

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #5**

Reference: TCPL Supplementary Evidence p.2, Ex.M.TCPL.Staff.L.8,
EB-2011-0210 Written Evidence of TCPL (May 16, 2012)

Request: Considering the termination by Enbridge of the Memorandum of Understanding (“MOU”), does TCPL still believe that it is prudent for Union to build its Parkway West loss of critical unit compressor?

Response:

It is TransCanada’s view that the MOU remains in full force and effect, and TransCanada has filed a Statement of Claim in Ontario Superior Court seeking adherence by Enbridge to the terms and conditions of the MOU.

TransCanada believes that the facilities proposed by Union in this application will be required if:

- All of the capacity requests included in the application actually materialize
- All of the downstream pipeline facilities are in fact approved and built
- All expiring Union M12 contracts are renewed at current levels

However, if any of the above requirements do not come to pass, there should be a complete reassessment of the facility requirement to ensure that redundant capacity is not constructed.

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #6**

Reference: TCPL Supplementary Evidence p. 1

Request: Please explain how discussions among the parties, TCPL, Enbridge and Union, resulted in a binding MOU between only two of the parties, that of Enbridge and TCPL?

Response:

Through the discussions amongst TransCanada, Enbridge and Union Gas, it was agreed that TransCanada and Enbridge would focus on infrastructure downstream of Parkway to meet the requirements of both organizations, and Union Gas would focus on infrastructure requirements upstream of and including Parkway.

Once it was agreed amongst the parties that TransCanada would co-own the Segment A pipeline with Enbridge, there was no requirement for Union to be involved in discussions with respect to the details of the MOU, though Union was aware of the agreement between Enbridge and TransCanada and of TransCanada's election to contribute to Segment A by way of a TBO contract rather than a capital contribution.

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #7**

Reference: Ex. M.TCPL.Energy Probe.2

Request: Does TCPL still plan to bring forward an application to the NEB for a pipeline between Enbridge's Albion Station and TCPL's King North Station?

Response:

If Enbridge honors its obligations under the MOU or if the Ontario Superior Court enforces the MOU, TransCanada will bring forward an application to the NEB to construct facilities between Albion Station and a point upstream of Maple. Currently, TransCanada is in negotiations with Union Gas, Enbridge and Gaz Métro to reach agreement on terms that would enable TransCanada to construct facilities for short haul transportation service.

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #8**

Reference: TCPL Supplementary Evidence p.3

Request: Please provide a copy of the Statement of Claim that was filed in the Ontario Superior Court for specific enforcement of the MOU.

Response:

Please refer to SEC Attachment 8.

Court File No. 13-58570

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)



TRANSCANADA PIPELINES LIMITED

Plaintiff

- and -

ENBRIDGE GAS DISTRIBUTION INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date August 16, 2013

Issued by 
Local Registrar

Address of court office: Superior Court of Justice
161 Elgin Street
Ottawa, Ontario
K2P 2K1

TO: ENBRIDGE GAS DISTRIBUTION INC.
500 Consumers Road
Toronto, Ontario
M2J 1P8

CLAIM

1. The plaintiff claims:
 - (a) specific performance of a contract between the plaintiff and the defendant dated January 28, 2013, as amended;
 - (b) in the alternative, damages for breach of contract in the amount of \$4.5 billion or such further amount as may be determined at trial;
 - (c) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) the costs of this proceeding, plus all applicable taxes; and
 - (f) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

2. The plaintiff TransCanada PipeLines Limited ("TransCanada") is a corporation incorporated under the laws of Canada with offices, *inter alia*, in Calgary, Alberta and Toronto, Ontario. TransCanada owns and operates a pipeline system for the transmission of natural gas in Canada extending from a point near the Alberta/Saskatchewan border easterly to the Province of Quebec, with connections at the international border for the import and export of gas (the "TransCanada Mainline"). TransCanada transports natural gas for shippers such as local distribution companies that take delivery of natural gas from the TransCanada Mainline and distribute it to end-use customers. TransCanada is a company regulated federally by the National Energy Board ("NEB").

3. Enbridge Gas Distribution Inc. ("Enbridge") is a corporation incorporated under the laws of Ontario with offices, *inter alia*, in Toronto, Ontario. Enbridge owns and operates a local distribution company in and around the Greater Toronto Area ("GTA") and in other regions in Ontario. Enbridge is a company regulated provincially by the Ontario Energy Board ("OEB").

MEMORANDUM OF UNDERSTANDING DATED JANUARY 28, 2013

4. In December 2012, Enbridge filed an application with the OEB for leave to construct (among other facilities) a 36" pipeline ("Segment A") from the terminus of the Union Gas Limited transportation system at a station known as Parkway, eastward approximately 27 kilometres to the Enbridge distribution system. Segment A is so called because it is one of two segments for which Enbridge applied for leave to construct within one application at the OEB. The stated purpose of Segment A (together with Segment B, a pipeline segment within the Enbridge distribution system) is to reinforce Enbridge's distribution facilities in the GTA. Segment A was to be for Enbridge's exclusive use in its gas distribution system in the GTA.

5. In the same time period and vicinity, TransCanada was planning to expand the TransCanada Mainline. Given their similarly timed and located expansions, TransCanada and Enbridge entered into an agreement to coordinate their projects efficiently so that only one pipeline, to be used by both companies, would be built: Enbridge would use Segment A for its distribution needs in the GTA and TransCanada would use Segment A to transport gas for its shippers (including Enbridge).

6. In a contract dated January 28, 2013 (the Memorandum of Understanding or "MOU"), TransCanada and Enbridge agreed to certain commitments that would result either in TransCanada owning Segment A jointly with Enbridge or electing to make an equivalent financial contribution by committing to contract for all of the transportation capacity on Segment A on financial terms that would guarantee Enbridge the said financial contribution. The MOU also

gave TransCanada a right of first refusal to purchase Segment A at net book value should Enbridge offer to sell Segment A. In order to avoid regulatory complications, TransCanada and Enbridge agreed that the option of TransCanada contracting for transportation was preferable to joint-ownership, and TransCanada so elected in accordance with the terms of the MOU.

7. Enbridge then revised its application to the OEB to reflect TransCanada's involvement in the project as the sole shipper on Segment A, so that Segment A would serve the dual purpose of serving Enbridge's distribution needs and TransCanada's need to transport its shippers' gas on the pipeline.

BREACH OF THE MOU BY ENBRIDGE

8. By letter to TransCanada dated July 5, 2013, Enbridge alleged breach of the MOU on the part of TransCanada and notified TransCanada of its intent to terminate the MOU. By letter to Enbridge dated July 9, 2013, and in subsequent communications, TransCanada denied any breach of the MOU, rejected Enbridge's repudiation of the MOU, insisted on performance of the MOU and indicated that it would be seeking performance of the MOU.

9. By letter to TransCanada dated July 10, 2013, Enbridge purported to terminate the MOU. Enbridge then proceeded to offer capacity on Segment A to all potential natural gas shippers, and further amended its application to the OEB for leave to construct Segment A on the newly proposed terms for its use.

10. The terms of the MOU did not entitle Enbridge to terminate the MOU without cause or other specified circumstance, and there was neither cause nor specified circumstance to entitle Enbridge to terminate the MOU. Enbridge terminated the MOU for its own convenience, including to avoid delays in the OEB proceeding in which it sought regulatory approval of Segment A. As noted, Enbridge's repudiation of the MOU was not accepted by TransCanada.

DAMAGES AND RELIEF REQUESTED

11. TransCanada will suffer irreparable harm if Enbridge does not abide by the terms of the MOU. The MOU provides TransCanada with significant rights to Segment A - rights akin to those of an owner - with respect to the exclusive right to transportation capacity on the pipeline.

12. If the MOU is not specifically enforced, TransCanada will lose the above rights and suffer financial injury that would not be compensable in damages. Accordingly, TransCanada requests that an order for specific performance be issued requiring Enbridge to continue to operate under and abide by all of the terms of the MOU.

13. Alternatively, if the court does not grant TransCanada specific performance of the MOU, TransCanada seeks damages, currently estimated at \$4.5 billion, for financial harm arising from Enbridge's breach of the MOU. TransCanada reserves the right to revise this amount before or at trial.

August 16, 2013

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TRANSCANADA
PIPELINES LIMITED

-and-

ENBRIDGE GAS
DISTRIBUTION INC.

Plaintiff

Defendant

Court File No.

13-88570

EB-2012-0451, EB-2012-0433, EB-2013-0074

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

STATEMENT OF CLAIM

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Lawyers for the plaintiff,
TransCanada PipeLines Limited

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #9**

Reference: TCPL Supplementary Evidence p.3

Request: Please explain what TCPL means when it states that, “all of the leave to construct applications combined in these proceedings are contingent on the outcome of regulatory and judicial litigation”.

Response:

The three applications are contingent on each other and (to the extent that Segment A is to serve any purpose other than distribution system reinforcement) on capacity downstream of Enbridge’s proposed Albion station. A pipeline from Albion to a point near Maple would connect Segment A to the Mainline. Without this connection, the transportation volumes on Segment A have nowhere to go downstream of Segment A.

Under the Memorandum of Understanding (MOU), TransCanada is to build this pipeline and use it to provide transportation service between Albion and Maple to TransCanada’s shippers (TransCanada does not ship any of its own gas on the Mainline). TransCanada has commenced an action in the Ontario Superior Court for an order requiring Enbridge to comply with the MOU.

Union and Gaz Métro have proposed the Vaughan Pipeline Project to connect Segment A to the Mainline at Vaughan. This pipeline requires an interconnection with the TransCanada Mainline. Union and Gaz Métro have brought an application to the National Energy Board for an order requiring TransCanada to interconnect with the proposed Union / Gaz Métro line near Vaughan. TransCanada is opposing that application. Union and Gaz Métro also require regulatory approval for the proposed pipeline connecting Albion to Vaughan. However under the MOU, TransCanada has the right to the upstream capacity on Segment A that Union and Gaz Métro propose to use to feed their proposed pipeline.

Without an order by the NEB requiring TransCanada to interconnect with the proposed Union / Gaz Métro line, and regulatory approval of an Albion to Vaughan pipeline, the scope of projects before the Board need to be reassessed, though TransCanada would take no issue with Segment A as an NPS 24 distribution reinforcement line.

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #10**

Reference: TCPL Supplementary Evidence p.3, MH-002-2013 TransCanada Notice of Intention to Participate.

Request: In its Notice of Intention to Participate in the application by Union and Gaz Metro to the NEB for orders directing TCPL to provide an interconnect with its Mainline near Vaughn, TCPL states that one of the issues that the application raises is, “whether the contractual agreement between TransCanada and EGD (the MOU) precludes approval or consideration of the Application by the Board pending resolution of the action that TransCanada has brought in the Ontario Superior Court of Justice against EGD for specific performance of the MOU or damages of \$4.5 billion”. Is it TCPL’s position that in this proceeding the Board is precluded from approving the proposed facilities pending the outcome of the TCPL’s Superior Court action? If so, please provide the basis for such a position?

Response:

TransCanada does not believe that the Board is precluded from approving the proposed facilities because of TransCanada’s Superior Court action. However, unless Enbridge agrees to honour its obligations under the MOU, or is required to do so by the Court, it might be that a number of the projects would not have any use for the transmission of gas.

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #11**

Reference: TCPL Supplementary Evidence p.4

Request: TCPL states that the net revenue reduction experience by TransCanada as a result of the proposed facilities would be approximately \$400 million per year, and cumulative approximately \$960 million between November 1, 2015 and December 31, 2017.

- a. Please provide a detailed derivation of that amount.
- b. Please provide an analysis of the consequential impact on all TCPL tolls paid by Ontario gas users as a result of the \$960 million reduction in TCPL revenues. Please also provide the impacts by path and service type.
- c. What percentage of the \$960 million would ultimately be borne by Ontario gas users?

Response:

- a) Please refer to SEC 11(a) Attachment 1 for the derivation of \$401 million per year net revenue reduction to TransCanada. The cumulative negative impact on TransCanada's revenues and resulting TSA balance between November 1, 2015 and December 31, 2017 (2.17 years) is derived by taking the annual lost revenue of \$401 million multiplied by 2.17 years to equal \$868 million. An additional \$92 million is added for carrying charges of the TSA balance, resulting in an overall TSA increase of \$960 million. (Contract quantities for Gaz Métro were derived from Appendix A R-3809-2012; Union contract quantities were derived from EB-2013-0074 Section 11, Pg 17 of 53; and Enbridge contract quantities were derived from EBB-2012-0451 Table A5, Exhibit A.3 Schedule 9 Attachment 1 pg 5 of 6).
- b) Up to December 31, 2017 there will be no toll impact as a result of the \$960 million revenue loss, because TransCanada tolls remain fixed over that time period. Instead, revenue and cost variances accumulate in the TSA up to December 31, 2017. Post 2017, specific toll impacts as a result of the \$960 million TSA balance cannot be determined at this time as this is dependent on the specific circumstances at that time such as the level of TransCanada billing determinants over which to allocate costs, as well as what particular method will be in place by which these costs will be allocated. These future circumstances are currently not known.
- c) Similar to toll impacts discussed in response (b), the specific percentage of the \$960 million ultimately borne by Ontario gas users cannot be definitively determined at this time as this is dependent on the proportion of future Ontario billing determinants compared to the overall system by which costs will be allocated to, as

well as what particular method will be in place by which these costs will be allocated to various users of the system. These future circumstances are currently not known. Having said that, TransCanada fully expects that Ontario gas users will bear a large portion of these costs. This is because there continues to be long term demand in Ontario for use of the Mainline system. The LDCs themselves have said they expect to use the Mainline system to serve their markets over the long term. In addition, the majority of TransCanada's Mainline facilities reside within the province of Ontario. To provide an order of magnitude, TransCanada estimates that Ontario gas consumers would bear between two thirds (2/3) and 100% of the costs. Two thirds is based on Ontario's percentage of current contract deliveries relative to the overall system domestic deliveries. It is possible that Ontario gas consumers could bear up to 100% of the costs if other shippers find alternative means of meeting their markets as they themselves have suggested is possible.

Annual Lost Revenue to TransCanada

Shipper	Path	GJ/d	Current Toll (\$/GJ/Month)	Annual Revenue (\$)
Gaz Metro	Empress to GMI EDA	(232,048)	52.601	(146,472,457)
	Empress to GMI NDA	(15,327)	40.883	(7,519,275)
	Parkway to GMI EDA	232,048	12.528	34,885,447
	Parkway to GMI NDA	15,327	10.387	1,910,384
				<hr/>
				(117,195,901)
Union	Empress to Union EDA	(57,831)	50.201	(34,837,936)
	Empress to Union NDA	(10,000)	40.057	(4,806,810)
	Parkway to Union EDA	57,831	7.618	5,286,630
	Parkway to Union NDA	10,000	10.889	1,306,704
				<hr/>
				(33,051,412)
Enbridge	Empress to EGD CDA - FT	(294,494)	47.628	(168,314,029)
	Empress to EGD CDA - Direct Purchase	(157,768)	47.628	(90,170,148)
	Dawn to EGD CDA - Direct Purchase	(42,232)	7.165	(3,630,869)
	Niagara to EGD Parkway CDA	200,000	4.664	11,194,608
				<hr/>
				(250,920,438)
Total				<hr/>
				(401,167,751)

**TransCanada PipeLines Limited Response to
School Energy Coalition Interrogatory #12**

Reference: Ex.M.TCPL.BOMA.4, JT1.2, 1.A1.EGD (Update).IGUA.1

Request: The well-publicized Energy Easy[sic] oil pipeline project will likely include conversion of certain Mainline assets between North Bay and Iroquois which Enbridge claims will impact Eastern shippers ability to deliver long haul and short haul capacity to their EDA markets.

- a. Please explain how TCPL will address the shortfall in firm capacity required to secure Ontario LDC firm service contracts.
- b. Please provide the the expected in-service date for the oil pipeline, please provide the expected dates that the various segments of the Mainline will need to be taken out of service for the purposes of the Energy East project.

Response:

- (a) The Energy East project is not relevant to any of the projects before the Board. None of the projects in these applications, will increase or otherwise affect the capacity available to the markets served by Mainline facilities between North Bay and Iroquois that might be converted to oil service as part of the Energy East project.
- (b) The expected in-service date is 2017. The Prairie and NOL facilities are expected to be removed from service mid to late 2015. The North Bay Shortcut facilities are expected to be removed from service in Q4 2016.