

October 27, 2015

VIA RESS AND COURIER

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Dear Ms. Walli:

Re: EB-2015-0233 – Enbridge Gas Distribution Inc. (EGD) Application for Exemption from the *Affiliate Relationships Code for Gas Utilities (ARC)*.

Industrial Gas Users Association (IGUA) Submissions on Requests for Confidentiality.

Further to Procedural Order No. 2 herein regarding EGD's request for confidential treatment of two reports filed in support of its *ARC* exemption application, on behalf of IGUA I have reviewed the full version of the subject reports under my *Declaration and Undertaking – Confidential Filings*.

The Board's *Practice Direction on Confidential Filings (Revised October 13, 2011)* (*PD Confidentiality*) requires (section 5.1.7) that an objection to a request for confidentiality must address the following:

- (a) the reason why the party believes that the information that is the subject of the request for confidentiality is not confidential, in whole or in part; and
- (b) the reason why the party requires disclosure of the information that is the subject of the request for confidentiality and why access to the non-confidential version or description of the document (as applicable) is insufficient to enable the party to present its case.

Given that as counsel to IGUA I have access to the full, unredacted reports, IGUA will be able to reference the subject information in order to make its case, as required. On this basis, then, IGUA cannot object to EGD's request for confidentiality.

However, IGUA believes that the Board's processes, including the Board's process regarding confidentiality, are designed to ensure fairness and transparency of regulatory proceedings, and should be followed. Fairness and transparency are important not only to ensure an appropriate

outcome to the proceedings, but also to support acceptability by affected stakeholders and the public of the Board's decisions and directions.

IGUA thus wishes to note the following deficiencies regarding EGD's confidentiality request, and the process used to address it:

1. Section 5.1.5 of the *PD Confidentiality* requires that the cover letter requesting confidentiality with requisite attachments must be served on all parties to the proceeding, and will be placed on the public record. Neither of these steps appears to have been taken in this case.
2. The *PD Confidentiality* specifies [section 5.1.4 (c)] that the party seeking confidential treatment must file either;
 - (a) a non-confidential, redacted version of the document from which the information that is the subject of the confidentiality request has been deleted or stricken; or
 - (b) where the request for confidentiality relates to the entire document, a non-confidential description or summary of the document.

IGUA submits that the choice between these two filing approaches is not at the option of the requestor. As specified by the Board in its own confidentiality policy [*PD Confidentiality*, page 2]:

The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible.

...

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. 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. [Emphasis added.]

In respect of the scope of confidential treatment to be afforded where justified, the Board states [*PD Confidentiality*, page 7]:

It is also the expectation of the Board that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure, and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record. This will provide parties with a fair opportunity to present their cases and permit the Board to provide meaningful and well-documented reasons for its decisions. [Emphasis added.]

EGD has not adhered to this expectation.

EGD's letter to the Board dated August 6, 2015, which was filed covering the two reports in respect of which EGD has sought confidential treatment, asserts confidentiality on the basis of the cost information contained in the reports. Apart from the financial comparators provided, there is much additional information contained in these reports (for example, regarding the purpose, scope and methodology of the work) which does not appear to be commercially sensitive or otherwise potentially prejudicial to EGD if filed on the public record. Blanketing the reports in their entirety with a request for confidential treatment fails to address the exceptional basis upon which confidential treatment of evidence filed in support of an application should be granted.

IGUA disagrees with Staff's cursory conclusion that extensive redactions would be required to segregate potentially confidential financial information from the balance of the information provided in the reports. Blanket confidential treatment does not appear to IGUA to be warranted or appropriate in this instance.

To preserve the integrity of the Board's processes, in this instance and going forward, IGUA submits that Board Staff, and the Board decision maker(s), should review EGD's request for confidential treatment critically, and extend confidential treatment only so far as is necessary to maintain a process that is fair to EGD, and no further.

Yours truly,



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