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Our File # 339583-000257

By electronic filing

March 5, 2019

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Ms. Walli

**Re: Enbridge Gas Distribution Inc. (“EGD”)
Union Gas Limited (“Union”)
Disposition of Cap and Trade-Related Deferral and Variance Accounts
Board File #: EB-2018-0331**

Pursuant to Procedural Order No. 3 dated February 12, 2019, please consider this letter as the submissions of Canadian Manufacturers & Exporters (“CME”) with respect to the treatment of the strictly confidential auction and market sensitive information in this proceeding resulting from the repeal of the *Climate Change Act*.

CME represents 1,400 Ontario-based member companies, many of which use natural gas as a critical source of energy to sustain ongoing operations. The price of natural gas, and by extension, the cost of carbon associate with natural gas, has a significant impact on CME’s competitiveness in the marketplace. Accordingly, the cost consequences arising from EGD and Union’s (together, the “Applicants”) compliance plans, and associated deferral and variance accounts are of central importance to CME’s members.

While regulatory transparency is a main consideration in all applications before the Board, given the substantial costs of the cap and trade program on the ratepayers of Ontario, CME submits that regulatory transparency takes on a heightened level of importance when dealing with the cost

consequences of the Applicants' compliance plans. Ratepayers, including CME's members, need to understand their natural gas bills, why they are being charged the rates that they are charged, and where and how the money collected from ratepayers is being spent. This understanding is especially challenging given the high rate of change in carbon policy in the last few years.

The Board is alive to the importance of regulatory transparency, and indeed articulated its role in the confidentiality policy applicable to the cap and trade program. In the Report of the Board in EB-2015-0363 the Board stated:

The approach that underlies the Rules and the Practice Direction on the treatment of confidential information is that the placing of materials on the public record is the rule, and confidentiality is the exception.¹

Despite the importance of transparency, in the context of the cap and trade plans necessitated by the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (the "*Climate Change Act*"),² the Board determined that certain types of information, 'auction confidential' and 'market sensitive' information would be strictly confidential.

While the *Climate Change Act* places limitations on the disclosure of information, it is clear from the Board's report that the Board's choice to designate auction confidential and market sensitive information as strictly confidential was motivated by more than simply the textual prohibitions in the *Climate Change Act*:

The OEB recognizes that the Ontario Cap and Trade market is still nascent, and that the protocols and procedures surrounding confidential information must evolve as the market matures. The OEB believes that, in the early stages of the market's development, the appropriate approach must not only comply with the *Climate Change Act* and associated regulations, it should also be cautious and have regard to market integrity in order to protect customers from undue costs while still making appropriate information publicly available where possible. [emphasis added]

As a result, even if, as the Applicants have suggested in their letter of December 27, 2018, the confidentiality obligations of the *Climate Change Act* remain operative due to the fact that the repeal was not retroactive,³ there is no more Ontario Cap and Trade market, and therefore the reasoning applied by the Board regarding strictly confidential material is no longer fully applicable.

Given that confidentiality is the exception not the rule, and given that a central component of the Board's decision to make auction confidential and market sensitive information strictly confidential has changed, CME submits that it would be appropriate for the Board to revisit what information is designated as strictly confidential. CME suggests that such a review of the

¹ Ontario Energy Board, Report of the Board: Regulatory Framework for the Assessment of Natural Gas Utilities' Cap and Trade Activities, EB-2015-0363, September 26, 2016, p. 9.

² S.O. 2016, c. 7.

³ Enbridge Gas Distribution Inc. and Union Gas Ltd., 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"), December 27, 2018, p. 3.

confidentiality designation should be completed with a view to increasing transparency, and should take into account the other confidentiality tools that the Board has at its disposal, such as the use of signed Declarations and Undertakings from participating parties.

Yours very truly

Borden Ladner Gervais LLP



Scott Pollock

enclosure

- c. Andrew Mandyam (EGD)
- Fred Cass (Aird & Berlis LLP)
- Mark Kitchen (Union)
- Crawford Smith (Torys)
- Intervenors EB-2018-0331
- Alex Greco and Ian Shaw (CME)

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