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May 17, 2012

VIA Electronic Filing

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

Re: EB-2011-0210 - Union 2013 Rates Application

Dear Ms. Walli:

Please find attached a Notice of Motion filed on behalf of TransCanada Pipelines Limited ("TransCanada"). The motion seeks an order requiring Union Gas Limited ("Union") to provide full answers to certain of the Interrogatories that were posed by TransCanada to Union.

Yours very truly,

Gordon Cameron

Gordon Cameron

c: Chris Ripley – Union Gas Limited
Intervenors

2012-05-17 TCPL CVR LTR FOR MOTION.DOC

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. c. 15, Schedule B, as amended;

AND IN THE MATTER OF an application by Union Gas Limited for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of natural gas, effective January 1, 2013 (the Application).

NOTICE OF MOTION

TransCanada Pipelines Limited ("TransCanada") will make a motion to the Ontario Energy Board (the "Board") in accordance with a schedule to be established by the Board.

PROPOSED METHOD OF HEARING:

TransCanada proposes that this motion be dealt with in writing.

THIS MOTION IS FOR:

1. An Order requiring Union Gas Limited ("Union") to provide proper answers to the Interrogatories identified in Appendix "A" to this Notice of Motion, or such other information as the Board considers appropriate.
2. An Order requiring Union to file with the Board unredacted copies of pages in Interrogatory Responses that were filed in redacted form as part of Union's Interrogatory Responses to TransCanada, so that the Board can assess the reasonableness of the claims for confidentiality and make such order as it considers appropriate in that regard.

THE GROUNDS FOR THE MOTION ARE:

3. As regards the inadequate Interrogatory Responses, the grounds are as set out in the attached Appendix "A".
4. As regards the redaction to documents filed in response to TransCanada's Interrogatories, Union has claimed "commercial and operational confidentiality" with respect to certain portions of documents that were responsive to an

Interrogatory posed by TransCanada, and has redacted those portions of the documents. TransCanada wishes to have the Board test Union's claim of confidentiality . These grounds are further particularized in Appendix "A".

5. Rule 8 of the Board's *Rules of Practice and Procedure*.

**THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE
RELIED UPON AT THE HEARING OF THE MOTION:**

1. The attached Appendix "A" and the Application and Interrogatory Response materials referred to in it.
2. Such further and other material as counsel may advise and the Board may permit.

DATED: May 17, 2012

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Counsel for TransCanada Pipelines Limited

TO:
ONTARIO ENERGY BOARD
Attention: Kirsten Walli,
Board Secretary

AND TO:
UNION GAS LIMITED
Attention: Chris Ripley, Crawford Smith

AND TO:
ALL PARTIES OF RECORD
IN EB-2011-0210

APPENDIX “A” TO TRANSCANADA MOTION TO COMPEL RESPONSES TO INTERROGATORIES

1. Exhibit J.B-1-7-21 (b)

Interrogatory and response:

In the evidence to which this Interrogatory pertains, Union described recent physical flows (2006-2009, 2009/10 and 2010/11) through Parkway – TransCanada (Parkway) in support of the need for loss of critical unit protection (LCU protection) at Parkway. The chart provided by Union to demonstrate these flows described total physical flows through Parkway. In Interrogatory J.B.-1-7-21(a), TransCanada asked Union to provide the data for these flows and Union did so in its response. In Interrogatory J.B.-1-7-21 (b), TransCanada asked Union to provide the data for the activity at Parkway by service class:

In an Excel spreadsheet, please provide the daily scheduled quantity for delivery through Parkway compression by service class. Please provide both the scheduled receipts as well as deliveries. If the sum of the receipts and deliveries do not equate to the net flow, please explain why.

Union responded that the chart in question was not intended to support the activity at Parkway by service class:

The graph in Exhibit B1, Tab 9, Schedule 2 represents the physical activity at the TCPL Parkway interconnect as measured by Union’s check measurement. It does not equate to the sum of the receipts and deliveries. The graph is intended to demonstrate the change in physical activity. It is not intended to support the activity by service class.

Submissions

While TransCanada agrees that the chart does not provide the activity at Parkway by service class, that is why TransCanada asked this Interrogatory. The Interrogatory was posed because Union did not provide data by service class in support of its need for LCU protection, and data by service class is necessary to undertake a meaningful analysis of the need for LCU protection.

LCU protection is only justified in order to support firm service obligations. Discretionary volumes are irrelevant to Union’s (or any utility’s) need for LCU protection because discretionary volumes would be curtailed in the event of the loss of a critical unit.

In order to assess the need for LCU protection at Parkway, the Board will need to understand the flows at Parkway by service class, most particularly the flows at Parkway that serve firm service obligations and those that serve discretionary volumes.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

2. Exhibit J.B-1-7-5 (d) and (g)
Interrogatory and response

This Interrogatory referenced Union's evidence in support of the need for LCU protection at Parkway and asked for supporting data in that regard; in particular, for question (d), the running hours and maintenance hours on the two compressor units at Parkway, and for question (g), the instances in which service would have been curtailed but for the existence of LCU protection.

In order to assess the relative likelihood that further compression will be needed in the future, TransCanada asked for the information in response to question (d) from 2006 to 2011 and for question (g) for the past 10 years.

Union responded that providing this information would be onerous and irrelevant given that the Application only pertains to rates for 2013. For both questions Union provided the requested information only for 2011 and the first three months of 2012.

Submissions

TransCanada submits that the period for which rates are applied is irrelevant to a question about the need for new facilities. The question is whether the new facilities, which will exist and be paid for by customers for many years beyond the year in which the applied-for tolls will be charged, are justified. This requires, among other considerations, a review of data regarding the use of the existing facilities in the past: does past usage demonstrate that future demand requires new facilities?

Union does not state why the production of the requested data would be onerous, nor does Union offer any data that it can provide without an onerous effort. For example, TransCanada presumes that Union could at least provide the number of days in the last five or ten years that Union has restricted firm service to Parkway as a result of loss of compression at Parkway and the last day that such a restriction occurred.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

3. Exhibit J.B-1-7-6 (c)
Interrogatory and response

In this Interrogatory, TransCanada asked for information in the same category as the previous Interrogatory, but with respect to the occasions and, for those occasions, the number of days on which LCU protection was required in the past 10 years.

Submissions

The rationale for these questions is the same as for the previous Interrogatory.

Here Union states that it does not have the data, but answers the question from January 1, 2011.

It strikes TransCanada as improbable that Union does not have the data in question, or at least some of the data for some reasonable period in the past, and so TransCanada assumes that Union means that it considers the request too onerous to warrant the effort of a response. Union does not, however, provide any explanation for this. Again, TransCanada presumes that Union could provide the number of time in the last five or ten years that Union has required LCU protection on the Dawn – Trafalgar system and the number of days for each instance that this protection was required.

LCU protection is useful but expensive. Union proposes to spend over \$180 million more on it. TransCanada submits that the Board should have a reasonable body of data upon which to assess the need for LCU protection at Parkway, and that the past need for LCU protection is, at a minimum, the starting point for that assessment.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

4. Exhibit J.B-1-7-8 (b)
Interrogatory and response

In this Interrogatory, TransCanada asked Union for the annual owning and operating costs of the Parkway West Project for the next 15 years, broken out between the proposed new compression and the proposed new connection to Enbridge.

Union provided the requested information only for the first year of operation, and only for the combined project.

Submissions

Union and other pipelines use non-facilities methods to reduce peak demand and thus reduce or eliminate the need for more expensive facilities-based LCU protection. These alternative methods, which do not involve capital expenditures, are assessed on their annual costs. The comparator for the evaluation of the need for facilities-based LCU protection is the annual owning and operating costs of the facilities-based option. This requires the long term owning and operating costs for the compression facilities alone.

This information is necessary for the Board to evaluate the reasonableness of Union's proposed capital expenditures, such as for the Parkway compression facilities, when there could be more economical non-facilities alternatives.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

5. Exhibit J.B-1-7-8 (c) and (d)
Interrogatory and response

In these Interrogatories, TransCanada requested the manner in which the costs described in the previous Interrogatory (annual owning and operating costs of the two components of the Parkway West Project) would be allocated among M12, M12-X and C1 customers, and the associated rate impacts.

Union responded that the costs of the facilities were not included in the test year in question and that the cost and rate consequences of the facilities would be dealt with in a subsequent proceeding.

Submissions

TransCanada does not propose to debate the appropriateness of the allocation of the costs of the proposed facilities or the relative rate impacts. TransCanada is seeking the approximate rate impact of the addition of the proposed facilities.

It is submitted that it is appropriate for Union to provide the Board and parties with the approximate rate impacts of its proposed facilities at the time it seeks authorization of the capital expenditures associated with those facilities. Rate impacts are a relevant factor in assessing the appropriateness of capital expenditures. The Board should not be told that these matters will be dealt with in a subsequent proceeding when the expenditures have already been authorized.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

6. Exhibit J.B-1-7-8 (e)
Interrogatory and response

In this Interrogatory, TransCanada requested “a copy of each presentation that Union made to Enbridge Gas Distribution, Enbridge Inc., Spectra Energy, TransCanada and Union Senior Management or any other affected party, in which either element of the Parkway West Project is the topic or is among the topics discussed in the presentation.”

TransCanada has two objections to the response to this Interrogatory.

First, Union responded by providing “representative” presentations. TransCanada does not object to Union’s economy in providing representative presentations. However, the representative presentations did not include any presentations made to Enbridge Gas Distribution or Enbridge Inc. Given that it was apparently EGD that provided the impetus for the Parkway West Project, TransCanada assumes that there would have been presentations to EGD about the project. TransCanada requests that the Board require Union to provide the presentations that it made to EGD in which the Parkway West Project is among the topics discussed, or to advise, if this is the case, that there never were any presentations to EGD.

Second, Union redacted “commercially and operationally sensitive material” from pages 4, 10 and 23 of the first presentation (Attachment 1 to the Interrogatory Response) and from page 4 of the second presentation (Attachment 2 to the Interrogatory Response). Union does not explain what “operational confidentiality” is independent of commercial confidentiality, and TransCanada disputes the legitimacy of withholding information on that basis.

The topic of the presentations and the locations of the redactions in the documents makes it improbable that they contain commercially or “operationally” sensitive information. For example:

- the three redacted bullets on page 4 of Attachment 1 follow a heading that discusses EGD’s concerns regarding security of supply at Parkway. This is not a topic of commercial or “operational” confidentiality.
- The words that follow the redactions on page 10 of Attachment 1 are “Parkway West provides supply reliability and eliminates this risk”, again indicating that the preceding redacted text was not a discussion of commercially or “operationally” confidential information.
- The joint ownership of the Parkway Extension discussed in the bullet with redactions on page 23 of Attachment 1 was made public in Union’s open season announcements and materials.

Accordingly, TransCanada requests that the Board order Union to file the unredacted materials so that the hearing panel can assess the reasonableness of these redactions. If Union elects to make submissions to the Board at the time of filing, the Board should provide the unredacted documents to counsel for Board Staff for the consideration of reply submissions.

7. Exhibit J.B-1-7-1 (a)

Interrogatory and response

In this Interrogatory, referencing the proposed Parkway West Project, TransCanada requested a diagram illustrating the existing and proposed connections between Union and other parties in the Parkway / Lisgar area.

Union provided a diagram that does not provide this information.

Submissions

The Parkway West Project is about additional facilities that will result in multiple new connections between Union and other parties in the Parkway / Lisgar area. TransCanada submits that this is a simple request for obviously relevant and helpful information – a diagram that will show the existing connections and the proposed connections and identifying which are existing and which are proposed.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

8. Exhibit J.B-1-7-1 3(a)

Interrogatory and response

As noted in the preamble, in this Interrogatory, TransCanada sought further information in order to understand the capabilities of the existing facilities in the Parkway area in order to understand the potential for restrictions to service (and thus the need for further facilities). The response refers TransCanada to a schematic provided pursuant to J.B-7-14, which does not provide the requested detail. Explaining the refusal, Union states baldly, without explanation, that the detail is not relevant to this application.

Submissions

Union is seeking approval for capital expenditures, ostensibly to remedy deficiencies in its existing facilities. It is submitted that the capabilities of the existing facilities are self-evidently relevant to the Board's consideration of this Application, because they pertain to the need for the facilities to which the requested Board approval pertains.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

9. Exhibit J.B-1-7-1 4(f)

Interrogatory and response

Union premised the need for the Parkway West Project on, among other things, growth in forecast requirements at Parkway. Union specifically referenced growth through to 2015/2016.

In this Interrogatory, TransCanada sought the forecast annual and daily deliveries to Parkway (TransCanada) and Parkway (Consumers) for 2012 to 2016.

Union responded with reference to an Interrogatory response that provides information only with respect to 2013/2014.

Submissions

Union relies on a forecast of growth in requirements at Parkway through to 2015/2016. TransCanada is simply requesting the data that Union must have in support of the forecast on which it relies regarding this anticipated growth.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

10. Exhibit J.B-4-7-1 (a)**Interrogatory and response**

In this Interrogatory, TransCanada sought to obtain information about the utilization of facilities in Union's rate base. In order to simplify the question and reduce the amount of data required to answer it, TransCanada framed a carefully focused question asking, for pipelines NPS12 diameter or greater and pipelines serving power generators and industrial customers, whether in the past ten years the lines had been utilized at rates in four specific tranches (less than 80%, 60%, 40% and 20%).

Union's answer was:

All of Union's distribution and transmission facilities included in approved rate base are sized to meet peak day demand under design day conditions. Accordingly, the utilization of Union's distribution and transmission facilities will be less than 100% unless Union is experiencing a design day.

Submissions

Union's answer is wholly unresponsive. The Board is aware of Union's design criteria and that the consequence of this is that facilities will be less than 100% utilized when not operating at design day loads.

It is reasonable for the Board to inquire into the utilization rates of Union's main lines. The Board has included in this proceeding the utilization of the St. Clair line and the consequences of that utilization for Union ratepayers.

Though the St. Clair line only attracted the attention of the Board and parties as a result of Union's recent proposal to sell it, there is nothing unique about the St. Clair line among Union's facilities, and the Board and parties, such as TransCanada, who are paying for these facilities, have a legitimate interest in whether there are other facilities that should also be scrutinized.

TransCanada asked a focused question that is not burdensome for Union to answer, so that the Board and parties could understand the utilization rates of Union's more substantial lines.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

11. Exhibit J.B-4-7-1 (b)(v)**Interrogatory and response**

This Interrogatory inquired about expansions to Union's Dawn-Parkway system since 2002, including (v) the volumes and terms of the incremental contracts associated with the expansions.

Union's response referred TransCanada to a response (FRPO (J.G-10-10-3) that provided some information but did not provide the volumes and terms of the incremental contracts underpinning the expansions.

Submissions

TransCanada submits that the Board and parties have a legitimate interest in understanding the basis on which Union expands the Dawn-Parkway system, including the role of contractual underpinnings for the expansions. This ties in with the present and forecast utilization of the Dawn-Parkway system and the role and significance of the Parkway Obligation, both relevant issues in this proceeding.

Accordingly, it is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.

12. Exhibit J.G-1-7-11

Interrogatory and response

In this Interrogatory, TransCanada asked Union for information from which the Board and parties could assess the current and potential Dawn-Union to Dawn-TransCanada (Dawn-Dawn TCPL) capacity.

Union declined to answer or provided non-answers to all of the questions in this Interrogatory.

Submissions

As Union is aware, Dawn-Dawn TCPL capacity allows TransCanada to provide service to Parkway at a lower cost than Union would incur to construct facilities to provide its own capability at Parkway – capability such as the applied-for LCU protection.

TransCanada submits that the Board and parties should have the information that Union is refusing to provide on this issue.

TransCanada sought specific objective capability and operational information about the facilities that do or could provide Dawn-Dawn TCPL service for 2012/2013.

In its response to question (a) Union begins its refusal to provide information on this issue by stating that the information is contingent on supplies and demands entering and leaving Dawn.

However, to plan its operations for the coming year Union must have the information about these contingencies at a reasonable level of accuracy – certainly accurate enough to provide pertinent information in response to the questions asked.

It is submitted that Union is being unresponsive on a question to which Union could provide relevant and meaningful information.

In its response to question (b), which asks for Union's capacity to provide Dawn-Dawn TCPL service, Union responds with its contracted capacity. This is not a subtle evasion of the question. TransCanada is the only Dawn-Dawn TCPL customer and is aware of its contracted capacity. As Union is aware, the question asks for the available capacity, not the contracted capacity.

The subsequent responses refer the reader to the unresponsive answer (b), thus providing no relevant information.

It is submitted that the Interrogatory is a reasonable one and that Union should be ordered to provide a proper response to it.