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December 27, 2018

DELIVERED VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario
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Dear Ms. Walli:

Re: OEB Prudence Review of Cap and Trade Deferral and Variance Account Balances of Enbridge Gas Distribution Inc. ("Enbridge") and Union Gas Ltd. ("Union") (jointly "Utilities")
File Number: EB-2018-0331

We are writing as counsel to Enbridge and Union in respect to the above-noted proceeding. While the Utilities appreciate that any objections to proposed interventions are not required until January 10, 2019, the Utilities feel compelled to immediately respond to the issues raised by the School Energy Coalition ("**SEC**"), the Industrial Gas Users Association ("**IGUA**") and the Association of Power Producers of Ontario ("**APPrO**") in respect of the Ontario Energy Board's ("**Board**" or "**OEB**") Procedural Order No. 1 dated December 7, 2018 and the continued treatment of strictly confidential information. SEC, IGUA and APPrO are asking the Board to undertake a prudence review of the Cap and Trade deferral and variance account balances on terms that would allow them to reopen the prior proceedings. The Utilities support the Board's position, as set out in Procedural Order No. 1. Specifically, the Utilities submit that the manner in which the Board proposes to receive and deal with strictly confidential information during this prudence review should continue as set out in Procedural Order No. 1.

It should be recalled that the Board and stakeholders devoted considerable time and effort developing the *Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities*[1]. The Framework specifically noted that *The Climate Change Mitigation and Low-Carbon Economy Act*, 2016 ("***Climate Change Act***") included statutory prohibitions on the disclosure of certain information that the Board recognized "must be respected despite the OEB's general approach to confidentiality"[2]. The Framework therefore specifically provided for two types of strictly confidential Cap and Trade information: Auction Confidential and Market Sensitive information. The Board

[1] EB-2015-0363, September 26, 2016 ("**Framework**")
[2] Framework, pages 9 and 10

determined that both Auction Confidential and Market Sensitive information could not be disclosed in OEB proceedings to anyone other than OEB Staff and OEB panels[3]. The Board went further and stated that Auction Confidential information…"will remain strictly confidential even after the auction or sale is concluded"[4]. The Utilities note that the Board has made no changes to the Framework in regard to these provisions.

While certain parties expressed disappointment over their inability to receive and comment on strictly confidential information filed with the Board, the fact remains that the Board and the Utilities were subject to the statutory prohibition. This prohibition existed both within the confines of the Board's review of the Utilities' Compliance Plans and in respect of their activities relating to the acquisition of compliance instruments. Throughout the term contemplated by this 2016-2018 deferral and variance account disposition proceeding the Utilities retained consultants to support the development of their respective compliance and procurement strategies under the conditions of strict confidentiality protections. Disregarding these conditions retroactively by disclosing the proprietary work of these consultants to parties other than the OEB, even under the protection of the OEB's confidentiality guidelines, would discourage certain consultants from providing the Utilities the same level of assistance and guidance in the future, ultimately disadvantaging ratepayers. This is especially concerning in Ontario's rapidly evolving carbon emissions environment which contains a limited number of qualified consultants.

SEC argues that disclosure of Strictly Confidential information will not harm the future market activities of the Utilities, because the Cap and Trade Program has ended.[5] The reality is not so clear. The Utilities have an affiliate, Gazifère, operating in the province of Québec who is an active participant in cap and trade programs in Québec and California under the Western Climate Initiative ("WCI"). Market participants in the WCI would benefit from knowing the strategies employed by Gazifère's affiliates in Ontario. Further, the Utilities themselves will be participating in future climate change compliance programs, such as the federal Clean Fuel Standard. Where the Utilities' general compliance strategies and plans are made public, it may become more expensive for the Utilities to implement similar strategies for future programs.

The process required by the Framework means that no party other than Board members and Board Staff have received, reviewed, questioned and ultimately made decisions about the strictly confidential portion of the Compliance Plan filings of the Utilities. Both Utilities received approval for their 2017 Compliance Plans including the compliance instrument acquisition strategies set out in the strictly confidential portions of their filings by the Board's Strictly Confidential decisions dated September 21, 2017[6]. The OEB-approved 2017 Compliance Plans formed the basis for the Utilities' 2018 Compliance Plans and while no decision was made by the Board in respect of the 2018 Compliance Plans filed by the Utilities, the proceeding was at the cusp of being decided having undergone a full oral hearing. Briefly stated, the Board determined that a decision in respect of the 2018

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[3] Framework, pages 11 and 12
[4] Framework, page 11
[5] SEC letter dated December 13, 2018, page 2 (paragraph 5).
[6] Strictly Confidential Decisions, September 21, 2017, EB-2016-0296/0300

Compliance Plan was not necessary because the Cap and Trade Program in Ontario was terminated and there was no further need to undertake activities related to the acquisition of compliance instruments.

While SEC, IGUA and APPrO do not specifically state how they would make use of having access to strictly confidential information as part of this prudence review, the only conclusion that can be drawn is that they now wish an opportunity to question the compliance instrument strategies proposed which were approved and/or reviewed by the Board for the purposes of arguing that all or certain portions of the costs incurred by such activities should be disallowed. This amounts to an inappropriate re-opening of the earlier proceedings. Enbridge and Union, consistent with concerns expressed earlier, are very much concerned about parties attempting to use, with the benefit of hindsight, this prudence review proceeding as a means to in effect second guess compliance instrument purchasing activities. This is not only unfair, it is wholly inappropriate and contrary to the regulatory principles applicable to prudence reviews.

SEC, IGUA and APPrO argue that they should be entitled to receive the strictly confidential information solely on the basis that the *Climate Change Act* has been revoked. While the *Climate Change Act* has been revoked as of the middle of 2018, it does not change the fact that the statutory prohibitions against the release of strictly confidential information other than to the Board and Board Staff existed and had to be observed at all relevant earlier times when the activities in respect of the costs which are the subject of this prudence review were incurred. It should also be noted that the statutory instruments which revoked the *Climate Change Act* did not revoke the *Act* retroactively to the date when it came into force and do not provide for the release today of what was prohibited by the statute when it was in force.

Notably, none of SEC, IGUA or APPrO reference the agreement entered into by the Province of Ontario with the Province of Quebec and the State of California with respect to the operation of the cap and trade regime in all three jurisdictions and to undertake joint auctions[7]. Stated succinctly, Ontario agreed to harmonize and integrate its regime in a manner consistent with and materially in compliance with the regimes in California and Quebec. The Agreement included provisions that specifically dealt with the protection of confidential information which clearly included information about activities relating to joint auctions. While Ontario has given notice of its withdrawal from the Agreement, it has not been relieved of its obligations during the currency of the Agreement nor in important respects, certain obligations which continue after withdrawal. It is important to note that the Agreement specifically provides at Article 17 that: "Withdrawal from this Agreement does not end a Party's obligations under Article 15 regarding confidentiality of information, which continue to remain in effect". The Utilities submit that the Board is bound by this provision.

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[7] Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions Between The Gouvernement du Québec, The Government of California and The Government of Ontario, September 22, 2017, ("**Agreement**")

Where activities involved matters of a strictly confidential information, the prudence review should be undertaken solely by the Board and Board Staff. The Utilities therefore oppose the changes to Procedural Order No. 1 sought by the above named intervenors.

Yours truly,

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