INTRODUCTION

The Natural Gas Forum[1] was initiated to establish a "Renewed Policy Framework" for Ontario. One of the strongest consensus positions from the stakeholder submissions in the review was the role of the utility in ensuring adequate transportation for the supply of natural gas to its franchise. In its report, the Board emphasized that role:

Given the importance of security of supply and to provide greater clarity in the marketplace, the Board will offer utilities the opportunity to apply for pre-approval of long-term supply and/or transportation contracts. Further, the Board will consult on the development of guidelines that will inform all stakeholders of the principles and issues the Board will consider when evaluating an application for contract preapproval.[2]

The level of consensus continued into the consultations and was evident in that the Staff Discussion Paper contemplated for Phase 1 of the review was deemed unnecessary and the Board issued draft guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts[3]. While the Guidelines were evolved and clarified somewhat through further consultations, they followed from the considerations contained in the Natural Gas Forum report.

Earlier this year, the Board established a further consultation [4] to review and examine recent developments in North American natural gas supply markets to consider any potential implications for the Ontario natural gas market. That proceeding focused on the implication to the Ontario energy market as a resulting of emerging supplies from Northeast United States. The consensus from the information exchange in that proceeding was that these natural gas supplies

[1] Natural Gas Regulation in Ontario: A Renewed Policy Framework. Ontario Energy Board Report issued March 30 ,2005
[2] Ibid, page 73.
[3] Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts: Board File No.: EB-2008-0280
[4] EB-2010-0199 2010 Natural Gas Market Review (NGMR)

would have a significant impact on the market but uncertainty over the quantity and timing of availability of supplies made it difficult to forecast the outcomes.

The Federation of Rental-housing Providers of Ontario (FRPO) was involved in each of these Board initiatives and commends the Board for its foresight in these consultations. In our submission, the current combined proceeding is important as it constitutes the first request for Pre-approval allowing stakeholders to consider the practical effect of the guidelines' application to the utilities response to the changes in the North American supply market. We submit that this proceeding clearly highlights the challenges with guidelines and may provide consideration for refinement.

Having had the benefit of being able to listen to the Argument-in-Chief by Union Gas (Union) and Enbridge Gas Distribution (EGD) and the able Reply Argument by Consumers Council of Canada (CCC) and Canadian Manufacturers and Exporters (CME) and having time for review and consideration, FRPO will try to constrain its Reply Argument to additional considerations without re-arguing positions taken by others.

QUALIFICATION OF THESE CONTRACTS FOR PRE-APPROVAL GUIDELINES

It is clear from submissions by parties in argument that there is debate over whether the contracts put forth by the utilities qualify for treatment under the guidelines. Frankly, the respective arguments lead us back through the Natural Gas Forum and the process to develop the Guidelines for Pre-Approval of Long-term Contracts by this Board. While parties have focused on the descriptors of Frontier and LNG to describe the type of contracts contemplated under the guidelines, our review of the records of both proceedings did not uncover a stated intent by the Board to develop such a threshold criteria. In fact, as alluded to previously, all stakeholders acknowledged the role of the LDC's in supporting long term contracts to underpin investment for the benefit all.

In fact, the evolution of the North American market toward shorter-term contracting has resulted in significant concerns being addressed in jurisdictions across North America. This consensus of the role of the LDC resulted in the adoption of a resolution by the National Association of Regulatory Utility Commissioners that speaks to the public interest considerations[5] (attached as Appendix A).

In our respectful submission, the intent of the Pre-approval process is to enable the utilities to make long-term commitments to underpin the investment in facilities which have a long-term benefit to the market it serves. By addressing the aspects of the guidelines, the Board has created a process to ensure that relevant considerations are made prior to the pre-approval of the cost consequences allowing for the possibility of reduced risk for acting in the interest of the market and the customers they serve.

Therefore, given the nature of the investment needed for the contracts submitted by the utilities, we believe the EGD contract warrants consideration of the process due to the nature of facilities, the financial commitments being made and the benefits to the market place. The investment proposed for the Parkway to Maple path should start to address a potential bottleneck for the movement of gas around Ontario, Ironically, Union has been one of the most ardent supporters of just such an investment.

However, it is our respectful submission that Union's contract does not qualify for the pre-approval process because of the limited investment in facilities required and the limited exposure of the company until when this contract could be reviewed later this year in the normal course of business. We would endorse the argument of CME[6] in calling on the Board to refer Union to its annual review process and encourage the Board's consideration of Union's action should it cancel the contract prior to the end of January, 2011.

We would respectfully encourage the Board to consider whether the qualification aspect of the guidelines would benefit from additional clarity.

[5] National Association of Regulatory Utility Commissioners, Resolution on Long-term Contracting, adopted November 15, 2005.
[6] Transcript Volume 2, January 21, 2010 page 67-68

APPLICATION OF THE PRE-APPROVAL GUIDELINE

Part II - Needs, Costs and Benefits & Part III Contract Diversity

One of the points of emphasis by the utilities in this proceeding is the opportunity for supply diversity as result of the contracts that have been put forth for Pre-approval of the Cost Consequences. From a simple economic point of view, diversity in a portfolio of contracts is fundamental. Also, energy and environmental stewardship would lead one to consider that accessing natural gas supply from a more geographic proximate source would be beneficial. For these reasons, we commend the utilities for their initiative in seeking to contract for firm transport from the developing supply source. We respectfully submit that the utilities ought to seek to increase the amount of gas sourced from Marcellus as proven reserves are developed and available. It appears that both Union and EGD have flexibility in their portfolio to incorporate reasonable increases in gas from this source over time and the ability to shed transport

Part IV - Risk Assessment

In our view, the utilities have done an adequate job of managing commercial and contracting risk. The construction risks in this application fall to TransCanada Pipelines (TCPL). For the most part these projects are relatively straightforward since they are on TCPL facilities or existing running lines. Therefore these aspects appear to have little risk.

The area of greatest risk, in our view, is in forecasting and these risks are in two areas: Performance of Basin and Landed Costs.

Performance of Basin

The NGMR[7] provided significant information that pointed to the most significant risk factor with performance of the basin is not adequate reserves but access in an environmentally sound and sustainable fashion. In our view, the party that was most cautious about the robustness of the

[7] EB-2010-0199 2010 Natural Gas Market Review (NGMR)

supply basin was the Council of Canadians. In submitting a report from its expert[8], the Council highlighted the challenges with the environmental impact of hydraulic fracturing in the extraction of the shale deposits that provide gas from the Marcellus Shield. However, when asked about the impact of more stringent environmental standards on the performance of Marcellus, the following was their response[9]:

> ***A frack act could be implemented, and is -- you know, Lisa pointed out, API did a study on that. They quantified it two different ways. They actually quantified the amount of resource reduction or supply development that could be reduced as a result of the FRAC Act, and I think the number was somewhere in the 20 percent ballpark, as Lisa mentioned.***
> ***They also tried to quantify the cost increases that could result, and I think I the cost increases were somewhere in the 10 percent ballpark.***

So, from the point of view of the organization presenting the greatest caution in viewing the robustness of Marcellus, their opinion was that there may be legislative change that could reduce performance by 20%. There was some inquiry by parties of how much gas is available to meet the demands created by these contracts. Combining Union request of 21,000 GJ/day with EGD's 30,000 GJ, the total is less than 10% of the over 800,000 GJ/day[10] of increased capacity from the 3 northeast US pipeline projects. Comparing the amount of take-away contracted by the two utilities with the amount of capacity available, even a potential reduction in basin performance does not create a significant risk to these contracts in our view.

Landed Costs

While the ability to forecast the comparative landed costs accurately was evident due to impending changes with TCPL long-haul and short-haul rates, it is clear that these sources should be comparable and competitive with other available opportunities. But what is clear, it is

[8] Environmental Concerns and Regulatory Initiatives Related to Hydraulic Fracturing in Shale Gas Formations: Potential Implications for North American Gas Supply, submitted by the Council of Canadians, Sept, 21,2010
[9] EB-2010-0199 Stakeholder Conference Transcript, October 7, 2010, page 26, lines 13-22.
[10] Exhibit A pages 7-8, filed October 5, 2010 by Union Gas

very difficult to forecast landed gas costs. This point was made evident in the examination of the table presented by Union and entered into evidence as Exhibit K1.3[11]. The table showed the forecasted landed cost of gas using Niagara as supply source. This disparity was noted in examination by TCPL[12] but was not was pursued as warranting understanding. In our submission, this type of difference demonstrates the difficulty in developing and relying on forecasts to compare what can be small differences in alternatives. In our respectful submission, while the exercise is beneficial as a means of comparison, small differences in alternatives should not be relied upon for choice of one alternative over the other.

Allocation of Risk

While neither utility presented it directly, it is clear that under cross-examination both believed that since they do not make a profit from these transportation contract, neither should they take any risk. This view was further communicated in that EGD has stated that, if they do not get this pre-approval by January 28th, they may give notice to cancel the contracts[13]. Union has the same date to give notice but substantially smaller penalties (zero for the next couple months) as demonstrated in Exhibit K2.1[14].

Now, we understand that the Pre-approval process could shift all of the burden of the cost consequences to ratepayers hence creating a form of advancing the prudency proceeding. But we also submit that the Board has alternatives in how it allocates the risk of cost consequences. Given our considered support for the EGD contracts and the potential benefit to customers in Ontario including the EGD System Reliability concerns, we would encourage the Board to allocate the cost consequences on a 50/50 basis between EGD and its ratepayers. We submit that the continued risk for the utility will encourage their diligence in remaining areas of risk that they can manage through their diligence.

[11] Exhibit K1.3
[12] Transcript Volume 1, January 20, 2010, page 102.
[13] Transcript Volume 1, January 20, 2010, page 143-144
[14] Exhibit K2.1 filed by TransCanada in response to undertaking J1.1.

Part V - Other Considerations

Impact on Ontario Customers

As noted above, forecasting comes with its inherent challenges to offer reliable comparability. But, in this case, the ability to compare scenario outcomes impact on Ontario customers has been further complicated by the wide range of potential long-haul rates that have been proposed by TCPL in the last few months. In response to a Board staff inquiry regarding implications of the varying long-haul tolls, Union presented its analysis of tolls ranging from $1.33 to $2.91[15]. This range of potential tolls in the near future makes it almost impossible to determine the relative impact of choosing long-haul versus short-haul deliveries. While the long-term level of tolls may not be known later this year, we respectfully submit that the outcome of further deliberation on these tolls in 2011 could be informative in reviewing Union's integration of the Niagara contract in its 2012 rate setting process.

Further, even when these potential swings are not considered in the analysis, it was clear that the difference in impact as calculated by Union in Exhibit K1.3 and TCPL in Exhibit K1.4 demonstrates that assumptions underpinning cost impact assessments can yield very different outcomes. We respectfully submit that this situation demonstrates the need for ongoing scrutiny of submissions regarding forecasts in any future Pre-approval or prudency reviews. In addition, it exemplifies that a holistic view of the need, benefits and risks ought to be considered in warranting the opportunity for Pre-approval.

Additional Considerations

While it is not an open issue at this time, the Union-TCPL Parkway contracts were reviewed by all and were examined in part in cross-examination even after they were withdrawn for consideration for Pre-approval by the applicant. We were uncertain of whether we could support the shift of cost consequences for these contracts prior to their withdrawal. However, an interesting observation was made during the cross-examination that we believe warrants further

[15] Union Letter, dated January 6, 2011

consideration. In justifying the termination of negotiation of the contract, the Union witness stated[16]:

> ***They're prepared to provide the service, but not necessarily through the construction of new facilities.***
>
> ***So as I said before, we would have two problems with that. Number one is if they're going to use existing facilities, why would we agree to sign a 10-year commitment to do that if there isn't an outlay of cash? In principle, we just don't support that.***

We respectfully submit that ratepayers are interested in the most efficient movement of gas to and around Ontario. It causes us concern that a utility would attempt to force additional investment in new infrastructure if existing infrastructure could be used more efficiently to effect the same delivery. We also find it ironic that the initial exposure of the EGD contract with TCPL is the demand charges for Union services for predominately existing facilities. We would encourage the Board to remind the utilities of their obligation in these negotiations to ensure ratepayers interests are considered in determining the best alternative for gas movement.

CONCLUSION

In conclusion, we support the pre-approval of a 50/50 pro-rata allocation of cost consequences for the EGD contracts and the deferral of review of the cost consequences of Union's Niagara contract to the 2012 rate setting process

We would like to thank the Board for this accommodation of written argument.

All of which is Respectfully Submitted on Behalf of FRPO,

Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD.

[16] Transcript Volume 1, January 20, 2011, page 39, para. 5-12.

APPENDIX A

Resolution on Long-Term Contracting

WHEREAS, Over the past 20 years long term commodity gas and gas transportation and storage transactions have declined; *and*

WHEREAS, The U.S. must expand its natural gas infrastructure over the next several years, to accommodate gas supplies from new sources, to meet growing demand, to provide storage accommodating higher peak demand, and to moderate future gas prices; *and*

WHEREAS, Without long-term shipping and storage commitments, financing of critical pipeline and storage infrastructure is both difficult and expensive, producing a chilling effect on future natural gas market conditions; *and*

WHEREAS, Long-term contracting produces preferred financing for gas transportation and storage projects, but because of the uncertainty surrounding future market conditions, market participants have taken a short-term perspective; *and*

WHEREAS, Prudent long-term gas procurement and capacity plans, within the context of a portfolio approach, may encompass long term contracts for pipeline and storage capacity supporting new gas production sources and LNG terminals; *and*

WHEREAS, The attractiveness of long-term contracts is utility and State-specific but recent market conditions indicate long-term transactions may be more economically attractive for shippers and other market participants in assuring that sufficient, reliable, affordable pipeline and storage capacity will be available to accommodate new gas supply sources; *and*

WHEREAS, A joint NARUC and IOGCC task force recently undertook research on this subject; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2005 Annual Convention, in Indian Wells, California, urges State regulators to:

- Recognize the need for additional gas infrastructure to accommodate future gas demand, and moderate the volatility of natural gas prices;
- Consider long term contracting as a potentially appropriate ingredient in a gas utility's portfolio strategy;
- Encourage gas utilities to develop long-term strategies for capacity and supply contracts to access new and expanded natural gas and LNG supply sources;
- Not discourage long-term transportation and storage contracts when a specific record merits encouragement; and
- Consider pre-approval of long-term contracts.

Sponsored by the Committee on Gas
Recommended by the NARUC Board of Directors November 15, 2005
Adopted by the NARUC November 16, 2005