

ONTARIO ENERGY BOARD

IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for: an order or orders granting leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton, City of Markham, Town of Richmond Hill, City of Brampton, City of Toronto, City of Vaughan and the Region of Halton, the Region of Peel and the Region of York; and an order or orders approving the methodology to establish a rate for transportation services for TransCanada Pipelines Limited;

AND IN THE MATTER OF an application by Union Gas Limited for: an Order or Orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Parkway West site; an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the Town of Milton; an Order or Orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Brantford-Kirkwall/Parkway D Compressor Station project; an Order or Orders for pre-approval of the cost consequences of two long term short haul transportation contracts; and an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities in the City of Cambridge and City of Hamilton.

Energy Probe Research Foundation Submissions on the STAR Threshold Issue

Per Procedural Order #5

July 9, 2013

Energy Probe Submissions on the STAR Issue per Procedural Order #5

Introduction

The primary rationale for the Motion, as stated by Union Gas Limited and Gaz Metro Metropolitain LP (UGL and GM) is:

UGL and GM require access to expanded pipeline capacity between Union's Parkway Station and TransCanada's Maple Compressor Station. Although Union and Gaz Metro secured access to that path from TransCanada in an open season in 2012, they claim that Enbridge and TransCanada are currently constraining their access to the path in three ways:

- First, Enbridge and TransCanada have agreed to restrict for themselves access to the pipeline Enbridge is building between the proposed Bram West Interconnect and Enbridge's Albion Road Station ("Segment A").**
- Second, Enbridge and TransCanada have agreed to reduce the diameter of the Segment A pipeline from NPS 42 to NPS 36 although a diameter of NPS 36 is insufficient to accommodate Union and Gaz Metro's incremental short-haul volumes.**
- Third, TransCanada (TCPL) has cancelled construction of an expansion pipeline linking the Albion Road Station to the Maple Compressor Station, and has announced that any construction will be for existing volumes only, and not for the incremental short-haul volumes.**

Scope of Energy Probe Submissions.

In procedural Order #5 the Board requested submissions on a Threshold Issue:

The Board will hold an oral hearing to consider the portion of the motion seeking a declaration regarding the applicability of STAR to Segment A prior to hearing any other portions of the motion. The Board regards the applicability of STAR to Segment A as a "threshold" issue for the other components of the motion. The Board asks that parties be prepared to make submissions on the threshold issue, and also to make submissions on what process should follow the hearing of the threshold issue in the event of either outcome, i.e. how should the Board proceed if STAR is found to apply, and how should the Board proceed if STAR is found not to apply.

With respect to compliance with the terms of STAR, in Energy Probe's view, the third ground stated in the Motion regarding the proposed Albion-Maple link is not a matter falling under OEB provisions for transmission lines. In any event, the evidence on this is not clear. EGD Undertaking JT1.1 states "These terms (cited earlier) combined with the obligations in the MOU stated above have the effect of obligating TransCanada to build the Albion to Maple pipeline in connection with its use of the GTA pipeline". However, TCPL's evidence does not clarify the plans and incremental capacity, other than the fact it will apply to the NEB for the King North later in 2013.

Also the scope of matters falling under “Next Steps” is not clear.

Energy Probe, although generally supporting the objectives of the projects (Parkway West, GTA Pipeline and Brantford-Kirkwall reinforcement), has significant concerns about the scope of the Applications and evidence supporting these. We will provide a summary of some of these concerns as part these submissions.

Threshold Issue: Is STAR Applicable to Segment A of EGDs Metro Pipeline?

Energy Probe notes the following evidence on the record:

- Technically, Segment A is a Transmission Pipeline by virtue of its size range and the services to be provided.
- Accordingly, the provisions of STAR, Including Open Season for capacity, would apply.
- As currently constituted Segment A is a joint arrangement between EGD and TCPL only and these parties have entered into a Memorandum of Agreement that does not allow other parties to contract for capacity (except possibly as shippers on TCPL’s proposed 800 GJ/day portion of the capacity of the line).
- In Energy Probe’s understanding, when EGD entered into this arrangement TCPL had held an open season for transportation from Parkway to Maple which UGL and GM had bid for capacity (including on Segment A)¹.
- It now appears that TCPL has now changed its requirements on Segment A to 800 GJ /day (36”pipeline) (total available up to 42” and 2000 GJ/ Day).
- Energy Probe has now seen TCPL’s evidence on this issue and this confirms the statements of UGL and GM that TCPL will not meet their new pathway and incremental short haul capacity requirements, in part due to their de-contracting on the Mainline².
- Other than EGDs own 800 GJ/ day Capacity which reinforces its in-franchise supply, other shippers on Segment A (including TCPL, UGL and GM) must also find a way to transport their gas downstream of the Segment A terminus at Albion Gate Station.

If our understanding of these facts is correct, *STAR does apply* and Energy Probe submits that EGD must be directed to offer capacity to potential shippers (including but not limited to, TCPL) on Segment A and should hold an open season for capacity up to the physical capacity of a 42” 2000 GJ/day pipeline.

In addition, EGD must design an appropriate rate for shippers on Segment A.

¹ TCR JT 1.2 states :”Accordingly, Enbridge is of the view that provided the principles underpinning the sharing arrangement are upheld by Enbridge and TransCanada, the intent of STAR would be met by TransCanada providing fair and non-discriminatory access to short haul capacity that is desired by the marketplace under the TAPS”.

² TCPL Evidence Page 6 of 6

The risk/benefit of the subsequent proposed contracted capacity and rate design should be provided as updated evidence in this case.

IN JTR 1.2 EGD states,

Enbridge would define the issue before the Board regarding STAR and the TransCanada MOU simply as whether the proposed sharing arrangement with TransCanada provides non-discriminatory access to transmission capacity. Enbridge is of the view that the Board will have enough information by the end of July to make that determination. Any proposals for further solicitation of market interest under STAR would not result in a comprehensive solution (for example, the cost to transport gas away from Maple would still be at issue) and would likely cause consideration of the GTA project to be delayed.

While more information, including clarification of TCPLs evidence may become available, the Board has set down the STAR Threshold issue to be heard on July 11, 2013.

If Star Does Not Apply

If the Board finds that STAR does not apply to Segment A of EGD GTA Project, we submit there are still significant issues to be resolved before proceeding to hear the applications.

These issues are common to the Applications *regardless of the Decision on STAR*. These issues are addressed below.

Potential Resolutions of the Capacity constraint from Parkway to Maple

Assuming that all parties involved in Metro Pipeline Segment A confirm their incremental short haul capacity requirements, it appears to us that the following options might be available to satisfy these:

- 1. TCPL agree to provide capacity for short haul transportation from Parkway to Maple with possible partnerships with EGD and UGL and GM.**
- 2. UGL, either alone or in partnership with EGD and GM, to provide required capacity from Parkway to Bram West and from Albion to Maple.**
- 3. EGD start the GTA Pipeline Segment A at Parkway³ (as per the original design) rather than Bram West and as noted hold an open season and Rate design for capacity (up to 2000 GJ/day) (This would require others to build from Albion to Maple). This could potentially leave TCPL with under-utilized capacity from Parkway to Bram West and provides no certainty with capacity from Albion to Maple.**

³ Exhibit I.A1.EGD.CME.1 part 3

In Energy Probe's view, one or more of these options in combination with changes at Parkway West and reinforcement of the Brantford to Parkway segment of the Dawn-Parkway transmission system could provide the capacity required by the parties.

TransCanada Evidence (July 5, 2013)

TransCanada states, among other things, it intends to apply to the NEB by the end of 2013 for approval to construct the interconnections required to accommodate Segment A of Enbridge's GTA Project and the facilities associated with TransCanada's King's North Project.⁴ (the latter is expansion from Albion to Maple)

TCPLs bottom line is set out in the final paragraph:

The decision of Union and Gaz Métro to de-contract TransCanada long-haul capacity and replace it with short-haul capacity has two major impacts on Ontario gas users.

The first major impact is that TransCanada loses substantial long-haul revenue—approximately \$150 million—with a potential consequential impact long-term on all TransCanada tolls paid by Ontario gas users.

The second major impact is that Ontario gas users incur additional costs as a result of constructing facilities to accommodate the new short-haul capacity.

TCPL indicates in its evidence it is not planning to add incremental short haul capacity from Parkway to Maple except for existing shippers. It appears to have no plans to meet the condition precedent requirements of UGL and GM for new capacity from Parkway to Maple. TCPL also does not appear to support EGD providing access to Segment A to UGL and GM (and Others).

Conditions Precedent -Upstream Transportation to the EGD CDA and Bram West

In Energy Probe's view, in order to provide the claimed benefits of the GTA Pipeline Project (and related Union facilities upstream at Parkway and from Kirkwall to Parkway) a number of precedent conditions must be in place related to transportation capacity upstream of the pipeline Segment A (Bram West to Albion).

Specifically, EGD still has to secure the upstream capacity to feed gas via Parkway into the Bram West Station and Segment A. The MOU with TransCanada contemplates two firm transportation contracts with TransCanada: 200,000 GJ/d from Niagara Falls to Parkway Enbridge CDA (requires a new delivery point at Parkway) and 800,000 GJ/d from Parkway to Bram West.⁵

⁴ TCPL Evidence Page 6 of 6

⁵ JT 2.37

In addition to the Marcellus Gas delivered by TCPL from Niagara to Parkway, EGD will need to secure up to 600 TJ/day on the Union Dawn-Parkway system including the Kirkwall to Parkway Reinforcement and Parkway Compressor D.⁶

Energy Probe is concerned that TCPL may not offer the 800TJ/day capacity upstream capacity that EGD is expecting per the EGD/TCPL MOU.

The Motion indicates that UGL and GM require expansion of the pipeline capacity between Parkway and Maple to carry incremental short-haul volumes of 110,000 GJ/day and 258,000 GJ/day, respectively, which are already contracted to be transported between the Dawn Hub and Parkway.⁷ Energy Probe supports Union's proposal to diversify supply to its Northern and Eastern Regions. This will not happen unless TCPL provides capacity from Parkway to Maple, including EGD Segment A, or Union builds new facilities.

Summary

1. In its EB-2011-0210 Decision the Board urged UGL, EGD and TCPL to cooperate to provide efficient solutions to increased transportation requirements for the Toronto area.

It is our view that despite the best efforts of the parties, recent events flowing from the NEB RH-003-2011 Decision have affected TCPL's ability to proceed in parallel with the three projects proposed by EGD and UGL.

2. Accordingly, regarding the issue of the applicability of STAR to Segment A as a transmission pipeline the Board should find that STAR *is applicable* and EGD should hold an Open Season for capacity on Segment A in excess of its own 800 GJ/day requirements.
3. Even if this is done, there remain significant concerns whether TCPL will provide EGD the *upstream* capacity from Niagara to Parkway (200GJ/day) and Parkway to Bram West (800 GJ/day) the origin of Segment A. This matter must be resolved before approval of Segment A for example by EGD reinstating the original Parkway to Bram West link.
4. UGL and GM transportation requirements will not be satisfied simply by these parties obtaining capacity on EGD Segment A. Other solutions will be required if TCPL does not provide the capacity.
5. Procedurally, the Board is faced with a significant number of issues related to the three Applications. First, in directing EGD to proceed with an open season it must be determined if this is for the current Application Segment A or the original proposal commencing at Parkway to Bram West. Second, an appropriate rate design for shippers on Segment A must be filed by EGD. Third the other conditions

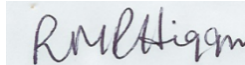
⁶ Exhibit I.A1.A3.EGD.BOMA.18

⁷ Tr Technical Conference p. 134, lines 27-28 and p. 138, lines 16-20,

precedent outlined above must be addressed by the Applicants before proceeding to Hearing.

- 6. If the Board finds Star does not apply, then it could proceed to hear the EGD Application and Union's Parkway LCU applications while the parties address the upstream Parkway to Bram West and Albion-Maple transportation issues.**
- 7. However, assuming the Board finds that STAR applies, EP reluctantly agrees with UGL and GM that it would be appropriate for the Board to place a temporary stay on the Applications, with the exception of the EB-2012-0433 Application for the LCU at Parkway, which could proceed to hearing.**

All of the above is Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "RM Higgin", is placed on a light blue rectangular background.

Roger Higgin SPA Inc. Consultant to Energy Probe Research Foundation