

April 26, 2018

**By E-Mail**

Ontario Energy Board  
2300 Yonge Street  
25<sup>th</sup> Floor  
Toronto, ON  
M4P 1E4

Dear Sirs:

**Re: File No. EB-2017-0255**  
**Confidentiality Order re: ICF Report**

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We are counsel to ICF Consulting Canada Inc. (“ICF”).

We write in support of a request by Union Gas Limited (“Union Gas”) for a report prepared by ICF for Union Gas entitled “Ontario Cap and Trade: Overview, Price Outlook, and Impact on NG” dated April 22, 2016 (the “Report”) to be treated as confidential. We understand that the Report is referenced as Undertaking JT1.2 in these proceedings.

It is ICF’s understanding that to date a copy of the Report has only been filed confidentially before the Board, but that there has been a request by an intervenor in this proceeding to have the Report placed on the public record. For the reasons set out below, ICF submits that the Report should continue to be treated as confidential pursuant to the Board’s Practice Direction on Confidential Filings, such that only those participants in these proceedings who have executed the Board’s Confidentiality Order may access the Report and such that all copies of the Report will be destroyed at the conclusion of these proceedings.

To be clear, we confirm that for the purposes of this proceeding, while ICF maintains its objection to the Report being placed on the public record, ICF has no objection to the Report being made available to those participants who have executed the Board’s Declaration and Undertaking in accordance with the OEB’s Practice Direction on Confidential Filings.

**Background to the Report**

By way of background, ICF is a global consulting services company whose over 5,000 specialized experts work on projects for both public and private sector clients.

The Report consists of proprietary research and analysis prepared by ICF experts for its client, Union Gas. The research and analysis provided in the report is the product of significant skill, judgment, and effort expended by ICF's experts.

Moreover, the terms of ICF's retainer with Union Gas for the purposes of the Report provided that the Report (and content contained therein) was non-transferable and intended for use only by Union Gas for internal business purposes only, and not for public dissemination or distribution. Accordingly, access to and use of the Report (and its content) was offered to Union Gas on a limited, confidential basis as a paid service, and represents ICF's informed view of the issues addressed in the Report.

### **Relevant Considerations Weigh in Favour of Confidential Treatment**

ICF recognizes that in determining whether or not information and documents will be kept confidential requires balancing the public interest in openness with the need to protect confidential information.

In this case, it is submitted that the relevant considerations weigh strongly in favour of confidential treatment of the Report.

First, the Report (and its content) is technical material of a nature which is consistently treated as confidential by ICF. Indeed, as noted above, the Report was prepared and delivered by ICF to Union Gas under various restrictions as to its use and dissemination.

Second, there is potential harm and prejudice to ICF that could result from the public disclosure of the Report. As noted above, the Report was prepared and delivered by ICF to Union Gas under various restrictions. Without such restrictions, and if public disclosure is permitted by the Board, the value of ICF's research and analysis and the significant skill, judgement and expertise exercised in preparing the Report would be lost. The public disclosure of the Report would leave such content free for anyone else's use and distribution, with the potential for serious harm to ICF's competitive position and ability to carry on its business offering such research and analysis. If those in the market for such research and analysis as that contained in the Report could access it for free, they would not look to retain ICF to provide such services, to ICF's detriment. ICF's ability to generate revenue through the provision of such paid advisory services would be severely prejudiced.

On the other hand, such potential harm and prejudice to ICF could be avoided simply by requiring any participants who wish to obtain access to the Report for the purposes of this proceeding to first execute and abide by the Board's Declaration and Undertaking. Such an approach would ensure that all participants' interests in accessing the Report are met while at the same time protecting ICF's legitimate commercial interests.

We note that in prior cases the Board has treated similar documents and information as confidential. For example, with respect to research and analysis prepared on a confidential or subscription-only basis the Board has previously determined that unrestricted public disclosure of such content through placing such material on the public record would place the parties preparing such research and analysis at a competitive disadvantage.<sup>1</sup> We respectfully submit that the same considerations apply to the Report in this case.

Finally, it is noted that the Report also contains certain content from a third party (CaliforniaCarbon.info) which is claimed as confidential by that party. ICF has reviewed the submissions provided to the Board by CaliforniaCarbon.info and supports its parallel request for confidential treatment of the Report (and the content found therein) in this proceeding.

### **Conclusion**

In summary, ICF submits that the Report should receive confidential treatment in these proceedings because: (i) the Report (and its contents) is technical material of a nature which is consistently treated as confidential by ICF; (ii) disclosure of the Report (and its content) could prejudice ICF's competitive position and produce a significant loss to ICF; and (iii) the Report contains third party content which is also claimed as confidential by that party.

We reiterate that, for the purposes of this proceeding, ICF has no objection to the Report being made available to those participants who have executed the Board's Declaration and Undertaking in accordance with the OEB's Practice Direction on Confidential Filings.

We would be pleased to make ourselves available to the Board should anything further be required in respect of this issue.

Yours very truly,

**Gowling WLG (Canada) LLP**



James Green

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<sup>1</sup> See e.g. EB-2016-0160.