



EB-2017-0224  
EB-2017-0255  
EB-2017-0275

**Enbridge Gas Distribution Inc.  
Union Gas Limited  
EPCOR Natural Gas Limited Partnership**

**Applications for approval of the cost consequences  
of 2018 cap and trade compliance plans**

**DECISION ON CONFIDENTIALITY REQUEST AND  
PROCEDURAL ORDER NO. 5**

**May 25, 2018**

Enbridge Gas Distribution Inc. (Enbridge Gas), Union Gas Limited (Union Gas) and EPCOR Natural Gas Limited Partnership (EPCOR Natural Gas) (collectively the Gas Utilities) each filed an application with the Ontario Energy Board (OEB) seeking approval of the forecast costs arising from their cap and trade Compliance Plan for the January 1 - December 31, 2018 time period. The Gas Utilities filed their applications in accordance with the OEB's *Report of the Board – Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* (Cap and Trade Framework).<sup>1</sup>

The OEB assigned the following file numbers to the applications: EB-2017-0224 (Enbridge Gas), EB-2017-0255 (Union Gas) and EB-2017-0275 (EPCOR Natural Gas).

**Proceeding Background**

On December 1, 2017, the OEB issued a Notice of Hearing for a combined public hearing to consider the application of each of the Gas Utilities.

On December 28, 2017, the OEB issued PO No.1 requesting comments on the draft Issues List and setting procedural steps for this proceeding.

On January 10, 2018, Environmental Defence (ED) and Green Energy Coalition (GEC)

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<sup>1</sup> EB-2015-0363

filed a letter indicating their wish to submit evidence related to whether the utilities have struck a reasonable and appropriate balance between purchasing carbon allowances and implementing incremental conservation programs to reduce carbon emissions. Enbridge Gas and Union Gas opposed this request.

On February 7, 2018, the OEB issued PO No. 2 requesting that ED and GEC provide an outline and budget for their proposed intervenor evidence.

On February 28, 2018, the OEB issued PO No. 3 indicating that the proposed intervenor evidence was acceptable and providing updated procedural steps including a transcribed technical conference which was convened on April 9 and 10, 2018.

On April 23, 2018, the OEB commenced its oral hearing related to the Gas Utilities' public evidence. The public portion of the oral hearing concluded on Friday, April 27, 2018. The OEB subsequently held in camera sessions with each applicant related to the strictly confidential evidence. The oral hearing concluded on April 30, 2018.

### **Union Gas Request for Confidentiality**

In response to technical conference undertakings Union Gas filed, among other documents, Undertaking JT1.1, a proprietary market forecast from California Carbon (Forecast), and Undertaking JT1.12, a presentation from ICF Consulting Canada Inc. (ICF Presentation).

In a letter filed April 26, 2018, Union Gas requested that Undertaking JT1.1 and Undertaking JT1.12 be treated as confidential in accordance with Rule 10.1 of the OEB's *Rules of Practice and Procedure* (Rules) and Section 5 of the *Practice Direction on Confidential Filings* (the Practice Direction).

Union Gas indicated that its letter should be read in conjunction with the following:

- A letter from counsel for California Carbon filed on April 25, 2018 requesting confidential treatment of the Forecast in Undertaking JT1.1 and portions of the ICF Presentation that include proprietary content of California Carbon in Undertakings JT1.12.
- A letter from counsel for ICF filed on April 26, 2018 requesting confidential treatment of the ICF Presentation produced in response to Undertaking JT1.12. The letter stated that the document consists of proprietary research and analysis and that public disclosure of the information could result in potential harm and prejudice to ICF. The letter also indicated that ICF did not object to the

presentation being made available to those participants who have executed the confidentiality Declaration and Undertaking in accordance with the OEB's Practice Direction.

Union Gas requested confidential treatment of both the California Carbon Forecast and the ICF Presentation and submitted that the documents contain proprietary information which has commercial value to California Carbon and ICF. Union Gas submitted that the commercial value of the work products would be considerably diminished if they were placed on the public record.

On April 27, 2018, ED filed a letter in response to the request for confidential treatment of JT1.1 and JT1.12. ED did not object to confidential treatment of JT1.1, nor to redaction of the California Carbon Forecast in a public version of the ICF Presentation. However, ED objected to the remaining portions of the ICF Presentation being filed confidentially which are primarily analysis specific to Union Gas and not generic information that can be resold to multiple different customers. Therefore, the remainder of the ICF Presentation would have little or no commercial value beyond that which ICF has already received from Union Gas.

On April 30, 2018, ICF's counsel reiterated that its submission of April 26, 2018 stands and that there would be potential harm and prejudice to ICF if the balance of the Presentation is placed on the public record.

On May 3, 2018, the Industrial Gas Users Association (IGUA) filed a letter in response to Union Gas' confidentiality request. IGUA did not object to JT1.1 and portions of JT1.12 related to California Carbon's Forecast being treated as confidential. However, IGUA objected to the remaining portions of the ICF Presentation in JT1.12 being filed confidentially and submitted that confidential treatment of this material limits the openness, transparency and accessibility of these proceedings without sufficient justification.

## **Findings**

As set out in the Practice Direction, the OEB's general policy is that all evidence should be on the public record and open for inspection by any person unless disclosure of the record is prohibited by law. The Practice Direction seeks to balance the objectives of transparency and accessibility with the need to protect information that has been properly designated as confidential.

In considering these principles, the OEB finds that JT1.1 and certain sections of the ICF Presentation contained in Undertaking JT1.12 are appropriately treated as confidential. The OEB finds that certain slides in the ICF Presentation contain information that is commercially sensitive and could negatively impact ICF if made available publicly.

### **Sections of ICF Presentation for the Public Record**

The OEB finds that the slides within the ICF Presentation discussed further below should be available on the public record. The information contained within these slides is not proprietary and can be sourced by anyone who may be interested in finding the information and the disclosure will not impose undue harm or prejudice on ICF.

Slides 1, 2, 3, 4, 9, 17, 21, and 30 of the ICF Presentation contain topic headings or have been included for the sole purpose of organizing the document. These slides will all be available on the public record.

Slides 5, 7, 24, 29, and 31 are slides that have already been placed on the public record of the proceeding.<sup>2</sup> Accordingly, these slides will remain available on the public record.

The information contained in ICF Presentation slides 6, 8, 10, 11, 12, 15, 16, 18, 19, and 20 has all been reproduced from public sources, and therefore does not meet the requirements for confidential treatment under the OEB's Rules or Practice Direction and will be placed on the public record.

Slide 32 contains an analysis and conclusions that originate from ICF and pertain only to Union Gas. This information is not proprietary or applicable more broadly and will therefore be placed on the public record.

### **Sections of ICF Presentation for Confidential Treatment**

The sections of the ICF Presentation discussed further below include information and analysis that the OEB agrees is commercially sensitive and may prejudice ICF if disclosed publicly.

ICF Presentation slides 33, 34, 35, 36, 37, and 38 contain non-confidential information from public sources but has been compiled and presented in a format chosen and developed by ICF. Therefore, the OEB agrees that the information contained in these slides is proprietary to ICF and will be treated as confidential.

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<sup>2</sup> EB-2017-0255, Exhibit B.ED.21

Slides 25, 26 and 28 contain analysis and conclusions that originate from ICF which are proprietary and may have commercial value. The OEB agrees that these slides are appropriately treated as confidential.

The ICF Presentation slides discussed above will be treated as confidential pursuant to the OEB's Practice Direction and made available only to those parties who execute the OEB Declaration and Undertaking.

Slides 13, 14, 22, 23, and 27 of the ICF Presentation have been redacted as they contain proprietary information of California Carbon. No party objected to confidential treatment of these sections of the ICF Presentation. Accordingly, these slides will retain confidential treatment.

The OEB will place the updated public version of the ICF Presentation slides from JT1.12 on the public record after the appeal or process outlined in the Practice Direction is concluded or the time for filing an appeal or review has expired.

The OEB may issue further procedural orders from time to time.

**IT IS THEREFORE ORDERED THAT:**

1. Undertaking JT1.1 and portions of Undertaking JT1.12 that the OEB has determined are appropriate for confidential treatment will not be placed on the public record of this proceeding.
2. Intervenors seeking access to Undertaking JT1.1 and the confidential portions of Undertaking JT1.12 shall execute the Declaration and Undertaking form in accordance with the OEB's Practice Direction on Confidential Filings and file a copy with the OEB and serve it on Union Gas Limited.
3. Union Gas Limited shall file on the public record of this proceeding a redacted, non-confidential version or a non-confidential description or summary of the document referenced in response to Undertaking JT1.1.
4. Union Gas Limited shall file on the public record of this proceeding a redacted, non-confidential version of the document produced in response to Undertaking JT1.12 that is updated to reflect the findings in this Decision.
5. If Union Gas Limited intends to appeal or seek review of this Decision it shall file a

letter within five business days of issuance of this Decision and Order. In the absence of such an indication the OEB will deal with the information in the manner set out in this Decision and Order.

All filings to the OEB must quote the file numbers **EB-2017-0224 / EB-2017-0255 / EB-2017-0275**, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a USB flash drive in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Valerie Bennett at [Valerie.Bennett@oeb.ca](mailto:Valerie.Bennett@oeb.ca) and OEB Counsel, Ljuba Djurdjevic, at [Ljuba.djurdjevic@oeb.ca](mailto:Ljuba.djurdjevic@oeb.ca), and Lawren Murray, at [Lawren.murray@oeb.ca](mailto:Lawren.murray@oeb.ca).

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**DATED** at Toronto, **May 25, 2018**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary