

Peter C.P. Thompson, Q.C.
T 613.787.3528
pthompson@blg.com

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen St, Suite 1100
Ottawa, ON, Canada K1P 1J9
T 613.237.5160
F 613.230.8842
F 613.787.3558 (IP)
blg.com



By electronic filing and by e-mail

May 24, 2012

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

Dear Ms Walli,

Union Gas Limited (“Union”)
2013 Rebasing Application
Board File No.: EB-2011-0210
Our File No.: 339583-000123

As solicitors for Canadian Manufacturers & Exporters (“CME”), we are writing to provide submissions on the confidentiality status of the following:

- (a) Redactions in the documents filed by Union in Attachments 1 and 2 to Exhibit J.B-1-7-8;
- (b) The Third Party Services Contract referenced in Exhibit J.H-12-2-1(d); and
- (c) The Benchmarking Studies referenced in Exhibit J.O-4-1-11(a).

Based on the statements contained in Union’s May 4, 2012 letter to the Board, we understand that Union asks the Board to accord confidentiality status to the foregoing information on the grounds that it is “sensitive” and, in the case of the information described in subparagraphs (b) and (c) above, is the subject matter of confidentiality agreements to which Union is a party.

Redactions in Attachments 1 and 2 of Exhibit J.B-1-7-8

The information that Union has redacted from these documents relates to information provided by Enbridge Gas Distribution Inc. (“EGD”) relating to activities that the Board regulates. We can see no reason why information from EGD about such activities should be treated in confidence and submit that Union should be required to file unredacted copies of these documents.

Third Party Services Contract referenced in Exhibit J.H-12-2-1(d)

We believe that the contract with the services provider referenced in this Exhibit has been produced by Union in prior proceedings before the Board. What we cannot recall is whether the Board accorded confidentiality status to the document in that prior proceeding. The status accorded to the document in this proceeding should be the same as it was in the prior proceeding before the Board.

Benchmarking Studies referenced in Exhibit J.O-4-1-11(a)

We note that the participants in the American Gas Association (“AGA”) Study referenced in the interrogatory response are identified by letter. In the Public Service Electric and Gas (“PSEG”) Study, the participants are identified by number. In the Canadian Gas Association (“CGA”) Study, the participants are identified by name, but all of the participants appear to be regulated public utilities. From this, we conclude that the information for each of the participants in the CGA Study is publically available information that can be obtained from the regulators of those utilities.

When determining whether the information in these Benchmarking Studies should be accorded confidentiality protection, we urge the Board to consider the following factors:

1. We can present CME’s case to the Board as long as we have access to all of the unredacted documents for which confidentiality status is requested. An inability to present CME’s case is not something that we rely upon in making these submissions with respect to the confidentiality issue;
2. Benchmarking information is of considerable importance to an exercise by the Board of its rate-making jurisdiction. The public interest is best served by having as much benchmarking information as is possible on the public record;
3. Having the benchmarking information contained in these Studies filed on the public record will avoid having to refer to the Studies in an in-camera process in this proceeding and in each and every other rate proceeding of other utilities that the Board regulates in which the results of these Studies will have relevance;
4. Confidential filings tend to create logistical cross-examination problems and make for cumbersome record-keeping;
5. The use of letters and numbers in the AGA and PSEG Studies maintains the confidentiality of the identity of its participants;
6. Masking the identity of the participants in the CGA Study by using letters or numbers is unnecessary because all of its participants are regulated public utilities;
7. In prior proceedings before the Board, Benchmarking information of the type that Union seeks to file in confidence has been filed on the public record. For example, in EGD’s 2006 Rate Case, EB-2005-0001/EB-2005-0437, an American Gas Foundation (“AGF”) Study identifying participants by letter, was filed and referenced in the Board’s Decision

with Reasons in that case dated February 8, 2006, at page 11 in paragraph 2.2.11. We were unable to access the document on the Board's website and urge the Board to have its Staff check the document to confirm that it is a Study analogous to the AGA and PSEG Studies that Union seeks to file in confidence in this proceeding. At pages 41 to 43 of the same Decision, the Board refers to other Benchmarking Studies prepared by TECC Group Inc. and by PA Consulting Group, which were filed as evidence in the proceeding. We submit that this case supports a conclusion that Benchmarking Studies of this nature should be filed on the public record; and

8. The Board is not obliged to accord confidentiality status to the Benchmarking Studies because Union has agreed with the authors of the Studies to make reasonable efforts to preserve their confidentiality. The issue is whether any material prejudice is likely to occur if the information contained in the Studies is disclosed on the public record.

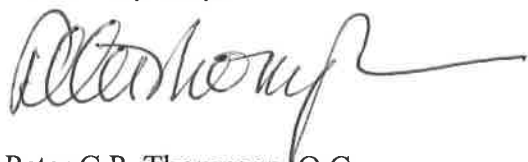
Based on these considerations, we urge the Board to find that none of the information contained in the benchmarking reports should be accorded confidentiality protection. The public interest is best served by having this information filed on the public record. That said, we reiterate that CME will be able to present its case to the Board as long as we have access to all of the unredacted documents for which Union seeks confidentiality protection.

Summary

We submit that unredacted Attachments 1 and 2 of Exhibit J.B-1-7-8 and all of the Benchmarking Studies referenced in Exhibit J.O-4-1-11(a) should be filed on the public record and that the contract referenced in Exhibit J.H-12-2-1(d) should be accorded the same status that it received in the prior proceeding before the Board in which it was produced.

We also agree with and adopt the submissions made by counsel for TransCanada PipeLines Limited ("TCPL") in his letter to the Board dated May 23, 2012, to the effect that it is not open to Union to withdraw any of the foregoing documents from the record in the event that its request for confidentiality protection is denied.

Yours very truly,



Peter C.P. Thompson, Q.C.

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c. Chris Ripley (Union)
Crawford Smith (Torys)
Intervenors EB-2011-0210
Paul Clipsham (CME)

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