

Ontario Energy Board
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BY E-MAIL

September 26, 2013

Mr. David Poch
Green Energy Coalition
1649 Old Brooke Road
Maberly ON K0H 2B0

Dear Mr. Poch,

**Re: Breach of Declaration and Undertaking
Enbridge Gas Distribution Inc. – GTA Project (EB-2012-0451)
Union Gas Limited – Parkway West Project (EB-2012-0433) & Brantford-
Kirkwall/Parkway D (EB-2013-0074)**

During the Issues/Process Day for these proceedings, the Board granted confidential status to certain documents filed as evidence by Enbridge Gas Distribution Inc. (“Enbridge”). Individuals that executed the Board’s Declaration and Undertaking (the “Undertaking”) were permitted to view these documents. The Undertaking provides, amongst other things, that the individual “will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.” The Undertaking also states that the individual “understand[s] that execution of this Declaration and Undertaking is a condition of an Order of the Board” Several representatives of the Green Energy Coalition (“GEC”) executed the Undertaking and received access to confidential documents.

On August 1, 2013, GEC filed interrogatories with the Board relating to Enbridge’s evidence. The interrogatories were circulated to all parties (including parties that had not executed the Undertaking) and on the Board’s publicly accessible Web Drawer. One of the interrogatory questions appears to have contained information that had been declared confidential by the Board.

Within 30 minutes, Enbridge noticed the confidential information and alerted both GEC and the Board. GEC's counsel immediately sent an email to all parties asking anyone who had received the interrogatories and had not executed the Undertaking to delete the interrogatories. The interrogatories were also removed from the publicly accessible Web Drawer.

Although the apparent breach of the Undertaking appears to have been inadvertent and quickly corrected, the Board takes matters of confidentiality seriously. Even if there is no direct harm arising from a particular breach, all parties who file confidential information must have confidence in the Board's processes and be assured that their information will remain confidential. In some previous cases, the Board has addressed breaches of the Undertaking through the cost awards process. In this case, the Board panel is not convinced that the cost award process is the most appropriate forum to consider possible breaches of the Undertaking. The remedies available through the cost award process are limited, and it may be appropriate to consider a broader range of potential remedies.

A breach of the Undertaking amounts to a breach of an Order of the Board. A breach of an Order of the Board is a breach of an "enforceable provision" pursuant to Part VII.1 (Compliance) of the Act. The panel will be referring this matter to the Board's Compliance and Consumer Protection group for investigation and possible further action.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

c. All Parties