



EB-2017-0306
EB-2017-0307

**Enbridge Gas Distribution Inc. and Union Gas
Limited**

**Application for approval to amalgamate Enbridge Gas
Distribution Inc. and Union Gas Limited and for approval
of a rate-setting mechanism and associated parameters
from January 1, 2019 to December 31, 2028**

Decision on Confidentiality and Procedural Order No. 7

April 27, 2018

Enbridge Gas Distribution Inc. (Enbridge Gas) and Union Gas Limited (Union Gas), jointly referred to as the applicants, filed an application dated November 2, 2017 with the Ontario Energy Board (OEB) under section 43(1) of the *Ontario Energy Board Act, 1998*, for approval to effect the amalgamation of Enbridge Gas and Union Gas into a single company referred to as Amalco. On November 23, 2017, the applicants filed another application with the OEB under section 36 of the *Ontario Energy Board Act, 1998* for approval of a rate setting mechanism and associated parameters, effective January 1, 2019.

The OEB issued a Notice of Hearing on December 1, 2017 for both applications. In Decision and Procedural Order No. 3 issued on March 1, 2018, the OEB combined the two proceedings and approved an issues list for the combined proceeding. The OEB also set dates for other procedural matters including a technical conference.

This Decision and Procedural Order addresses the requests made by the applicants pursuant to the *Practice Direction on Confidential Filings* (the Practice Direction) for confidential treatment of two documents.

The Strategic Plan

In response to an undertaking,¹ the applicants filed a document titled “2017 Strategic Plan, Board of Directors Planning Session” (the Strategic Plan). The applicants requested that the document be treated confidential and made available only to those parties who sign the OEB’s Declaration and Undertaking with respect to confidentiality (the Undertaking).

Pursuant to the Practice Direction, the applicants are seeking confidential treatment for the Strategic Plan. If the OEB accepts that this document is confidential, then ordinarily it could only be viewed by persons who sign the Undertaking. However, the applicants have further requested that the Strategic Plan not be made available at all (i.e. even if they sign the Undertaking) to representatives from the following parties: the City of Kitchener (Kitchener), National Grid Gas Delivery Companies, Rover Pipelines LLP, Six Nations Natural Gas Company Limited, and TransCanada Pipelines Limited. The applicants argue that the Strategic Plan contains information relating to their potential future activities and plans in Ontario’s natural gas market. The applicants believe that the listed parties could be competitors for some of these activities, and that providing them with this information (even in confidence) could harm the applicants’ future business interests.

In Procedural Order No. 5, the OEB made provision for parties to file any objections to the applicants’ request for confidentiality. In a letter dated April 20, 2018, Kitchener objected to the request, though it did not object to the Strategic Plan being declared confidential subject to the normal rules. Kitchener argued that it is in no meaningful way a competitor to the applicants, and that it has never had an agenda of expanding beyond the City of Kitchener, and that it has not participated in any of the recent “expansion” proceedings. The applicants responded that Kitchener’s assurance of not expanding in the future is not a binding or enforceable commitment, and therefore access to the Strategic Plan should be denied.

No other party objected to the applicants’ request for confidentiality.

The OEB finds that the Strategic Plan shall be kept confidential. The OEB will allow representatives of Kitchener to access the Strategic Plan, provided that they sign the Undertaking. The onus in demonstrating that a document should be confidential rests with the party making that request. The OEB is not satisfied that Kitchener is in any meaningful sense a competitor to the applicants in the areas described in the document, or that Kitchener would be likely to gain any meaningful business advantage by reviewing the document. The OEB reminds any persons that sign the Undertaking that

¹ Undertaking JT1.2

the information must be kept confidential from any person that has not signed the Undertaking, and that if any theoretical competitive issue arose between Kitchener and the applicants in the future that the information in the Strategic Plan could not be used to assist Kitchener. In the context of this proceeding the Undertaking should only be signed by representatives of Kitchener that truly need to see it in order to make their arguments before the OEB.

The CRA Analysis

In response to a motion by the School Energy Coalition seeking certain additional information from the applicants, the applicants filed three documents. For one of the documents, "Enbridge/Spectra: Section 96 Trade-off Analysis," dated February 8, 2017 (CRA Analysis), the applicants requested that the redacted information be treated as confidential.

Any party may file an objection to the request in accordance with the timeline below. In the meantime, the OEB will treat the CRA Analysis as confidential, and intervenors will be able to access the unredacted document by executing the Undertaking.

IT IS THEREFORE ORDERED THAT:

1. The applicants' request for confidential treatment for the Strategic Plan is granted. Kitchener may have access to the Strategic Plan, provided the Undertaking is signed. National Grid Gas Delivery Companies, Rover Pipelines LLP, Six Nations Natural Gas Company Limited, and TransCanada Pipelines Limited shall not have access to the Strategic Plan, even if they sign the Undertaking.
2. The applicants have filed the CRA Analysis and have requested the redacted information to be treated as confidential. Any objections to the request for confidential treatment must be filed by **April 30, 2018**.
3. The applicants may file a reply to any objections to the request for confidential treatment by **May 1, 2018**.

All filings to the OEB must quote the file number, **EB-2017-0306** and **EB-2017-0307** and be made electronically in searchable/unrestricted PDF format through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/OEB/Industry>. If the web portal is not available, parties may email their documents to the address below.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Khalil Viraney at Khalil.Viraney@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca and Ian Richler at Ian.Richler@oeb.ca.

ADDRESS

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DATED at Toronto, April 27, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary