

By Electronic Mail

December 4, 2006

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

KIRSTEN CRAIN  
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Dear Ms. Walli:

**Ontario Energy Board No.: EB-2006-0034**  
**Re: Enbridge Gas Distribution Inc. - 2007 Rates Application**  
**Our Client: Union Energy Limited Partnership ("Union Energy")**  
**Our File: 016778-000043**

This is further to the Board's Procedural Order No. 4. Union Energy objects to Enbridge Gas Distribution Inc.'s ("EGDI") request that its response to HVAC Interrogatory No. 16 (Request No. 4) be afforded confidential status.

**Guiding Principle: Confidentiality is Exceptional**

As stated in the Board's Practice Direction on Confidential Filings, "The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case".

**HVAC Interrogatory No. 16 (EGDI Request No. 4)**

In its Application, EGDI states at Exhibit D1, Tab 11, Schedule 1 p. 4 that, "Bill access is also critical for continued retention of the water heater load". It goes on to assert that, "Any disruption or alternative payment arrangement could exacerbate the switch out of natural gas water heaters to other fuels". In support of those statements, EGDI makes specific reference to market research it has carried out.

HVAC, at Interrogatory #16, properly requested that EGDI provide the market research referred to above.

In response, EGDI only produced parts of the study. Of the parts it did produce, it redacted certain information. EGDI now seeks a ruling that this study is confidential, on the grounds that, "public disclosure of the entire study would be harmful to the Company's strategic position and would unfairly gift participants in the HVAC industry with confidential information about their competitors". EGDI goes on to say that it would not object to producing the study to the parties' outside lawyers and experts, providing that they execute a Declaration and Undertaking, which would, among other things, preclude counsel from sharing the information with their clients.

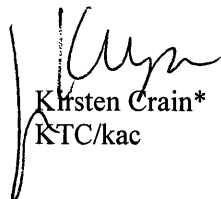
In Union Energy's view, it is completely inappropriate for EGDI to conduct market research at ratepayers' expense, to rely on the substance of that market research in support of its Application before the Board, and then to refuse to publicly produce the information.

EGDI is styling itself here as a market facilitator. It is not in direct competition with Union Energy or any of the HVAC members, and as such there is no reasonable basis to conclude that publicly filing this information would be harmful to EGDI's strategic position or otherwise "unfair" in any way.

EGDI's proposal that the research only be provided to outside counsel and to consultants who sign the Declaration and Undertaking is not justified. Providing access only to lawyers and outside experts interferes substantially with the solicitor and client relationship by putting the lawyer in a very difficult position with respect to his or her duties to his or her client. As a practical matter, it also makes it impossible for the lawyer to get instructions from his or her client in areas relating to "confidential" information, thereby preventing the party's meaningful participation in the issue in question. Such an intrusion into the solicitor and client relationship should be granted only in exceptional circumstances. No such circumstances exist here. The information should be publicly filed.

In order to obtain prompt access to the information, we will sign the Declaration and Undertaking form, but we do so without prejudice to our position that the Board should reject EGDI's request.

Yours very truly,

  
Kristen Crain\*  
KTC/kac

c.c. Patrick Hoey, Enbridge Gas Distribution Inc. (By e-mail)  
Fred D. Cass, Aird & Berlis LLP (By e-mail)  
Catherine David Nolan, Union Energy (By e-mail)  
Intervenors of Record (By e-mail)

\*Dictated but not read

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