

**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.

**REPLY ARGUMENT OF UNION GAS LIMITED  
(BRANTFORD-KIRK WALL/PARKWAY D PROJECT, EB-2013-0074)**

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1. This is Union Gas Limited's Reply Argument in EB-2013-0074, with respect to the Brantford-Kirkwall Pipeline and the Parkway D Compressor (the "Project").<sup>1</sup> This argument should be read in conjunction with Union's Argument-in-Chief. For the reasons set out in that argument and below, Union remains of the view that the relief requested in respect of the Project should be granted by the Board.

2. The Project has received broad support from Board Staff and from intervenors. Only GEC and COC take the position that the Project should not be approved at all.

3. The balance of the parties' submissions focus largely on conditions of approval and on the pre-approval of the cost consequences of the Project and of two long-term contracts with TransCanada. For the reasons set out below, Union submits that the requested pre-approvals should be granted and that no conditions of approval (other than the standard ones) are necessary.

4. The balance of the argument has been organized based on the Board's Issues List.

**Issue A1: Are the Proposed Facilities Needed? / Issue A5: Is the Proposed Timing of the Project Appropriate?**

5. The clear majority of intervenors supports the Project as being in the public interest (although in many cases subject to conditions of approval, addressed below).<sup>2</sup> However, GEC and COC take the position that the Project is not needed, largely on the basis that it is not in the public interest for natural gas for Ontario consumers to be sourced from supply basins other than the WCSB. Union submits that the arguments made by these intervenors are without merit and should be rejected by the Board.

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<sup>1</sup> Unless otherwise indicated capitalized terms have the same meaning as in Union's Argument-in-Chief.

<sup>2</sup> BOMA's position is difficult to discern. Ultimately, BOMA appears to support the Project subject to NEB approval of the Settlement Agreement. BOMA also argues that Segment A of the GTA Project should be built by TransCanada.

### **Proposed Facilities Needed to Ensure Security and Diversity of Supply**

6. As set out in detail in Union's Argument-in-Chief, the Project is needed to provide market access to the Dawn Hub and emerging natural gas supply basins located closer to Ontario, Quebec and other Eastern regional markets.
7. The need for the Project is supported by Union's main ex-franchise customers, Enbridge and Gaz Métro, who will bear the vast majority of the costs of the Projects. It is also supported by intervenors who represent Union and Enbridge ratepayers: VECC, CCC, LPMA, CME, IGUA and FRPO. TransCanada supports the Project.
8. As recognized by Board Staff and most intervenors, natural gas supply diversity, gas entry point diversity, supply path diversity and security of supply are important objectives that are in the public interest and will be furthered by the Project.
9. The reasons supporting this conclusion are amply set out in Union's Argument-in-Chief and evidence, but include that, as a result of the Project:
  - (a) security of supply, through diversity, is enhanced;
  - (b) future price fluctuations will be mitigated as a result of increased access to supply and increased diversity of supply;
  - (c) the Dawn Hub will continue to grow as a source of liquid supply, which makes competitively priced natural gas available to Ontario consumers; and
  - (d) shippers will have the choice to source natural gas from the Dawn Hub, Niagara, Chippawa or the WCSB.
10. COC and GEC unjustifiably discount the significant benefits to Ontario customers that flow from increased diversity and security of supply in favour of a narrow focus on the supposed importance of continuing to source gas from the WCSB (in the case of COC) and of reducing demand (GEC). Supply sourced from the WCSB has been decreasing for customers in Ontario, Quebec and the U.S. Northeast since the mid-2000s as market participants have shifted supply

from the WCSB (coupled with long haul transportation) in favour of supply at liquid hubs closer to the market (short haul transportation).<sup>3</sup>

11. In its submissions, COC supports a “made in Canada” energy security strategy and suggests that, by allowing for supply to come in from the United States through Dawn or Niagara, the Project is contrary to that strategy. There has never been any suggestion by the Board that a “made in Canada” energy security strategy is in the public interest. On the contrary, Union, Enbridge and natural gas consumers operate in an integrated North American market. Placing sole reliance on supply from the WCSB would be contrary to the realities of the market and would undermine the objective of seeking security and diversity of supply. It would also be contrary to how natural gas is purchased today and the Board’s own findings in NGEIR regarding the importance of the Dawn Hub. There, the Board held that “it is in the public interest to maintain and enhance the depth and liquidity of the market at the Dawn Hub as a means of facilitating competition”.<sup>4</sup>

12. As set out in detail in Union’s Argument-in-Chief, there is a need to diversify supply beyond the WCSB. While the WCSB has a large resource, a number of factors have contributed to its declining availability for eastern consumers and undermine its reliability for the future, including exports of liquefied natural gas, increasing domestic use of natural gas to develop the oil sands, and the low price of gas restricting drilling in the WCSB, particularly in areas of Alberta conventional production.<sup>5</sup> Eastern consumers simply cannot (and should not) rely on the WCSB as a sole source of supply in the future, based on the rationale that WCSB supply is a “made in Canada” solution. Further, contrary to COC’s submission, allowing for diversity of supply in no way prevents Union from sourcing gas from the WCSB if it is economic to do so.<sup>6</sup>

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<sup>3</sup> Union Evidence, Section 5

<sup>4</sup> EB-2005-0551 Decision, November 7, 2006, p. 45

<sup>5</sup> Union Evidence, Schedule 4-1

<sup>6</sup> Transcript, Volume 2, September 16, 2013, p. 92

13. COC also seeks to undermine the need for diversity of supply by suggesting that the shale gas supply forecasts in the record are overstated. There is no substance to this argument. First, the rapid growth of unconventional gas is a historical fact, not a simple projection: between 2007 and 2010, shale gas increased from 10% to 32% as percentage of U.S. natural gas reserves. Today, it accounts for almost one third of all natural gas production in the U.S.<sup>7</sup> Second, there is no competing forecast on the record: COC failed to put forward its own forecast. Indeed, not only did COC's witnesses admit that they had not prepared such a forecast, Dr. Ingraffea conceded that he lacked the requisite expertise to do so:

MR. SMITH: And you have not [Mr. Hughes] in this proceeding prepared a forecast of your own, have you?

MR. HUGHES: No, I haven't. I've strictly looked at the historical production data.

MR. SMITH: And, Dr. Ingraffea, you have not prepared a production forecast in this proceeding, have you?

DR. INGRAFFEA: No, I have not. That's not my area of expertise.

MR. SMITH: Ms. Sumi, you have not prepared a production forecast of your own, have you?

MS. SUMI: No, I haven't.<sup>8</sup>

14. The factors identified by COC as undermining ICF's forecast, including alleged failure to consider competing demand and regulatory risk and the existence of "sweet spots", were, in fact, considered by ICF.<sup>9</sup> Its forecast is comparable to the forecasts prepared by other forecasting firms, as well as the forecast prepared by the U.S. Department of Energy's, Energy Information Administration. Its "2013 Annual Energy Outlook", forecasts shale gas to constitute 49% of U.S. domestic production in 2035 with the U.S. Northeast (Marcellus/Utica) providing almost 15

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<sup>7</sup> Union Evidence, Section 4, p. 5

<sup>8</sup> Transcript, Volume 8, October 9, 2013, p. 40

<sup>9</sup> Transcript, Volume 3, September 17, 2013, pp. 68, 110

Bcf/d of that production.<sup>10</sup> There is therefore no basis for COC's challenge to the supply forecast submitted in this proceeding. But in any event, even if shale gas production were less than the forecasts indicate, that would not eliminate the need to diversify supply and to ensure security of supply.

15. COC also discusses at length the greenhouse gas impacts of shale gas. In discussing these impacts, the COC assumes that all gas supplied through Dawn will be shale gas and all gas from the WCSB will be conventional. This is inaccurate. Going forward, production from the WCSB will be predominantly unconventional gas. At Schedule 4-1, page 6, the ICF Report states:

While conventional gas production has continued to decline, a trend that will persist over the next several years, shale gas in western Canada is also being developed. Shale gas production is forecast to grow, eventually reversing the production decline. However, declines in conventional resource production capabilities are expected to more than offset growth in unconventional gas production until 2019, when unconventional WCSB production begins to exceed that of conventional. That trend will continue over the foreseeable future, with unconventional gas production comprising over 60 percent of WCSB production in 2025 (up from just over 20 percent in 2011).

16. Further, contrary to GEC's position, Union has filed evidence concerning the role of natural gas in reducing the environmental impacts of energy use, consistent with government policy.<sup>11</sup> In any event, all natural gas supplies in North America today reflect a combination of conventional and unconventional gas, which is traded and flows freely. There is no evidence on the record that suggests that the Project will in any way increase greenhouse gas emissions as a result of any increase in shale gas production, let alone evidence that would be sufficient to outweigh the significant benefits of diversity and security of supply.

17. Finally, GEC's suggestion that security of supply is somehow of diminished importance because supply can be managed through DSM initiatives is misplaced. While Enbridge has confirmed that it continues to make DSM a priority, there is no evidence that DSM initiatives

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<sup>10</sup> Union Evidence, Section 4, Figure 4-8, p. 27

<sup>11</sup> Union Evidence, Section 9, p. 7

could significantly decrease demand in the near or medium term. Again, even if demand did decrease, that in no way undermines the critical importance of achieving diversity and security of supply for Ontario. That objective can only be achieved through the Project.

18. With respect to BOMA's suggestion that only one compressor would be sufficient at the Parkway site to meet both growth and loss of critical unit coverage, this suggestion is completely unsupported in the record (as is set out in greater detail in Union's Reply Argument in EB-2012-0433).

19. BOMA also refers, at pages 32 to 34 of its argument, to "common knowledge" in the industry regarding what shippers may do and which pipelines may be built. In large measure, BOMA's comments are, similarly, not grounded in the record. To the extent the issues were discussed at the hearing, the evidence does not support BOMA's position. For example, as it relates to the Constitution Pipeline, Mr. Henning testified that construction of that pipeline has been incorporated into ICF's forecasts.<sup>12</sup> Mr. Isherwood testified, contrary to BOMA's argument, that Union is not forecasting turnback of gas from Parkway to Iroquois.<sup>13</sup> In any event, as explained in Union's evidence and Argument-in-Chief, Compressor D is necessary to meet volumes already under contract.<sup>14</sup>

**Issue A2: Is the Project Economic? / Issue A3: Are the Costs and Rate Impacts Reasonable?**

20. Board Staff and the majority of intervenors also agree that the Project is economic and that the associated costs and rate impacts are reasonable.

21. Contrary to the suggestion by COC, GEC, Energy Probe and BOMA, Union has not overestimated gas cost savings as part of its DCF analysis. On the contrary, its estimate is conservative.

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<sup>12</sup> Transcript, Vol. 2, pp. 81-82

<sup>13</sup> Transcript, Vol. 2, p. 83

<sup>14</sup> See I.A1.A3.EGD.BOMA18(c); see also, Argument-in-Chief, para. 59 and related cites

22. Union's estimated gas cost savings are based on a differential of \$0.92/GJ between the gas price at Empress and Dawn. This figure is conservative. Current basis differentials between these two supply points are in the range of \$0.50/GJ and forward market differentials for 2015/16 are in the range of \$0.60/GJ to \$0.70/GJ.<sup>15</sup> These figures are consistent with the range of between \$0.64/GJ and \$0.77/GJ that TransCanada has provided for winter 2013/14.<sup>16</sup> The lower the basis differential, the higher the savings.<sup>17</sup> Therefore, the use of the higher differential of \$0.92/GJ is conservative.

23. BOMA suggests that \$1.50/GJ would be a more appropriate differential, but that figure is clearly an outlier. TransCanada, from which the figure was obtained, did not (at any time) describe it as a forecast. That differential was unusual, reflective of short term market uncertainty following the NEB's Decision in RH-2011-0003. TransCanada's own projection for next winter is much lower than that. In addition, as TransCanada acknowledged in response to interrogatories, since the late 2000s, a period which corresponds to the development of shale gas, the average differential has been approximately \$0.74/GJ.<sup>18</sup>

24. Further, GEC's suggestion that gas cost savings are overestimated because there is a premium for U.S. gas is also inaccurate. GEC's analysis uses the commodity cost of gas without accounting for transportation costs. Union, in contrast, uses a standard landed cost analysis (established in EB-2005-0520) to incorporate changes to both the gas commodity and upstream transportation costs. These analyses have been presented and updated throughout this process.<sup>19</sup> They were also supported by similar analyses done by ICF.<sup>20</sup> Union took into account the difference in price of transporting gas to its market in the Union EDA from Dawn and from

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<sup>15</sup> Undertaking J4.5

<sup>16</sup> IR TransCanada.Union.10, p. 2(e)

<sup>17</sup> Transcript, Volume 8, October 9, 2013, p. 116, lines 1-4

<sup>18</sup> IR TransCanada.Union 10; TransCanada.Enbridge 4

<sup>19</sup> Union Evidence, Section 11, p. 32

<sup>20</sup> Union Evidence, Section 11, p. 34



Empress. While it is often cheaper to buy gas commodity at Empress, this benefit is more than offset by the transportation cost disadvantage associated with moving the gas long haul from Empress to the EDA. The gas cost savings calculated by Union are based on the landed cost, rather than on the commodity cost (which does not represent the true cost of gas delivered at Dawn).<sup>21</sup>

25. In any event, as noted by Board Staff and other intervenors, even if gas cost savings turn out to be lower than predicted and are uncertain, the Project is still in the public interest based on increased security and diversity of supply. The opportunity to develop access to Dawn and Niagara is now, because Ontario needs to ensure that its end users have access to the least expensive natural gas possible. Union agrees with LPMA's argument that the best way to manage the risk of gas cost uncertainty is through supply diversity, which the Project achieves. As LPMA observes:

In order to minimize the impact on Ontario consumers of changes in future prices and price differentials, the province needs to have access to as many supply basins through as many different pipeline transportation routes as is practical. Any constraints on the ability to shift future volumes in reaction to changing price differentials could have significant negative impacts on costs for Ontario consumers, not just of natural gas, but also of electricity, given the increased reliance on gas fired generation plants in the province. Constraints hamper economic efficiency and increase costs.<sup>22</sup>

### **Settlement Agreement Produces Net Benefits**

26. The proper role of the Settlement Agreement is discussed in Union's Argument-in-Chief. Union also agrees with Enbridge's discussion in its Reply Argument of the certainty brought about by the Settlement Agreement.

27. In its argument, GEC takes a narrow view of the Settlement Agreement, focusing only on the projected gas cost savings. As set out in Union's Argument-in-Chief and the evidence, the Settlement Agreement covers a broad range of issues and addresses the volatility and uncertainty

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<sup>21</sup> Union Evidence, Section 11, p. 33 and Union's November 7, 2013 Submission, Attachment 1

<sup>22</sup> LPMA Argument, p. 3

that was pervasive in the marketplace following the NEB's RH-2011-003 Decision earlier this year.

28. The benefits of the Settlement Agreement for Ontario are tangible. Most importantly, it provides:

- (a) Market access to Dawn and Niagara for natural gas consumers in Ontario and Quebec. As the Settlement Agreement confirms, TransCanada will reinstate the short haul volumes awarded by it as a result of its May 2012 new capacity open season for an in-service date of November 1, 2015. The King's North Project, together with Segment A of the GTA Project and the Project will relieve the present constraint between Parkway and Maple.<sup>23</sup>
- (b) Elimination of the toll stabilization account and the uncertainty associated with the potentially significant future impact of that account.
- (c) A known toll structure until 2020.
- (d) Segmentation of the Mainline beyond 2020. As of 2021, shippers in the Eastern Triangle will have no responsibility for the costs of the rest of the TransCanada system. TransCanada will have to recover those costs without any contribution from Eastern Triangle shippers who choose not to use paths outside of the Triangle.
- (e) A reduction in TransCanada's return on equity from 11.5% to 10.1%.
- (f) A further reduction in TransCanada's annual revenue requirement of \$20 million per year for the next 6 years, providing an effective return on equity of 9.3%.

29. GEC's argument also fails to account for the fact that, under the Settlement Agreement, any increase in short haul and long haul tolls (1) will maintain the toll differential on average over the period and (2) includes the bridging mechanism, which Union's gas costs savings calculation already contemplates. There is no basis for GEC's assertion that the toll differential

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<sup>23</sup> Provided the Board approves Segment A as an NPS 42 size pipe as requested by Enbridge.

will drive a further revenue shortfall for TransCanada – the bridging mechanism captures any shortfall created by shippers changing from long haul to short haul.<sup>24</sup>

30. Further, GEC's claim that the Project PI will be below 1 is incorrect, as illustrated in the updates to J4.5 and J4.6 filed after the Settlement Agreement was concluded.<sup>25</sup> The stage 1 DCF analysis (which, again, is based upon a conservative estimate of the savings)<sup>26</sup> indicates a PI of 1.02.<sup>27</sup> In any event, as described in Union's Argument-in-Chief, the focus on the PI of the Project is largely misplaced.

31. Finally, GEC ignores entirely the "Landed Costs Analysis" performed by ICF in J3.5, and described by Union in its Argument-in-Chief at paragraph 64 and 65. To reiterate, as ICF concludes:

- "Under all of the scenarios examined [including differing utilization rates], facilities that allow access to additional natural gas supplies through Dawn and Niagara/Chippawa will produce gas cost savings for consumers in Ontario compared to acquiring natural gas at Empress and transporting [that gas] on the TransCanada Mainline."<sup>28</sup>
- "The risk associated with a failure to successfully implement the principles of the Settlement Term Sheet presents the highest landed cost of gas for any of the

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<sup>24</sup> Undertaking J4.5

<sup>25</sup> Undertakings J4.5 and J4.6

<sup>26</sup> Union's Argument-in-Chief, para. 63

<sup>27</sup> Union agrees with LPMA's comments at p. 6 of its argument:

"LPMA submits that the Board should accept that the project is economic based on this calculation. LPMA further submits that even if the PI is below 1.0, the DCF analysis is only the Stage 1 test of a three stage test employed by Union Gas to assess the economic feasibility of projects. This three stage test is in accordance with the Board's E.B.O. 134 Report on System Expansion. A Stage 2 analysis can be undertaken if the Stage 1 PI is less than 1.0. As Union notes in their Argument-in-Chief (page 22), most of Union's transmission related expansion projects have had a PI less than 1.0. While Union has not done a Stage 2 analysis in this proceeding, it is clear to LPMA that the savings to customers of Enbridge and Gaz Metro are substantial and more than enough to make the project economic. Stage 3 benefits also need to be taken into account."

<sup>28</sup> Undertaking J3.5, p. 8

scenarios examined. The conclusion is based upon the recognition that absent the implementation of the principles embodied in the Settlement Term Sheet, most of the gas transported to Ontario will be sourced through Empress. Implementation of the principles embodied in the Settlement Term Sheet provides the opportunity to access gas at Dawn, reducing the landed cost of gas.”<sup>29</sup>

32. Overall, it can fairly be said the Settlement Agreement provides for greater certainty with respect to the market and future tolls than is typically the case in facilities applications. Contrary to GEC’s argument, the Settlement Agreement is not a “zero-sum game”.

33. With respect to BOMA, its statement that short haul tolls are higher as a result of the Settlement Agreement than contemplated at the hearing is equally inaccurate. First, the short haul and long haul tolls provided for in the Agreement are within the expected ranges set out in the Term Sheet, as illustrated by the following example:

<b>Path</b>	<b>Settlement % Increase of Compliance toll</b>	<b>Settlement Toll \$/GJ</b>	<b>Term Sheet Toll Range \$/GJ</b>
<u>Long Haul:</u> Empress-Union EDA	19%	\$1.96	\$1.87-\$1.98
<u>Short Haul:</u> PkwY – Union EDA	55%	\$0.39	\$0.36-\$0.39
Differential		\$1.57	\$1.51-\$1.59

34. Second, it was never contemplated that tolls (short haul and long haul) would increase by the same percentage. If that were the case, the differential would not be maintained. As the Joint Panel testified, the differential in \$/GJ was to be maintained under the Settlement Agreement, such that the estimated gas cost savings would not be affected by the Agreement.<sup>30</sup> This has been accomplished.

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<sup>29</sup> Undertaking J3.5

<sup>30</sup> Transcript, Volume 9, October 10, 2013, p. 99

35. Nor does the Settlement Agreement represent a “fundamental change”, as BOMA and GEC submit. In most respects, the Settlement Agreement is simply a return to a cost of service methodology for toll-setting.

36. Having regard to the above, Union rejects BOMA’s assertion that the eastern LDCs had to “buy their freedom” from TransCanada and that they “paid a steep price” for it.

37. Ultimately, however, as Union indicated in its Argument-in-Chief, and others such as IGUA have agreed, it is not necessary for the Board to approve the Settlement Agreement in this (or any) proceeding. The Settlement Agreement will form the basis of an application by TransCanada for approval of the relevant tolls and tariffs. To the extent parties oppose the Settlement Agreement, those parties will have a full opportunity to do so at the NEB.

**Issue C5: Should Pre-Approval of the Cost Consequences of the Project Be Granted?**

38. Contrary to the suggestion made by Board Staff and FRPO, CME, CCC and Energy Probe, Union does need assurance through the leave to construct process that it will be entitled to recover the costs consequences of the Project from ratepayers, effective January 1, 2015. The reasons why pre-approval is appropriate are set out in Union’s Argument-in-Chief and below.

39. Fundamentally, the few parties opposed to pre-approval of the cost consequences associated with the Project overlook the terms of Union’s Board-approved IRM Agreement which expressly contemplate not only this Project but the very process followed by Union here; that is, leave to construct coupled with rate recovery in the same application. As Mr. Birmingham explained:

The incentive regulation framework actually contemplates this very process; that is, to the extent that it meets the criteria, Union would be required to apply for leave-to-construct and rate recovery all at the same time so that the Board could deal with all the aspects of the project and all of the impacts from the projects at a single time.

So this would be the full regulatory review, which would include the typical leave-to-construct criteria and whether the project's in

the public interest, as well as the section 36 rate-recovery application.<sup>31</sup>

40. Specifically, the IRM Agreement provides the following:

6.6 2. vi) The project will be subject to a full regulatory review equivalent to a leave to construct proceeding, in which the applicant must demonstrate need, safety or reliability purposes, and economic viability prior to inclusion in rates. For any project that requires leave-to-construct approval of the Board, the full regulatory review will be conducted in that proceeding. For any project that does not require leave-to construct approval of the Board, Union commits to filing its annual rate adjustment application with the Board by July 1 of the year prior to rate impacts of the project going into effect, to allow sufficient time for a full regulatory review of the project in its rates application.<sup>32</sup> (emphasis added)

41. Moreover, parties and the Board will have a full opportunity to review any cost variances in a future proceeding. The deferral account proposed by Union will capture variances from the forecast included in the application.

42. Board Staff and CME oppose pre-approval. For its part, Board Staff suggests pre-approval is unnecessary because Union could always apply for rate recovery at a later date. Quite apart from the fact that this statement overlooks Union's argument as to the need for rate assurance, it disregards the express terms of the IRM Agreement and, if accepted, would result in a significant waste of regulatory time and resources redoing at a later date work that has been done already as part of this proceeding.

43. Board Staff also makes the argument that Union has not applied for a rate order. First, a rate order at this stage is, in fact, premature because the Project is not in service. Second, the objection is technical in nature only: Board Staff has confirmed that it has no concerns with the costs of the Project, the allocation of those costs or the resulting rate impacts. The rate order that will result in these costs being included in rates will be part of the filed 2015 Rates application.

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<sup>31</sup> Transcript, Volume 2, September 16, 2013, pp. 138-39

<sup>32</sup> IRM Agreement, Exhibit A, Tab 2, p. 21, s. 6.6.2 vi)

44. In its argument, CME objects to pre-approval of the cost consequences associated with the Project on the basis that parties should have an opportunity to conduct an “after the fact” prudence review. If, by that statement, CME intends that the Board should, at a later date, employ hindsight in assessing the prudence of the Project, that would be impermissible at law.<sup>33</sup> If, on the other hand, CME means that the Board should simply review the costs at a later date, CME ignores the IRM Agreement, which it agreed to, which provides for full Board review at this time. CME also ignores the variance account described above.

**Issue C6: Should Pre-Approval of the Cost Consequences of the TransCanada Long Term Contracts Be Granted?**

45. With respect to the pre-approval of the costs consequences of the TransCanada long-term contracts, Union’s position is set out in paragraphs 105 and 106 of its Argument-in-Chief. Significantly, neither Board Staff nor any intervenor has suggested that the long-term contracts should not be entered into. It is therefore appropriate, and advisable, for the Board to consider their cost consequences now.

46. This is particularly the case given that the Board has an opportunity now, and all the required evidence before it, to review the prudence of the long-term contracts. In particular, the Board has the requisite evidence with respect to the anticipated tolls, the terms of the contracts and the transportation paths. Union does not anticipate that the form of TransCanada’s precedent agreement will vary from the form Union has executed in the past.<sup>34</sup>

**Issue C7: What Board Conditions, if any, are Appropriate?**

47. Some intervenors have suggested that the Project should not be approved until TransCanada receives approval from the NEB for the Settlement Agreement and for the King’s North Project. Union submits that these conditions are not necessary and could cause significant delays in the Project’s in-service date, which would compromise Union’s ability to service its customers.

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<sup>33</sup> *Ontario Power Generation Inc. et al. v. Ontario Energy Board*, 2013 ONCA 359

<sup>34</sup> Transcript, Volume 4, September 19, 2013, p. 29, lines 16-24

48. In Union's submission, the Board's standard conditions of approval are appropriate and the only conditions which are necessary in the circumstances.

49. In particular, the Proposed Parkway D Compressor is not dependent on any other projects except Segment A and is required to meet Enbridge's distribution demands in any event.<sup>35</sup> Union does not object to Board Staff's recommendation that approval of the Parkway D Compressor be conditional upon approval of Segment A of Enbridge's GTA Project, but notes that it is not a necessary condition of approval given that the applications are being heard jointly and that Union expects that the Board will provide its decision on the GTA Project at the same time as its decision on the Proposed Parkway D Compressor. Therefore, it does not make sense to make approval of the Proposed Parkway D Compressor conditional upon approval of the GTA Project.

50. With respect to the Proposed Pipeline, Union does not have an objection in principle to not starting construction until TransCanada's application based on the Settlement Agreement is approved by the NEB. However, any such condition should not in any way interfere with Union's ability to begin pre-construction work on the Pipeline (for example, ordering pipe and establishing easements). As described by Mr. Isherwood at the hearing, it is critical that Union be permitted to begin this work immediately in order to meet the in-service date:

MR. MILLAR: Sorry, just to repeat, the condition I'm suggesting or asking you to consider would be the Board says do not start construction until the NEB has approved the Kings North project.

MR. ISHERWOOD: We would not start construction, but we may be incurring costs before that, in terms of buying pipe or creating easement, that type of thing, which you would have to do to be ready for a '15 in-service.<sup>36</sup>

51. Union will not undertake construction until after TransCanada has received approval from the NEB for the King's North Project. As reflected in Exhibit I.C7.UGL.Staff.42, Union has requested that the date for Condition 1.2 (the date for construction of the Proposed Pipeline)

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<sup>35</sup> Exhibit K8.1, Union Evidence, Section 1, p. 2

<sup>36</sup> Transcript, Volume 9, October 10, 2013, p. 128, lines 15-26



be changed to December 31, 2016 to accommodate any delay associated with the King's North Project.

52. That said, the Board should not make approval of the Proposed Pipeline contingent on approval from the NEB of TransCanada's King's North Project. TransCanada anticipates that the King's North Project will not be brought forward until summer 2014 and will not be approved by the NEB until at least March 2015.<sup>37</sup> This reflects standard NEB practice (it is common for TransCanada to seek leave to construct much later in the project cycle than Union). While Union will not start construction of the Proposed Pipeline until TransCanada has received approval, as described above, Union must begin pre-construction development work (buying pipe and establishing easements, for example) earlier than that to meet the target in-service date.

53. The risks of delay are described in detail in Union's evidence and answers to interrogatories. First, a delay would compromise the ability of Union's customers, Enbridge and Gaz Métro, to serve their own customers. As Gaz Métro notes in its argument, it does not possess sufficient capacity to service its market past November 1, 2015. Second, delay would restrict competitive market activity by restricting the flow of gas into, within and outside of Ontario (and the liquidity of the Dawn Hub). The undesirability of this consequence is recognized by the intervenors who support the Project (who represent customers who need access to a competitive market). For example, CME "accepts the proposition that in order to support an efficient marketplace for energy, it is critical that natural gas be able to flow unimpeded to meet market demands [...] The market will likely suffer if any component of the pathway [...] is not built or is significantly delayed."<sup>38</sup>

54. Contrary to Board Staff's submission, there is no need for the timing of the King's North Project's in-service date to be perfectly aligned with the Proposed Pipeline or Enbridge's GTA Project, and any requirement for perfect alignment could be detrimental. Short-term delays are

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<sup>37</sup> TransCanada Undertaking J9.5

<sup>38</sup> CME Argument, para. 16

not uncommon in building large infrastructure projects like these, but that does not mean that a delay in one project would eliminate the need for the others.

55. Further, in Union's submission, it would set an undesirable precedent for the Board to condone delaying infrastructure projects until all contingencies were eliminated. While information about future contingencies will never be perfect, Union has submitted ample evidence that proves that the Proposed Pipeline is needed now. Union and its customers should not have to wait until the NEB approves King's North to proceed with development of the Proposed Pipeline.

56. However, in the event that the Board does impose a condition of approval for the Proposed Pipeline in connection with the approval of TransCanada's application based on the Settlement Agreement or of approval of the King's North Project, any such condition should not interfere with:

- (a) Union's ability to incur costs in connection with the development of the Proposed Pipeline leading up to construction; or
- (b) Union's ability to recover its prudently incurred costs for any development work on the Proposed Pipeline, even if the NEB does not ultimately approve the King's North Project.

#### **NPS 42 is the Right Size for Segment A**

57. Union also strongly supports Enbridge's proposed NPS 42 sizing for Segment A, contrary to the position of some interveners that the pipe should be sized at NPS 36 or that Enbridge should be at risk for the costs associated with the difference in pipe size from NPS 36 to NPS 42.

58. NPS 42 sizing is in the public interest because it is necessary to meet the volumes of Union, of Enbridge and of Gaz Métro in 2015 and beyond.<sup>39</sup> Further, additional industrial

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<sup>39</sup> Enbridge Evidence, Exhibit A3, Schedule 9, pp. 3-4

volumes are expected in the near term. The results of Enbridge's open season (930 TJs for 2015/2016) confirm the overwhelming demand for market access and transmission capacity.

59. An NPS 42 line is also an integral part of the Settlement Agreement.

60. Building a pipeline that is too small to meet known and forecast demand through the most populated municipalities in Ontario would not be in the public interest, particularly given that the incremental cost of moving from an NPS 36 pipe to an NPS 42 pipe is relatively modest (less than 10%).<sup>40</sup> Putting in an NPS 36 line now would only lead to greater costs in installing a bigger pipe later, possibly in the short term. There is no rational basis for this.

61. There is also no support in the regulatory framework for the position taken by some intervenors that Enbridge should be at-risk for the NPS 42 sizing. The regulatory framework allows for one of two outcomes: either Segment A is regulated, and Enbridge is allowed a fair rate of return on the entire investment, or Segment A is deregulated, and Enbridge is at risk for the entire investment. There is no evidence, and no party has suggested, that there should be regulatory forbearance on Segment A. Clearly, then, Segment A will be regulated and Enbridge entitled to a fair rate of return on the entire investment. The only costs for which Enbridge should be "at risk" are any costs that it incurs imprudently in the circumstances that exist today, when the investment decision must be made. Far from showing that Enbridge's investment in an NPS 42 pipeline for Segment A is imprudent, there is strong evidence that the NPS 42 sizing is in the public interest, has strong support from the shippers who will pay for it, and is the prudent choice in the circumstances.

62. Further, there is no proper basis to tie the construction of Segment A to the approval of the Settlement Agreement. As described in Enbridge's application, Segment A is needed today to meet Enbridge's distribution needs.

63. Union also disagrees with BOMA's suggestion that TransCanada should build Segment A rather than Enbridge. As Enbridge pointed out in its evidence, there are a number of

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<sup>40</sup> Transcript, Volume 9, October 10, 2013, pp. 98-99

advantages to Enbridge building the line, including that it can do so less expensively than TransCanada could.<sup>41</sup> BOMA further confused the discussion by suggesting that Enbridge has no experience operating compressors. The evidence is clear – there are no Enbridge compressors on Segment A.

### **Conclusion**

64. In conclusion, for the reasons set out above and in its Argument-in-Chief, Union submits that the Project is in the public interest and respectfully requests the approvals set out in the application for an in-service date of November 1, 2015. It also submits that the Board should approve Enbridge's application as-filed with respect to Segment A of the GTA Project.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

*[original signed by]*

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Crawford Smith and Myriam M. Seers

Lawyers for Union Gas Limited

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<sup>41</sup> Transcript, Volume 6, September 26, 2013, pp. 48 *et seq*; A1.EGD.Boma.26