

April 25th, 2018

ONTARIO ENERGY BOARD  
2300 Yonge Street  
25<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1R0.

Dear Sir/Madam:

Re: EB-2017-0255  
Order of Confidentiality for CaliforniaCarbon.info Content.

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This letter is in support of a request by Union Gas Limited to keep confidential certain content belonging to our client, CaliforniaCarbon.info namely, a proprietary market forecast on the joint carbon market in California, Ontario and Quebec, set out on a slide and entitled “2030 WCI carbon price forecast and implications of AB398”, dated October 2017 (“the Slide”). We understand the Slide is currently being treated as a confidential document before the Board, but there has been a request by an Intervenor to have the Slide made public. Should this happen, it would become available to be accessed, copied and further distributed, for free, by anyone, as it would be posted on the Board’s website.

We further understand that this Intervenor is also seeking to have made public a report prepared by ICF International (“ICF”), which also contains some of our client’s confidential content (the “Report Content”). We would, therefore, request that the Report Content also receive confidential treatment, as per the OEB Practice Direction on Confidential Filings (the “OEB Practice Direction”) and that all copies of the Slide and the Report Content be destroyed once these proceedings are completed. We have been advised that ICF will be providing written submissions that its entire report is confidential and we are in agreement with and support those submissions.

By way of background, our client, CaliforniaCarbon.info is a data/information service provider in the carbon markets established by the Western Climate initiative in Ontario, Quebec and California. It is a small business which is solely based on selling proprietary data, analysis and technical content through a paid subscription-driven revenue model. It charges a membership fee to clients for exclusive and restricted access to its compiled data, analytics and other confidential content. CaliforniaCarbon.info and its parent company, referred to below, have expended extensive skill, judgement and labour as well as invested significant resources to research, compile, analyze and sell this content to the market in order to support informed decision making by the relevant parties. All content on CaliforniaCarbon.info’s website, including the Slide and the Report Content, is the intellectual property and confidential information of Climate Connect Technologies, the parent company of CaliforniaCarbon.info, and used exclusively by CaliforniaCarbon.info under its parent company’s authorization.



Bereskin & Parr LLP

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As this is the only product our client has to generate revenue, the economic survival of CaliforniaCarbon.info depends on it maintaining the confidentiality of its content, including the Slide and the Report Content, provided to paying subscribers only. The subscribers are also bound by a Terms Of Use Agreement to keep our client's content confidential and not to use it for commercial purposes or further disseminate it. Without these restrictions and confidentiality measures, our client, as a small, private company, could not realize the value of its investment of time and resources as well as the significant skill, judgement and expertise of those within its organization who develop the in-depth data, analysis and market forecasts. Bluntly put, without restrictions on access to its confidential content, CaliforniaCarbon.info would soon be out of business.

Furthermore, unauthorized and unfettered reproduction, publication or distribution of its rights protected content, (including the Slide and the Report Content), by the public, would constitute an infringement of Climate Connect Technologies'/CaliforniaCarbon.info's copyrights.

As stated, public disclosure of the Slide and the Report Content would render these materials available for anyone's free use and further distribution, undermining, if not destroying, the very basis of our client's business. CaliforniaCarbon.info has one highly specialized product to sell to a finite market. If current subscribers can find the content elsewhere for free, why would they maintain a subscription, and why would a new potential subscriber want to pay for what they can access for free. Our client estimates that public disclosure of its content could cause its business damages equivalent to at least USD600,000 in the next three to five years.

On the other hand, the Intervenor can obtain limited access to the Slide and the Report Content, sufficient for its needs for these proceedings, by signing the Board's Non-Disclosure Agreement. In this way, the Intervenor's interests are met and CaliforniaCarbon.info's interests are protected. We submit that the only prejudice or damage that could befall an affected party would clearly fall on our client if the Confidentiality Order was not maintained.

For all these reasons, we request that the Slide and the Report Content be kept confidential pursuant to the OEB's Practice Direction. In further support of this request, we refer to Appendix A of that Direction which states that relevant factors the Board may consider in addressing confidentiality of filings includes; "the potential harm that could result from the disclosure of the information, including (i) prejudice to any person's competitive position; and (iv) whether the disclosure would be likely to produce a significant loss or gain to any person" as well as "whether the information consists of...commercial, scientific or technical material that is consistently treated in a confidential manner by the person providing it to the Board." We respectfully submit that all these factors are present and applicable in this case.

We also note that the Board has in the past granted Confidentiality Orders in similar situations, namely, to protect third party business' commercially valuable confidential information. We refer to the Board decision in EB-2016-0160 concerning Hydro One and proprietary reports owned by Canadian Electricity Association ("CEA"), also only distributed via the same business model as our client. In keeping such reports confidential, the Board stated: "These reports are sold on a

subscription fee basis only. The OEB agrees with Hydro One that unrestricted public disclosure of these reports would place CEA at a competitive disadvantage as potential clients could access the documents free of charge. The OEB grants Hydro One's confidentiality request for these two documents."

We trust that these submissions are sufficient to prove to the Board that the Slide and the Report Content should remain under a Confidentiality Order. We were just retained to act for CaliforniaCarbon.info on this specific request before the Board two days ago. The undersigned is out of the country from April 26<sup>th</sup> to April 30<sup>th</sup> and, therefore, could not provide oral submissions at today's Hearing. However, if the Board feels it is unable to grant the confidentiality request based on these written submissions alone, we respectfully request the opportunity to make oral submissions next week, after May 1, 2018

Respectfully submitted,

BERESKIN & PARR LLP/S.E.N.C.R.L., s.r.l.  
Agent for the Applicant

A handwritten signature in blue ink that reads "Jill Tonus". The signature is written in a cursive, flowing style.

Jill Tonus  
/fa