

Elson Advocacy

April 27, 2018

BY COURIER (2 COPIES) AND RESS

Ms. Kirsten Walli

Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700, P.O. Box 2319
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: EB-2017-0224 – Enbridge Gas Distribution Inc. (“Enbridge”)
EB-2017-0255 – Union Gas Limited (“Union”)
2018 Cap and Trade Compliance Plans**

I am writing on behalf of Environmental Defence further to Union’s letter of yesterday evening requesting confidential treatment of the responses to JT1.1 and JT1.12. Although I understand that this letter will be processed by the Board shortly, I am providing a response now to help move this process forward.

Environmental Defence does not object to JT1.1 (the “Carbon California Forecast”) being filed confidentially. Nor does it object to the California Carbon price Forecast being redacted from any publicly filed version of JT1.12 (the “ICF Report”). However, Environmental Defence does object to the remaining portions of the ICF Report being filed confidentially for the following reasons:

1. Union seeks confidential treatment of the ICF Report on the basis that “the report is the product of significant skill, judgment, and effort expended by ICF’s experts.”¹ This is not sufficient justification for confidential treatment under the Board’s Practice Direction. Board-regulated entities regularly file reports that are the product of skill, judgement, and effort by experts. Treating these confidentially would be very cumbersome and much less transparent to the public. Approving Union’s request could set a negative precedent.
2. The information in the ICF Report is primarily analysis specific to Union Gas, and to a lesser extent, to Union and Enbridge combined. It is not the kind of generic information that can be resold to multiple different customers (unlike, for example, the California Carbon Forecast). There would be no (or minimal) commercial harm from publicly releasing ICF’s Report. This information is relevant to Union and Enbridge, who have already purchased it from ICF.

¹ Letter from Counsel for ICF, April 26, 2018, p. 2.

3. A number of similar ICF reports regarding the impacts of carbon pricing have been placed on the public record in past proceedings.² Those reports were also the product of significant skill, judgement, and effort by ICF experts. Union has not explained why this latest ICF Report should be treated confidentially when those previous versions were not.
4. Union also has not explained why the release of the latest report would purportedly cause commercial harm when the previous versions, and the information contained therein, are already available on the public record.
5. Union already filed approximately five pages of the ICF Report in Exhibit B.ED.21. However, the letter from ICF's counsel describes the *entire report* as requiring confidential treatment due to it being the product of expert skill, judgment, and effort. A blanket justification was provided and no differentiation was been made in ICF's letter between different portions of the report. If five pages can be released publicly, presumably the entire report can be released publicly, unless there are other specific reasons to seek confidential treatment that pertain to specific sections of the report.

Proposed Next Steps

In light of the Board's tight schedule, Environmental Defence does not believe that this issue requires oral submissions. However, should the Board direct oral submissions, I can make myself available on Monday or Tuesday of next week to attend in person.

If the Board decides to hear this matter in writing, Environmental Defence requests an opportunity to respond to further submissions of Union should they raise any new reasons for seeking confidential treatment of the ICF Report.

Lastly, I request that the process followed by Union with respect to these documents not be repeated in the future. The ICF Report was requested in an interrogatory filed on January 26, 2018 (Ex. B.ED.21). Only a portion of the report was filed. The full version was requested at the technical conference held on April 8, 2018 (JT1.12). However, the request for permission to file the document confidentially did not arrive until yesterday evening. Should this occur again in the future it could cause disruption and wasted Board resources.

Please

Yours truly,



Kent Elson

² For example see EB-2016-0300, Exhibit I.1.EGDI.SEC.4 and EB-2016-0004, Exhibit S3.EGDI.OGA.3 (the latest version is available at <http://www.rds.oeb.ca/HPECMWebDrawer/Record/526018/File/document>).