

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

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.

**SUBMISSIONS OF
CANADIAN MANUFACTURERS & EXPORTERS (“CME”)**

November 15, 2013

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I. INTRODUCTION

1. This argument, which is submitted on behalf of Canadian Manufacturers & Exporters (“CME”), addresses the issues that have arisen in the context of the combined hearing of Enbridge Gas Distribution’s (“EGD”) GTA Project (EB-2012-0451), Union Gas Limited’s (“Union”) Parkway West Project (EB-2012-0433) and Union’s Brantford-Kirkwall/Parkway D Project (EB-2013-0074).

2. CME has had the benefit of reviewing the written arguments of Board Staff, the City of Kitchener and LPMA. CME has also worked closely with other intervenors, in particular CCC, throughout this proceeding. Efforts were made to ensure that CME did not unnecessarily duplicate the work of these other parties.

EGD’s GTA Project

3. EGD’s GTA Project seeks approval for, amongst other things:

- (a) Leave to construct two segments of pipeline and associated facilities,
 - (i) Segment A – approximately 27 km long and located in the Town of Milton, the City of Mississauga and the City of Toronto, and
 - (ii) Segment B – approximately 23 km long and located in the City of Vaughan, the City of Markham, the City of Toronto and the Town of Richmond Hill.

The approximate total cost of the GTA project is \$686.5 million. EGD is not asking the Board for pre-approval of these costs.

- (b) Approval of the rate methodology to be applied to Rate 322 for transmission services on the proposed Segment A pipeline, which would result in 60% of the revenue requirement pertaining to Segment A being allocated to transmission customers.

4. The total capacity of EGD's proposed Segment A pipeline is 2000 TJ/Day. Of that, 800 TJ/Day will be used for EGD's distribution requirements and the remaining 1200 TJ/Day will be utilized for transmission purposes. The 1200 TJ/Day will only become used by shippers if it can be transported from the end of Segment A at Albion to TCPL's Maple compressor station. This requires the construction of an additional pipeline beyond the end of Segment A at Albion. Pursuant to a Settlement Agreement executed by EGD, Union, TCPL and Gaz Metro – which was filed with the Board on October 31, 2013 – TCPL will build that additional pipeline which is referred to as the "King's North Project". CME submits that until the King's North Project receives all necessary regulatory approvals from the National Energy Board ("NEB") and is built, the 1200 TJ/Day, or 60% of the capacity of Segment A, will remain unutilized.

Union's Parkway West Project

5. Union's Parkway West Project seeks approval for

- (a) Leave to construct 750 meters of pipeline and associated facilities, including a standby compressor in the Town of Milton;
- (b) Leave to construct a measurement and control station to connect to the EGD pipeline system; connections to Union's Dawn-Parkway system; a loss of critical unit ("LCU") compressor; and various general infrastructure and land necessary to operate the Parkway West site; and
- (c) Unlike EGD, Union is requesting that the Board give pre-approval of the project costs in this proceeding. The approximate cost of the Parkway West Project is \$220M. Pre-approval of costs relating to existing infrastructure has never been granted by this Board.

6. The need for Union's Parkway West Project is not dependent upon TCPL building the King's North Project.

Union's Brantford-Kirkwall/Parkway D Project

7. Union's Brantford-Kirkwall/Parkway D Project seeks, amongst other things:
 - (a) Leave to construct 13.9 kilometers of pipeline and associated facilities from the City of Cambridge to the City of Hamilton;
 - (b) Leave to construct compressor facilities in the Town of Milton at the proposed Parkway West Compressor Station;
 - (c) Unlike EGD, Union is requesting that the Board give pre-approval of these costs in this proceeding. The approximate cost of Brantford-Kirkwall/Parkway D Project is \$204M. Pre-approval of costs relating to the expansion of existing infrastructure has never been granted by this Board; and
 - (d) Pre-approval of the cost consequences of two long-term short-haul transportation contracts with TCPL. Pre-approval of such contracts has never been granted by the Board.
8. Union's proposed Brantford-Kirkwall pipeline is entirely dependent upon TCPL building the King's North pipeline. Union has confirmed that without King's North receiving all necessary regulatory approvals from the NEB, it would not commence construction of the Brantford-Kirkwall pipeline.
9. Union's proposed Parkway D compressor is required for Segment A, regardless of whether King's North is built. If EGD does not obtain regulatory approval for Segment A, or does receive approval but elects not to build Segment A, then the Parkway D compressor is not required.
10. In Procedural Order #2, dated May 8, 2013 the Board combined these three applications. In making that finding, the Board concluded that there are administrative and substantive benefits to combining these three applications. Moreover, the Board recognized the interdependency of these applications:

From a substantive perspective, the Board finds that combining the proceedings is appropriate in light of the related interdependent nature of the applications. The Board believes that it is important to consider the related issues in a cohesive and rational manner. That is best accomplished through a combined proceeding.

11. We submit that the Board cannot assess the economic feasibility of the Brantford-Kirkwall/Parkway D Project in isolation from EGD's Segment A and TCPL's proposed King's North Project. These proposed facilities complement one another. Therefore, CME urges the Board to assess the appropriateness of approvals, as well as the conditions applied thereto, in the context of Union's proposed facilities, EGD's proposed facilities (in particular Segment A of the GTA Project) and TCPL's proposed King's North.

12. The need for increased transportation between Parkway and Maple was previously addressed by the Board in Union's Application EB-2011-0210. In that case, the Board expressly called upon Union, EGD and TCPL to coordinate their infrastructure planning in a more structured manner. The Board wrote as follows:

The record in this proceeding makes it clear to the Board that the relationships between the three large natural gas pipeline companies that serve Ontario customers – Union, Enbridge and TCPL, are complex. The Board notes that not only do these companies compete to construct new facilities and utilize existing facilities; they are also each customers of the other. They are bound, however, by the fact that the operation of each of its respective natural gas system is integrated in the province of Ontario, and that Ontario customers pay a significant portion of, if not all of, the cost of installed natural gas facilities, and that each entity has an incentive to maximize rate base.

The Board is concerned with the apparent lack of cooperation and consultation between Union, Enbridge and TCPL that came to light in this proceeding. The Board is concerned that this may have adverse consequences for Ontario ratepayers – result in higher rates and costs than would otherwise be the case, contribute to the uneconomic bypass of existing natural gas infrastructure, create asset stranding, encourage the proliferation of natural gas infrastructure, and lead to the underutilization of existing natural gas infrastructure.

The Board agrees that the consideration of the Parkway West facilities requires a wider perspective. The Board therefore encourages Union to engage TCPL, Enbridge and shippers in a consultative process, the purpose of which is to jointly consider the need for the Parkway West project, explore reasonable alternatives (including the repurposing of existing facilities) in order to maximize the benefit to Ontario ratepayers. The result of this process would then be filed with Union's Leave to Construct application for the Parkway West facilities.

13. CME would add that, as this combined proceeding has evolved it has become apparent that these applications are interdependent on the construction of further transportation beyond Segment A to allow for incremental short haul transportation from Parkway all the way to Maple. While that additional transportation is now to be provided by TCPL building the King's North Project, there has been significant uncertainty throughout the hearing process on the nature and path for the incremental facilities, and who would build this requisite incremental capacity. As set out in more detail below, this uncertainty on how gas would be transported beyond EGD's proposed Segment A has contributed to the complexity of this combined proceeding.

II. BACKGROUND TO THE APPLICATIONS

14. The combined applications are, to varying degrees, a reaction to declining gas production in the Western Canadian Sedimentary Basin ("WCSB"), coupled with the emergence of alternative supply sources much closer to Ontario. The result is that the ability to access gas at the Dawn hub is increasingly desirable to many market participants. If all of the facilities that are the subject matter of this proceeding are approved and constructed by Union and EGD, and if TCPL builds King's North, then ratepayers throughout Ontario will gain incremental access to gas from Dawn.

15. Union has stated that it requires expansion of the pipeline capacity between Parkway and Maple to carry incremental short haul volumes of 110,000 GJ/day. This expansion would allow Union's customers in Northern and Eastern Ontario to realize annual gas cost savings resulting from increased access to the liquid Dawn hub. Union has testified that the gas cost savings will be achieved by shifting the source of gas delivered to those customers from supply sourced from the WCSB and transported long haul on TCPL's Mainline, to supply sourced from the Dawn hub and transported short haul within Ontario. According to Union, shifting from supply sourced from the WCSB to supply sourced from the Dawn hub would provide various gas supply benefits including diversity and security of supply.

16. 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. Putting at risk

flows of gas into, within and out of Ontario would undermine the development of an efficient marketplace to the detriment of all energy consumers. To this end, the expansion of the entire pathway from Parkway to Maple appears to be necessary to meet market demands. The market will likely suffer if any component of the pathway, which includes Union's Brantford-Kirkwall pipeline, EGD's Segment A pipeline, and TCPL's King's North pipeline, is not built or is significantly delayed.

17. The evidence in this hearing supports a finding that market participants have increasingly contracted for short haul transportation to move gas from liquid hubs such as Dawn located closer to market areas, instead of purchasing long haul transportation from TCPL. There is also evidence in this case that suggests that the increase in non-WCSB gas supply has, and will continue to, put downward pressure on natural gas prices. In this context it is suggested that the introduction of non-WCSB gas will change the price differentials across North America. CME agrees with LPMA that trying to forecast prices, let alone price differentials, is a "risky venture". The Board should be cautious when making a decision based, even in part, on future prices of gas.

18. It appears to CME that the long-term forecast of gas prices, while of assistance to determining the economic feasibility of the projects, is not determinative of the overarching benefits of the projects. To this end, CME agrees with LPMA that increasing Ontario ratepayers' access to multiple supply basins through different pipeline transportation routes will likely, over the longer term, provide economic benefits.

19. A central focus for CME is to ensure that Ontario businesses can compete with those in their neighboring jurisdictions. Manufacturers in Ontario seek to have access to economic sources of supply at the Dawn hub. To the extent that the Dawn hub becomes increasingly more liquid, in combination with the increased availability of short haul transportation, CME supports the construction of incremental short haul facilities. Over the long run, this should result in an increase in price competitive gas supply options for Ontario customers.

20. To a large extent, CME supports these three applications. Coming to this conclusion, however, has not been an easy process. The evidence has been complicated and the manner in which short haul transportation from Parkway to Maple would be achieved has changed a number of times over the course of this proceeding. It is within this context that, at the end of this argument, CME proposes a number of conditions for the Board's consideration. CME submits that it is appropriate for the Board to impose special conditions for approval of the inter-related proposals in order to protect the interests of ratepayers.

III. EXPANDING PIPELINE CAPACITY FROM PARKWAY TO MAPLE

21. These proceedings have demonstrated the complexity and uncertainty surrounding the development of incremental short haul transportation in Ontario. Plans for the expansion of existing pipeline and infrastructure in Ontario to accommodate incremental short haul transportation from Dawn have dramatically changed throughout these proceedings. An additional level of uncertainty is created by the fact that TCPL's King's North project, which is a requisite element of the Dawn to Parkway path, remains dependent upon regulatory approvals by the NEB.

22. The Board cannot properly assess Union and EGD's projects without considering the broader context that includes TCPL's proposed future-build of King's North. The nature and frequency of the changes in how the Parkway to Maple expansion will be achieved demonstrates the impact that TCPL's proposed build has on the projects. This broader context provides a basis for the Board to consider imposing conditions which go beyond the standard conditions normally imposed in leave to construct applications.

23. The following is the chronology of changes that occurred over the course of this combined hearing, pertaining to the increase in incremental short haul capacity, which demonstrates the appropriateness of imposing special conditions to protect the interests of ratepayers:

- (a) Union and Gaz Metro entered into TCPL's Open Season 2012. At that time, TCPL represented that the expanded pipeline between Parkway and Maple would

be in service by November 1, 2014. TCPL subsequently advised that it was cancelling the project;

- (b) On February 12, 2013, EGD provided Update No. 1 to its filed evidence. EGD proposed that Segment A connect to existing TCPL infrastructure (referred to as the “Bram West Interconnect”) instead of Parkway West. EGD also confirmed that to accommodate the anticipated needs of both EGD and TCPL, the diameter of the Segment A pipe would be increased from NPS 36 to NPS 46;
- (c) Approximately two months later, on April 15, 2013, EGD provided Update No. 2. That update set out, amongst other things, revised cost estimates and economic feasibility calculations based upon the point of delivery changing from Parkway West to the Bram West Interconnect, the shared usage with TCPL and the increase of pipe size to NPS 46. EGD also updated the gas supply benefits it expected to generate based, in part, upon the expected toll from TCPL to ship gas from Parkway West to the Bram West Interconnect;
- (d) Approximately one month later, on May 15, 2013, EGD again updated its calculations of economic feasibility and of gas supply benefits, this time as a result of the NEB’s decision in RH-003-2011. These revised calculations included assumptions relating to transportation capacity displacement as a result of TCPL’s May 1, 2013 Compliance Filing and Review and Variance Application;
- (e) During the initial round of interrogatories in this combined proceeding, EGD disclosed that on January 28, 2013 it entered into a Memorandum of Understanding (“MOU”) with TCPL with respect to Segment A. That MOU was amended on April 26, 2013 and again on May 21, 2013;
- (f) Pursuant to the MOU, all capacity on Segment A beyond the capacity needed to serve EGD’s distribution franchise would be for the sole and exclusive use of TCPL. Moreover, TCPL would have exclusive right over Segment A’s excess

capacity for a period of 10 years following any termination of the MOU. In exchange for granting TCPL exclusivity over transportation capacity on Segment A, EGD secured, amongst other things, TCPL's agreement to cooperate and not oppose or seek to delay EGD and Union's efforts to obtain leave from the Board to construct the GTA Project and the Parkway West Project;

- (g) Union was not made aware of this MOU until it was disclosed in the Interrogatory Process;
- (h) The MOU led to Union and Gaz Metro filing a Notice of Motion on June 21, 2013 which sought, amongst other things:
 - (i) A Declaration that the Board's Storage and Transportation Access Rule ("STAR") applied to Segment A of EGD's GTA Project;
 - (ii) An Order declaring that the MOU between EGD and TCPL failed to comply with STAR and, therefore, is unenforceable;
 - (iii) An Order requiring that EGD hold an Open Season in respect of the new capacity of Segment A of the GTA Project; and
 - (iv) An Order staying the GTA Project until such time as EGD had initiated an Open Season pursuant to STAR in respect of the new capacity on Segment A of the GTA Project.
- (i) On July 10, 2013, Union, Gaz Metro and EGD filed a complaint with the NEB against TCPL. The complaint related to recent actions taken by TCPL including the cancellation of accepted service requests for new capacity, allegedly unjust and unreasonable tolls and conditions of service imposed upon future access to short haul service, and certain open seasons initiated by TCPL that sought to put the unjust and unreasonable tolls and conditions of service into effect;

- (j) On July 22, 2013, EGD filed Update No. 6. In that update, EGD advised that the MOU with TCPL had been terminated. To this end, EGD advised that the original proposed Segment A initiation point at Parkway West was reinstated. EGD also provided a revised economic sensitivity analysis, estimated rate impacts and updated its previously provided project cost estimate and economic feasibility calculations;
- (k) On July 31, 2013, Union and Gaz Metro filed an Application with the NEB for an Order directing TCPL to provide adequate facilities for the junction of the “Vaughan Pipeline Project” with the TCPL mainline at a point on the Parkway to Maple segment of the mainline upstream of the Maple Compressor Station. That Application was based on the premise that Union and Gaz Metro would jointly own, construct and operate a pipeline which would connect EGD’s Segment A to the TCPL Mainline, thereby allowing for incremental short haul capacity from Parkway to Maple;
- (l) On August 16, 2013, TCPL filed supplemental evidence in this combined proceeding. TCPL’s supplemental evidence stated that:
 - (i) TCPL had commenced an action in the Ontario Superior Court for specific enforcement of the MOU with EGD. That Action also claimed damages in the amount of \$4.5 billion as against EGD for breach of the MOU;
 - (ii) Neither Union nor EGD was in compliance with the Transmission System Expansion Guidelines;
 - (iii) EGD’s Segment A is substantially oversized and represents a wholly unnecessary cost burden to distribution customers;
 - (iv) EGD’s Segment A in combination with the other projects applied for in the combined proceedings will contribute to approximately \$1.3 billion in capital expenditure. This capital cost would be incurred with the result that

the LDCs would also expose their customers to the risk of almost \$1 billion in future TCPL tolls;

- (v) Connecting the GTA project as proposed by EGD eliminates supply options and leaves EGD's distribution customers with an increased level of exposure to an incident on Union's Dawn to Parkway System;
 - (vi) The supply analysis put forward by EGD and Union in their respective applications provide misleading characterizations of the WCSB as a potential source for Eastern LDC supply; and
 - (vii) TCPL opposed EGD's amended Application (as set out in Update No. 6) and submitted that it is not in the best interests of Canada, Ontario, or Ontario's customers.
- (m) On September 11, 2013, less than 24 hours before the commencement of the oral hearing, a Settlement Term Sheet as between Union, EGD, Gaz Metro and TCPL was filed with the Board. That Settlement Term Sheet addressed a number of issues including the removal of transportation constraints between Parkway and Maple, changes to TCPL's tariffs, changes to TCPL's short haul tolls and resolution of outstanding disputes between the parties before the NEB and the Ontario Superior Court of Justice. The most immediate impact on the combined hearing was that TCPL would seek regulatory approval from the NEB to build King's North and that the parties would agree upon tolls in the yet-to-be negotiated Settlement Agreement. On the basis of that Settlement Term Sheet, TCPL also no longer took the position that the combined applications, in particular EGD's proposed Segment A, were not in the public interest; and
- (n) On October 31, 2013, after the conclusion of the oral hearing, the Settlement Agreement was filed with the Board.

24. The frequency of the changes that have occurred during the course of this combined hearing to the proposals for incremental capacity between Dawn and Maple creates an atmosphere of uncertainty. This atmosphere of uncertainty affects the extent to which the Board can rely on the evidence that demonstrates that the economic feasibility of the projects will remain positive. This atmosphere of uncertainty is exacerbated by the fact that TCPL's King's North project remains subject to regulatory approvals by the NEB. It is this uncertainty surrounding the economic feasibility of the inter-related projects that prompts CME to propose conditions of approval which are unique to this particular combined leave to construct application.

25. The remainder of CME's argument will address the Issues as established by the Issues List.

A. Issue A1: Are the Proposed Facilities Needed? / Issue A2: Are the Projects Economic? / Issue A3: Are the Costs and Rate Impacts Reasonable? / Issue A5: Is the Proposed Timing of the Project Appropriate?

26. CME accepts that Union's Parkway West Project and Brantford-Kirkwall Parkway Project, and EGD's GTA Project are all needed and the proposed timings are appropriate, subject to proposed conditions set out in response to Issues C7.

27. In coming to this conclusion, CME accepts that the proposed projects will, so long as TCPL obtains all necessary regulatory approvals and builds King's North in a timely fashion, provide for market access to emerging supply basins located closer to Ontario and other regional markets. Assuming this occurs, the proposed projects will:

- (a) Provide for market access; and
- (b) Address incremental demands on the Dawn Parkway System.

28. CME also notes that both Union and EGD in their updates to evidence following the execution of the Settlement Agreement confirm the continued benefits for energy consumers in

Ontario; see the updates to undertaking responses J4.5, J4.6, J9.2 and J6.X all filed on November 7, 2013.

29. CME has relied heavily upon these revised undertaking responses in concluding that the costs and rate impacts are reasonable. In doing so, CME notes that the economic benefits for energy consumers in Ontario resulting from the proposed projects are, in part, dependent upon TCPL building King's North in a timely manner and the tolls that will flow from the Settlement Agreement which has not yet been approved by the NEB. CME is concerned that, to the extent that the NEB does not approve the Settlement Agreement, or modifies terms contained in the Settlement Agreement, the economic feasibility of the projects and the related rate impacts could dramatically change.

30. CME wishes to also comment on EGD's stated position to proceed with construction of Segment A, even if King's North is not built. According to EGD, Segment A with NPS 42 pipe can be justified even if it is only used for distribution purposes.

31. Board Staff comprehensively addresses this issue at pages 6-8 of its Written Submissions. CME adopts Board Staff's argument, and in particular supports the conclusion that, consistent with the need and design capacity for distribution needs, EGD's distribution customers should not bear more than 40% of the revenue requirement of Segment A.

32. CME suggests that the following additional evidence, set out at Transcript Volume 4, pages 98-109 further supports such a conclusion:

- (a) The total capacity of Segment A, as proposed, will be 2000 TJ/Day. Only 800 TJ/Day, or 40% of the proposed pipeline, is needed for distribution purposes;
- (b) EGD could transport 800 TJ/Day for distribution purposes by building a pipe smaller than NPS 42;
- (c) EGD does not currently use the type and size of pipe proposed for Segment A anywhere in its distribution system. If 60% of the pipe is never used for

transmission purposes, Segment A will be the largest distribution-only extra-high pressure pipe in EGD's distribution system; and

- (d) EGD has not obtained any written agreement obligating TCPL to financially contribute or backstop the non-distribution costs of Segment A. To this end, it is CME's position that the non-distribution costs of Segment A should be 60% of the resulting revenue requirement.

33. The fact that EGD is not seeking pre-approval of any costs in this proceeding is irrelevant to the issue of the rate methodology proposed by EGD. EGD proposes to allocate 60% of the revenue requirement to transmission customers. Any approval of Segment A should be conditional upon EGD undertaking to adhere to this rate methodology for which it is asking Board approval. This can be appropriately achieved in this case by imposing a condition upon EGD that it not begin construction of Segment A until it provides an undertaking to the Board to refrain from seeking to recover from its distribution customers any more than 40% of the revenue requirement for Segment A.

34. CME addresses the timing of Union's Brantford-Kirkwall and Parkway D Project as a condition to be imposed in response to Issue C7.

B. Issue A4: What are the Alternatives to the Proposed Facilities? Are Any Alternatives Preferable?

35. CME takes no position with respect to the alternatives of the proposed facilities by Union or EGD. CME submits that, so long as the Board accepts the economic feasibility of these projects taking into consideration the implications that will flow from the recently provided TCPL Settlement Agreement, then no alternatives have been identified which should be considered by the Board as preferable to any elements of the various projects.

C. Issues B1, C1 and D1: Do the Facilities Address the Board's Guidelines for Hydro Carbon Pipelines?

36. CME is unaware of any evidence which would suggest that the Board's Guidelines for hydro carbon pipelines have not been met by either Union or EGD.

37. CME has relied heavily upon Board Staff's assessment of these issues. In this regard, Board Staff has confirmed that all of the projects satisfied the directions given in the Board's Environmental Guidelines, subject to the standard conditions of approval proposed at Appendix A of Board Staff's Written Argument.

D. Issue B2, C2 and D2: Are there any Outstanding Landowner Matters?

38. CME is unaware of any outstanding landowner matters with respect to either EGD or Union's Applications, and as such, does not take any issue with this aspect of the Applications.

E. Issue B3, C3 and D3: Are the Proposed Facilities Designed in Accordance with Technical and Safety Requirements?

39. CME is unaware of any evidence which suggests that any of the proposed projects are not designed in accordance with the *Technical Standards and Safety Act* 2000. To this end, CME takes further comfort by the fact that Board Staff also has no concerns about any of the projects' proposed facilities design.

F. Issue B4, C4 and D4: Has there been Adequate Consultation with any Affected First Nations or Metis Communities?

40. CME is unaware of any outstanding issues with respect to consultations with affected First Nations or Metis communities. As such, CME does not take any issue with this aspect of the Applications.

G. Issues B5 and C5: Should Pre-Approval of the Cost Consequences of the Proposed Facilities Be Granted?

41. CME is opposed to the Board providing pre-approval of the cost consequences of the Brantford-Kirkwall/Parkway D Project or the Parkway West Project.

42. First, CME supports Board Staff's conclusion at page 16 of its Written Submissions that pre-approval to recover the cost consequences of the Parkway West and Brantford-Kirkwall/Parkway D projects in the current leave-to-construct application is not necessary. As

recognized by Board Staff, Union is already entitled to apply to include the revenue requirement in rates in a subsequent IRM proceeding.

43. In the normal course of a leave to construct application, Applicants do not seek pre-approval of costs. That approval is normally granted in a rate proceeding for a test period in which the project is forecast to come into service.

44. Union has never sought and received such pre-approval from the Board. To the best of CME's knowledge, such pre-approval has never been granted by the Board in any leave to construct proceeding.

45. Union's request, if approved, will deprive ratepayers and a future panel of the Board of the ability to assess prudence after the fact. During cross-examination, Union was asked what would happen if pre-approval was granted and Union then went ahead and constructed the Brantford-Kirkwall pipeline even though TCPL decided not to build King's North. Union confirmed that under such a scenario there would be no recourse to challenge the prudence of building the Brantford-Kirkwall pipeline [Transcript, Vol. 2, pages 139-140]. CME submits that the prudence of such a decision should be subject to after-the-fact review.

46. The level of change and uncertainty that has permeated this hearing provides a further reason for the Board to reject pre-approving the costs. In this regard, the Settlement Agreement has not yet been approved by the NEB and TCPL is not in a position to immediately commence construction on King's North. This hearing has demonstrated how quickly these projects can change. This provides further support for not granting pre-approval of the costs in this proceeding.

H. Issue C6: Should Pre-Approval of Cost Consequences of Two Long-Term Transportation Contracts Be Granted?

47. CME agrees with Board Staff that Union's request for pre-approval of the long-term transportation contracts is not consistent with the Board's Filing Guidelines for the Pre-Approval

of Long-Term Natural Gas Supply. On this basis alone, CME submits that the Board may reject Union's pre-approval request.

48. Union is seeking the pre-approval of two long-term transportation contracts. Those long-term transportation contracts for which Union seeks approval arise out of the May 2012 TCPL Open Season [Transcript, Vol. 2, page 129]. That is the Open Season that TCPL subsequently cancelled.

49. Union is asking the Board to approve contracts that do not currently exist. The contracts for which Union seeks approval will flow out of the Settlement Agreement, if that Settlement agreement is approved by the NEB. Put another way, Union is seeking approval of contracts that currently do not exist, and that may flow under the NEB approved TCPL tolls that will come into effect at some point in the future [Transcript, Vol. 2, page 131].

50. While there were precedent agreements and contracts provided by TCPL arising out of the now-cancelled 2012 Open Season, Union has not received any precedent agreements or contracts from TCPL arising out of the Term Sheet or the Settlement Agreement [Transcript, Vol. 2, page 132]. Precedent agreements or draft contracts do not exist for the contracts that Union now asks the Board to approve. This fact was acknowledged by Union's counsel, Mr. Smith, at Transcript Vol. 4, pages 28-29:

If it may be of assistance, I think what the Chair is asking for is the pre-approval reflected in the evidence, and obviously we'll have to deal with this because there is a fact, which is not a great one from our perspective, that there aren't signed contracts right now.

51. It would be wholly inappropriate for the Board to approve long-term contracts without first reviewing the terms of the contracts as set out in the precedent agreements and/or draft contracts.

52. Union was only able to identify one previous attempt to seek pre-approval of a transportation contract, and that request was denied by the Board. Union has never received pre-approval of any cost consequences of long-term transportation contracts [Transcript, Vol. 2, page

133]. The first time that such pre-approval is granted by the Board should not be in the absence of a precedent agreement and/or draft contract.

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

53. Subject to the comments which follow, CME supports all of the conditions set out in Appendix A, Appendix B and Appendix C of Board Staff's Written Submissions.

54. CME notes that condition of approval 1.3 of Appendix C, only prohibits Union from beginning construction of the Brantford-Kirkwall pipeline until TCPL has received approval from the NEB for its King's North project. At page 19 of its Written Submissions, Board Staff submitted that construction of the proposed Brantford-Kirkwall pipeline should be conditional on TCPL receiving approval of the King's North project and EGD obtaining Board approval for the construction of Segment A. As such, CME suggests that proposed condition of approval 1.3 be amended to state as follows:

Union shall not begin construction of the Brantford-Kirkwall pipeline until TransCanada Pipelines Ltd. has received approval from the National Energy Board for its King's North project, and EGD has received approval from the Ontario Energy Board for leave to construct Segment A of its GTA project.

55. In addition to this minor amendment to Board Staff's proposed draft conditions of approval, CME urges the Board to impose the following additional special conditions.

56. First, EGD should not begin construction of Segment A until it provides an undertaking to the Board to refrain from seeking to recover from its distribution customers any more than 40% of the revenue requirement for Segment A.

57. Second, the approval of the Brantford-Kirkwall pipeline should be conditional upon the EGD's GTA project (in particular Segment A) and TCPL's King's North Project receiving all necessary regulatory approvals by their respective regulators. CME notes that both LPMA and Board Staff have also asked for a similar condition.

58. Union has confirmed that it would only build the Brantford-Kirkwall line if TCPL builds King's North; even if Union receives leave to construct from the Board, it would not go ahead

and build that line without TCPL getting their approval. In cross-examination, Union agreed that an appropriate condition for the Board to impose is that TCPL obtain approval for its King's North line prior to commencing construction of the Brantford- Kirkwall line [Transcript, Vol. 2, pages 109-110]:

Mr. DeRose: Okay. So would TCPL obtaining approval for its Kings North be an appropriate condition for the Board to put on your leave-to-construct?

Mr. Isherwood: I believe it would. I think we've asked for actually the permission to build as late as 2016, in case TCPL does get delayed.

59. Third, the approval of Parkway Compressor D should be conditional upon EGD's GTA project (in particular Segment A) receiving all necessary regulatory approvals from the Board. Again, Union confirmed in cross-examination that it would not build Compressor D until EGD has leave to construct Segment A [Transcript, Vol. 2, page 112].

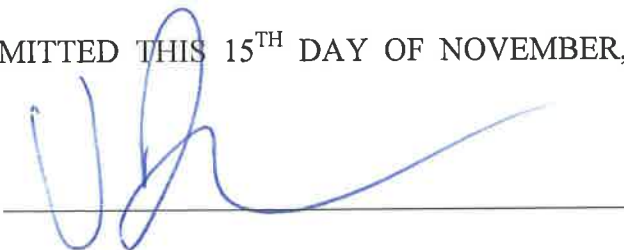
60. Fourth, CME supports the condition, set out by LPMA, that Union receive assurances from EGD and TCPL, after they obtain approval and before Union starts construction, that both projects will be built on schedule, and that any delays in their schedules should be taken into account by Union in their schedule.

61. Fifth, if this Board provides pre-approval of the costs consequences of the Brantford-Kirkwall/Parkway D project, notwithstanding the argument by CME and Board Staff opposing that pre-approval, then the pre-approval should be conditional upon EGD's Segment A and TCPL's King's North both being constructed and coming into service.

IV. COSTS

62. CME requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding. In CME's submission, it participated responsibly throughout the entire hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15TH DAY OF NOVEMBER,
2013.

A handwritten signature in blue ink, consisting of stylized initials and a long horizontal stroke, is written over a solid horizontal line.

Peter C.P. Thompson, Q.C./Vincent J. DeRose
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