and Standard & Poor's.

3. Information Covered by Solicitor-client Privilege or Litigation Privilege

Advice with respect to litigation or other legal information protected by solicitor-client privilege or litigation privilege.

4. Tax Related Information

Information from a tax return or information gathered for the purpose of determining tax liability or collecting a tax.

5. Third Party Information under FIPPA

Third party information as described in section 17(1) of FIPPA, including vendor pricing information.

6. "Forward Looking" Financial Information

"Forward looking" financial information that has not been publicly disclosed and that Ontario securities law therefore requires be treated as confidential.

7. Information Identified as Confidential in Board Templates and Filing Guidelines

Information identified as being considered confidential in Board templates and filing guidelines, including licence application forms for electricity licences and gas marketing licences.

8. Information Filed Under the RRR

Information identified in the Board's *Natural Gas Reporting & Record Keeping Requirements: Rule for Natural Gas Utilities, Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements and Electricity Reporting and Record Keeping Requirements* as being treated as confidential.

Appendix C
Form of Declaration and Undertaking

EB-[•]

IN THE MATTER OF [•]

DECLARATION AND UNDERTAKING

I, _____, am counsel of record or a consultant for
 _____.

DECLARATION

I declare that:

1. I have read the *Rules of Practice and Procedure* of the Ontario Energy Board (the "Board") and all Orders of the Board that relate to this proceeding.
2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding.
3. I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been designated by the Board as confidential and to all documents that contain or refer to that confidential information ("Confidential Information").
4. I understand that execution of this Declaration and Undertaking is a condition of an Order of the Board, that the Board may apply to the Superior Court of Justice to enforce it.

UNDERTAKING

I undertake that:

1. I will use Confidential Information exclusively for duties performed in respect of this proceeding.

2. I will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.
3. I will not reproduce, in any manner, Confidential Information without the prior written approval of the Board. For this purpose, reproducing Confidential Information includes scanning paper copies of Confidential Information, copying the Confidential Information onto a diskette or other machine-readable media and saving the Confidential Information onto a computer system.
4. I will protect Confidential Information from unauthorized access.
5. With respect to Confidential Information other than in electronic media, I will, promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding:
 - (a) return to the Board Secretary, under the direction of the Board Secretary, all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
 - (b) destroy such documents and materials and file with the Board Secretary a certification of destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
6. With respect to Confidential Information in electronic media, I will:
 - (a) promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary a certificate of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
 - (b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.
7. For the purposes of paragraphs 5 and 6, the end of this proceeding is the date on which the period for filing a review or appeal of the Board's final order in this

proceeding expires or, if a review or appeal is filed, upon issuance of a final decision on the review or appeal from which no further review or appeal can or has been taken.

- 8. I will inform the Board Secretary immediately of any changes in the facts referred to in this Declaration and Undertaking.

Dated at _____ this _____ day of _____, _____.

Signature:
Name:
Company/Firm:
Address:
Telephone:
Fax:
E-mail: