VIA E-MAIL & COURIER TO THE BOARD

April 15, 2011

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

Re: EB-2010-0039 FPRO Submission on St. Clair Line Deferrals - Declatory Relief

Please find attached the submissions of the Federation of Rental-housing Providers of Ontario (FRPO) in the above-noted proceeding.

While we have intentionally avoided using numbers that may be considered confidential, our description of matters may be considered sensitive by the Applicant and therefore we will not be submitting through the RESS unless instructed to do so. Further, we will are distributing by email to those whom the Applicant sent their confidential IR responses.

Respectfully Submitted on Behalf of FRPO,

Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD.

c. V. Brescia (FRPO)

Preface

1. The Federation of Rental-housing Providers of Ontario (FRPO) has been an active participant in the course of multiple proceedings related to the St. Clair Line.

2. Throughout these proceedings, FRPO has benefitted from the collaboration with Canadian Manufacturers and Exporters and, in particular, the wisdom and legal experience of its Counsel. Given the importance of this issue, and our desire for the best, long-term outcomes for the Ontario market and its ratepayers, we have chosen to play a supportive role in submissions especially as they pertained to legal matters (e.g., jurisdiction).

3. At this juncture, having previewed the submissions of CME, FRPO will defer to our colleague`s comprehensive approach and fully support the submissions of CME. In support of their position, the following is FRPO`s layman submissions that we trust are helpful to the Board.

Proposition

4. FRPO`s primary concern from the outset was that the parent of a utility should not be able to leave an under-performing asset in the utility for decades and then subsequently move the asset to a non-utility, joint venture (JV) as an "at-risk" pipeline, at time when it becomes more valuable in the market. To do that at residual, unamortized value in a non-arms length transaction was not equitable, in our view.

5. The Board ruled that the utility could transfer the asset to the JV but determined that the shareholder would have to pay a fair market value for the pipe to compensate for the harm to ratepayers for foregoing future benefits of the line.

6. Upon seeking and receiving expedited approvals of the Leave to Construct of the completion link from Bickford to Dawn and the lighter-handed regulatory construct it sought, the JV was in position to bring the benefits of the new gateway to all stakeholders.

7. However, in spite of representations made to the Board, the JV decided, on its own, without informing or seeking guidance from the pipeline regulator, to transfer control of the destiny of the project to shippers putting its own risk managment and the relationships with those shippers over the rights and interests of the utility`s ratepayers. In essence, shifting the risk of recovery back to ratepayers.

8. Union seems to rely on the assertion that if there is no sale there is no harm. FRPO would argue that there is harm caused to ratepayers by Union`s parent company`s use and abuse of ratepayer`s interests in the entire process. The parent was aware of the under-performance of this line and an increasing value for this path into Ontario. Union was consistent in representation that this project held benefits for the Ontario customers in creating another path in and through Dawn. Thus, ratepayer harm was created in shifting the control over the project to others without ratepayer compensation nor Board approval.

Chronology

9. From the outset, Union argued that it was important to remove the asset from utility service so it could become more valuable to all including the ratepayers of Ontario by removing the cost of the underperforming asset that was not even worth its book value (by the independent evaluation they commissioned) and providing a valued service to keep Dawn viable. Then only their parent as a participant with their partners on the US side could provide the integrated service of allowing one nomination that would allow the market to uptake the service. FRPO voiced it`s concern that this was only a "marriage of convenience" to prohibit ratepayers from benefitting from the increased value of the pipeline but Union witnesses testified[1] that it was the only way to bring this project to fruition. In doing so, they would remove the under-performing asset from regulation and take the risk of bringing the project to market.

10. Through an open season and subsequent negotiation, precedent agreements were established in favour of the pipeline that provide for firm financial commitments sufficient to fund the capital cost of the building the new line and purchasing the St. Clair line portion. This minimized the risk for the JV. In "negotiating" the agreement of Purchase and Sale, the parent and its partner provided itself the luxuries of time to decide and veto power while putting the utility through an investment of scarce resources to fast track the project through the regulatory system when the initial "deal" of transfer at Net Book Value created sufficient ratepayer and regulator concern. This agreement

[1] EB-2008-0411 Transcript Volume 1, page 12

maintained the risk with utility to create the conditions satisfactory to the parent for the risk to be shifted.

11. After receiving the Board`s decision quantifying the repayment of harm moving the utility asset JV, the JV pushed forward for lighter handed regulation and a leave to construct the necessary pipeline to make the path continuous and separate from utility operations. The premise was that this would be an "at-risk" pipeline that would be completely separated from the utility becoming a non-utility asset.

12. Additional urgency was applied by asserting that the pipe order needed to be confirmed almost right after the hearing for the project to meet a same year in-service date. Under-cross examination, Union Staff testified[2] that they had exhausted options to push back the decision to proceed with pipe fabrication.

13. In the Leave to Construct proceeding, the joint venture co-president confirmed that if the proposed regulatory construct and leave to construct were granted, the joint venture would have all they need to move forward and become an "at-risk" pipeline but failed to inform the Board of internal votes and resolutions that were still pending for the sale to occur.

[2] EB-2009-0422 Transcript Volume 1, pages 185-7.

14. The Board issued favourable decisions in an expedited fashion on the regulatory construct and the leave thus, based upon testimony from the JV co-president[3], the deal would be done for regulatory purposes. Immediately following the decision, with all of its approvals in hand to provide benefits to the stakeholders, the joint venture received a concern from one of its shippers. Notwithstanding the testimony of staff regarding the importance of the date to the pipe order referenced above, in the current proceeding, Union testified[4] that based upon the one phone call from a concerned shipper, they released the pipe and sought other alternatives and found one with a later commitment date of April.

15. The JV initiated a process to determine if there are alternatives to proceeding. Upon meeting with it shippers, the JV decided that holding favour in the relationships with the shippers and not incurring renewal risk[5] was paramount to the interests of ratepayers in obtaining the benefits of completing the project and therefore gave away its option to build the pipeline to the shippers for simple repayment of the cost of utility`s investment to this point. Its subordination of ratepayer‘s interests is evidenced by the fact that Union Gas was not represented in the meeting of the joint venture[6] with the shippers.

[3] EB-2009-0422 Transcript Volume 1, page 26-28
[4] EB-2010-0039 April 6, 2011 Motion Transcript pages 77-78
[5] EB-2010-0039 April 6, 2011 Motion Transcript page 137-139
[6] EB-2010-0039 April 6, 2011 Motion Transcript pages 98-99

16. Further its lack of recognition of its role as a regulated, non-utility pipeline results in its actions in its own interests without consultation with it regulator[7] to determine the consequences of its actions.

Conclusion

17. Therefore, we respectfully conclude, the parent used its position as owner of the utility to seek its own interests while neglecting those of its utility`s customers and gave up its option on the future of the pipeline system while it held the pipe "at risk" from a regulatory perspective. Since Union was not present to protect ratepayers interests in mitigating harm, we respectfully request the Board declare that the clearing of the deferral accounts does not have to await the transaction of the pipe between the non-arms length parties but require the JV to act on its commitments represented to the Board while respecting the interests of the Ontario in the process.

All of which is Respectfully Submitted on Behalf of FRPO,

Dwayne Quinn P.Eng, MBA

PRINCIPAL

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[7] EB-2010-0039 April 6, 2011 Motion Transcript pages 69