

Ontario Energy
Board

Commission de l'énergie
de l'Ontario



EB-2012-0433

IN THE MATTER OF AN APPLICATION BY

UNION GAS LIMITED

LEAVE TO CONSTRUCT THE PARKWAY WEST PROJECT

EB-2013-0074

IN THE MATTER OF AN APPLICATION BY

UNION GAS LIMITED

LEAVE TO CONSTRUCT THE BRANTFORD-KIRKWALL/PARKWAY D PROJECT

EB-2012-0451

IN THE MATTER OF AN APPLICATION BY

ENBRIDGE GAS DISTRIBUTION INC.

LEAVE TO CONSTRUCT THE GTA PROJECT

DECISION AND ORDER

JANUARY 30, 2014

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EB-2012-0433
EB-2012-0451
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.

BEFORE: Cynthia Chaplin
Presiding Member & Vice Chair

Marika Hare
Member

Peter Noonan
Member

DECISION AND ORDER
January 30, 2014

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1. Introduction

Union Gas Limited and Enbridge Gas Distribution Inc. filed three applications with the Ontario Energy Board requesting approval to construct major system expansion projects.

The projects include natural gas pipelines, compressor stations and related facilities. According to Union and Enbridge, the projects are needed to respond to system demands, to diversify their supply portfolios, to address short haul market access requirements for natural gas transportation, and to address integrity issues on Enbridge's distribution system. The applications were filed separately, but the Board combined the proceedings and heard them together.

The OEB Act requires the Board to consider the public interest when deciding whether to grant leave to construct. For the reasons set out below, the Board concludes that the applications for leave to construct are in the public interest and the projects are approved, subject to various conditions. In determining the public interest, the Board has considered a number of factors which are addressed further in the findings in this decision.

1.1 The Applications

Union made two applications. The Parkway West Project (EB-2012-0433) involves the installation of a standby compressor along with 740 meters of natural gas pipeline and associated facilities, all in the Town of Milton. These requests were made under sections 90 and 91 of the Act. Union estimated the total cost for the Parkway West Project at \$219 million. Union also requested pre-approval for recovery of the costs of the project and an accounting order to establish the Parkway West Cost Deferral Account. These requests were under section 36 of the Act. A map of the Parkway West Project is attached in Appendix D.

Union's second application, the Brantford-Kirkwall/Parkway D Project (EB-2013-0074), involves the construction of 13.9 km of NPS 48 pipeline and associated facilities

between the City of Cambridge and the City of Hamilton and the installation of a new compressor at the Parkway West site. These requests were made under section 90 and 91 of the Act. Union estimated the total cost of the Brantford-Kirkwall/Parkway D Project at \$204 million. Union also requested pre-approval for the recovery of the costs of the Brantford-Kirkwall/Parkway D Project, and an accounting order to establish the Brantford-Kirkwall/Parkway D Deferral Account. Union also sought pre-approval of the cost consequences of two long-term short-haul transportation contracts on the TransCanada system. A map of the Brantford-Kirkwall/Parkway D Project is attached in Appendix F.

Enbridge's application, the GTA Project (EB-2012-0451), involves the construction of two segments of natural gas pipeline, and associated facilities, in and around the City of Toronto. Segment A is approximately 27 km long and would be located in the Town of Milton, the City of Mississauga and the City of Toronto. Segment B is approximately 23 km long and would be located in the City of Vaughan, the City of Markham, the City of Toronto and the Town of Richmond Hill. These requests were made under sections 90 and 91 of the Act. The approximate cost of Enbridge's GTA Project is \$686.5 million. Enbridge is also seeking approval, under section 36 of the Act, for its proposed Rate 332 methodology for transmission services along Segment A. A map of the GTA Project is attached in Appendix H.

Union's Brantford-Kirkwall/Parkway D Project and Segment A of Enbridge's GTA Project would together increase the capacity on the Dawn-Parkway system and facilitate new contracting options on the TransCanada system. TransCanada intends to apply to the National Energy Board ("NEB") for an additional pipeline project, the King's North project, which together with the Union and Enbridge sections would remove a current bottleneck in the overall system. The interrelationships among these projects are discussed later in this decision. A map showing all the projects is attached in Appendix B.

1.2 The Hearing

The Board conducted an oral public hearing. There were 39 intervenors, including ratepayer representatives, landowners, municipalities, environmental groups, First Nations, gas shippers, and others. The Board also received four Letters of Comment. A complete list of intervenors, more information about the Letters of Comment, and further details regarding the proceeding are set out at Appendix A.

Seven intervenors filed evidence. Gaz Métro Limited Partnership (“GMi”) filed evidence in support of the projects. The City of Markham and Markham Gateway each filed evidence regarding potential adverse impacts on future land use from the Enbridge project. Their concerns were subsequently resolved and they did not oppose the application.

The Council of Canadians (“COC”) opposed the projects and filed expert evidence prepared by Dr. Anthony Ingraffea, Ms. Lisa Sumi, and Mr. David Hughes on shale gas production and related environmental and gas market issues. Environmental Defence and Green Energy Coalition (“GEC”) also opposed the projects (in whole or in part), and each filed expert evidence related to Demand Side Management (“DSM”) as an alternative to further infrastructure. GEC filed evidence by Mr. Paul Chernick from Resource Insight Inc., and Mr. Chris Neme and Mr. Jim Grevatt from Energy Futures Group. Environmental Defence filed evidence prepared by Mr. Ian Jarvis, Ms. Wen Jie Li and Ms. Gillian Henderson from Enerlife Consulting.

Before the oral hearing began, significant conflict arose between TransCanada and the eastern distributors (Union, Enbridge and GMi). TransCanada and Enbridge had entered into a Memorandum of Understanding (“MOU”) relating to capacity on Enbridge’s proposed GTA Segment A pipeline. However, when the terms were revealed, Union and GMi objected and brought a motion to enforce the Board’s *Storage and Transportation Access Rule*. That dispute led directly to Enbridge terminating the MOU. Subsequently, the parties initiated civil litigation and proceedings at the NEB. The eastern distributors applied to the NEB under Section 71 of the *National Energy Board Act* to enforce service obligations against TransCanada, while TransCanada, in turn, adopted a position opposing the applications before this Board, including the filing

of evidence, and filed a law suit against Enbridge. However, on the eve of the oral hearing the applicants announced that TransCanada and the three eastern distributors had entered into an agreement which became known as the “Settlement Agreement”. This agreement, while entered into evidence, was not negotiated under the auspices of this Board’s settlement process. The parties to the agreement intend for TransCanada to submit it to the NEB for approval. As part of the settlement, the litigation before the NEB and the courts was withdrawn and TransCanada ultimately supported the applications before this Board.

The Settlement Agreement is an important development in the evolution of the pipeline transportation network in Ontario. It is intended to provide stability to the commercial relationships between the eastern distributors and TransCanada. It seeks to provide a basis for the eastern distributors to access new sources of supply while ensuring that the financial viability of the TransCanada system is not threatened by decontracting.

Stable commercial relationships between TransCanada and the eastern distributors are desirable from a public policy perspective. This Board has, in the past, encouraged Union, Enbridge and TransCanada to cooperate in matters relating to the evolution of the pipeline system serving Ontarians. To the extent that this Settlement Agreement is responsive to the Board’s previously expressed sentiments, the parties to the agreement are to be commended for their ability to seek solutions that enhance the prospects for optimal commercial outcomes consistent with the public interest.

At the same time, this Board must remain cognizant of the limitations surrounding its own responsibilities. The NEB has the jurisdiction to approve, or reject, the Settlement Agreement and any of its specific elements. It would therefore not be appropriate for the Board to determine whether the Settlement Agreement should be approved. The cost consequences of the Settlement Agreement on Ontario ratepayers, if it is approved by the National Energy Board, will be reviewed by the Board in a subsequent proceeding.

The Union and Enbridge projects are interrelated, and in some cases interdependent. The projects are also related to facility expansion on the TransCanada system. Although the applications were combined into one proceeding, the Board will set out its

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findings for each application separately. The findings address the following major public interest considerations for each application:

- Need and Alternatives
- Cost, Economic Evaluation, and Rate Impact
- Environmental, Technical and Safety Issues
- Landowner Matters
- Aboriginal Consultation
- Conditions of Approval

The interrelationships between the applications are addressed primarily under the Conditions of Approval.

2. Union's Parkway West Project (EB-2012-0433)

2.1 Need and Alternatives

Union's Parkway West Project involves the construction of facilities on a new site, directly across from the existing Parkway Station. Union is proposing the addition of a compressor for the discharge volumes that flow through Parkway, an additional pipeline connection to Enbridge, and upgrades to existing Union transmission pipelines and other required infrastructure. This project would provide what is known as "loss of critical unit coverage". Loss of critical unit coverage requires that at a minimum, there is enough spare horsepower available to meet demand in the event that the single biggest compressor fails. Hence, the compressor is termed an "LCU compressor".

Union justifies the project on the basis that Parkway is essential to natural gas flow in Ontario, and that the addition of an LCU compressor will ensure continued reliability. Union's evidence is that a major failure at Parkway would not allow Union to meet its contractual commitments and that the addition of the LCU compressor will therefore mitigate significant operational risk. Union noted that Parkway is the only site on the Dawn-Parkway System which does not have loss of critical unit coverage.

Union reviewed eight alternatives to meet the objectives of the Parkway West Project, including physical alternatives and contracting for services on other pipeline systems. Union also met and consulted with stakeholders to review the options. Union concluded that there are no viable alternatives that can provide reliability and resilience for its Parkway deliveries into the TransCanada system as effectively and cost efficiently as the LCU protection proposed through the Parkway West Project.

Most parties agreed that the LCU compressor is needed in order to provide added reliability and security to the Dawn-Parkway System and that there were no reasonably viable alternatives. Parties noted that the potential risk of an outage is significant and would have detrimental effects on a large number of customers and that the proposed Parkway West Project addresses these concerns.

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Building Owners and Managers Association - Toronto (“BOMA”) and COC did not support the Parkway West Project. GEC opposed Union’s applications generally, but indicated that the LCU compressor might be an exception to its general position.

BOMA submitted that it was unnecessary to construct both the LCU compressor and the Parkway D compressor (which is part of the Brantford-Kirkwall/Parkway D Project), and that one new compressor should be satisfactory to address the reliability and growth concerns. Union disagreed and noted that the two different purposes (growth and reliability) cannot be met by a single compressor: Parkway D is required for load growth whereas the LCU compressor provides the reserve capacity necessary to cover off the failure of any of the other units at the facility (including Parkway D). Union submitted that there was no evidence on the record that supports BOMA’s position.

COC opposed all of the applications, but its concerns were focused on the new sources of supply the other projects facilitate. Union responded that COC’s general argument against the applications does not apply to the Parkway West Project.

Board Findings

The Board finds that the evidence supports the need for the Parkway West Project and that there is no superior alternative.

The evidence clearly shows that the lack of LCU capacity at Parkway West represents a system reliability weakness in the Union system. Parkway West is the only major station on the system that lacks LCU capacity and it is an essential gateway for not only the Union system but for services to the Enbridge system and transportation for other shippers within and beyond Ontario. A compressor failure at Parkway, in the absence of adequate LCU capabilities at that point, could have profound ramifications for the provision of gas service to central and eastern Ontario, as well as Quebec and other markets. No party identified any reasonable or practical alternative to the construction of an LCU compressor.

BOMA recommended the construction of a single compressor as an alternative to the LCU project, noting that Union planned to construct an additional compressor as part of the Brantford-Kirkwall/Parkway D Project. As the Board understands the argument of

BOMA, one large compressor could provide transmission capacity on the Brantford-Kirkwall segment as well providing LCU capability should an outage occur at Parkway. In BOMA's view, eliminating the second compressor would provide substantial cost savings.

The Board does not agree with BOMA's analysis. The evidence is that an LCU compressor provides additional incremental capacity that can be quickly deployed to backstop the system when an outage occurs at one of the other compressors. The evidence shows that whether or not the Parkway Compressor D is built, separate LCU protection is warranted. To the extent Parkway D is justified on the basis of growing demand (which is addressed elsewhere in this decision) it cannot provide LCU coverage. Union needs to be able to replace the single largest unit in service at Parkway should an outage occur, regardless of the number of existing operational compressors at Parkway.

COC also expressed opposition to Union's LCU project in general terms, but its objections related more to its opposition to the extraction of shale gas¹ through the hydraulic fracturing process, and concerns about reliance on U.S. rather than Canadian sources of supply. These issues are not relevant to the issue of building an LCU compressor at Parkway West.

2.2 Project Costs, Economic Evaluation and Rate Impact

The total estimated Parkway West Project cost, including contingencies and interest during construction, is \$219 million, and the largest full-year revenue requirement is approximately \$17.7 million. Union sought pre-approval for the recovery of the project costs.

The Board's economic feasibility requirements for transmission and distribution pipelines are outlined in E.B.O. 134 and E.B.O. 188. These requirements relate to

¹ Shale is a low permeability rock, and gas found in it is produced by using horizontal drilling and hydraulic fracturing. Conventional gas supplies come from higher permeability rock. There are extensive shale supplies in the eastern U.S., western Canada and in other parts of North America.

system expansion projects which will result in incremental revenues. Since the Parkway West Project is not a system expansion project and does not result in incremental revenues, it is not subject to these economic feasibility tests. As a result, Union did not conduct an economic feasibility analysis.

Based on the current Board approved allocation of Dawn-Parkway costs, 16% of the project costs would be allocated to in-franchise rate classes and 84% of the costs would be allocated to ex-franchise rate classes. Union is not proposing any changes to the allocation of Dawn-Parkway transmission system costs, including the allocation of Parkway costs, as a result of the Parkway West Project.

Union's proposal to allocate costs directly attributable to the Parkway West Project between in-franchise and ex-franchise rate classes using the current approved allocation method for Dawn-Parkway transmission costs, along with consequential shifts in the allocation of indirect costs and taxes, results in a small rate reduction for in-franchise rate classes. The average Rate M1 residential customer in Union South and Rate 01 customer in Union North would experience a rate reduction of about \$0.84 per year and \$0.33 per year, respectively. Costs allocated to ex-franchise customers would increase by \$18.6 million. The M12/C1 Dawn-Parkway rate would increase to \$0.089 GJ/day from the current \$0.078 GJ/day.

Most parties took no issue with the estimated costs and rate impacts associated with the Parkway West Project. However some objections were raised. Also, a number of parties raised concerns with respect to Union's request for cost pre-approval. The following issues are addressed by the Board:

- Treatment of site costs
- Allocation of project costs
- Pre-Approval of the costs

Treatment of Site Costs

Union has attributed the full costs of the Parkway West site to the Parkway West Project, even though part of the site is to be used for the Parkway D compressor, which

is part of Union's Brantford-Kirkwall/Parkway D Project. Union maintained that the same land and facilities are required for the Parkway West Project, whether or not the proposed Parkway D compressor is constructed. Union also noted that the bill impacts are the same regardless of how the costs are allocated between the two projects.

Energy Probe and School Energy Coalition ("SEC") argued that Union's allocation of Parkway West site development costs are not appropriate. Energy Probe argued that site development costs should be allocated between the two projects. SEC submitted that even if the rate impact of allocating some site development costs to the Brantford-Kirkwall/Parkway D Project is virtually nothing, as claimed by Union, proper cost allocation between projects should be followed and half of the Parkway West site development cost (\$51 million) should be allocated to the Brantford-Kirkwall/Parkway D Project.

Union responded that attributing half of the Parkway West land and site development costs to the Brantford-Kirkwall/Parkway D Project is not consistent with the Discounted Cash Flow ("DCF") analysis, which is an incremental cost approach. Union noted that even though the two projects are concurrent, in principle the investment in Parkway D is an incremental decision, independent of Parkway West. Union maintained that the same land and facilities are required for Parkway West, whether or not Parkway D is required.

Board Findings

Union took the position that it would have purchased and developed the same sized site regardless of whether its plans contemplated the construction at the present time of one or two compressors. However, Union acknowledged that the size of the site was driven by anticipated future growth. Thus, the size of the proposed site and the land and development costs are not exclusively related to system reliability.

Although the evidence shows there is also a component of land acquisition that is related to future growth, the allocation of the site costs is moot because the Board is approving both Union projects and the evidence is that the allocation of the site costs has no impact on rates. Given the coincident nature of the projects, and the fact that there is no rate impact, more granular cost allocation is of limited significance.

Allocation of Project Costs

Association of Power Producers of Ontario (“APPrO”) questioned whether all M12 shippers and Union South in-franchise customers should be paying costs for added reliability, or whether those customers requesting and directly benefiting from LCU protection should bear the costs. APPrO submitted that Enbridge’s small volume customers are the primary beneficiary of the increased reliability because of the company’s location and its reliance on storage and gas supplies originating from Dawn and Niagara. APPrO noted that its members are the first customers to be curtailed in the event of an emergency. Union responded that LCU coverage reduces the risk of a major failure at Parkway and thus reduces the risk of all types of customers losing gas services, including all gas-fired power generators.

The City of Kitchener (“Kitchener”), a direct customer of Union, also argued that the costs for the Parkway West Project should be recovered from those customers benefitting from the project. In Kitchener’s view, it does not benefit from the project and it should not be required to bear any of the associated costs. Kitchener proposed that the cost allocation methodology for the LCU compressor should be reviewed in a separate, consultative process. Union responded that Kitchener’s argument overlooks the benefits it and others receive as a result of the project. In Union’s view, these benefits include a Dawn-Parkway system that remains as fully contracted as possible, and maintaining and increasing the health and liquidity of the Dawn Hub, which benefits all parties that buy or sell gas at Dawn. Union also maintained that the Dawn-Parkway System is integrated, with different specific system additions benefitting specific customers differently. Union reiterated that the proposed cost allocation methodology follows the current, Board-approved methodology which is aligned with the principle of cost causality.

Board Findings

The Board accepts Union’s proposal that the current Board-approved cost allocation methodology should be used to allocate the costs of the project to Union’s rate classes.

APPrO suggested that large customers will obtain minimal benefits from the installation of the LCU compressor because they are curtailed first in the event of a service outage. However, Union’s perspective, with which the Board agrees, is that enhanced reliability

reduces the risk of curtailment – which is of particular benefit to large customers who would otherwise be curtailed first. Therefore, the Board is of the view that, in general, larger customers will obtain a benefit from enhanced system reliability.

Kitchener argued that it would derive no benefit from the provision of LCU capacity at Parkway from an operational or reliability perspective because the City of Kitchener is serviced by Union from its Owen Sound lateral, which is upstream of Parkway. Kitchener argued that the cost allocation methodology should be revised so that customers upstream of Parkway West do not bear the costs of the Parkway West LCU compressor. Union responded that there are system-wide benefits from high utilization and liquidity of Dawn – both of which Union considers to be aspects of reliability. Union also argued that the Dawn to Parkway system is an integrated gas transmission and distribution system.

While Kitchener may not be directly affected by a compressor outage at Parkway West, the Board is nevertheless of the view that Union's investments are intended to advance an important public purpose – the provision of a reliable gas transportation system within Ontario. The need for new facilities should be considered in the context of the system as a whole, and not merely from a local perspective. The considerations that Kitchener has raised would require a broader examination of cost allocation principles and their application to the Dawn-Parkway system, which is beyond the scope of this proceeding. Kitchener proposed that the Board conduct a separate review using a consultation process. In the normal course, cost allocation issues are reviewed in cost of service rebasing hearings. The Board finds that Kitchener has not made a sufficiently compelling case to warrant a stand-alone review of this issue, but this issue could be raised in Union's next cost of service proceeding.

Pre-Approval of the Costs

Union's application includes a request for pre-approval of the project costs and their inclusion in rates. Union has also applied for approval of a deferral account to capture any variance between the estimated costs and actual costs. Union explained that it is seeking pre-approval of the recovery of the costs consequences due to the size of the Project, which is the largest in Union's history. Union maintained that it is not able to

proceed with the development of the Parkway West Project without reasonable certainty of cost recovery.

Union noted that under the settlement agreement for its multi-year Incentive Regulation Mechanism (“IRM”), which the Board approved, the parties agreed to treat major capital additions as Y factors during the IRM period provided that they meet various criteria.² Union submitted that the Parkway West Project meets the criteria for Y factor treatment during the IRM period. Union noted that the project exceeds the \$5 million annual revenue requirement and \$50 million capital cost thresholds, is needed to serve customers and to maintain system safety, reliability or integrity, cannot reasonably be delayed, and is the most cost effective manner of achieving the project’s objectives relative to reasonably available alternatives. Union further noted that the Parkway West Project is identified in the IRM settlement agreement as an example of a project that will be evaluated during the IRM period. Union maintained that the parties to the IRM settlement agreement agreed that the Parkway West Project meets the criteria, provided there is no material change made by the Board.

APPrO, London Property Management Association (“LPMA”) and SEC supported Union’s request noting that the project will primarily be paid for by ex-franchise customers, pre-approval is an efficient use of regulatory time, and the Parkway West Project meets the criteria for Y factor treatment outlined in the IRM settlement agreement. These parties also agreed that the Parkway West Project deferral account should be established. APPrO submitted that pre-approval of the costs should only be granted up to the current cost estimate of \$219 million.

Board staff, BOMA, Canadian Manufacturers and Exporters (“CME”), Consumers Council of Canada (“CCC”), Energy Probe and Federation of Rental-housing Providers of Ontario (“FRPO”) opposed Union’s request for pre-approval for various reasons. Board staff submitted that Union does not require an additional layer of assurance through the leave to construct application in order to recover its costs. Board staff noted that Union’s IRM process ensures that Union has the appropriate opportunity to include the revenue requirement associated with the projects in a future IRM application,

² EB-2013-0202

making pre-approval unnecessary. FRPO and Energy Probe provided similar submissions. BOMA submitted that pre-approval is not appropriate as it is impossible to conduct a proper prudence review in advance of any expenditures being made. Both CCC and CME made similar submissions to BOMA's, arguing that the prudence of actual costs incurred should be considered in the context of a rate proceeding. CME noted that Union is already entitled to apply to include the Parkway West revenue requirement into rates in a subsequent IRM proceeding. No party opposed the approval of the requested Parkway West deferral account.

Board Findings

The Board approves the recovery of the costs of the Parkway West Project, subject to two limitations set out below. This project and the Brantford-Kirkwall/Parkway D Project are the largest, in financial terms, which Union has undertaken. Union emphasized that pre-approval of costs was a prerequisite for the company to undertake the project, as the company considered that it was too risky to undertake the project in the absence of assurances that the costs would be recovered in rates.

While some of the intervenors supported the request several did not, generally arguing that Union does not require an additional layer of assurance with respect to costs and that the terms of the IRM settlement agreement are sufficient. However, given the magnitude of the expenditure that is proposed, the Board is of the view that Union's request is reasonable and consistent with the overall regulatory structure. Recovery of these costs is specifically contemplated in the IRM settlement agreement approved by the Board. This situation is also similar to traditional cost of service ratemaking, in which the costs of projects approved in leave to construct proceedings typically flowed into rates with only significant cost variances being subjected to examination in the subsequent rates proceeding.

The Board's approval of cost recovery is subject to two important limitations. First, the Board is only pre-approving recovery of costs up to the current estimate of \$219 million. None of the parties took issue with Union's cost projection of \$219 million for the Parkway West Project and the Board considers the cost projection to be a reasonable estimate in the circumstances. Second, the costs will only be incorporated into rates

when the project is completed and in-service. This provides reasonable assurance that ratepayers are not exposed to costs prematurely.

No party took specific issue with Union's request for a deferral and variance account, and the Board finds that it is appropriate to use an account to track any difference between the estimated cost and actual cost. The request for a deferral and variance account is granted. The Board wishes to emphasize that any excess costs over and above the pre-approved amount will be examined at Union's next rates application after the completion of the project. As evidence tendered in the proceeding showed, Union has experienced cost overruns on several of its past compressor projects and therefore the Board will be looking to the utility to rigorously control its expenditures on this project.

2.3 Environmental, Technical and Safety Issues

Stantec Consulting Ltd. prepared the environmental reports for the Parkway West Project. The results in the environmental reports indicate that the location of the proposed Parkway West Project is environmentally acceptable and no significant cumulative effects are anticipated. Union maintained that by following its standard construction practices and adhering to the mitigation measures identified in the environmental reports, construction of the Parkway West Project will have negligible impacts on the environment. Union noted that the Ontario Pipeline Coordinating Committee's review raised no significant issues.³

Union provided detailed evidence regarding the design, installation and testing of the project. Union noted that all work would be done in accordance with the requirements of Ontario Regulation 210/01, *Oil and Gas Pipeline Systems* under the *Technical Standards and Safety Act, 2000*.

³ The Ontario Pipeline Coordinating Committee (OPCC) coordinates the Ontario government's review of natural gas facility projects in Ontario that require approval from the Board. Its goal is to minimize negative environmental impacts that could arise from these projects by reviewing environmental assessments and routing reports prepared by the applicants before they apply to the Board to have projects approved. The committee is made up of government ministries and agencies that have a role in reviewing natural gas transmission and distribution facility projects and is chaired by a staff member from the Board.

There were no issues raised by parties with respect to environmental impacts or technical and safety requirements.

Board Findings

Union has committed to implement all the recommendations in the environmental reports. The Board accepts Union's evidence regarding the environmental assessment and finds that the proposed mitigation and monitoring activities are acceptable and address the environmental concerns. The Conditions of Approval reflect Union's commitments.

The Board is also satisfied that the evidence establishes that the pipeline design and specifications are acceptable based on current standards.

2.4 Landowner Matters

Union noted that the station property site has been purchased already and there are no outstanding landowner concerns related to the site. Union also noted that for the pipeline segment it will require new permanent and temporary land rights, crossing permits or agreements with Hydro One Networks Inc. and her Majesty the Queen in the Right of Ontario, administered by Infrastructure Ontario. Union has met and discussed the project with Hydro One and Infrastructure Ontario, and with the Ministry of Transportation and 407ETR, who have existing rights in the Highway 407 corridor. Union maintained that although agreements have not been finalized with these entities, no significant concerns have been raised. Union included a proposed form of easement as part of its application.

There were no issues raised by parties with respect to landowner matters.

Board Findings

Under section 97 of the Act, the Board ensures that the forms of agreement provided to landowners who are located along the approved route of the pipeline are appropriate. The Board determines the appropriate subject-matter of the form of an agreement to be offered to an Ontario landowner, as well as the technical format of the document but not

the substance of the agreements, which are left to the landowner and the pipeline company to negotiate. The Board's approval of the form of an agreement thus provides a baseline for the initial offer of an easement agreement to a landowner, and prevents the company from unilaterally resiling from its proffered terms.

The Board is satisfied that Union has properly consulted with those landowners directly affected by the Parkway West Project and that it will continue to do so leading up to and throughout construction. The Board has examined the form of easement agreement provided by Union and finds that it is acceptable and it is therefore approved.

2.5 Aboriginal Consultation

Union indicated that it is not aware of any outstanding issues raised by First Nations or Métis organizations. Union notified First Nation and Métis organizations by letter regarding the Parkway West Project on two separate occasions. Union noted that it is conducting formal consultation with Six Nations of the Grand First Nation, Mississaugas of the New Credit First Nation, and Métis Nation of Ontario with respect to the Parkway West Project. Union noted that during construction, it will have inspectors in the field who are available to First Nations and Métis organizations as primary contacts to discuss and review any issues that may arise during construction. When the necessary archaeological assessments for the project are complete, the company has committed to consulting with and providing the result of the surveys to any First Nations or Métis Nations organizations upon their request as part of the environmental review process.

There were no issues raised by First Nations or Métis organizations, or by other parties with respect to Union's consultation with First Nation or Métis organizations.

Board Findings

The Board is satisfied that the evidence establishes that Union has made appropriate efforts to consult with affected First Nations and Métis organizations with respect to the Parkway West Project. The Board expects Union to continue to proactively consult with affected First Nations and Métis organizations, as appropriate, throughout the

construction phase of the project. The Conditions of Approval reflect Union's commitments as indicated in the prior section,.

2.6 Conditions of Approval

Union accepted the standard conditions of approval for Section 90 and Section 91 applications as proposed by Board staff, with one exception. Union proposed that Condition 1.2 be modified so that leave to construct is not terminated until December 31, 2015 as opposed to December 31, 2014.

Union submitted that no other conditions are required as the Parkway West Project is independent of both the Brantford-Kirkwall/Parkway D Project and Enbridge's GTA Project. Most parties agreed that this project was independent of the other two projects, although APPrO proposed that if the other projects are not approved, then the Board should delay approval of the Parkway West Project until the Parkway facilities accommodate a greater share of the Ontario volumes. In addition, APPrO proposed that pre-approval of the costs should be conditional on approval of the other projects in the combined proceeding.

Energy Probe submitted that additional wording should be added to Condition 1.3 and 4.1. The proposed additions are set out in bold below.

- 1.3 Union shall implement all of the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review. **Union shall also adhere to the conditions of all other permits, approvals, licences, certificates and easements rights.**
- 4.1 Union shall obtain all other approvals, permits, licences and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof **to the Board**, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.

Board Findings

The Board agrees that the standard conditions presented to Union during the hearing should be adopted, with certain modifications. The Board is prepared to accept Union's request for additional flexibility on the timing of the project and will therefore modify Condition 1.2 so that leave to construct will not be terminated until December 31, 2015 as opposed to December 31, 2014. The Board will also modify condition 4.1 by inserting the words "to the Board" for clarification, as was suggested by Energy Probe.

The Board finds that this project is independent of the other projects considered in this proceeding. The project is predicated on providing loss of critical unit coverage for the compression at Parkway and increased reliability for the substantial interconnection with Enbridge at Parkway. It is not impacted by pipeline capacity downstream of Parkway or the related projects. Therefore, the Board finds that there is no requirement for a linkage in the Conditions of Approval between this project and the other projects. Consequently, the Board will not adopt APPrO's proposal that pre-approval of the costs consequences be conditional on approval of the other projects. APPrO's other proposal that approval be delayed is moot because the other applications are being approved.

The Board will not accept Energy Probe's proposed modification to Condition 1.3. The various bodies from which Union must acquire approvals, permits, licences and certificates will have their own enforcement powers. The Board concludes that enforcing the approvals of other authorities is not an appropriate role for the Board. In addition, Energy Probe's proposal is legally vague and thus potentially unenforceable.

The Conditions of Approval for this application are attached as Appendix C of this decision.

3. Union's Brantford-Kirkwall/Parkway D Project (EB-2013-0074)

3.1 Need and Alternatives

The Brantford-Kirkwall/Parkway D project involves the construction of 13.9 km of NPS 48 pipeline to enhance capacity between the existing Brantford Valve Site and the Kirkwall Custody Transfer Station. The project also includes the addition of the Parkway D compressor, including measurement and associated facilities. The project would allow Union to deliver new contracted volumes to Enbridge, GMi, and the U.S. Northeast and to provide Dawn-based natural gas supply to its customers. Union developed the proposal in consultation with Enbridge, TransCanada and GMi and it complements the projects being developed by Enbridge (i.e. Segment A of the GTA Project) and TransCanada (i.e. King's North Project).

Union justified the project on the basis that it will facilitate access to gas supplies from eastern U.S. sources (primarily the Marcellus and Utica shale) and will therefore increase security and diversity of supply for its in-franchise customers, particularly in the Union North area. Union also claimed that the project will produce significant gas supply savings for Union North sales services and bundled direct purchase customers. These savings were estimated at \$144 million over the next 15 years.

Union maintained that the project will support the continued growth of the Dawn Hub, which would increase market depth and liquidity and the price competitiveness of gas supply options for Ontario customers over the long term.

Union considered both facility and non-facility alternatives to the project. Union concluded that non-facility alternatives (e.g. winter peaking service) were not viable due to the large size of the forecast 2015/2016 capacity shortfall (approximately 557 TJ/day) and the fact that the shortfall is associated with firm incremental demand. Union also considered pipeline looping and compression alternatives. These were considered separately and in various combinations. Union concluded that across all pipeline and compressor scenarios, the proposed Brantford-Kirkwall/Parkway D Project ranked the lowest (i.e. best) in terms of capital cost per unit of capacity.

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Most parties supported the application and agreed that there was no better alternative. CME noted that the expansion of the entire pathway from Parkway to Maple appears to be necessary to meet market demands. CME also submitted that the market will likely suffer if any component of the pathway, which includes Union's Brantford-Kirkwall pipeline, Enbridge's Segment A pipeline and TransCanada's proposed King's North pipeline, is not built or is significantly delayed.

Three parties opposed the project: BOMA, GEC and COC. These parties argued that the Board should not approve any of the projects in the combined proceeding.

BOMA argued that given the uncertainty as to whether the NEB will approve the Settlement Agreement, it would not make sense for the Board to approve any transmission related components of the proposed projects, including Union's Brantford-Kirkwall/Parkway D application. Further, BOMA viewed the overall increase of compression capacity at Parkway West as excessive and not required at this time. BOMA submitted that if the Settlement Agreement is approved, there appears to be sufficient compressor horse power at Parkway with the addition of the proposed LCU compressor to secure the forecast growth and provide LCU protection.

GEC argued that the applicants have not established the need or demonstrated the economic value for any of the projects in the combined proceeding, and have not properly investigated lower cost alternatives to the proposed capital expansions, including DSM. Union responded that there is no evidence that DSM initiatives could significantly decrease demand in the near or medium term. Union noted that even if demand did decrease, that would in no way undermine the critical importance of achieving diversity and security of supply for Ontario which is achieved through the Brantford-Kirkwall/Parkway D Project.

COC submitted that the group of projects is not in the public interest because there are significant supply risks associated with the Marcellus and Utica shale gas resources as well as significant adverse environmental impacts. COC argued that continued reliance on Western Canadian Sedimentary Basin ("WCSB") supplies was the preferred alternative from the perspective of environmental impact, security of supply and cost.

Union responded that placing sole reliance on supply from the WCSB would be contrary to the realities of the market and undermine the objective of seeking security and diversity of supply. Union also noted that doing so would be contrary to the Board's findings in the Natural Gas and Electricity Interface Review regarding the importance of the Dawn Hub.⁴ In that decision 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."

Board Findings

The Board finds that the evidence supports the need for the Brantford-Kirkwall/Parkway D Project and that there is no superior alternative which has been presented.

The project is part of a group of projects, including Enbridge's GTA Segment A pipeline and TransCanada's proposed King's North pipeline that will facilitate greater flows of mid-continent natural gas into Dawn for transportation to downstream markets. The projected benefits of these projects stem from an enhanced diversity of supply, gas costs savings, and enhanced liquidity at Dawn.

The Brantford-Kirkwall/Parkway D Project received substantial support from Union's ratepayer groups. However, BOMA, COC and GEC opposed the project.

BOMA's concerns relate mostly to the timing of the project and to concerns about the uncertainty around the upcoming NEB proceeding, which will consider the Settlement Agreement. However, the Board finds that this concern can be effectively addressed by conditioning the approval, particularly in respect to timing. This issue is discussed in further detail below in the Conditions of Approval section. BOMA also proposed that only one compressor be installed, instead of both the Parkway D compressor and the LCU compressor. However, that argument has previously been addressed in this decision in relation to the Parkway West Project.

GEC focused on natural gas conservation as a preferred alternative, primarily through DSM programs. In its argument, GEC focused primarily on the Enbridge GTA

⁴ EB-2005-0551

reinforcement projects but stated that its views generally applied to Union as well. However, GEC did not advance specific arguments against the Brantford-Kirkwall/Parkway D Project based on evidence in the proceeding. The issue of DSM as an alternative is discussed later in this decision in the context of the Enbridge application. There was no evidence that DSM measures would obviate the need for the Brantford-Kirkwall/Parkway D Project. GEC's own witness, Mr. Chernick, did not take a position on Union's applications, but indicated that because the projects relate to switching gas supplies the need for the projects would not be affected by load reductions. As he stated in testimony:

"I was asked to look at the feasibility and benefits of avoiding additions through load reductions. And since the justification for Segment A and some of the other facilities had to do with switching gas supplies, it really wouldn't have been affected by load reductions."⁵

Similarly, the other evidence related to DSM alternatives (Mr. Neme and Mr. Jim Grevatt on behalf of GEC and Mr. Ian Jarvis, Ms. Wen Jie Li and Ms. Gillian Henderson from Enerlife Consulting on behalf of Environmental Defence) related only to the Enbridge application. The Board finds that there is no evidence that DSM measures would provide a superior alternative to the Union project.

COC opposed all of the applications. COC submitted that the applicants have underestimated the risks of diversifying supply with shale gas while overestimating the benefits. COC also took the position that Canadian gas is preferable to a reliance on U.S. sourced gas. However, Ontario is situated within a continental energy market which has developed over a substantial period of time. The integrated nature of the gas market has brought significant cost and reliability benefits to Ontario consumers. Further, the evidence in the proceeding is that shale production is expected to remain strong and there are no regulatory impediments to ongoing production where it is currently taking place. It is the Board's view that while uncertainties exist for all supply sources in terms of future cost and availability, it is widely acknowledged, including by

⁵ Transcript Vol. 7, p. 55-56.

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this Board in prior decisions, that supply diversification enhances reliability and brings cost benefits through enhanced competition.

COC also opposed the project on the basis that it enables greater use of an environmentally harmful source of supply – shale gas – which is produced through hydraulic fracturing. COC compares the Board’s position to the considerations before the United States Department of State, and the President of the United States in the case of TransCanada’s proposed Keystone XL Pipeline. COC argued that environmental impacts of shale production should be taken into account when considering the applications.

The Board does not agree with COC’s analysis for two reasons. First, there was evidence in this proceeding that conventional WCSB gas supplies are being replaced with shale gas from western Canada and therefore shale gas supplies will likely enter the Ontario market from Canada as well. In addition, in an integrated pipeline system there are multiple paths that gas can take; at any given time gas in the proposed pipeline could come from multiple sources, including conventional supplies. Second, there are currently no regulations in Ontario or at the Canadian federal level which prohibit shale gas production or transportation. There was no evidence that the relevant authorities within the Marcellus or Utica basins, from which the proposed facilities will access gas, are failing to enforce legal standards relating to environmental protection in relation to shale or tight gas production. There is therefore no public policy or regulation governing shale gas production which could form a basis upon which the Board could reasonably deny the application.

3.2 Project Costs, Economic Evaluation and Rate Impact

The Brantford-Kirkwall/Parkway D Project is estimated to cost \$204 million, comprised of:

- The Brantford-Kirkwall pipeline at a cost of \$96 million.
- Parkway D Compressor Station at a capital cost of \$108 million.

The annual revenue requirement associated with the project reaches approximately \$15.9 million in 2018. Union expressed a high degree of confidence in its cost estimates noting that it is further along in the costing process than it has been in other leave to construct applications in which approval was granted by the Board. Union requested pre-approval of the costs and an associated variance account.

In evaluating the economic feasibility of the project, Union used a three-stage analysis in accordance with the Board's E.B.O. 134 *Report on System Expansion*. The report forms the basis of the filing requirements on the economic feasibility test for leave to construct applications for pipeline transmission projects. The Board's *Filing Guidelines on the Economics Tests for Transmission Pipeline Applications* provides further guidance on the proper economic tests to be used, including the details of the discount cash flow analysis.⁶ In E.B.O. 134, the Board discusses that if the first stage analysis results in a profitability index ("PI") of 1.0 or greater, no further analysis is required. The second and third stage analyses quantify other public interest factors not considered at Stage 1. Stage 2 includes all other quantifiable public interest information as to costs and benefits, and Stage 3 assesses all other relevant public interest factors plus the results from Stage 1 and Stage 2.

Stage 1 of the analysis consists of a discounted cash flow, which identifies the incremental cash inflows and outflows resulting from a project. When evaluating facilities projects, the PI typically should be above 1.0 in order to be considered economic. The PI is calculated by dividing the net present value of the cash inflows by the net present value of the cash outflows. Union's Stage 1 analysis indicates a cumulative net present value of \$1.8 million and a PI of 1.01. Union noted that this estimate is conservative for several reasons. First, the gas cost savings included by Union in the estimate reflect an Empress to Dawn basis differential that is higher than that forecasted by TransCanada for the winter 2013/2014 (\$0.92/GJ versus \$0.64/GJ). Union noted that every 10 cent reduction in the basis differential results in a \$2 million increase in gas cost savings. Second, the economics reflect only 15 years of gas cost savings notwithstanding that the Brantford-Kirkwall/Parkway D Project has been evaluated over a 30-year period.

⁶ EB-2012-0092

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Union did not complete a Stage 2 analysis because the Stage 1 NPV is positive. The Stage 3 analysis of other public interest considerations were outlined by Union in its argument-in-chief, based on evidence in the proceeding. Union noted that there are a number of such considerations such as security of supply, contribution to a competitive market, environmental benefits, employment, utility taxes, cost reductions, diversity of supply, and long-term growth and rate stability.

As with its Parkway West Project, Union proposed to use the current Board-approved cost allocation methodology, which allocates costs between in-franchise and ex-franchise rate classes using distance weighted Dawn-Parkway design day demands. On that basis, in-franchise rate classes will be allocated approximately 16% of the costs, with the remaining 84% of costs allocated to ex-franchise rate classes. Union stated that the largest revenue requirement for the project would be \$15.9 million, with the following resulting cost allocation impacts:

- An increase of approximately \$1.6 million, allocated to Union North in-franchise rate classes
- A reduction of approximately \$1.7 million, allocated to Union South in-franchise rate classes
- An increase of approximately \$16.0 million allocated to ex-franchise rate classes

Union estimated the following rate impacts:

- The average Rate 01 residential customer in Union North would see an increase of approximately \$2.80 per year.
- The average Rate M1 residential customers in Union South would see a decrease of approximately \$1.12 per year.
- For ex-franchise customers taking M12 Dawn-Parkway transportation service, the M12 rate is expected to increase by approximately \$0.003/GJ/d; from \$0.078/GJ/d to \$0.081/GJ/d.

Parties raised three issues related to project cost, economic evaluation and rate impact:

- Gas cost savings
- Pre-Approval of the costs
- Pre-Approval of the cost consequences of two contracts with TransCanada

Gas Cost Savings

One of the key drivers for the economic analysis is the forecasted gas savings.

Although shale gas from eastern U.S. sources is expected to be priced at a premium to WCSB supplies, the associated transportation costs are forecast to be lower and this is expected to result in overall net gas cost savings.

COC, GEC and BOMA submitted that Union's estimated gas cost savings appear to be overestimated. GEC cautioned that although there may be some gas cost savings initially, those savings will not be realized in the end because under the Settlement Agreement TransCanada will be made whole for any lost revenues due to the shift from long haul to short haul service. BOMA noted that the gas cost savings are based on speculative tolls and commodity price projections. SEC also submitted that the estimated gas savings may be overstated and are uncertain for a number of reasons: the Settlement Agreement is not yet approved; there is uncertainty around the impacts of the TransCanada Energy East project; and there is uncertainty as to how the impacts of converting from long haul to short haul service will be allocated.

Union responded that its gas cost savings estimates are conservative. Union noted that it had used a higher differential between the gas price at Empress and Dawn (\$0.92/GJ) than the current differential between these two supply points (approximately \$0.50/GJ) and the forward market differentials for 2015/16 (approximately \$0.60/GJ to \$0.70/GJ). Union noted that TransCanada's projection for winter 2013/2014 is currently between \$0.64/GJ and \$0.77/GJ. Union maintained that, even without the predicted significant savings in gas costs, the Brantford-Kirkwall/Parkway D Project is still in the public interest based on increased security and diversity of supply. Union submitted that 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 agreed with LPMA's argument that the best way to manage the risk of gas cost uncertainty is through supply diversity.

Board Findings

The economic analysis of the Brantford-Kirkwall/Parkway D Project hinges to a large extent on the estimated gas cost savings, which are a major driver for a positive NPV. The evidence shows that gas purchased at Dawn is currently more expensive than gas purchased at Empress and it is expected to remain so for the foreseeable future. However, long haul transportation costs from Empress are higher than the cost of short haul transportation services on pipelines that serve Dawn. The Settlement Agreement addresses that issue and provides for an alignment of that differential, in absolute terms, in a manner intended to keep TransCanada whole. The shift from long haul transportation on the TransCanada system to short haul transportation from the new mid-continent shale gas supply fields has created, and will continue to create, lost revenues for TransCanada. The Settlement Agreement provides that the lost revenue will be recovered over time. While it is proposed in the Settlement Agreement that, on a net basis, TransCanada will be largely kept whole, the Board notes that there are several other factors that must be taken into account, including timing differences with respect to payments, which may result in discounts to present values, as well as a fixed contribution to be made by TransCanada, and TransCanada's acceptance of a return on equity that is less than what was awarded to it in the most recent NEB decision (although it will still exceed historical return on equity levels for TransCanada).

While Union submits that the net effect is forecast to be gas cost savings to the eastern distributors, the Board is less sure of that outcome. After weighing the various factors noted above, the Board concludes that the delivered gas cost savings on a *final net* landed basis are uncertain. Any revenue shortfall on the TransCanada system caused by the proposed shift to short haul transportation from long haul transportation will be recovered eventually under the terms of the Settlement Agreement. As a result, there may be no enduring transportation savings to offset the gas commodity cost differential.

However, the alternative for the eastern distributors under the recent NEB decision is continued uncertainty with respect to access to gas transportation service on the TransCanada system. That results from the fact, recently underscored by the NEB's

latest decision on TransCanada tolls, that TransCanada has no legal obligation to serve the public.⁷

Therefore it is difficult to come to a firm conclusion about the likelihood of TransCanada costs under the various comparative scenarios as there will always be an element of uncertainty in relation to future economic events. However, the Board accepts as a matter of principle that TransCanada will need to be able to recover its costs in order to continue offering services and to offer new services. The Board concludes that under the most likely scenarios TransCanada will be kept whole, and therefore ratepayers will be no worse off than they would be under the current TransCanada toll regime.

Furthermore, Ontario gas consumers will obtain additional certainty through this project concerning their access to alternative supply sources. The project will provide access to more supply and to more sources of supply while retaining market access to existing WCSB supplies. That is a clear benefit to Ontario consumers, and is a positive element in relation to the economic viability of the project. Supply diversity enhances security and has the tendency to lower gas prices from what they would otherwise be if the market continued to rely on fewer sources of supply.

COC questioned the certainty of eastern shale supply in light of declining production profiles and potential environmental regulations. The Board accepts that all forecasts are uncertain; indeed forecasts based on current information vary. However, all current forecasts show substantial ongoing total production from eastern mid-continent shale supplies. Future regulations may affect price or volumes, but whether regulations having that effect will be adopted in the future is uncertain. Certainly there is no strong evidence that regulatory action will be taken in the short term which would have the result of significantly diminishing production. Nevertheless, production levels are always sensitive to price and the gas market can be highly volatile. Volatility can be driven by all sorts of factors including the economy, weather, transportation bottlenecks, new drilling technologies, and access to storage. Access to liquid markets and a variety of supply sources (which is facilitated by this project) helps to mitigate those uncertainties and price volatility.

⁷ RH-003-2011

The Board concludes that while it cannot firmly determine that Brantford-Kirkwall/Parkway D Project will result in gas cost savings, in the light of the contextual factors, gas cost savings are possible. Even if gas cost savings do not materialize, the project is justified on the grounds of enhanced security and diversity of gas supply, and the contribution that the project will make to enhance a competitive natural gas market in Ontario through increased liquidity at Dawn. The Board notes that the rate impacts are modest and the project has the general support of ratepayer representatives.

Pre-Approval of the Costs

As with the Parkway West Project, Union is also seeking pre-approval of recovery of the cost consequences of the Brantford-Kirkwall/Parkway D Project. The total estimated Brantford-Kirkwall/Parkway D Project costs are \$204 million with the largest full-year revenue requirement being approximately \$15.9 million. Union also requested approval for a variance account to capture any difference between the estimated costs and actual costs. Union's justification and parties' positions were the same for this project as for the Parkway West Project.

Board Findings

Consistent with the finding for the Parkway West Project, the Board will approve the recovery of the cost consequences of the Brantford-Kirkwall/Parkway D Project, subject to two limitations, and the associated variance account. Based on the evidence, the Board concludes that there was no substantive difference between the two projects in relation to this issue and therefore the same reasons apply.

As with the earlier finding, the Board will impose two limitations on the cost pre-approval. First, the Board is only pre-approving recovery of costs consequences up to the current estimate of \$204 million. The Board finds that this cost estimate is reasonable. Second, costs will only be incorporated into rates when the project is completed and in-service. This provides reasonable assurance that ratepayers are not exposed to facilities costs prematurely.

The Board also approves the requested variance account and notes that the same expectations regarding cost control and the future review of cost overruns applies to this project.

Pre-Approval of two contracts with TransCanada

Union has requested pre-approval of the cost consequences of two anticipated TransCanada long-term short-haul transportation contracts. Union submitted that even though precedent agreements have not been executed with TransCanada, the Board should provide pre-approval of the cost consequences of those contracts. Union cited several reasons the Board should provide pre-approval, including:

- the contracts are directly tied to and support the construction of new facilities planned by Enbridge and TransCanada, as contemplated by the Board's guidelines;
- there are significant economic benefits (approximately \$10 million annually) to ratepayers in Union North;
- the contracts represent significant financial and term commitments by Union; and,
- the term and volume associated with the anticipated contracts are known and the remaining aspects of the contract are standard and will be comparable to other TransCanada precedent agreements executed by Union.

Most parties opposed Union's request. Board staff, CME and FRPO submitted that Union's request is not consistent with the Board's *Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts* (the "Guidelines").⁸ CME further submitted that the Board should reject Union's request because the contracts do not currently exist. CCC submitted that approval of the contracts should not be provided until both Segment A of Enbridge's GTA Project and TransCanada's King's North Project have been approved.

Union responded that no party had suggested that Union should not enter into the long-term contracts. Union submitted that based on this, it is appropriate for the Board to consider their cost consequences at this time because the Board has all of the required evidence with respect to the anticipated tolls, the terms of the contracts and the transportation paths.

⁸ EB-2008-0280

Board Findings

The Board will not grant the requested pre-approval of the cost consequences of the two long-term contracts with TransCanada.

The Guidelines specify that pre-approval of the cost consequences of long-term contracts should be limited to those contracts that support the development of new natural gas infrastructure. Although the proposed contracts are related to the new infrastructure proposals, no contract has yet been put in place, nor is there any precedent agreement. The Board has difficulty with the concept of approving the cost consequences of a contract which does not yet exist. How can the Board consider the cost consequences of these proposed contracts when the Board does not know what those costs may be? Union maintained that all the key factors are known, including anticipated tolls. However, in the absence of actual agreements, or even precedent agreements, that information remains highly uncertain. It would be contrary to the public interest to make a decision that is based on an absence, or paucity, of evidence. In addition, there was no cogent evidence to show that the requested approval was crucial to the project.

3.3 Environmental, Technical and Safety Issues

Stantec Consulting Ltd. (“Stantec”) prepared a route selection and environmental impact report for the Brantford-Kirkwall Pipeline in 2009. Stantec subsequently prepared an addendum to the report in 2013. According to the report, the location of the Brantford-Kirkwall Pipeline is the environmentally preferred route. A mitigation plan has been developed to minimize any potential impacts. Stantec also prepared an environmental report for the Parkway West Compressor Station. The report indicates that the Proposed Parkway West Compressor Station will have minimal effects on the environment and Union plans to follow the mitigation measures that have been recommended. There were no issues raised by parties with respect to the environmental impacts of the pipeline or the compressor.

Union stated that the design, installation and testing of the pipeline and station facilities would be done in accordance with the requirements of Ontario Regulation 210/01, *Oil*

and Gas Pipeline Systems under the *Technical Standards and Safety Act, 2000*. There were no issues raised by parties with respect to technical and safety requirements.

Board Findings

Union has committed to implement all the recommendations of the environmental reports. The Board accepts Union's evidence regarding the environmental assessment of the project, and finds that the proposed mitigation and monitoring activities are acceptable and address the environmental concerns. The Conditions of Approval reflect Union's commitments.

The Board is also satisfied that the evidence establishes that the pipeline design and specifications are acceptable based on current standards.

3.4 Landowner Matters

Union has purchased the site for the compressor station. For the Brantford-Kirkwall Pipeline, Union has negotiated early access agreements with landowners along the route to conduct all necessary preliminary surveys. Union committed to having all land rights in place prior to construction. Union noted that it will implement a comprehensive program to provide landowners, tenants and other interested parties with information regarding the proposed pipeline. Union included its draft form of easement which will be offered to all affected landowners in the event an easement is necessary.

There were no issues raised by parties with respect to landowner matters.

Board Findings

Under section 97 of the Act, the Board ensures that the forms of agreement provided to landowners who are located along the approved route of the pipeline are appropriate. The Board determines the appropriate subject-matter of the form of an agreement to be offered to an Ontario landowner, as well as the technical format of the document but not the substance of the agreements, which is left to the landowner and the pipeline company to negotiate. The Board's approval of the form of an agreement thus provides

a baseline for the initial offer of an easement agreement to a landowner, and prevents the company from later resiling from its proffered terms.

The Board is satisfied that Union has properly consulted with those landowners directly affected by the Brantford-Kirkwall/Parkway D Project and that it will continue to do so leading up to and throughout construction. The Board has examined the form of easement agreement provided by Union and finds that it is acceptable and it is therefore approved.

3.5 Aboriginal Consultation

Union indicated that it is not aware of any outstanding issues raised by Métis or First Nations organizations related to the proposed facilities. Union noted that during construction it will have inspectors in the field who are available as primary contacts to discuss and review any issues that may arise. Union will make the necessary archaeological assessments for the project available to any Métis or First Nations organization that requests a copy. Union will undertake construction in accordance with the mitigation measures recommended in the assessment. Board staff submitted that an appropriate mitigation plan has been developed by Union to address any potential issues regarding affected First Nations and Métis organizations.

There were no issues raised by other parties with respect to Union's consultation with First Nation or Métis organizations.

Board Findings

The Board is satisfied that the evidence establishes that Union has consulted appropriately with affected First Nations and Métis organizations with respect to the Brantford-Kirkwall/Parkway D Project. The Board expects Union to continue to proactively consult with affected First Nations and Métis organizations, as appropriate, throughout the construction phase of the project.

3.6 Conditions of Approval

Union accepted the standard conditions of approval as proposed by Board staff, with one exception. Union submitted that the termination date should be December 31, 2016 rather than December 31, 2015.

Union acknowledged that this project is related to the Enbridge GTA Project and the planned TransCanada King's North project. Union stated that it will not undertake construction of the Brantford-Kirkwall Pipeline until TransCanada has received approval from the NEB for the King's North Project. However, Union also maintained that the Parkway D Compressor is not dependent on the TransCanada King's North Project, but is required to meet Enbridge's distribution demands.

Many parties argued that approval for the Brantford-Kirkwall/Parkway D Project should be conditional on other approvals. Board staff submitted that the timing of the Brantford-Kirkwall/Parkway D Project should be aligned with Segment A of Enbridge's GTA Project and TransCanada's King's North Project so that all projects are in-service at about the same time. Board staff submitted that it would not be appropriate to have facilities complete and in-service but under-utilized, because the associated costs will begin to be recovered from in-franchise customers rather than primarily from ex-franchise customers as contemplated in the proposal. CME and LPMA agreed with Board staff's position.

Union responded that it will not begin construction of the Brantford-Kirkwall pipeline until after TransCanada has received approval from the NEB for the King's North Project. However, contrary to Board staff's submission, Union argued that there is no need for the timing of the King's North Project's in-service date to be perfectly aligned with the Brantford-Kirkwall pipeline or Enbridge's GTA Project, and any requirement for perfect alignment could be detrimental. Union noted that short-term delays are 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.

Union also submitted that it would set an undesirable precedent for the Board to condone delaying infrastructure projects until all contingencies were eliminated. Union

submitted that it and its customers should not have to wait until the NEB approves King's North to proceed with development of the Brantford-Kirkwall pipeline. In the event the Board does impose a condition of approval, Union submitted that the condition should not interfere with:

- Union's ability to incur costs in connection with the development of the proposed Brantford-Kirkwall pipeline leading up to construction; or
- Union's ability to recover its prudently incurred costs for any development work on the proposed Brantford-Kirkwall pipeline, even if the NEB does not ultimately approve the King's North Project.

Board Findings

The Board notes that Union has accepted all standard conditions with a proposed revised termination date of December 31, 2016, which is acceptable to the Board.

The Board has considered the interrelationships amongst the projects and how appropriate conditions may be used to ensure a rational construction sequence with respect to the approved facilities. The Board will not condition approval of the Brantford-Kirkwall/Parkway D Project on the approval and construction of Enbridge's proposed GTA pipeline Segment A, notwithstanding the relationship between the projects. Such a condition would be moot in the circumstances because elsewhere in this decision the Board has granted Enbridge leave to construct Segment A.

However, the Board finds that the Brantford-Kirkwall pipeline and the proposed TransCanada King's North project are interdependent (as Union has acknowledged). Accordingly, the Board will condition approval of the construction of the Brantford-Kirkwall pipeline on the NEB's approval of the TransCanada King's North project. In addition, the Board will condition approval on the receipt by Union of a written commitment from TransCanada (after it receives NEB approval) to proceed with the construction of King's North in accordance with the proposed schedule. Within ten days of its receipt by Union, the company shall provide the Board with a copy of TransCanada's written commitment to proceed, and the Board will determine at that time whether further action is required.

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Union has indicated that it intends to expend funds on development work in relation to the pipeline in advance of the NEB's decision on King's North. The Board cautions Union that it will be at risk for recovery of these costs should the pipeline not proceed.

The Conditions of Approval for this application are attached as Appendix E of this decision.

4. Enbridge GTA Project (EB-2012-0451)

4.1 Need and Alternatives

Enbridge's GTA Project involves the construction of two segments of pipeline and associated facilities in and around the Greater Toronto Area. Segment A would be 27 km of NPS 42 pipeline in and around the Town of Milton, the City of Mississauga and the City of Toronto. Closely related to this is the Parkway Gate Station which will connect Enbridge to Union's Parkway West Station. Segment B would be a 23 km NPS 36 pipeline in and around in the City of Vaughan, the City of Markham, the City of Toronto and the Town of Richmond Hill. Enbridge is also seeking approval of its proposed rate methodology for Rate 332 for transportation services along Segment A.

Segment A/Parkway Gate Station

Segment A and the Parkway Gate Station would connect Enbridge to TransCanada and provide gas delivery to Enbridge's Albion Road Station. Segment A has a planned capacity of 2,000 TJ/day. Enbridge maintained that Segment A is needed primarily for distribution purposes, although it has additional transportation benefits and is related to Union's Brantford-Kirkwall/Parkway D Project and TransCanada's King's North project. Enbridge plans to use 40% of the capacity (800 TJ/day) on Segment A to serve in-franchise distribution customers while the remaining 60% (1,200 TJ/day) would be used for transportation purposes, serving ex-franchise customers.

Enbridge identified the following distribution benefits:

- increased supply diversity through access to gas supplies from the U.S. Northeast
- greater system capacity to meet load growth
- gas supply cost savings particularly for peak and seasonal supplies
- improved reliability of upstream arrangements by replacing less secure (short term firm and interruptible) long haul transportation from Western Canada with more secure short haul firm transportation from emerging U.S. Northeast and Dawn supply

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- backup and entry point diversity for the single largest point of risk in the Enbridge franchise – the Parkway Gate Station

Enbridge identified the following transportation benefits:

- access to gas from the U.S. Northeast using short-haul transmission
- greater access to the Dawn Hub

Segment B

Segment B is primarily designed to address load growth, safety and reliability issues. Enbridge forecasts that, by the winter of 2015/2016, the current infrastructure will be unable to supply the required volume of gas at the minimum required inlet pressure at Enbridge's Station B. Station B is the most remote point on the Extra High Pressure (XHP) system from the entry point of gas to the Enbridge GTA franchise area. Without the GTA Project, the inlet pressure at Station B is forecast to drop below the minimum system pressure. With the GTA Project, there will be additional capacity to serve Station B.

Enbridge first identified Station B inlet pressure as a concern in 2002. Enbridge explained that it had deferred construction of the proposed Segment B pipeline on a number of occasions, dating back to 1993, and instead had either procured additional Storage Transportation Service or Firm Transportation capacity. Enbridge noted that its ability to manage the operational risks has become constrained because customer growth has consumed the available capacity in the XHP distribution system.

In addition, the NPS 26 line is the only XHP pipeline connecting the western and eastern parts of Enbridge's distribution system serving the GTA. The smaller NPS 26 connecting pipeline is a bottleneck between the NPS 36 Parkway North line and the NPS 36 Don Valley line. The proposed Segment B would eliminate this east-west bottleneck and allow gas to be available from more diverse supply points and aid in daily load balancing.

Enbridge also noted that Segment B will address operating parameters recently implemented by the Technical Standards and Safety Authority (“TSSA”) for pipelines operating at greater than 30% of Specified Minimum Yield Strength (“SMYS”) in densely populated or high consequence areas. In order to mitigate the risk of a catastrophic event, Segment B would have an operating pressure below 30% SMYS whereas both the Don Valley and the NPS 26 line operate at greater than 30% SMYS. Enbridge indicated that these have been identified as high priority areas in the company’s risk assessment process.

Enbridge explained that it had reviewed a variety of alternatives to the project: using existing pipeline infrastructure on the distribution system or external to Enbridge’s system; curtailing existing firm customers; using liquefied natural gas; and contracting for more transportation services. Enbridge concluded that none of these were viable alternatives to the GTA Project. Enbridge also investigated compression alternatives within the distribution system to alleviate the potential of falling below minimum system pressure requirements. This alternative was rejected because it would involve adding compression at numerous locations which is problematic in an urban setting.

While most parties supported Enbridge’s application, Environmental Defence, GEC and BOMA opposed the project on the basis that DSM was a viable alternative for all or part of the project. Both Environmental Defence and GEC coordinated to sponsor expert evidence on DSM.

Mr. Ian Jarvis, Ms. Wen Jie Li and Ms. Gillian Henderson from Enerlife Consulting provided expert evidence on behalf of Environmental Defence. Their evidence examined the potential role increased DSM efforts could play in offsetting load growth in the GTA area. Enerlife Consulting concluded that all load growth in the GTA area can be completely offset through commercial and apartment DSM and that overall demand can be significantly reduced with the addition of residential and industrial DSM.

Mr. Chris Neme and Mr. Jim Grevatt from Energy Futures Group and Mr. Paul Chernick from Resource Insight, Inc. provided separate, but related pieces of expert evidence on behalf of GEC. Energy Futures Group provided a companion piece of evidence to that of Enerlife Consulting. Energy Futures Group critiqued Enbridge’s assessment of DSM

as an alternative and provided an assessment of the potential incremental efficiency savings achievable in the GTA Project area based on the experience of leading jurisdictions. Energy Futures Group concluded that examples from other jurisdictions clearly demonstrate that Enbridge could be capturing much greater savings through aggressive energy efficiency than it has been capturing to date. Mr. Chernick examined the extent to which expanded DSM efforts could defer or avoid some or all of EGD's proposed GTA Project, with a focus on Segment B. Mr. Chernick concluded that Segment B appears to be avoidable through load reductions from a combination of accelerated DSM, expansion of interruptible or curtailment rates for industrial, commercial and apartment loads, and arrangements to reduce the load of the Portlands Energy Centre ("Portlands") (a large combined-cycle power plant served from Station B) on winter design-peak days.

Board Findings

The Board finds that the evidence supports the need for the GTA Project and that no superior alternative has been identified.

COC opposed the GTA Project as a whole for the same reasons it opposed the Union projects. The Board has already explained earlier in this decision in respect of the Union projects why it does not agree with COC's analysis, and the Board adopts the same reasoning in relation to COC's objections to the Enbridge project. The Board does not consider COC's arguments to be a valid basis to deny the application.

Segment A/Parkway Gate Station

Most parties supported Segment A and the Parkway Gate Station, largely for the same reasons they supported Union's Brantford-Kirkwall/Parkway D Project. Enbridge has been guided by the Board's direction in the Union EB-2011-0210 decision. In that proceeding, the Board was concerned with the potential for overbuilding or duplicative infrastructure which would result in adverse consequences to ratepayers. As a result, the Board directed Union Gas, Enbridge and TransCanada to co-operate on building natural gas infrastructure. The Board finds that Enbridge's Segment A, as well as Union's project, are responsive to the Board's direction. Segment A and the Parkway Gate Station alleviate a key transmission bottleneck, enable switching from long haul to

short haul transportation services, and provide efficiency and optimization benefits through shared transportation and distribution use.

BOMA, GEC and Environmental Defence objected to Segment A and the Parkway Gate Station to varying degrees, largely for the same reasons BOMA and GEC objected to the Union Brantford-Kirkwall/Parkway D Project. The Board has previously addressed these arguments and has explained why it does not agree with the analysis. The Board adopts the same reasoning as it relates to Segment A and the Parkway Gate Station. As with the Brantford-Kirkwall/Parkway D Project, the Board finds that there is no credible evidence that DSM is a viable alternative to Segment A and the Parkway Gate Station.

Segment B

Most parties supported Segment B as the appropriate way to address customer growth and system reliability and safety concerns. However, a few parties raised objections and concerns with respect to whether the project is needed at this time and whether there were suitable alternatives. The Board will deal with each issue separately and then set out its expectations regarding future planning.

Segment B – Need

Two issues were raised with respect to the need for the project:

- the risk assessment process
- the urgency of the requirement

Environmental Defence submitted that demand growth and gas supply alternatives were the primary drivers for Enbridge's proposal and that reliability concerns were a secondary consideration in the planning process. GEC questioned the rationale supporting pressure as a driver for Segment B, arguing that pressure was not a significant issue in the near or long term as many other lines on Enbridge's system currently operate above 30% SMYS. SEC also noted that a significant number of Enbridge's pipelines operate at or above 30% SMYS. Although supportive of the overall project, SEC submitted that Enbridge's risk assessment was inadequate and argued that the company should have developed or conducted an analysis of its distribution system to determine if and when facilities are needed to address pressure issues.

The Board finds that there was limited evidence that Enbridge undertakes a systematic and transparent risk assessment process for pipeline replacement. Other pipelines on the company's system are over 40 years old and operate at or above 30% SMYS, and Enbridge's prioritization process for determining pipeline replacement is not entirely clear. However, the Board finds that there are reliability issues associated with the NPS 26 and Don Valley Line which need to be addressed. These issues arise from load growth and recent TSSA code changes. Recent experience on the Don Valley Line confirms the existence of a significant physical risk. For any future pipeline replacement or reinforcement proposals, the Board expects to see a more transparent and systematic risk assessment and project prioritization.

While not opposing the project, some parties suggested that Segment B was the least urgent portion of the GTA Project, particularly the north-south Don Valley line, and that it could perhaps be done in stages or the construction start date deferred. The Board finds that Enbridge's evidence is adequate to approve the project now, and that there is no compelling reason to defer the building of Segment B or to stage the construction. The Board accepts Enbridge's evidence that there are cost efficiencies in proceeding with Segment B concurrently with Segment A.

Segment B – Alternatives

Environmental Defence submitted that Enbridge had not established that the GTA Project was the preferred alternative compared to a combination of DSM and increased interruptible service. BOMA provided similar submissions with respect to Enbridge's lack of evaluating DSM as an alternative during its planning. GEC submitted that DSM as an alternative was not properly considered and that Enbridge did not fully evaluate the least cost planning option of increased conservation and/or rate design options.

Rate design options would include interruptible and/or curtailment rates for specific customers. For example, it was suggested that if Portlands were switched to an interruptible service, then the reliability issue would be largely addressed, at least in the short term. Portlands did not participate in the hearing, so it is speculation as to whether it would agree to such an arrangement. However, it is significant that Enbridge

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did not explore this option or other rate options with key customers. Enbridge explained that it plans its system to meet peak needs and assumes that interruptible loads are on.

The second alternative would be DSM programs. As noted above, both GEC and Environmental Defence provided expert evidence which examined the potential for increased natural gas savings in the GTA to offset or defer Enbridge's proposed GTA Project. Both GEC and Environmental Defence's experts concluded that some or all of Enbridge's GTA Project could be avoided or deferred.

GEC submitted that the Board needs to promote energy conservation and that DSM has proven to be a viable alternative to capital investments with a 4:1 benefit to cost ratio. Further, GEC submitted that concentrated DSM in higher influence areas could address Enbridge's peak issues on Segment B. The added benefit of this option would be greenhouse gas reduction, in accordance with government policy.

Environmental Defence submitted that DSM was a superior alternative to the project. In Environmental Defence's view, load growth and the reliability concern can be adequately addressed using DSM and interruptible rate options. Environmental Defence argued that such an approach would be less risky for ratepayers and would be consistent with government policy.

Many parties submitted that although DSM provides benefits, it was not a viable or reasonable alternative to Segment B. Board staff submitted that increased DSM activity is not a full or partial alternative at this time. In Board staff's view Enbridge's current approaches to DSM and system planning are not directly comparable because system planning is based on peak demand which is not the basis for DSM program planning. SEC submitted that it is not practical to require Enbridge to design and develop new DSM programs to meet an in-service date of winter 2015/2016. However, SEC also noted that Enbridge waited and addressed the pressure issue poorly, eliminating any possibility for targeted or increased DSM as an option.

Enbridge responded that it is fully committed to DSM but that DSM cannot be seen as an appropriate alternative to any portion of the GTA Project. Enbridge noted that the DSM framework is specifically intended to consider annual consumption savings.

Enbridge submitted that the capacity required to reduce the pressure in the Don Valley Line (165 TJ/day) is more than an order of magnitude larger than what Enbridge could achieve through its DSM efforts.

Based on the evidence of GEC and Environmental Defence, the Board accepts that targeted DSM programs and/or rate design options might in some circumstances mitigate the need for Segment B. However, there are significant uncertainties:

- It is uncertain whether DSM or rate design would fully offset the need for the pipeline. For example, Portlands is a firm service customer and presumably selected that option, including paying a substantial contribution in aid of construction, understanding its options. In addition, the intervenor evidence identified the use of 80 buildings for targeted DSM, but Enbridge's evidence is that there are only 42 such buildings in the relevant area.
- Considerable time and resources would be required to substantially re-structure Enbridge's current DSM program. The evidence suggests that the DSM budget would need to triple in size and the nature of the programs would change substantially.
- The impact of targeted DSM programs on Enbridge's peak demand is uncertain as Enbridge does not currently have the necessary analytical tools or information. The current DSM framework is intended to achieve annual consumption savings.
- The cost of the DSM programs is uncertain. It would be important to understand the costs and rate impacts as part of the analysis of the alternatives.

These uncertainties are significant because of the timing for Enbridge's requirement and the lack of documented success of this approach in another similar situation involving a gas utility. The Board accepts the company's evidence related to the timing in which the reliability and load growth issues must be addressed, given the physical system risks involved, and concludes that DSM and/or rate design options are not a sufficiently viable alternative in these circumstances to warrant denial of the project.

GEC and Environmental Defence also argued that the project should be rejected on the basis that Enbridge's planning approach was inadequate. The Board does not agree. Enbridge claimed to have considered DSM alternatives, but the consideration was cursory at best. The evidence is clear that no staff with DSM expertise attended the relevant meetings. Enbridge acknowledged that it had not conducted integrated resource planning⁹ and argued that it could not have been expected to do so. The company conducted its planning, and the assessment of alternatives, within the context of the current regulatory framework and the current framework for DSM. The Board finds that this approach was reasonable in the circumstances.

Future Planning

Environmental Defence urged the Board to send a signal to the companies that new supply-side investments will not be approved unless all lower cost DSM and/or interruptible service options have been explored and documented. Other parties agreed and argued that both Enbridge and Union should be required to do a better job at properly incorporating DSM into system planning, with some parties suggesting that both companies should be required to conduct integrated resource planning.

Enbridge responded that if the Board decides to consider integrated resource planning within the DSM framework, or more broadly in a generic hearing, Enbridge would be willing to take a leadership role. Enbridge was supportive of a generic hearing regarding the role of geographically targeted DSM programs under an integrated resource planning framework, including addressing some of the suggestions from Environmental Defence, GEC and BOMA.

In light of the evidence presented, the Board concludes that further examination of integrated resource planning for gas utilities is warranted. The evidence in this proceeding demonstrates that the following issues should be examined:

- The potential for targeted DSM and alternative rate designs to reduce peak demand

⁹ An integrated resource plan is a utility plan for meeting demand through a combination of supply-side and demand-side resources.

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- The role of interruptible loads in system planning
- Risk assessment in system planning, including project prioritization and option comparison
- Shareholder incentives

There will undoubtedly be other issues as well. The Board notes that this review is particularly timely given the recent provincial Long Term Energy Plan. Further information on how the Board will examine gas integrated resource planning will be released in due course.

Pending that review, the Board expects applicants to provide a more rigorous examination of demand side alternatives, including rate options, in all gas leave to construct applications.

4.2 Project Costs, Economic Evaluation, Rate Impact (including Rate 332)

Enbridge estimated the cost of the GTA Project to be \$686.5 million. Segment A is estimated to cost approximately \$384 million, including the Parkway West Gate Station, while Segment B is estimated to cost approximately \$302 million. Enbridge conducted economic feasibility calculations for the GTA Project in accordance with both E.B.O 188 and E.B.O. 134. Based on Enbridge's analysis, the PI of the GTA Project is 1.73 and the NPV is \$667 million. Enbridge also conducted sensitivity analysis scenarios: 10% higher capital costs; zero transmission revenue from shippers on Segment A; 25% and 50% lower transportation cost savings. Under these scenarios, either individually or collectively, the GTA Project is still economically feasible in Enbridge's analysis. Because the economic feasibility results are positive, the company only performed a Stage 1 analysis. However, Enbridge maintained that the evidence shows that Stage 2 benefits would be substantial for consumers using natural gas as opposed to other fuels. Enbridge also noted that the reliability benefits of GTA Project were not monetized, and are not part of the economic feasibility calculations, but are of significant value.

Under Enbridge's analysis, total bill impacts are positive overall. Enbridge provided bill impacts for each rate class, calculated two ways: (1) the total impacts associated with all three applications (Enbridge's GTA Project and Union's Parkway West and Brantford-Kirkwall/Parkway D Projects) and the expected gas cost savings; and, (2) the bill impacts associated solely with the Settlement Agreement, which relates to increased gas costs. The first analysis indicates customer bill savings ranging from a reduction of 3.7% for residential customers to a reduction of 11.0% for industrial customers. The second analysis indicates customer bill increases ranging from an increase of 2.3% for residential customers to an increase of 3.4% for industrial customers.

Enbridge also requested Board approval of the proposed rate methodology for Parkway to Albion transportation service on Segment A under Rate 332. Enbridge proposed that 60% of the fully allocated revenue requirement for Segment A be allocated to transportation service customers. Enbridge has also proposed that the allocated costs be recovered through a monthly charge, but the company indicated that the actual rate design for Rate 332 should be reviewed by the Board in the company's customized incentive rate application which is currently before the Board.¹⁰

Parties provided a range of submissions regarding the economics of the GTA Project. However, there was general support for Enbridge's proposition that the GTA Project will allow the company to switch to short haul transportation for seasonal or peaking needs from the more expensive firm long haul service which it is currently using.

Parties raised two concerns with respect to rate impacts: the estimated gas cost savings and the allocation of costs on Segment A, particularly in the event there are no transportation customers. With respect to gas costs savings, parties raised many of the same issues as were raised in the context of Union's Brantford-Kirkwall/Parkway D Project.

With respect to the allocation of Segment A costs, Enbridge's proposal is that if there are no transportation service customers on Segment A, then the full revenue requirement would be recovered from in-franchise customers. Board staff submitted

¹⁰ EB-2012-0459

that it is unreasonable for distribution customers to bear the risk and cost consequences in the event that transmission service revenue on Segment A does not occur or is delayed. Board staff submitted that the risk should reside with the parties standing to benefit from the availability of incremental capacity stemming from upsizing Segment A from NPS 36 to NPS 42, such as transmission customers or Enbridge shareholders. CME, CCC, BOMA and Energy Probe took similar positions. CME suggested that a condition of approval should be added so that Enbridge cannot begin construction of Segment A until it provides an undertaking to the Board that it will not seek to recover from its distribution customers any more than 40% of the revenue requirement for Segment A.

Some parties argued that additional costs should be allocated to transportation customers in any event, namely the incremental costs of increasing the pipe size and changing the starting point. Energy Probe submitted that it is not appropriate for ratepayers to have any cost responsibility for additional capacity or operating capital related to Enbridge's change from an NPS 36 to NPS 42 pipeline as it is unnecessary to serve its in-franchise distribution needs. FRPO submitted that the incremental cost of moving the starting point of Segment A from Bram West to Parkway only benefits transportation services and therefore the incremental cost should be borne by those customers.

Enbridge noted that the original application was for a distribution-only NPS 36 pipeline and that its revised approach added the transportation component in response to the Board's direction in Union's EB-2011-0210 proceeding where the Board encouraged cooperation amongst Union, Enbridge, and TransCanada with regard to natural gas infrastructure expansion. Enbridge further noted that the updated application and approach to Segment A results in distribution ratepayers bearing 40% of the revenue requirement on \$350 million rather than 100% of the revenue requirement for a project that would cost only \$55 million less. Enbridge submitted that the results of its open season for Segment A demonstrated enough interest to warrant an NPS 42 pipeline.

Enbridge argued that it would be inappropriate for shareholders to bear the risks associated with 60% of the revenue requirement of Segment A. Enbridge maintained that if the Board were to accept the position advanced by Board staff regarding the

allocation of responsibility for the revenue requirement of Segment A, the company could not proceed with the GTA Project on that basis. Enbridge submitted that the GTA Project is not primarily for transportation purposes, but rather that it is primarily for distribution purposes.

Board Findings

The Board accepts the cost estimate for the GTA Project as reasonable and finds that the economic analysis, along with the qualitative factors related to supply diversity and reliability, supports a conclusion that the project is in the public interest.

Some parties challenged the estimates of gas cost savings. The Board has already addressed this issue in its decision on Union's Brantford-Kirkwall/Parkway D Project. The Board does note however, that the evidence supporting gas cost savings is stronger for this project than for the Union project. Enbridge is currently relying on firm service for seasonal requirements, thereby incurring significant unabsorbed demand charges. The completion of Segment A will facilitate a shift to alternative sources of seasonal services, and the evidence demonstrates these alternatives will be less expensive.

Parties supported the proposed 60/40 transportation/distribution allocation of the Segment A revenue requirement. However, some parties argued that in addition to the 60/40 split, all of the incremental costs associated with changing Segment A to a joint distribution/transportation project should also be allocated to transportation customers. The Board does not agree. Segment A is an integrated distribution and transportation pipeline and the cost allocation method appropriately allocates costs on the basis of total costs and the proportion of total capacity for each use.

Some parties also disputed who should bear the costs of unused transportation capacity on Segment A. This situation would arise if Segment A were completed before Union's Brantford-Kirkwall/Parkway D Project and/or TransCanada's King's North project. Enbridge proposed that the costs be recovered from distribution customers. Some parties argued that the Board's approval should be conditioned on the NEB's approval of King's North. That proposal, which the Board will not adopt, is discussed later under Conditions of Approval. Other parties argued that Enbridge's shareholders should bear

the risk of unused transportation capacity. The Board does not agree that shareholders should be at risk for 60% of the revenue requirement for Segment A. The project is a combined distribution and transportation project. The project is responsive to the Board's direction in Union EB-2011-0210 that the various companies cooperate on infrastructure planning. The Board accepts that this type of coordination may result in some timing differences amongst the projects. The benefits of a combined approach are significant in terms of lowering total cost, avoiding duplicate infrastructure and reducing environmental impact.

However, the Board also agrees with parties that if there is no transportation revenue, distribution customers should not automatically bear the costs associated with the incremental capacity added to serve transportation customers. The evidence is that the cost difference between the NPS 36 pipeline (which would be required for distribution needs only) and the NPS 42 pipeline (which accommodates both distribution and transportation needs) is \$55 million. Once Segment A is in service, if there are no transportation customers, then Enbridge will be required to record the revenue requirement impact of the \$55 million in a deferral account for eventual recovery from transportation customers on Segment A.

There are also incremental costs associated with changing the starting point from Bram West to Parkway. However, under a distribution-only project, with Bram West as the starting point, there would also have been additional TransCanada charges. The charges are avoided in the combined distribution and transportation project. For this reason, the Board will not segregate the incremental starting point costs.

The Board will also approve the proposed methodology for transportation service on Segment A under Rate 332. The Board finds that the proposed 60/40 allocation of the revenue requirement for Segment A to transmission and distribution customers respectively is consistent with established cost allocation principles in that 60% of the capacity is for transportation customers and 40% is for distribution customers. The Board notes however that the detailed rate design will be examined through a separate proceeding, at which time parties will have an opportunity to review this issue in greater detail.

APPPrO opposed the rate impact on unbundled distribution customers and argued that the costs of the GTA Project should be borne mostly by bundled and transportation customers. APPPrO indicated that it intended to address this concern in an upcoming rate proceeding, likely Enbridge's IRM application. APPPrO's argument is similar to the submission Kitchener made on Union's Parkway West Project. Like Kitchener, APPPrO raises considerations which require an examination of cost allocation principles which is beyond the scope of this proceeding. Cost allocation issues are generally reviewed in cost of service rebasing hearings, and APPPrO has indicated that it intends to raise the issue in a future rates proceeding. The Board need not make a determination on this issue at this time.

4.3 Environmental, Technical and Safety Issues

Dillon Consulting Inc. ("Dillon") prepared an environmental report for Enbridge in 2012 and recommended the route and location for the GTA Project through the process outlined in the Board's *Environmental Guidelines*. Dillon subsequently prepared two amendments to the environmental report, one in February 2013 and the second in July 2013 in response to ongoing consultations. According to the report, the locations of Segment A and Segment B are the environmentally preferred routes. A mitigation plan has been developed to minimize any potential impacts. There were no issues raised by parties with respect to the GTA Project environmental report.

Enbridge stated that the design, installation and testing of the pipeline and station facilities would meet or exceed the most stringent standards according to CSA Z662-11 which is the Canadian Standards Association's Oil & Gas Pipeline System standard (2011 edition). There were no issues raised by parties with respect to technical and safety requirements.

Board Findings

The Board accepts Enbridge's evidence regarding the environmental assessment of the GTA Project, and finds that the proposed mitigation and monitoring activities are acceptable and address the environmental concerns. Enbridge has committed to

implementing all the recommendations of the Environmental Report. The Conditions of Approval reflect Enbridge's commitments.

The Board is also satisfied that the evidence establishes that the pipeline design and specifications are acceptable based on current standards.

4.4 Landowner Matters

Enbridge submitted that there are no outstanding issues with respect to land matters related to the GTA Project. Enbridge included a proposed form of agreement as part of its application. Enbridge noted that it has offered, or will offer, the form of agreement to each of the landowners affected by the GTA Project. Enbridge noted that it will complete agreements with landowners, and obtain permits, following approval of the project by the Board.

Metrolinx and York did not object to the proposed pipeline route, but submitted that they would like to continue to be included in discussions about the project once the final detailed engineering plans are complete.

Metrolinx noted that Enbridge still needs to obtain the necessary permits and/or enter into the crossing agreements required by Metrolinx. Enbridge responded by confirming that it will continue to work with Metrolinx through the detailed design of the GTA Project, provide detailed design drawings, obtain permits and enter into crossing agreements necessary to carry out the work. Enbridge also noted that it will, to the extent practicable, avoid impacting existing and planned GO Transit and Metrolinx facilities.

York submitted that it remains concerned about temporary and permanent impacts of the construction and operation of the proposed pipeline on existing and planned regional facilities. York noted that Enbridge will still be required to obtain all the necessary permits and/or enter into agreements as required by York. Enbridge confirmed that detailed engineering or construction plans will include proposed construction and staging requirements for the pipeline, and the plans will be provided to

York for its review and comment. Enbridge also confirmed that it will continue to work with York through the detailed design of the GTA Project, obtain permits and enter into agreements necessary to carry out the work and avoid impacting existing and planned York facilities where practicable.

8081 Woodbine Investment requested that a condition be included in the Board's Conditions of Approval indicating that leave to construct does not authorize any expropriation in respect of Part 1 on Plan 65R-32626, owned by 8081 Woodbine Investment land. Enbridge confirmed it does not require land rights in respect of Part 1 on Plan 65R-32626 and submitted that the proposed condition is not warranted and that it is premature for the Board to make such a ruling. Enbridge submitted that any issue with expropriation is more properly dealt with by the panel constituted to consider any such application.

Enbridge noted that it and Markham Gateway had entered into Minutes of Settlement in respect of the location of the GTA Project within the Markham Gateway lands. Enbridge expressed its intention to fulfill its obligations as set out in the Minutes of Settlement.

Board Findings

Enbridge has successfully resolved most landowner issues. Several landowners and adjacent landowners have requested that Enbridge continue to work with them to keep them informed of progress and ensure there are no land conflicts. The Board notes Enbridge's commitments to York Region, Metrolinx, Markham Gateway and Contango.

With respect to the condition of approval proposed by 8081 Woodbine Investment, the Board agrees with Enbridge that it is inappropriate for the Board to make any decisions on possible expropriation at this time. Issues related to expropriation are beyond the scope of this proceeding.

The Board approves the form of easement which has been filed by Enbridge.

4.5 Aboriginal Consultation

Enbridge followed the consultation guidelines set out in the Board's *Environmental Guidelines*. Two First Nations intervened in the proceeding: the Mississaugas of the New Credit First Nation ("MNCFN") and the Six Nations. Both were granted costs eligibility. Six Nations withdrew from the proceeding on April 24, 2013. The MNCFN filed written submissions.

The MNCFN suggested that the Crown's duty to consult with respect to potential impacts to existing or asserted Aboriginal or treaty rights has not been satisfied. The MNCFN requested that the Board include a variety of conditions to any approval, including a request that the project be delayed until Enbridge has provided the appropriate financial resources to retain expertise to review the project. MNCFN requested that it be included in further environmental assessments conducted on traditional territory.

Enbridge reiterated its commitment to continue to work with the MNCFN throughout the remainder of the planning, design and construction for the GTA Project, a commitment outlined in the environmental report. Enbridge noted that as a result of the findings in the archaeological assessments the location of the proposed pipeline was altered to reduce and mitigate potential impacts and a Stage 2 archaeological assessment was scheduled for completion in 2013. Enbridge noted that in April 2013, Dillon wrote to the First Nations and Métis organizations regarding the results of the Stage 2 assessment that had been completed on a 7 km section of Segment B, which indicated that no archaeological remains were found in this section. Enbridge further noted that there has been additional correspondence with First Nations and Métis organizations regarding the completion of Stage 2 and Stage 3 archeological assessment work. Enbridge committed to continuing to work with all First Nations, including the MNCFN, and Métis throughout the remainder of the archeological assessment, and the design and construction of the GTA Project.

Board staff noted that the MNCFN had notice of this proceeding since March, 2013 and that it appears that Enbridge's pre-filed evidence addressed many of the MNCFN concerns. Board staff noted that to the extent that the MNCFN was not satisfied with

Enbridge's proposal, or if it had further questions, the interrogatory process would have been an appropriate forum to obtain additional information. Board staff did not support the conditions requested by the MNCFN.

Board Findings

The MNCFN was granted intervenor status and was deemed eligible for a cost award. The MNCFN did not file any interrogatories, and did not participate in the Issues Day, the settlement conference, or the oral hearing but did participate in final argument. It is unfortunate that the MNCFN did not take advantage of the opportunity to explore Enbridge's evidence in detail through the hearing process. For example, Enbridge's archaeological assessment could have been subjected to questioning through the interrogatory process and the oral hearing. That is one of the key purposes of having a hearing. The Board provided the MNCFN with eligibility for an award of costs, so funding for counsel, consultants and experts (if required) was available.

With respect to the MNCFN's submissions regarding the duty to consult, the Board offers the following comments. To the extent that the duty to consult issues identified fall within the Board's jurisdiction, it is the Board's responsibility to ensure appropriate consultation has taken place. MNCFN does not suggest that the Board itself should be engaged in one on one consultation. The Supreme Court's decision in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*¹¹ also suggests that this will not normally be the role of a tribunal.

The MNCFN indicated that it is in the process of developing a long-term relationship agreement with Enbridge Inc. but that an agreement has not yet been finalized. The Board takes this as a positive indication that discussions are ongoing between the parties at a variety of levels, including with respect to this particular project, and therefore no formal findings are required at this time with respect to the quality of the consultations that have occurred with respect to this project. In addition, the MNCFN proposed a number of conditions designed to address its primary concerns. The MNCFN's proposed conditions were as follows:

¹¹ [2010] 2 S.C.R. 650, para. 60.

- For each work site, Enbridge provide MNCFN with the following information: (i) exact location and size of site; (ii) plans to protect the environment and sensitive watershed; and (iii) the contamination characteristics, dewatering details, and water treatment and discharge plans for the site.
- Enbridge Gas permit third party contractors (“Monitors”) selected by the MNCFN to actively participate in Enbridge’s environmental and archaeological assessment and monitoring work at any Work Site that has high archaeological potential or has significant environmental concerns, as determined by MNCFN.
- Enbridge Gas provide financial resources to the MNCFN to hire and administer the Monitors and to hire consultants to review all of the permits and approvals that Enbridge has made with respect to the initial construction and ongoing operations and maintenance activities, to the extent necessary to protect the MNCFN’s rights, title and interests.
- Enbridge Gas ensure that adequate insurance and/or funds are available for any cleanup, compensation and restoration in the event of accidents and malfunctions on the MNCFN’s traditional territory resulting from the Project and any operations and maintenance activities in the future.

The Board finds that the first condition is reasonable and that condition will be adopted as presented. With respect to the other three conditions, the Board finds that the conditions should be applied in conjunction with a reasonability standard and therefore the Board has modified them accordingly. In addition, the Board’s Conditions of Approval only govern the construction phase, not ongoing operations and maintenance. Enbridge’s ongoing operations are governed using other mechanisms, including rate regulation and various technical requirements established by standards-setting authorities. The Board will modify each of the conditions accordingly:

- Enbridge Gas will permit Monitors selected by the MNCFN to actively participate in Enbridge’s environmental and archaeological assessment and monitoring work at any Work Site that has high archaeological potential or has significant environmental concerns, as determined jointly by the MNCFN and Enbridge, both parties acting reasonably.

- Enbridge Gas will provide reasonable financial resources to the MNCFN to hire and administer the Monitors and to hire consultants to review the construction permits and approvals required by Enbridge, to the extent necessary to protect the MNCFN's rights, title and interests.
- Enbridge Gas will ensure that it has adequate insurance and/or funds available for any cleanup, compensation and restoration in the event of accidents and malfunctions on the MNCFN's traditional territory resulting from the project.

With the application of those conditions, the Board is of the view that it is appropriate for the Board to issue its final decision with respect to this application.

4.6 Conditions of Approval

Enbridge accepted the standard conditions of approval for section 90 and section 91 applications as proposed by Board staff with a termination date of February 28, 2015.

For Segment A, the main concern raised by parties was how the in-service date should correspond to the proposed TransCanada King's North project. It was the general position of parties that Segment A should be in some way tied to the approval and construction schedule of the TransCanada project.

Board Findings

The Board notes that Enbridge has accepted all standard conditions with a revised termination date of February 28, 2015, which is acceptable to the Board.

The Board has considered the interrelationships amongst the projects and how appropriate conditions may be used to ensure a rational construction sequence with respect to the approved facilities. The Board has conditioned the Brantford-Kirkwall pipeline on approval of TransCanada's King's North project. Many parties argued that Segment A should be similarly conditioned. Energy Probe proposed a related condition requiring that Enbridge demonstrate it has entered into long-term contracts for capacity on Segment A. The Board will not adopt these conditions. Although Segment A is related to the Union and TransCanada pipeline projects, it also has a distribution

Ontario Energy Board

purpose which is distinct. The Board will therefore not condition Segment A on the NEB's approval of the King's North project or the completion of long-term contracts. Ideally, all of the projects (Union's, Enbridge's and TransCanada's) would be in-service at the same time. However, the Board accepts that there is some risk of timing differences. Elsewhere in this decision the Board has addressed how the risk of underutilized transmission capacity on Segment A will be treated.

Various parties proposed other conditions of approval, which have been addressed elsewhere in this decision. The Conditions of Approval for this project are attached at Appendix G.

5. THE BOARD ORDERS THAT:

1. Union Gas Limited is granted leave, pursuant to sections 90(1) and 91 of the Act, to construct the Parkway West project, consisting of the installation of a compressor and the construction of 740 meters of natural gas pipeline and associated facilities in the Town of Milton, all subject to the conditions of approval set out in Appendix C.
2. Union Gas Limited is granted approval, pursuant to section 36 of the Act, for the recovery of up to \$219 million of capital costs for the Parkway West Project, beginning from the date that the as-constructed facilities are placed in service. The Board further approves the creation of a Parkway West variance account to track any variances from the \$219 million cost estimate.
3. Union Gas Limited shall file a Draft Accounting Order for the Parkway West Project with the Board within **10 days** of the date of this Decision and Order. The Draft Accounting Order shall include the purpose of the account, an account description, the account number and accounting entries for recording any variances.
4. Union Gas Limited is granted leave, pursuant to sections 90(1) and 91 of the Act, to construct the Brantford-Kirkwall/Parkway D Project; consisting of 13.9 km of NPS 48 pipeline and associated facilities between the City of Cambridge and the City of Hamilton and a new compressor at the Parkway West site, all subject to the conditions of approval set forth in Appendix E.
5. Union Gas Limited is granted approval, pursuant to section 36 of the Act, for the recovery of up to \$204 million of capital costs for the Brantford-Kirkwall/Parkway D Project, beginning from the date that the as-constructed facilities are placed in service. The Board further approves the creation of a Brantford-Kirkwall/Parkway D variance account to track any variances from the \$204 million cost estimate.
6. Union Gas Limited shall file a Draft Accounting Order for the Brantford-Kirkwall/Parkway D Project with the Board within **10 days** of the date of this Decision and Order. The Draft Accounting Order shall include the purpose of the account, an account description, the account number and accounting entries for recording any variances.

7. Enbridge Gas Distribution Inc. is granted leave, pursuant to section 90(1) and 91 of the Act, to construct the GTA Project; consisting of the construction of two segments of natural gas pipeline, and associated facilities, in and around the City of Toronto, more particularly described as: Segment A (approximately 27 km long and located in the Town of Milton, the City of Mississauga and the City of Toronto), the Parkway West Gate Station and associated facilities, and 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), all subject to the conditions of approval set out in Appendix G.
8. Enbridge will create a deferral account to track the revenue requirement impact of \$55 million in incremental capital spending associated with the transmission component of the GTA Project. Enbridge Gas Distribution Inc. shall file a Draft Accounting Order with the Board within **10 days** of the date of this Decision and Order. The Draft Accounting Order shall include the purpose the account, an account description, the revenue requirement impact calculation methodology for recording costs, the account number and accounting entries.
9. Intervenors shall file with the Board and forward to Union Gas Limited and/or Enbridge Gas Distribution Inc. their respective detailed and project specific cost claims within **7 days** from the date of this Decision and Order.
10. Union Gas Limited and Enbridge Gas Distribution Inc. shall file with the Board and forward to intervenors any objections to the claimed costs within **14 days** from the date of this Decision and Order.
11. Intervenors shall file with the Board and forward to Union Gas Limited and/or Enbridge Gas Distribution Inc. any responses to any objections for cost claims within **21 days** of the date of this Decision and Order.
12. Union Gas Limited and Enbridge Gas Distribution Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

Ontario Energy Board

All filings with the Board must quote the file number EB-2012-0451/EB-2012-0433/EB-2013-0074, and be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Parties should use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may e-mail their documents to the attention of the Board Secretary at BoardSec@ontarioenergyboard.ca. All other filings not filed via the Board's web portal should be filed in accordance with the Board's *Practice Directions on Cost Awards*.

DATED at Toronto, January 30, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

**Decision and Order
January 30, 2014**

**Enbridge Gas Distribution Inc.
GTA Project (EB-2012-0451)**

**Union Gas Limited
Parkway West Project (EB-2012-0433)
Brantford-Kirkwall/Parkway D Project (EB-2013-0074)**

Details of the Proceeding

Intervenors and Issues

On March 5, 2013 the Board issued a Notice of Application (the “Notice”) for both Enbridge’s GTA Project and Union’s Parkway West Project. In response to the Notice, the Board received intervention requests from the following parties:

1. Beverly Glen Ratepayers Association (“Beverly Glen Ratepayers”)
2. Beaver Valley Stone Limited (“Beaver Valley”)
3. City of Kitchener (“Kitchener”)
4. City of Markham (“Markham”)
5. City of Toronto (“Toronto”)
6. Direct Energy Marketing Limited (“Direct Energy”)
7. Enbridge Gas Distribution Inc. (“Enbridge”)
8. Gaz Métro Limited Partnership (“Gaz Métro”)
9. Independent Electricity System Operator (“IESO”)
10. Markham Gateway Inc. (“Markham Gateway”)
11. Metrolinx
12. Ontario Power Generation (“OPG”)
13. Regional Municipality of York (“York Region”)
14. 8081 Woodbine Investment Ltd (“8081 Woodbine Investment”)
15. Union Gas Limited (“Union”)
16. TransCanada PipeLines Limited (“TransCanada”)
17. TransCanada Energy Limited (“TCE”)
18. Transalta Cogeneration LP (“Transalta”)
19. Dennis Wintjes
20. Ajit Rathod
21. Karny Roe
22. Jadhu Nadarajah
23. Linda Nardea
24. Gary Drisdelle

The Board granted intervenor status to each of these parties.

Ontario Energy Board

The Board also received requests for intervention and cost eligibility from the following parties:

1. Association of Power Producers of Ontario (“APPrO”)
2. Building Owners and Managers Association - Toronto (“BOMA”)
3. Consumers Council of Canada (“CCC”)
4. Council of Canadians (“COC”)
5. Canadian Manufacturers and Exporters (“CME”)
6. Energy Probe Research Foundation (“Energy Probe”)
7. Environmental Defence
8. Federation of Rental-housing Providers of Ontario (“FRPO”)
9. Frontenac Forest Estates Inc. (“Frontenac”)
10. Green Energy Coalition (“GEC”)
11. Industrial Gas Users Association (“IGUA”)
12. London Property Management Association (“LPMA”)
13. Mississaugas of the New Credit First Nation (“MNCFN”)
14. School Energy Coalition (“SEC”)
15. Six Nations Elected Council (“Six Nations”)
16. Toronto District School Board (“TDSB”)
17. Vulnerable Energy Consumers Coalition (“VECC”)

The Board determined that the parties noted above were approved as intervenors and would be eligible to apply for an award of costs in this proceeding. Frontenac and the City of Toronto subsequently withdrew their interventions.

On April 26, 2013, the Board held an Issues and Process Conference for parties to discuss the Draft Issues List and the process the Board should follow when hearing the applications. On April 30, 2013, the Board held an Issues and Process Day to hear submissions on the draft Issues List and the hearing process. The Board heard submissions on a disputed issue and rendered its decision orally.

Intervenor Evidence

Seven intervenors filed evidence: City of Markham, Council of Canadians, Environmental Defence, Gaz Métro, GEC, Markham Gateway, and TransCanada.

Ontario Energy Board

The City of Markham and Markham Gateway's evidence centered on the location of Enbridge's GTA Project and the potential impacts on both current and future projects in the area.

Environmental Defence and GEC's evidence focused on natural gas conservation through demand side management programs as an alternative to parts or all of the proposed Enbridge GTA Pipeline.

The Council of Canadians' evidence focused on the effects of shale gas production on the environment and the Ontario natural gas market.

Gaz Métro's evidence provided information about its current supply and regulatory situation. TransCanada filed evidence in the proceeding, originally outlining its role with respect to Segment A, then later revising its evidence and opposing Enbridge's application following Enbridge's termination of the Memorandum of Understanding ("MOU") between it and TransCanada. TransCanada ultimately supported the applications after it entered into the Settlement Agreement and gave testimony at the oral hearing with respect to its role in the Settlement Agreement.

Letters of Comment

Linda Makarchuk wrote in response to Enbridge's application to express her concerns about pipeline safety and the environmental impact of pipelines. Elaine and Arnie Rose also wrote in response to Enbridge's application and expressed similar concerns. Pipeline safety and the environmental impacts of pipeline construction are important concerns for the Board. One of the key purposes of the GTA Project is to improve the safety and reliability of the Enbridge pipeline system. The Board has reviewed the technical specifications of the project to ensure that Enbridge is adhering to the appropriate standards. The Board has also reviewed the evidence on the environmental impacts of the project. Environmental reports were prepared for Enbridge by an independent third party. The Board has concluded that the impacts are acceptable and that action can be taken to mitigate any adverse impacts. The Board has imposed conditions on its approval to ensure that Enbridge fulfills its commitments regarding safety and environmental impacts.

Rita Bijons wrote in response to the group of applications to express her concerns with shale gas and climate change and to urge greater conservation and efficiency programs. Nadine Hawkins wrote expressing similar concerns. The COC raised similar issues and the Board has addressed these concerns in this decision. The Board shares the concern about the importance of conservation and demand side management and the extent to which these were considered as options to infrastructure development. This issue has been addressed in earlier in this decision.

Union Gas and Gaz Métro Motion

On, June 21, 2013 Union Gas Limited (“Union”) and Gaz Métro Limited Partnership (“Gaz Métro”) filed a motion (the “STAR Motion”) with the Board requesting an order declaring that the Board’s Storage and Transportation Access Rule (“STAR”) applies to Segment A of Enbridge’s GTA Project and that the MOU between Enbridge and TransCanada dated January 28, 2013, fails to comply with STAR and is unenforceable and of no effect, amongst other things.

On July 10, 2013, Enbridge filed a letter informing the Board that it had notified TransCanada that it was terminating the MOU and that it was committed to becoming STAR compliant through the non-discriminatory allocation of transportation services of Segment A, including performing a new capacity open season on or before July 25, 2013. In response to Enbridge’s letter, Union and Gaz Métro withdrew their motion.

Settlement Term Sheet and Settlement Agreement

On September 11, 2013, Union Gas, Enbridge and Gaz Métro (together the “LDCs”) filed a letter informing the Board that the LDCs, along with TransCanada, had reached the basis for an agreement to resolve their differences regarding natural gas infrastructure expansion in Ontario. Included in the LDCs’ letter was a Settlement Term Sheet that outlined the various clauses and information that would be used to form a complete Settlement Agreement between the LDCs and TransCanada.

On the last day of the oral hearing, SEC proposed that the evidentiary portion for the proceeding remain open until the Settlement Agreement between the LDCs and TransCanada was completed and filed with the Board. Intervenors generally supported this request. The applicants opposed the request, citing the detrimental effects of

further delay and advancing the argument that the Settlement Agreement is not necessary to the Board's deliberations on the applications. The Board required the applicants to file the Settlement Agreement no later than October 31, 2013. The Board noted that if the Settlement Agreement were consistent with the Term Sheet and the testimony provided, no further oral examination would be required.

On October 31, 2013, the applicants filed the complete Settlement Agreement. The Settlement Agreement details the specific articles and clauses, including commitments for capital investments and financial contributions amongst the parties, under the goal of a collaborative approach to facilitating natural gas transmission development in Ontario. The Settlement Agreement will be filed with the National Energy Board ("NEB") for its review. The agreement also outlines the process that will transpire if the agreement is not approved by the NEB, including the timelines upon which the agreement will terminate. The record was closed after that filing.

Procedural Steps

On June 12, 2013, a Technical Conference was held to allow parties to seek further clarification on areas of the applications that remained after the Applicants provided responses to interrogatories.

On August 28, 2013, a Settlement Conference was held at the Board's offices.

On September 5, 2013, a Pre-Hearing Conference was convened by the Board in order to finalize and confirm the hearing plan, which included cross examination duration and order, in respect of the oral hearing that would follow.

The oral hearing began on September 16, 2013, and was completed on October 10, 2013. Written arguments followed the hearing. The applicants filed their reply arguments on November 25, 2013.

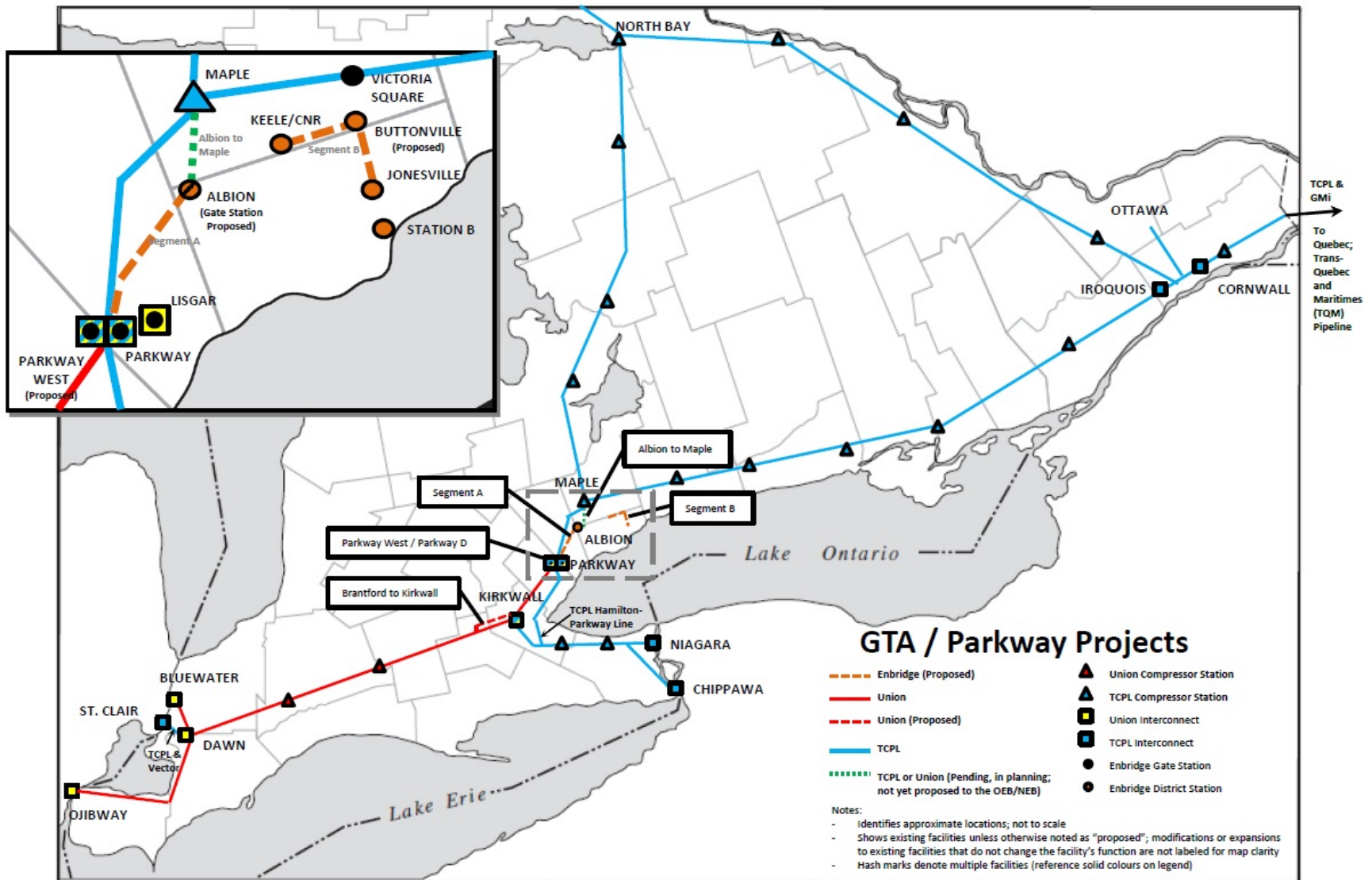
Appendix B

**Decision and Order
January 30, 2014**

**Enbridge Gas Distribution Inc.
GTA Project (EB-2012-0451)**

**Union Gas Limited
Parkway West Project (EB-2012-0433)
Brantford-Kirkwall/Parkway D Project (EB-2013-0074)**

Map of GTA-Parkway Projects and surrounding area



Appendix C

Union Gas Limited
Leave to Construct Application
EB-2012-0433
Parkway West Project
Conditions of Approval

1 General Requirements

- 1.1 Union Gas Limited (“Union”) shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2012-0433 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2015, unless construction has commenced prior to that date.
- 1.3 Union shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee (“OPCC”) review.
- 1.4 Union shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Union shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.
- 1.5 Within 15 months of the final in-service date, Union shall file with the Board Secretary a Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Union shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Union shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 Union shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Union shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Union shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Union shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Union shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Union shall attach a log of all complaints

that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.

- 3.2 The interim monitoring report shall confirm Union's adherence to Condition and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Other Approvals

- 4.1 Union shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof to the Board, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

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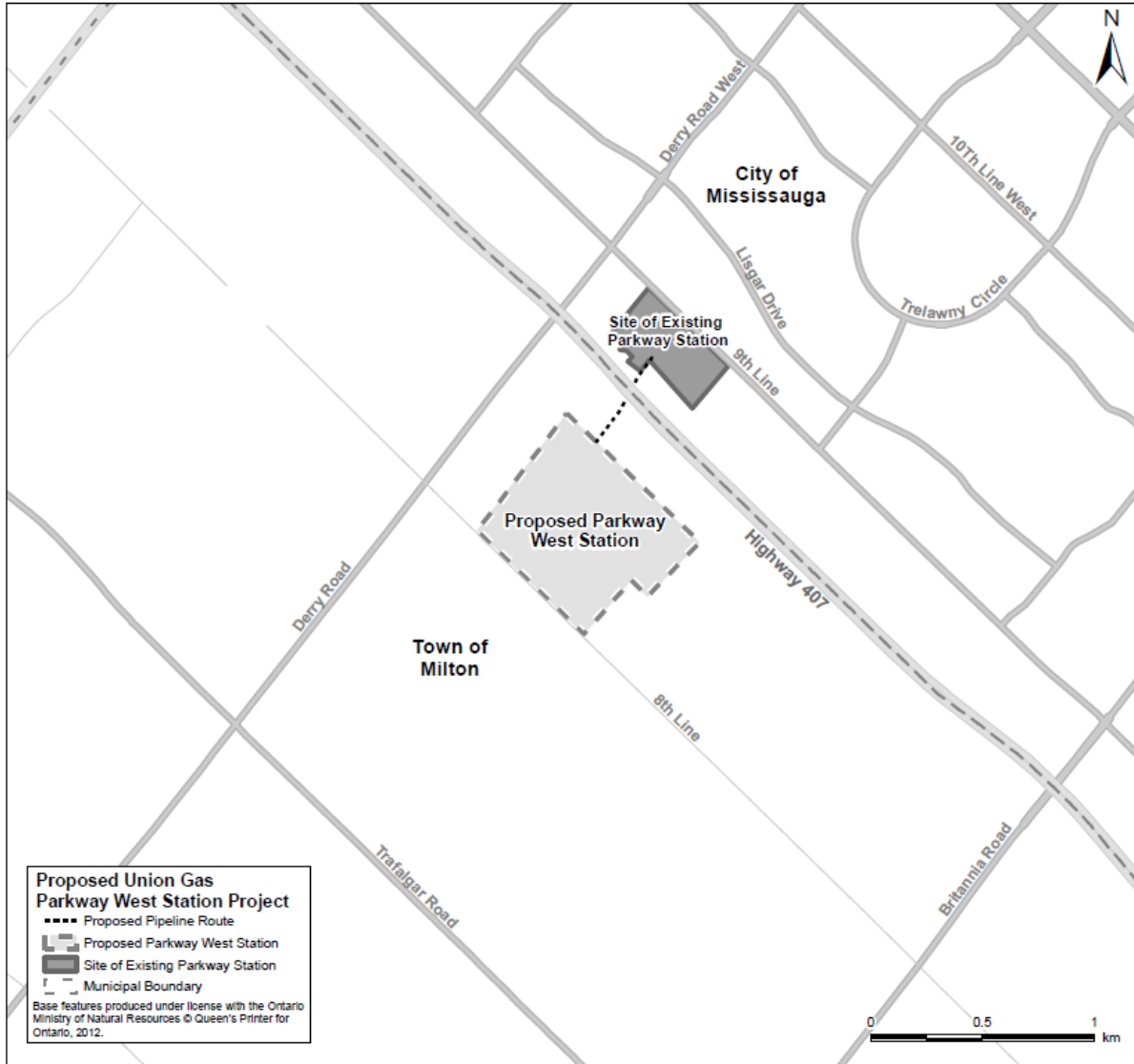
Appendix D

**Decision and Order
January 30, 2014**

**Enbridge Gas Distribution Inc.
GTA Project (EB-2012-0451)**

**Union Gas Limited
Parkway West Project (EB-2012-0433)
Brantford-Kirkwall/Parkway D Project (EB-2013-0074)**

Map of Union Gas Limited's Parkway West Project



Appendix E

Union Gas Limited
Leave to Construct Application
EB-2013-0074
Brantford-Kirkwall/Parkway D Project
Conditions of Approval

1 General Requirements

- 1.1 Union Gas Limited (“Union”) shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2013-0074 except as modified by this Order and these Conditions of Approval.
- 1.2 Union shall not begin construction of the Brantford-Kirkwall pipeline before the National Energy Board approves the TransCanada King’s North project. Union shall not begin construction of the Brantford-Kirkwall pipeline until it has received written confirmation from TransCanada that TransCanada is committed to proceeding with construction of the King’s North project. Union shall file with the Board a copy of TransCanada’s written confirmation within 10 days of its receipt by Union.
- 1.3 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2016, unless construction has commenced prior to that date.
- 1.4 Union shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee (“OPCC”) review.
- 1.5 Union shall advise the Board’s designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Union shall not make such change without prior approval of the

Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

- 1.6 Within 15 months of the final in-service date, Union shall file with the Board Secretary a Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Union shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Union shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 Union shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Union shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Union shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Union shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Union shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Union shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Union's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Other Approvals

- 4.1 Union shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list shall provide a list thereof to the Board, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

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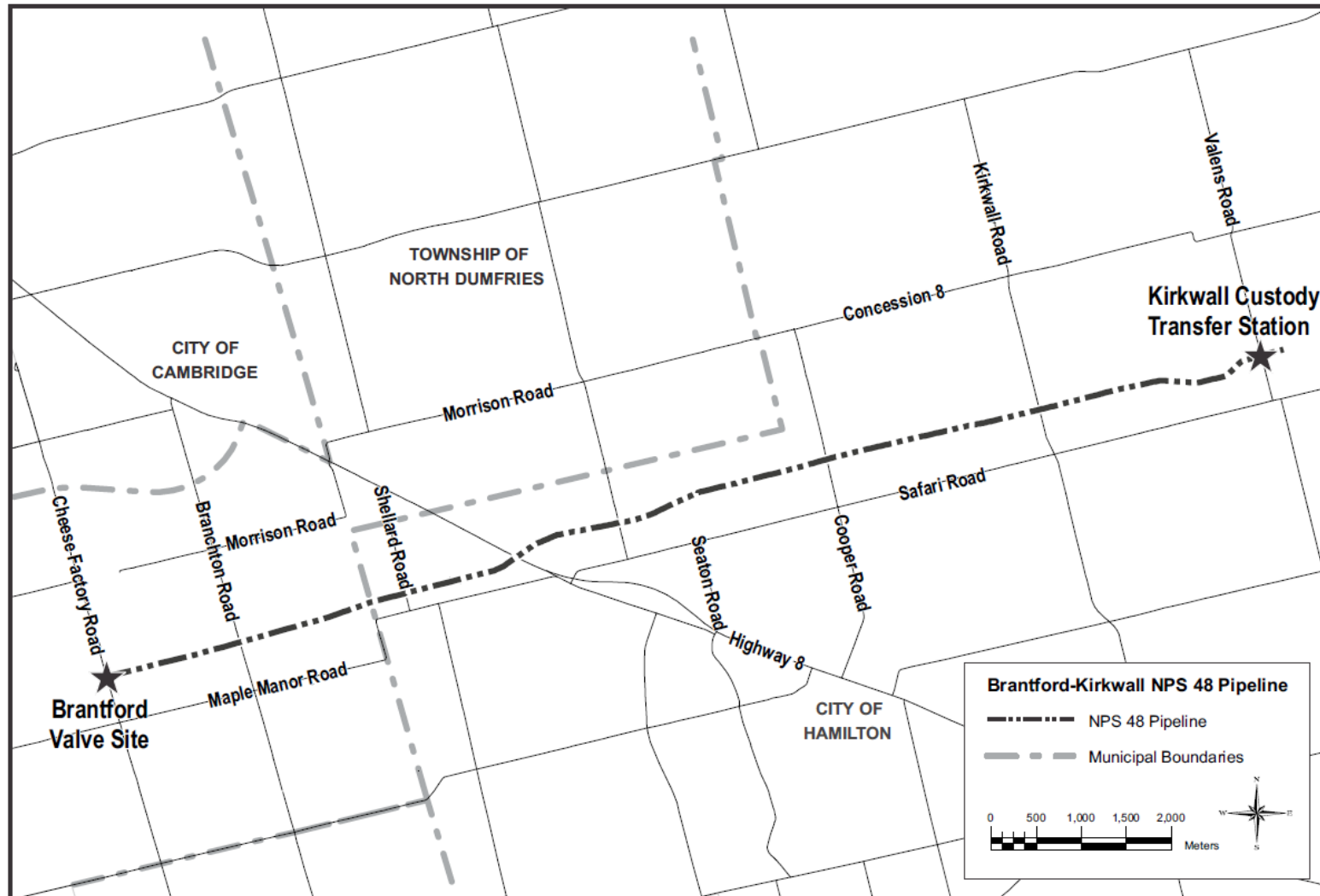
Appendix F

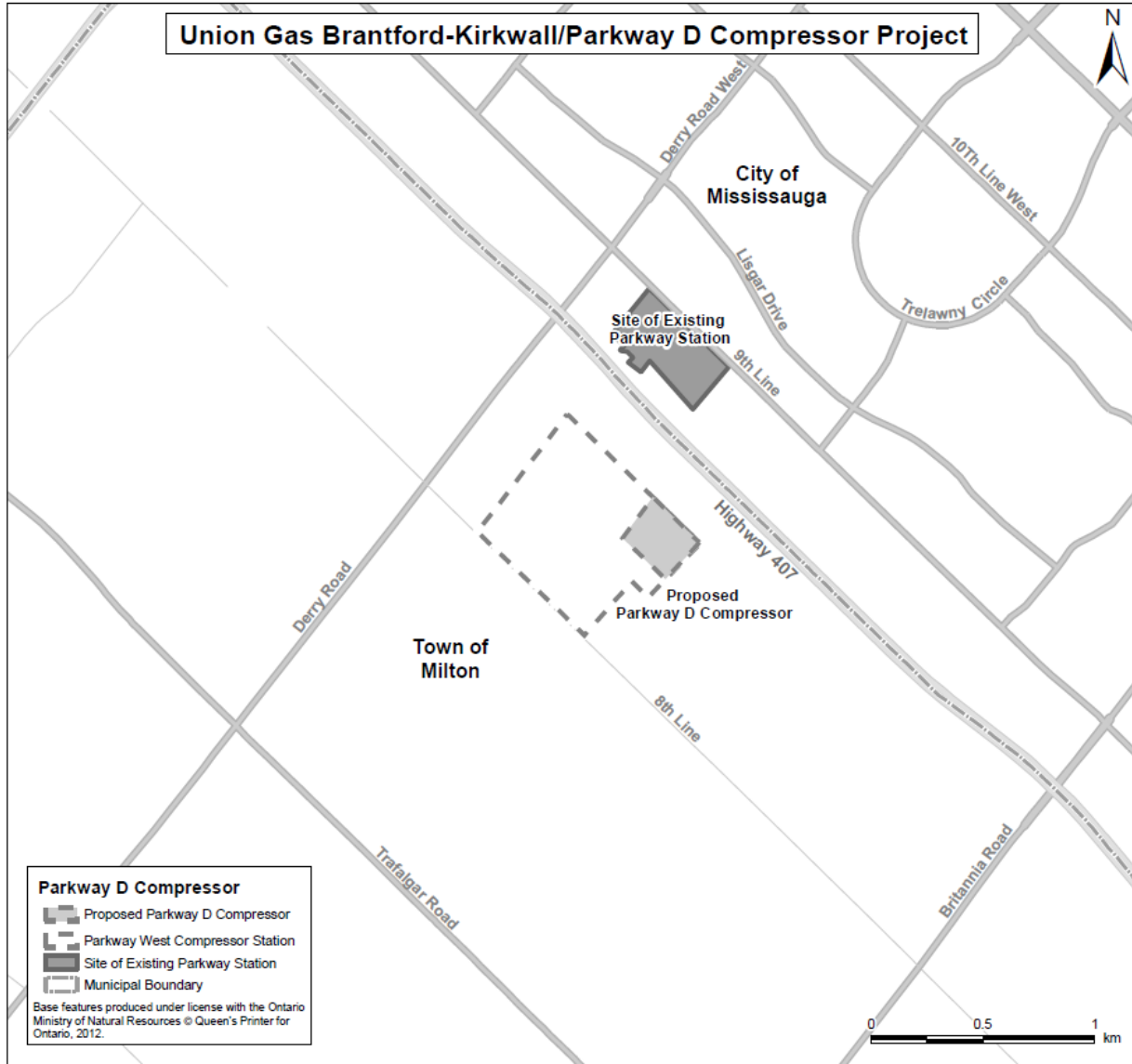
**Decision and Order
January 30, 2014**

**Enbridge Gas Distribution Inc.
GTA Project (EB-2012-0451)**

**Union Gas Limited
Parkway West Project (EB-2012-0433)
Brantford-Kirkwall/Parkway D Project (EB-2013-0074)**

Map of Union Gas Limited's Brantford-Kirkwall/Parkway D Project





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Appendix G

Enbridge Gas Distribution
Leave to Construct Application
EB-2012-0451
GTA Project
Conditions of Approval

1 General Requirements

- 1.1 Enbridge shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2012-451 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate February 28, 2015, unless construction has commenced prior to that date.
- 1.3 Enbridge shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee (“OPCC”) review.
- 1.4 Enbridge shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Enbridge shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.
- 1.5 Within 15 months of the final in-service date, Enbridge shall file with the Board Secretary a Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and an explanation for any significant variances from the estimates filed in this proceeding.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Enbridge shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Enbridge shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 Enbridge shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.
- 2.4 Enbridge shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Enbridge shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Enbridge shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.
- 2.7 For each work site, Enbridge shall provide MNCFN with the following information:
(i) exact location and size of site; (ii) plans to protect the environment and sensitive watershed; and (iii) the contamination characteristics, dewatering details, and water treatment and discharge plans for the site.

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- 2.8 Enbridge Gas will permit third part contractors (“Monitors”) selected by the MNCFN to actively participate in Enbridge’s environmental and archaeological assessment and monitoring work at any Work Site that has high archaeological potential or has significant environmental concerns, as determined jointly by the MNCFN and Enbridge, both parties acting reasonably.
- 2.9 Enbridge Gas will provide reasonable financial resources to the MNCFN to hire and administer the Monitors and to hire consultants to review the construction permits and approvals required by Enbridge, to the extent necessary to protect the MNCFN’s rights, title and interests.
- 2.10 Enbridge Gas will ensure that it has adequate insurance and/or funds available for any cleanup, compensation and restoration in the event of accidents and malfunctions on the MNCFN’s traditional territory resulting from the project.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Enbridge shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Enbridge’s adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the

monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

4 Other Approvals

- 4.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof to the Board, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

Appendix H

**Decision and Order
January 30, 2014**

**Enbridge Gas Distribution Inc.
GTA Project (EB-2012-0451)**

**Union Gas Limited
Parkway West Project (EB-2012-0433)
Brantford-Kirkwall/Parkway D Project (EB-2013-0074)**

Map of Enbridge Gas Distribution Inc.'s GTA Project

