

March 3, 2016

**VIA RESS and COURIER**

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File No. T1007912

Dear Ms. Walli:

**Re: EB-2015-0276 – Union Gas Limited (Union) Application for 2014 Demand Side Management Clearance of Variance Accounts.**

**Comments on Request for Confidential Treatment of Appendix N – 2014 Verification of Large Custom Projects.**

Union has claimed confidential treatment for Exhibit B, Tab 1, Appendix N; *2014 Verification of Large Custom Projects* (the Diamond Report). Union has stated the basis of its claim as the protection of “*sensitive commercial information*”.<sup>1</sup>

IGUA fully agrees that “*sensitive commercial information*” of, or regarding, Union’s customers should, if such information is relevant and appropriately filed with the Board at first instance, be afforded confidential treatment through the Board’s confidential filings protocols.

Those protocols seek to balance the protection from public disclosure of legitimately sensitive information, on the one hand, with, on the other hand; i) the ability of parties to the Board’s proceedings to understand the applicant’s case and present their own in response; and ii) the ability of the Board to provide meaningful, well documented and publicly accessible decisions.<sup>2</sup>

Through its *Decision and Order* in Enbridge Gas Distribution Inc.’s and Union’s 2015-20 DSM Plan approval applications<sup>3</sup> the Board has reinstated large volume customer (LVC) DSM programs for Union. In the result, IGUA has determined that it will remain active in Ontario DSM proceedings, and that it has an obligation to its members to both fully inform them of the utilities’ regulatory positions on LVC DSM, and to seek their input to ensure that their interests and views in this area are fully and accurately represented in proceedings before the Board. Accordingly, IGUA too must balance the interests of its members in protecting legitimately sensitive customer information, on

<sup>1</sup> While Union’s December 9, 2015 application transmittal letter also refers to redaction of customer names, the un-redacted version of the Diamond Report does not contain any customer names, leaving only the assertion of “*sensitive commercial information*” as the basis for the Appendix N redactions.

<sup>2</sup> *Practice Direction on Confidential Filings*, October 13, 2011, page 7.

<sup>3</sup> EB-2015-0029/EB-2015-0049

the one hand, and fully understanding, and responding to, the positions of the utilities and the decisions of the Board in respect of LVC DSM on the other hand.

With this balance in mind, we have reviewed the un-redacted version of Exhibit B, Tab 1, Appendix N in this application (the Diamond Report), and considered the scope of the redactions made by Union in the publicly filed version of that report.

The redacted version of the Diamond Report which Union has filed removes all large volume customer project verification information. Union has removed 127 full pages from this report, leaving only 7 introductory pages un-redacted (not including the cover page). Union has made no discernible attempt to parse the information contained in the 127 pages which it has completely removed from the publicly filed version of the Diamond Report to identify information that is truly “sensitive commercial information” and which could prejudice the subject customers if publicly revealed. In the result, Union has removed from the verification report all of the information tendered as evidence in support of the calculation of the gas savings resulting from Union’s LVC DSM projects.

On behalf of IGUA, the writer has reviewed, in full, the 127 pages of this verification report which Union has removed from the public record. It is my view that most of this information does not pose a threat to the legitimate interests of Union’s LVCs in maintaining the confidentiality of their commercially sensitive information. I agree with counsel for School Energy Coalition, who in his letter dated February 22<sup>nd</sup> has submitted that Union “*should be required to go back and redact Appendix N in the same manner as Appendixes L and M, and produce a public version of the Diamond Engineering Report that is largely intact, but for a limited number of redactions*”.

### **Lateness of this Submission**

We did not file IGUA’s intervention request for this proceeding until February 18<sup>th</sup>. Our interrogatories and *Declaration and Undertakings – Confidential Filings* were filed on February 23<sup>rd</sup>.

IGUA’s late intervention request was granted by way of letter from the Registrar dated March 1<sup>st</sup>. In her letter, the Registrar indicated that IGUA was required to adhere to the case schedule outlined in Procedural Order No. 1. That case schedule required submissions on Union’s request for confidentiality to be filed no later than February 22<sup>nd</sup>. Consequently, it would be consistent with the Board’s conditions for acceptance of IGUA’s late intervention that these submissions regarding Union’s request for confidentiality in respect of the Diamond Report be disregarded.

IGUA has nonetheless instructed us to provide this letter. It is our view that unless a more appropriately redacted version of the Diamond Report is provided by Union, our ability to relate the information provided in support of Union’s application to, and receive informed input from, IGUA and its member companies will be unnecessarily constrained.

We do note that Union has until March 7<sup>th</sup> to respond to this, and any other submissions, regarding its requests for confidential treatment of filed documents.



### **Appropriate Scope of Appendix N Redaction**

As noted above, there are no customer names included in Appendix N at all. All customer references are by code number.

There are a few scattered references to the nature of the subject customers' businesses which could conceivably betray the customer's identity. If Union determines, based on its knowledge of the customer and of the number of like customers in its service territory, that this information could reveal the identity of a customer, then this information would be properly redacted. It may be that portions of the customer specific references contained on the following pages of the report are appropriately redacted:

1. Page 56 (first paragraph under "Project Details"), repeated at page 57 (paragraphs following the "Project Description" heading)
2. Page 61 (first paragraph under "Project Details"), repeated at page 62 (paragraphs following the "Project Description" heading)
3. Page 66 (first paragraph under "Project Details"), repeated at page 67 (first paragraph under the "Project Description" heading)
4. Page 71 (first paragraph under "Project Details"), repeated at page 72 (first paragraph under "Project Description")
5. Page 78 (first paragraph under "Project Details"), repeated at page 79 (first paragraph under "Project Description")
6. Page 84 (first paragraph under "Project Description")
7. Page 89 (first paragraph under "Project Details"), and again at Page 90 (under "Project Description") and page 91.
8. Page 100 (last paragraph under "Variabilities and Notes")
9. Page 111 (second paragraph under "Project Details"), and again at page 112 (first paragraph under "Project Description")
10. Page 116 (first paragraph under "Project Details"), and again at page 117 (paragraph under "Project Description"), page 118 (second line in table).
11. Page 119 (second line in the table).

In addition, there are a few references in the report to the nature of the customers' gas related infrastructure which could conceivably reveal the identity of the customer. Again, only Union could, at this point, confirm whether the customer specific gas related infrastructure descriptions on the following pages of the report must be excluded from the public record to protect the identity of the subject customers:

1. Page 94 (first paragraph under "Project Details")

2. Page 107 (first paragraph under "Project Details"), and again at page 108 (second paragraph under "Project Description")

***To the extent that redaction of information in each of the foregoing instances is required to protect the identity, and thus the commercial position, of the subject customers, redaction of a few words, or perhaps a few phrases, would seem to the writer to be sufficient to achieve that objective. Without identification of the customer, it is not apparent how any commercial prejudice could result from public disclosure of the balance of the information in the report.***

### **Appropriate Scope of Appendix N Publication**

On the other hand, much of the information contained on the 127 pages which Union has removed from the report is critical to validation of the veracity of the savings claimed by Union for the subject customer projects, and to understanding the various assumptions made in derivation of those savings. This is precisely why such customer project verification reports are required by the Board, and precisely why Union has filed an un-redacted version of the report with the Board (in confidence).

The redacted version of the document provides virtually no supporting evidence of the validity of the savings claimed by Union for its large industrial DSM projects in 2014.

We can, on behalf of IGUA, proceed to consider and, as warranted, incorporate the information which Union has redacted from the Diamond Report in its argument in this proceeding, utilizing the Board's protocols for presentation and critique of information afforded confidential treatment. However, in so doing we will be unnecessarily constrained in our ability to; a) seek the input and advice of IGUA's members, who are best placed to understand and evaluate the gas savings measures and resulting volumetric savings claims described in the Diamond Report; and b) provide IGUA and its members with a thorough understanding of the basis of Union's claims regarding the veracity and worth of its LVC DSM programs.

### **Conclusion**

In our view, IGUA's ability to properly inform its understanding of Union's LVC DSM programs, and its consequent positions on those programs, is significantly compromised by the withholding by Union from public review of the significant amount of non-confidential and non-prejudicial (to Union's customers) information contained in the Diamond Report.

Acceptance of the scope of the redaction submitted by Union would violate the Board's general policy<sup>4</sup> that "*proceedings should be open, transparent and accessible*". The Board's policy states

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<sup>4</sup> Practice Direction on Confidential Filings, October 13, 2011, page 1.



that “the placing of materials on the public record is the rule, and confidentiality is the exception”<sup>5</sup>. The Board’s policy further states:

*“it is [ ] 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... and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record”<sup>6</sup>.*

Union’s approach to redaction of the Diamond Report violates this policy and should be rejected.

Union’s approach to redaction in this instance not only undermines IGUA’s opportunity to present its case, and to facilitate its own members’ understandings of Union’s case, but could, if accepted, also compromise the Board’s ability to provide meaningful, well-documented, and publicly accessible reasons for its decision herein.<sup>7</sup>

As submitted by counsel for SEC, we believe that Union should be directed to redact Appendix N in the same manner as Appendixes L and M, and produce a public version of the Diamond Engineering Report that is largely intact, but for a limited number of redactions required to protect the commercial interests of the subject LVC customers.

Yours truly,



Ian Mondrow

- c. V. Innis (Union)
- A. Smith (Torys LLP, Counsel for Union)
- S. Rahbar (IGUA)
- V. Mazzone (OEB Staff)
- M. Millar (OEB Staff)
- Intervenors of Record

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<sup>5</sup> Practice Direction on Confidential Filings, October 13, 2011, page 1.

<sup>6</sup> Practice Direction on Confidential Filings, October 13, 2011, page 7.

<sup>7</sup> Practice Direction on Confidential Filings, October 13, 2011, page 7.