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BY EMAIL and RESS

February 10, 2014
Our File No. EB-2013-0352

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0352 – Enbridge DSM Clearances – Confidentiality Issue

We are counsel for the School Energy Coalition. This letter is being sent to request that the Board order compliance by the Applicant with the Board's Practice Direction on Confidential Filings, and defer the deadline for submissions until that process has been completed. The Applicant has redacted material information that goes to the root of SEC's case in this matter, without apparent justification and without adhering to the Board's rules.

On December 6, 2013 the Applicant Enbridge Gas Distribution responded to interrogatories from the parties, including SEC IRs #4 and #5, which attached the reports from the Custom Project Savings Verification (CPSV) contractors. This is the central element to, and reason for, SEC's involvement in this proceeding.

In the cover letter with the responses, the Applicant advised that they had redacted the three CPSV reports to remove information identifying the specific customers. They also advised that they did not plan to adhere to the Board's Practice Direction on Confidential Filings, due to the limited nature of the information redacted. The letter says "It is the view of the Company that



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the redactions do not detract from the ability of parties to understand the steps taken and the findings of the various Contractors...” This has turned out not to be the case.

SEC’s initial reaction is that removing names of customers and similar information would not generally be objectionable, but that refusal to follow the Board’s rules was a more serious matter that should not be allowed simply through a unilateral decision by a utility. It was our intent to ask the Board, in its decision, to censure the Applicant for deliberately failing to follow the rules.

Before SEC was able to write to the Board in this regard, the Applicant identified an error in their Application, and this process was suspended by the Board pending a refiling. On January 27th, Enbridge filed new information, and on January 28th the Board established a new deadline for intervenor submissions.

Last Friday, February 7th, after the completion of the ADR in EB-2012-0459, another Enbridge proceeding, SEC turned to review the interrogatory responses in this matter. What we found were redactions to the CPSV reports far in excess of what the Applicant had described in their December 6th letter.

By way of example only, in the report of Byron Landry, attached to SEC #5, the Applicant has redacted not just the name of each customer and type of business, but also most of the explanation of the project, including any references to the baseline, and all of the information on the savings claimed and adjustments made, for four of the seventeen projects reviewed. Those four projects comprise 82% of the savings claimed for Industrial custom projects, and 92% of the adjustments made by the CPSV contractor.

To get a sense of the magnitude of just that part of the hidden information, based SEC #2 and SEC #3, that information represents about \$4.3 million of the DSMIDA and all \$2.5 million of the DSMVA.

Without that redacted information, SEC is unable to make submissions on the bulk of the claim by the Applicant in this proceeding.

Redactions not authorized by the Board are also found in the other two reports, although they do not appear to be as extensive.

SEC therefore asks that the Board order the Applicant to file an unredacted version of each of the reports with the Board, and provide that same unredacted copy to each of the parties that files an appropriate Declaration and Undertaking. SEC would like the opportunity to make submissions on whether that information, or parts of it, should be protected as confidential.

Further, once the Board has determined if any of the redactions should stand, SEC would like to have the opportunity to make submissions on whether oral testing of the evidence is required. While we cannot know until we see the full documents, it may be the case that some of the



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information necessary for this proceeding is not in the reports themselves (for example, on the appropriate baselines, including measure life, persistence, and other factors, to be used). As the Board saw in EB-2013-0109, the equivalent Union Gas case, a great deal of relevant information was revealed when the CPSV contractors were cross-examined, and additional information could have been revealed had the Auditor been available for cross-examination in that proceeding as well.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.

Jay Shepherd

cc: Wayne McNally, SEC (email)
Interested Parties