

VIA E-MAIL

March 30, 2017

Ontario Energy Board
Attn: Kirsten Walli, Board Secretary
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

**RE: EB-2016-0186 Union Gas Panhandle Reinforcement Project
FRPO Response to Union Comments on Cost Claims**

Introduction

In response to the Union Gas letter dated March 24, 2017, I am writing on behalf of the Federation of Rental-housing Providers of Ontario (“FRPO”). FRPO has served the Board and Ontario through in its intervenor capacity at natural gas proceedings for several years. With the support of my experience, and my associates at DR QUINN & ASSOCIATES LTD. (DRQ), valuable insight and expertise has been provided to the Board on infrastructure and gas supply proceedings. This experience has been relied upon by others including intervenors and, at times, Board staff, to generate thorough discovery in testing evidence and to create understanding of how complex gas systems can be planned, contracted and operated in the public interest.

The Panhandle Reinforcement Project proceeding required a thorough testing of the evidence and the alternatives especially given the uncertainty associated with long-term gas utilization as a result of Climate Change initiatives. Attempts to serve the Board in this capacity was inhibited by the applicant resulting in additional stages of discovery, led by FRPO, which increased our time invested in these efforts.

To be helpful to the Board, on behalf of FRPO, I will respond to the assertions of Union below:

FRPO Determined that it Could Not Generate Expert Evidence on Viability of Alternatives

Union asserts : “no evidence was filed to assist the Board with review of alternatives, but significant costs have been claimed”

At its root, the Panhandle Reinforcement Project Application was infrastructure project designed to meet forecasted natural gas demand on the pipeline system. An evaluation and test of viable infrastructure and non-infrastructure solutions to meet increased demand requires the data

extracted from a model that emulates actual peak conditions and the systems ability to meet those demands using sources of gas to the system and facilities integral to the system.

Utilities traditionally use simulations that translate of the characteristics of the system into model that emulates the capabilities and constraints of the facilities. To be effective, these models must have all of the specific characteristics of the facilities to provide reliable data for decision-making. In addition, this information needs to be integrated with demand on the system at the specific take-offs and a knowledge of the supply to the system including capacity and pressure. All of this information is property of the utility including its rights to the use of the simulation. Even if intervenor requests for all the information were provided by the utility¹, one would have to find a company that has a network analysis simulation that could be used to generate results. Companies that own simulations or simulation rights are either utilities or companies who serve utilities as clients and latter companies are reluctant to assist those who oppose utility interests. Given the challenge of this path, we determined that we better serve the Board in the proceeding by extracting simulation runs from the utility that holds the resources in an attempt to demonstrate the viability of our proposal and refute artificial constraints asserted by the utility.

FRPO Did Inform the Board that It Would Not Be Submitting Evidence

Union asserts: “FRPO never advised the Board whether it would be filing expert evidence”.

The following is an extract from our opening submissions at the oral hearing on the Motion²:

MR. QUINN:... Before I start I believe it's helpful to the Board if I address the letter that Union Gas submitted this morning. These matters are very complex, and therefore through this process we have continued to refine our questions to understand Union's systems and their physical capabilities, to establish the basis for consideration of economic alternatives.

However, to be clear, we do not have access to Union's simulation, nor the communications with the market, nor information that would allow a picture to be formed by the pieces in the puzzle. So we have determined that we would be better to get more comprehensive discovery, which, again, makes our request here all the more important and our ability to analyze that ahead of the hearing.

So we will not be putting in evidence, and I trust that will then not have a schedule impact that was a concern of Union Gas.

MS. DUFF: Thank you, please proceed.

¹ FRPO requested components of pressure-reducing stations in the critical Leamington area in advance of the Technical Conference and in the Technical Conference but those equipment components were not provided.

² Eb-2016-0186 Motion Transcript, October 24, 2016, page 7, line 5-22

FRPO Identified the Role of A.S. Cheung and the Road to Discovery was Convolutted

Union makes a number of assertions related to timing of notifying the Board for cost estimates for expert evidence.

In our cover letter to our interrogatories, we stated³:

“The interrogatories were prepared with the assistance of Ms. A. Cheung who has previously been retained to provide evidence to the Board (EB-2014-0182). Her assistance was requested to ensure that we would obtain sufficient information for an understanding of the project and alternatives to the project for our consideration of the value of evidence to the Board in these matters. Our determination of the potential value of such evidence will be made when we have received that understanding.”

A.S. Cheung was retained at the outset of the proceeding to assist DRQ with discovery and an assessment of whether expert evidence could be prepared that would demonstrate the viability of alternative approaches to feed additional demand on the Panhandle system. Ms. Cheung experience with TransCanada in Transportation Planning and Pipeline Systems Analysis coupled with her regulatory experience at the NEB gave FRPO an opportunity for expert assessment of the situation and the potential for evidence to be generated. As an example, her experience was essential in navigating FERC documents submitted by Rover which proved the pipeline included Ojibway as a delivery point⁴ contrary to Union’s understanding⁵. Throughout the proceeding, DRQ provided specific instruction to Ms. Cheung to separate her work and minimize duplication of effort.

The timing of that notification of intent to file evidence was amended by the Board in Procedural Order No. 2 in making provision for additional discovery in a technical conference. As the minutes of the Technical conference demonstrate⁶, this discovery process was inhibited in numerous ways. As a brief example⁷:

MR. KEIZER: Well, ask your question, and then we will refuse, and then we will move on, and you can deal with it at a later date.

This is one specific example of the challenge that we faced requiring a motion and the power of the Board to compel provision. Further, some of the information that was provided at the Technical conference was not forthright especially when questions were asked about capacity on the Union Gas Panhandle system and the Energy Transfer Panhandle Eastern system. These statements were shown to be lacking when the extent of Union Gas and Energy Transfer

³ FRPO_Cvr_IR, PANHANDLE_20160826

⁴ FRPO Motion, submitted Oct. 20, 2017.

⁵ Technical Conference Transcript, Oct. 4, 2017, page 92

⁶ Technical Conference Transcript, Oct. 4, 2017: pages 46-50 and 61-62; pages 94-95; pages 118-119

⁷ Technical Conference Transcript, Oct. 4, 2017, page 46, lines 19-21

negotiations were provided in the initial provision of correspondence with Energy Transfer⁸. The first set of communications delivered after our request through Motion demonstrated a significant amount of negotiation and analysis as Energy Partners attempted to maximize their throughput through Ojibway. These communications were in stark contrast to “discussions”⁹ with Union and Energy Transfers’ “wondering”¹⁰ to which Union testified.

More conclusively, the submissions in the Technical Conference were considered as misleading as characterized by Energy Transfer in the correspondence provided on the first night of the hearing¹¹. It is important to recognize the footnote in that document expressly specifies that “These examples are not comprehensive of the inaccuracies we are finding in the Technical Conference Transcript.”¹² Contrary, to Union’s explanation of referenced inaccuracies¹³, Energy Transfer offered to rescind their above referenced letter, not on the basis of the explanation they received but on the basis that they can get a ten year contract¹⁴.

To be clear, we are not re-arguing the case but providing evidence of the challenges of discovery in the early stages of the proceeding which resulted in more time spent seeking public sources of information to refute Union statements and more analysis to try to piece together components of evidence to try to ask the right question to prove viability of our alternatives. As an explanatory note, this challenge was captured in our Final Argument under Procedural Frustration. We apologize to the Board that we should have selected a more accurate title as our frustration was not with the avenues afforded by the Board in the proceeding, but the conduct of the applicant in refusing to provide requested information pushing actual provision of discovery to later in the process, some of which could not be adequately tested¹⁵.

FRPO’s Cost Claim Represents its Role in the Proceeding

Union asserts that the FRPO cost claim is excessive as it represents four times the average claim.

In our view, that is not an appropriate comparison as a number of parties had varying levels of involvement in the proceeding and thus had significantly lower claims. In contrast, FRPO led the requests for a technical conference, researched other sources such as FERC submissions by Rover and market pricing, prepared and submitted a motion and was lead intervenor on technical matters associated with system capabilities and the feasibility of alternatives.

⁸ Union Gas Limited (“Union”) - EB-2016-0186 Panhandle Reinforcement Project - Response to requests for information from FRPO Motion

⁹ Technical Conference Transcript, Oct. 4, 2017, page 90-91

¹⁰ Technical Conference Transcript, Oct. 4, 2017, page 72

¹¹ Union Gas Limited (“Union”) - EB-2016-0186 Panhandle Reinforcement Project -Further Correspondence Request, pages 4 and 5 of 37.

¹² Union Gas Limited (“Union”) - EB-2016-0186 Panhandle Reinforcement Project -Further Correspondence Request, page 4 of 37, Footnote

¹³ Union Gas Limited (“Union”) - EB-2016-0186 Panhandle Reinforcement Project -Further Correspondence Request, page 2 of 3

¹⁴ Union Gas Limited (“Union”) - EB-2016-0186 Panhandle Reinforcement Project -Further Correspondence Request, page 13 of 37.

¹⁵ EB-2016-0186 Transcript, Volume 2, November 23, 2017, pages 99-102

The intervenors worked closely together to help ensure duplication of effort did not occur and that the benefits of our respective expertise was shared with the group. As lead on technical matters, DRQ, on behalf of FRPO, was the only intervenor with the experience to analyze the existing system including pressures, flows and impacts of growth. A simple example of that experience and prior work in discovery was exhibited in the hearing when Exhibit J2.1 was produced as directed by the Panel¹⁶, we were able to review the results and establish concurrence from the Union witness that the results were in error.¹⁷ Given the context and challenges described above, significant time was invested in analysis during each stage of discovery.

In our view, this effort was consistent with the statement in the Decision “In the OEB’s view, the intervenors fulfilled their role by participating actively in these processes.”¹⁸

Differentiation from EB-2016-0004

In the recently published Decision in the above proceeding, intervenor cost claims were capped at \$100,000 for those who submitted evidence and \$75,000 for those who did not. As is outlined above, the inability to have access to crucial information and a critical resource, a simulation, inhibited the production of reliable evidence precluding our original intent to do so. Instead, we strived to be vigilant in asking increasingly specific questions in an attempt to extract the information to make the case. In our view, the information asymmetry between the applicant and intervenors in this proceeding differentiates the situation from generic proceeding in EB-2016-0004

Conclusion

As outlined above, as we have strived to do over the last several years, FRPO acted responsibly and in the public interest in service to the Board. We trust that the above submissions, coupled with the Board’s experience with our conduct in this proceeding and past proceedings will inform its consideration of our cost claim.

All of which is respectfully submitted on behalf of FRPO,



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Principal
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c. K. Hockin – Union Gas, K. Lauesen – FRPO, A.S. Cheung, Interested Parties EB-2016-0186

¹⁶ EB-2016-0186 Transcript, Volume 2, November 23, 2017, pages 46-48

¹⁷ EB-2016-0186 Transcript, Volume 2, November 23, 2017, page 99, lines 20-26

¹⁸ EB-2016-0186 Decision, page 3.