Shepherd Rubenstein

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**BY EMAIL and RESS**

Ontario Energy Board
2300 Yonge Street
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Our File: EB20180331

**Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

**Re: EB- EB-2018-0331 – Enbridge/Union/EPCOR Cap and Trade Related DVAs**

We are counsel to the School Energy Coalition ("SEC"). Enclosed, please find SEC's Notice of Intervention in the applications by Enbridge Gas Distribution Inc., Union Gas Ltd., and EPCOR (collectively the "Gas Utilities"), for disposition of Cap and Trade related deferral and variance accounts for the period 2016-2018. SEC writes to raise a preliminary issue with the Board regarding the issue of confidentiality.

In the Notice of Hearing and Procedural Order No. 1, the Board has directed the Gas Utilities to prepare supplementary evidence. In its direction, the Board notes that some of the supplementary evidence may contain information that it had previously identified as Strictly Confidential and requires that the information not be placed on the public record or made available to other parties. The Procedural Order then sets out the steps regarding interrogatories, similar to the two previous compliance plan proceedings, where only Board Staff will have access to that Strictly Confidential information, and may ask interrogatories on it.

SEC submits the Board's approach to confidentiality requires reconsideration in light of the cancellation of the Cap and Trade program.

The Board's approach to confidentiality of the Gas Utilities Cap and Trade information was set out in the *Report of the Board*: *Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* (the "Framework").[1] In the Framework, the Board determined that a combination of statutory restrictions, as well as the nascent nature of the Cap and Trade market, required more limited disclosure, even on a confidential basis, than is normally the case. The Board determined that, pursuant to section 32 of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016,* and related regulations (Regulation 144/16), it was required to restrict disclosure of auction information to only the Board (and its Staff).[2] The Board took the view that with respect to market sensitive information, disclosure should similarly be restricted out of fear that it could result in "'selective disclosure', tipping and trading on non-public information, which is prohibited in financial

[1] Report of the Board: *Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities* (EB-2015-0363), September 26 2016
[2] *Ibid*, p.11

markets, or have an impact on a Utility's future market activities." [3] In addition, the Strictly Confidential treatment should be accorded to past activities, as its disclosure could impact future market activity as past activities "could reveal bidding strategies in future market activities and compromise the integrity of the markets contrary to the provisions of the Climate Change Act."[4]

As the Board's Notice of Hearing and Procedural Order No. 1 referenced, on July 3, 2018, the Government issued a regulation revoking Ontario Regulation 144/16, and prohibited the purchasing, selling, trading or otherwise dealing with emission allowances and credits. Further, on October 31, 2018, royal assent was given to Bill 4, the *Cap and Trade Cancellation Act, 2018*, which repealed the *Climate Change Mitigation and Low-Carbon Economy Act, 2016*.[5]

The effect of the cancellation of the Cap and Trade program and the repealing of the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* is that there is no longer a need for information filed by the Gas Utilities to be treated as Strictly Confidential and therefore not made available to the public and intervenors.

First, with repeal of the legislation there is no longer a statutory restriction on disclosure of auction information.

Second, there is no longer a Cap and Trade program so the harm the Board envisioned in the Framework will not occur. Disclosure of past activities will not harm the future market activities of the Gas Utilities since the market created by the Cap and Trade program no longer exists. Since the program has ended, there can be no selective disclosure which could result in trading on non-public information or any serious harm to the Gas Utilities' market activities.

Insofar as there is some residual concern about public disclosure of certain information, this should be dealt with as is the normal course, by way of the process set out in the *Practice Direction on Confidential Filings*. This would require the Gas Utilities to disclose the information to representatives of intervenors who have signed a Declaration and Undertaking. The restriction on allowing intervenor representatives access to the information, even on a confidential basis, can no longer be justified in light of the program's cancellation.

Since the purpose of this proceeding is to essentially wind up the program's impact on the Gas Utilities and ratepayers by requiring the disposition of their Cap and Trade related deferral and variance accounts, it is important that ratepayers are provided an opportunity to ensure that the balances are prudent. This requires access to the type of information that may have previously been considered Strictly Confidential. It is no longer in the public interest for the information to be withheld from intervenors who are charged by customers with the requirement to properly scrutinize the balances that the Gas Utilities are seeking approval to recover from ratepayers.

Yours very truly,
**Shepherd Rubenstein P.C.**

*Original signed by*

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Applicants and interested parties (by email)

[3] *Ibid*, p.12
[4] *Ibid*, p.13
[5] *Cap and Trade Cancellation Act,* 2018, s.16 <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-4>