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VIA Electronic Filing

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON
M4P 1E4

Re: EB-2011-0210 - Union 2013 Rates Application

Dear Ms. Walli:

Further to paragraph 2 of the Board's Procedural Order #6, I am writing on behalf of TransCanada PipeLines Limited ("TransCanada") with submissions as to the confidentiality of the redacted portions of Attachments 1 [on pages 4, 10 and 23] and 2 [on page 4] of Exhibit J.B-1-7-8 (e) (the "Redacted Information").

Introduction

Parties are at somewhat of a disadvantage in making submissions with respect to the Redacted Information because Union did not provide the submissions regarding confidentiality that Union would have provided if it had complied with sections 5.1.4 and 5.1.5 of the *Practice Direction on Confidential Filings* (the "Practice Direction") at the time of the filing of the interrogatory response. TransCanada has not received any such submissions in conjunction with the filing of the unredacted versions of the documents.

All that Union said with respect to the redactions at the time of the filing of the interrogatory response was that "*Commercially and operationally sensitive material has been redacted from these presentations.*" Parties have no section 5.1.4 submissions to which they can respond regarding whether there are "*reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental*", and in particular no submissions as to why the factors identified in Appendix A to the Practice Direction are engaged.

This situation is exacerbated by the fact that TransCanada has had about eight hours after receiving the unredacted documents within which to prepare these submissions. This deadline does not seem proportionate to the seven days that Procedural Order #6 gives Union to respond to these submissions; that is, to file the submissions that were due with its interrogatory response on May 4th.

In these circumstances, parties might reasonably request an opportunity to reply to the submissions that Union files in accordance with Procedural Order #6. If the Board considers that there is time for this step, TransCanada would appreciate the opportunity to do so. If there is not such time, TransCanada appreciates that the Board understands the principles at play and will trust the Board to apply them in the context of this process.

Submissions

TransCanada has reviewed the Redacted Information and submits that none of it meets the requirements of the Practice Direction for the sealing of information in this proceeding. It seems unlikely that Union ever intended that redactions would meet the high standards of the Practice Direction. TransCanada will be surprised if Union attempts to defend the proposition that the Redacted Information should be withheld from the public record. TransCanada believes that such submissions would trivialize both the principles in the Practice Direction and the use of the Board's authority to receive information in confidence in the course of a public proceeding.

As regards the Board's mandate as an open tribunal and the importance of maintaining a public record, the Practice Direction is clear on the Board's position and TransCanada will not repeat statements of principles already well-known to, and respected by, the Board.

As regards the particular redactions and the application of the principles in Appendix A to the Practice Direction, TransCanada notes first that almost all of the Redacted Information is information of Enbridge Gas Distribution Inc. ("EGDI") supplied to Union by EGDI. Reliable submissions as to whether or not EGDI considers that the provisions of the Practice Direction and in particular of s.17 of *FIPPA* apply can only reliably originate with EGDI, and it is submitted that absent those submissions, Union will have failed to meet the high burden required to support confidentiality of information on the record of this public proceeding within the principles enunciated in the Practice Direction.

The Requirement of Significant Prejudice from Public Disclosure

The most salient provision of s.17 of *FIPPA* is clause 17(1)(c)(i). TransCanada submits that none of the Redacted Information could prejudice EGDI's (or Union's¹) competitive position, let alone do so "significantly", nor interfere with EGDI's contractual or other negotiations.

Attachment 1, Page 4

First bullet: The quantity of gas that serves the GTA through a given source is not a fact of any confidentiality, let alone of technical, commercial, financial etc. confidentiality. Further, this information could be readily discerned from materials filed publicly with the Board by EGDI in the course of past regulatory proceedings.

Second bullet: An expression of concern on the topic of this bullet is not an incidence of any confidentiality, let alone of technical, commercial, financial etc. confidentiality.

Third bullet: The future facilities plans of EGDI could in some circumstances be confidential, but is not so here. The public disclosure of the particular point described in this bullet – mere contemplation of a very general proposition not tied to any location or any particular facilities – could not, it is submitted, conceivably cause EGDI significant prejudice.

Furthermore, the Board will note that the point that is redacted in this bullet is discussed twice on the same page and on page 6 of the document.

Attachment 1, page 10

First Bullet: As with the third bullet on page 4, the public disclosure of the mere contemplation of a proposition would not cause EGDI significant prejudice.

Second Bullet: This bullet, which is the only item of non-EGDI information, is a simple hypothetical proposition of engineering logic that would be evident to anyone in the industry. It has no air at all of confidential information, the public disclosure of which could cause Union any prejudice, let alone significant prejudice.

¹ Where these submissions refer to EGDI, they should be taken to refer also to Union in any context where the information could be said to be Union's or to have a potential impact on Union.

Attachment 1, page 23

Second bullet: This bullet describes the future requirements of EGD I at a particular point on its system. Such a forecast is not an item of confidence that could cause EGD I significant prejudice. Enbridge's system planning is not inherently confidential and this bullet in particular describes a round figure with no date or time period specified.

The fact that the forecast requirement is described in the context of a potential Union/Enbridge project does not make the forecast likely to cause significant prejudice, any more than the information that Union published in this Application concerning its future requirements at Parkway. The Union/Enbridge project is discussed openly in the unredacted portions of this and other public documents.

Attachment 2, page 4

Bullets 1-3 The Redacted Information in these bullets is virtually identical to the Redacted Information on page 4 of Attachment 1, and TransCanada makes the same submissions for page 4 of Attachment 2.

Conclusion

For the foregoing reasons, TransCanada submits that none of the Redacted Information meets the high tests that the Board rightly established in the Practice Direction for the filing of confidential information in a public proceeding conducted by the Board.

Yours very truly,

Gordon Cameron

Gordon Cameron

c: -Chris Ripley – Union Gas Limited
-Crawford Smith – Torys
-Intervenors