

September 21, 2012

**VIA RESS AND COURIER**

Ms. Kirsten Walli  
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Dear Ms. Walli:

**Re: EB-2012-0226 – Union Gas Limited (Union) Application for Leave to Construct.**

**Thunder Bay Terminals Limited (TBTL) Written Submissions on the Application.**

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Pursuant to Procedural Order No. 1 issued herein on August 9, 2012, this letter constitutes TBTL's written submissions on Union's Application for Leave to Construct.

Procedural Order No. 1 required this filing yesterday (September 20<sup>th</sup>). As a result of the writers' schedule and that of the TBTL representatives engaged in this matter, both of which schedules included travel and were also affected this week by the Jewish holidays (from late Monday through Wednesday), we have been able to confirm instructions for these submissions only this morning. We thus request a one day indulgence from the Board and Union, and the acceptance of these submissions today.

## **Submissions**

As indicated in TBTL's letter requesting intervention (July 3, 2012), Union's proposed pipeline would be built across property on McKellar Island occupied and used by TBTL under a long term lease from Canadian Pacific Railroad Company (CPR). As such, TBTL's concern in this proceeding relates to the execution and remediation by Union of the construction of the proposed pipeline.

In its responses to TBTL's interrogatories (in particular TBTL Interrogatory #2), Union has indicated that:

- The proposed installation of pipe across land on which TBTL operates, and in particular across the railway lines on which TBTL relies in its daily operations, would be by horizontal directional drill (HDD), and that blasting or ramming will not be required.
- Pursued in this way, the construction of the pipeline across McKellar Island would not interrupt traffic on either of the rail lines serving TBTL.
- *"No interruption of TBTL's operations is anticipated."*

Union also indicated that the crossing of the land on which TBTL operates will be completed in accord with a Master Agreement that Union has with CPR, and that:

- The design of the crossing will ensure that the depth of the crossing will not interfere with the integrity of the track bed or any adjacent foundations.
- Union's agreement with CPR also addresses the potential for ongoing issues related to pipeline construction, and how they are to be resolved.

In response to TBTL interrogatory #1 (at page 2, part (c)), Union stated:

*The site [on which TBTL operates] is serviced by various roads and rail networks that Union would assume are critical to operations.*

*Union understands the importance of maintaining vehicle access and rail traffic in order for TBTL to carry on daily operations. As a result, Union proposes to directional drill/bore all rail lines and paved roads in order not to disrupt operations. ...*

*Union is committed to maintaining vehicle and rail traffic throughout all stages of construction and at this time does not anticipate any other construction related impacts to TBTL terminal.*

TBTL notes the draft conditions of approval included in Board Staff interrogatory #5, and Union's acceptance of such conditions for approval of its application herein. In particular, the conditions accepted by Union include:

- A requirement that Union construct the facilities and restore the land in accordance with its application and the evidence filed herein. (This would include the statements by Union referenced above.)

- A condition that the authorization for leave to construct would terminate December 31, 2013 if construction has not commenced prior to this date.
- A requirement for Union to advise the Board of any proposed material change in construction or restoration procedures.
- A requirement that Union monitor impacts of construction and file interim and final monitoring reports.

***TBTL submits that if the Board approves Union's application, Staff's proposed conditions of approval, as referenced above, should be incorporated.***

***TBTL further submits that a condition should be added requiring Union to provide any advice/reports required on the public record, with copies to TBTL as a party to this proceeding.***

In its response to Board Staff Interrogatory #4, Union indicated that a "Traditional Study" focussed on the pipeline that crosses McKellar and Mission Islands was expected to be completed by the end of August 2012, which would have been 5 days before this interrogatory was filed. In Staff's submission (page 6), Union was "encouraged" to provide an update regarding this study. TBTL would go further.

***TBTL Requests that Union immediately file a copy of the subject study. TBTL expressly reserves its rights in respect of issues that might arise from review of this study.***

TBTL has had the benefit of review of Staff's submissions, and notes Staff's recommendation (at page 4, and again at page 8) that the leave to construct approval be made contingent on the economic justification of an executed power purchase agreement between Union and the Ontario Power Authority (OPA).

***TBTL supports this recommendation.***

TBTL would amplify this condition, in recognition of the recent history in Ontario of OPA agreements being suspended or cancelled. Should that happen in respect of the proposed Thunder Bay plant conversion, the leave to construct should be similarly suspended or cancelled (as the economic justification supporting that leave would be negated).

***TBTL thus recommends that the following condition be adopted in lieu of that proposed by Board Staff:***

***Union shall not commence or continue, as the case may be, construction of the proposed pipeline unless a Power Purchase Agreement with the***

***Ontario Power Authority has been executed and remains in full force and effect, without formal suspension. Union shall file with the Board a document providing verification of the Power Purchase Agreement within 7 days of the date it is executed. Union shall also advise the Board, on the public record and including notification to the parties to this proceeding, immediately upon cancellation of, or any formal suspension of, the Power Purchase Agreement, and shall, subject to securing the construction site(s), cease construction upon occurrence of either of these events.***

## **Costs**

Pursuant to the Board's determination that TBTL is eligible to apply for an award of its reasonably incurred costs for intervention herein, TBTL hereby requests such an award of costs. TBTL submits that it has acted responsibly in its intervention, focussing on the impact of the proposed project to its operations in accord with the basis upon which it was granted intervention. TBTL asked a few interrogatories in this respect, which respected the scope of this process, and has limited these final submissions to matters of direct concern to it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED by:**



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- c. John Kepes, TBTL  
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