

April 26, 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 – Confidentiality Request

Dear Ms. Walli,

I write regarding Union's request, made pursuant to Rule 10.01 of the *Rules of Practice and Procedure* and Section 5 of the *Practice Direction on Confidential Filings*, that certain documents filed in response to updated undertakings JT1.1 and JT1.12 be treated confidentially.

This letter should be read in conjunction with the letter dated April 25, 2018 from Jill Tonus (Bereskin & Parr) submitted on behalf of CaliforniaCarbon.info, and the letter dated April 25, 2018 from James Green (Gowling WLG) dated April 26 2018 submitted on behalf of ICF Consulting Canada Inc.

Confidential documents at issue

The confidential documents at issue are: (1) 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, that is the property of CaliforniaCarbon.info and its parent company, Climate Connect Technologies (the "California Carbon Forecast"), and (2) a report prepared by ICF for Union entitled "Ontario Cap and Trade: Overview, Price Outlook, and Impact on NG" dated April 22, 2016 (the "ICF Report"), which also contains proprietary information of California Carbon.info. The California Carbon Forecast has been filed with the OEB confidentially in response to undertaking JT1.1.

The ICF Report has been filed with the OEB confidentially in response to undertaking JT1.12. Both have been provided to OEB Staff and to those who have signed a Declaration and Undertaking.

Third parties will sustain substantial harm if the documents are not protected

As set out in the letters submitted by Ms. Tonus and Mr. Green, the California Carbon Forecast and the ICF Report are the confidential proprietary information of CaliforniaCarbon.info, Climate Connect Technologies and ICF. Both letters set this out in substantial detail, and explain the very substantial harm that would result to those parties if the documents were made public on the OEB website and available to be downloaded by anyone. As Ms. Tonus explains:

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, judgment 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.** [Emphasis added.]

Similarly, Mr. Green states:

The public disclosure of the [ICF] 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.** [Emphasis added.]

As Ms. Tonus and Mr. Green explain, disclosure of the California Carbon Forecast and the ICF Report would cause severe harm to both entities. This is reason enough to protect the confidentiality of those documents, consistent with the Practice Direction, which states that in deciding whether confidential treatment is warranted the OEB may consider "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." All of these factors are met with respect to the documents at issue.

Conversely, there is no prejudice to any interested party in keeping the information confidential, since the information is and will continue to be available to any intervenor who signs a Declaration and Undertaking.

The OEB has consistently protected the confidentiality of information the disclosure of which would cause harm to third parties. For example, as both Ms. Tonus and Mr. Green identify in their letters, the OEB in EB-2016-0160 protected the confidentiality of proprietary third party information in circumstances identical to those at issue here. It stated: “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.”

Union’s competitive position would be harmed if the documents are not protected

Union would also be harmed if the documents were made available publicly on the Board’s website. If third parties cannot have confidence that the proprietary information that is the very product that they sell will be protected, they will be reluctant to provide that information to Union in the future. This will put Union at a competitive disadvantage, because Union would not have access to the market intelligence, market forecasts and other information on which it relies to make prudent business decisions to the benefit of ratepayers.

Counsel for CaliforniaCarbon.info and ICF request an opportunity to make oral submissions

Given the severity of the potential harm to their respective businesses, the threatened public disclosure of the California Carbon Forecast and the ICF Report was treated extremely seriously by CaliforniaCarbon.info and ICF. Both of them retained external intellectual property counsel to represent them before the OEB once we advised them that the confidential treatment of their proprietary information was at risk.

As both counsel state in their letters, they respectfully request the opportunity to make oral submissions to the OEB should the written submissions not be sufficient to persuade the OEB that the confidentiality of the documents at issue should be protected. I understand that both Ms. Tonus and Mr. Green would be available to appear to make submissions on Tuesday, May 1st if required. We are also available to attend on May 1st to make oral submissions on this issue if necessary.

Yours truly,

[Original signed by]

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c.c.: EB-2017-0255 parties *(by email)*
Adam Stiers, Union Gas Ltd. *(by email)*

Valerie Bennett, OEB (*by email*)
Ljuba Djurdjevic, OEB (*by email*)
Lawren Murray, OEB (*by email*)
Josh Wasylyk, OEB (*by email*)