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BY E-MAIL

December 14, 2017

Adam Stiers
Manager, Regulatory Initiatives
Union Gas Limited
P.O. Box 2001
50 Keil Drive North
Chatham ON N7M 5M1
astiers@uniongas.com

Dear Mr. Stiers:

**Re: Union Gas Limited
2018 Cap and Trade Compliance Plan Application
OEB File Number EB-2017-0255**

On November 9, 2017, Union Gas Limited (Union Gas) filed its 2018 cap and trade Compliance Plan with the Ontario Energy Board (OEB) (EB-2017-0255). In accordance with the OEB's Report: Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (EB-2015-0363) ([Cap and Trade Framework](#)), Union Gas has requested that various portions of its Compliance Plan be classified as strictly confidential. Union Gas has made reference to the areas of its application which it deems confidential in Exhibit 1, page 16 of its application.

As a general rule, and consistent with the OEB's Rules of Practice and Procedure ([Rules](#)) and Practice Direction on Confidential Filings ([Practice Direction](#)), the OEB places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. This reflects the OEB's view that its proceedings should be open, transparent, accessible and that placing material on the public record is the rule and confidentiality is the exception. That said the OEB recognizes that certain disclosures are prohibited by law and will not be made available to any parties other than OEB staff participating in this proceeding and the OEB panel deciding the application.

The *Climate Change Mitigation and Low-Carbon Economy Act, 2016* (Climate Change Act) outlines limitations on the disclosure of certain information.¹ These restrictions are also reflected in section 4 of the Cap and Trade Framework.²

The Cap and Trade Framework indicates that there are three forms of information that may be included within a natural gas utility's Compliance Plan: public information, confidential information and strictly confidential information. Two categories of strictly confidential information arise out of the Climate Change Act and Regulations³ namely, auction confidential and market sensitive information. Auction confidential information is "information related to participation at auctions for emissions allowances".⁴ "Market sensitive" information is defined in the Cap and Trade Framework as "information relating to transactions of emissions units on secondary or tertiary markets or offset credits" and "information relating to compliance instruments used by a Utility to meet its GHG obligations" and is based on the Climate Change Act restriction on disclosure of non-public information.⁵

The Cap and Trade Framework notes that while certain information included in an application may not be strictly confidential it may nevertheless need to be considered confidential on other grounds. For example, it may be strategically or commercially sensitive information.⁶ In those circumstances, the OEB requires applicants to file both an un-redacted, confidential version and a non-confidential, redacted version of the document from which information that is the subject of the confidentiality request has been deleted or stricken. The OEB will then determine whether access to such information may be allowed to third parties in accordance with the provisions of the Rules and Practice Direction and may also initiate a process to determine whether the information over which confidentiality is requested is confidential or should be placed on the public record.

Given that strictly confidential information is not accessible by any parties other than OEB staff participating in this proceeding and the OEB panel assigned to decide the application,⁷ it is even more important that the material for which strictly confidential

¹ *Climate Change Mitigation and Low-carbon Economy Act, 2016*, S.O. 2016, CHAPTER 7 (Climate Change Act) sections 28 and 32

² EB-2015-0363 Report of the Board - Regulatory Framework for Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities (Cap and Trade Framework) defines "market sensitive" as "information relating to transactions of emissions units on secondary or tertiary markets or offset credits" and "information relating to compliance instruments used by a Utility to meet its GHG obligations".

³ *Ontario Regulation 144/16, The Cap and Trade Program (Cap and Trade Regulation)*

⁴ Climate Change Act section 28 and Cap and Trade Framework, page 10

⁵ Ibid

⁶ Cap and Trade Framework, pages 13-14

⁷ Cap and Trade Framework, pages 9-13

treatment is sought be clearly prohibited from disclosure pursuant to the Climate Change Act.

Having reviewed both the public and confidential versions of Union's application, the OEB notes that portions of Union's evidence are filed strictly confidentially in their entirety, rather than being redacted.

OEB staff is of the view that certain portions of the strictly confidential version of the application are not clearly prohibited disclosures according to the Climate Change Act or the Cap and Trade Framework and should be reconsidered by Union Gas for inclusion in the public version of the application material.

OEB staff believes that there is value in placing on the public record some of the general or publicly available background information that is embedded in portions of the strictly confidential version of the application.

OEB staff believes that some of the redacted information could be placed on the public version of the application for a number of reasons, including:

- Portions of documents referring to Union Gas' 2018 Compliance Plan that do not contain information that can be characterized as auction confidential or market sensitive could be on the public version of the application
- Portions of the consultants' reports for which confidentiality is claimed contain general market information, compliance options, political and regulatory context that is publicly available and could be un-redacted and added to the public version
- Disclosure of additional non-confidential portions of the application material could provide useful context to other participants and the general public to increase public knowledge and understanding of Union Gas' cap and trade compliance obligation and resulting rates
- Disclosure of additional non-confidential portions may reduce the amount of interrogatories and cross-examination by parties seeking general understanding and thereby contribute to regulatory efficiency
- Portions of the application material for which confidentiality is sought are very similar to information contained in the public version of the application and it is not clear what the rationale is for the distinction
- Certain redacted information that is directly related to amounts to be recovered from ratepayers should be publicly disclosed
- Portions of the application material related to general discussion about the OEB Cap and Trade Framework should be un-redacted if there are no prohibited disclosures

Exhibit 1

- Page 4: Third bullet, second sentence

Exhibit 1, Schedule 1:

- Page 2: (Three) Description entries for Exhibit 3-6 and Exhibit 4-1

Exhibit 1, Schedule 3:

- Page 2: Acronym between EHS and Framework

Exhibit 3, Tab 1:

- Page 5: Last sentence of first bulleted paragraph

Exhibit 3, Tab 2:

- Page 14: Entire paragraph except last sentence (which is already produced)

Exhibit 3, Tab 3:

- Page 2: Lines 1-11 and 19-20 plus footnote [except last four words on line 20 “to include....” which can remain confidential]
- Page 3: Last two sentences of first paragraph
- Page 5: Last sentence of first paragraph

Exhibit 3, Tab 3, Appendix A:

- Page 2: Subheadings under section 2. and Annex 1
- Page 3: Second sentence of first paragraph
- Page 6: Third last sentence of first paragraph
- Page 7: From three lines above Figure 3 (“see Figure 3...”) to end of page 8 (except for (i) last sentence before Figure 4 on page 8 (“Regardless...”); and (ii) second last sentence of last paragraph on page 8 (“This is also...”))
- Page 9: Table (Figure 5) at top
- Page 10: Last two sentences of last paragraph plus footnote #8
- Page 11: Table (Figure 8) plus footnote
- Pages 13-14: From the second paragraph under 1.5 heading (except last sentence in second bullet [ClearBlue...]) over to top paragraph of page 14
- Pages 18-23: Headings 2.1, 2.2 and 2.3 and subheadings under 2.3 should be made public
- Page 19: Top paragraph and table (Figure 12) under heading 2.2
- Page 20: First two sentences under heading 2.3
- Page 21: Third paragraph from bottom, second sentence (“Though a...”)
- Page 22: Paragraph under subheading HS
- Page 22: First two sentences of the last paragraph (“A c.....”)

- Page 33: Annex 1

Exhibit 3, Tab 5:

- Page 2: First full sentence (line 1-2) and last full sentence of first para (line 7-8)

Ex 3, Tab 5, Schedule 1:

- Disclose only column headings and row headings (except row headings under Compliance Instruments and associated line numbers)

Exhibit 3, Tab 6:

- Page 1: Title for item 1.5
- Page 3 (line 21) to page 4 (lines 1-2)
- Page 11: Last paragraph
- Page 12 (lines 15-19) and page 13 (lines 1-5) plus footnote 3
- Page 25: First two sentences under “Financial Hedging Activities” heading (lines 11-14)

Exhibit 3, Tab 6, Schedules – Schedule 4**Exhibit 4:**

- Page 1: Lines 12-20 plus footnote
- Page 2: Lines 1-20
- Page 4: Lines 7 and 14 – headings only

Exhibit 4, Schedules:

- Schedule 1 (Disclose only column headings and row headings (except row headings #1-7). Also disclose number, N12 (actual total compliance costs).

Conclusion

The OEB requests that Union Gas review the confidential version of the application material and portions referenced in this letter and file updated redacted versions of the documents. If Union Gas objects to public disclosure of any sections it should provide written explanations as to why these sections of the evidence should not be on the public record. The OEB requires Union Gas to **respond accordingly by January 3, 2018.**

OEB staff and legal counsel are available for a confidential telephone conference to discuss any concerns that Union Gas or its legal counsel has with respect to providing the above-noted information on the public record of this proceeding.

This letter and the re-filing of any materials by Union Gas will not preclude any further OEB-initiated process for determining whether confidentiality requests will be granted or whether the information will be required to be placed on the public record.

Yours truly,

Original signed by

Kristi Sebalj
Registrar
Office of the Registrar

C: Crawford Smith, Torys