Ontario

ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

October 16, 2015

Application for leave to construct natural gas pipelines and ancillary facilities in the Town of Milton and the Town of Oakville and for approval to recover the costs of the development of the proposed Burlington Oakville Project.

Union Gas Limited

EB-2014-0182

The Application

Union Gas Limited (Union) applied with the Ontario Energy Board (OEB) on December 12, 2014 under section 90(1) of the *Ontario Energy Board Act, 1998* (the Act) for leave to construct a 20 inch pipeline and ancillary facilities in the Town of Milton and the Town of Oakville (Burlington Oakville Project or Project). The total estimated cost of the project is $119 million with an in-service date of November 1, 2016. Union also sought approval, under section 36 of the Act, to recover the cost consequences of the project and to track any variance between the estimated costs embedded in rates and the actual annual revenue requirement of the Project.

The Ontario Greenhouse and Vegetables Growers (OGVG) and Canadian Manufacturers and Exporters (CME) retained an expert to file evidence on a non-build alternative to Union's Burlington Oakville Project (Ms. Cheung's evidence). Under the non- build alternative, Union would contract for new firm TransCanada PipeLines Limited (TransCanada) transportation (FT) service from Niagara instead of constructing the new pipeline.

OEB staff supports Union's application. It is OEB staff position that Ms. Cheung's non-build alternative is not a viable option to Union's proposal of constructing a new 20 inch pipeline from Parkway to Bronte. OEB staff has no concerns regarding all other aspects of Union's application including the need for the project, the project's economics and rate impacts, environmental and landowner matters, and technical and safety requirements.

This document will summarize OEB staff position regarding each of the issues from the OEB approved Issues List.

Need - Are the proposed facilities needed?

Union provided evidence that the Burlington Oakville Project is needed to ensure security of supply to Burlington Oakville customers because of the lack of renewable firm short haul transportation services in the short-term, and expected customer growth in the long-term.

Union stated that currently due to physical limitations of the existing Burlington Oakville system, about three quarters of the supply to customers is under firm transportation services contracts from TransCanada Mainline. Since 2012, Union has been unable to get firm renewable short haul transportation services from TransCanada for 64 TJ/day of capacity. Union replaced this capacity with firm non-renewable secondary market transportation services in the winters of 2012-2015. Union indicated that it observed an increase in costs for third party transportation services since 2011, ranging from $5 million in 2011/2012 to $15.0 million in 2014/2015 and noted that this service is more expensive than the posted TransCanada tolls due to, amongst other things, the limited number of counterparties and quantity available. Union also filed evidence that the operational requirements of the Burlington Oakville system will not be met for the winter of 2016/17 assuming forecast growth to design day demand of 205 TJ/day and no changes to existing facilities or the contracted firm transportation service.

In the long-term, for the period from 2016 to 2035, Union forecast approximately 50,445 residential, 2,320 commercial, and 220 industrial new customer attachments. Union's total design day requirement for the Burlington Oakville System in 2035 is forecast to be 276 TJ/day.

Based on the above, OEB staff submits that Union has demonstrated the need for the project in both short-term and long-term.

Alternatives-What are the facilities and non-facilities alternatives to the proposed facilities? Have these alternatives been adequately assessed and are any preferable to the proposed facilities, in whole or in part?

Union presented commercial alternatives to the physical alternative which included four short haul firm alternatives and one long haul alternative. None of Union's short haul alternatives included transportation service from Niagara to Union ECDA.

Of the five commercial alternatives evaluated, the least cost option is $48.7 million more than Union's proposal on a Net Present Value (NPV) basis [1].

OGVG/ CME evidence prepared by Ms. Cheung presented a non-build alternative to Union's Burlington Oakville Project. Under the non- build alternative, Union would contract for new firm TransCanada transportation (FT) service from Niagara to the newly created Union ECDA instead of constructing the new pipeline proposed by Union. The entire Burlington-Oakville market would be served from gas sourced at Niagara instead of Dawn. Ms. Cheung's evidence indicated that the non-build alternative could save Union's customers in the range of $4 to $12.8 million over Union's proposal annually assuming a demand of 276 TJ/day[2]. OEB staff notes that Ms. Cheung's analysis did not include the $8.25 million for the 135 TJ/day of Kirkwall to Union Amended CDA short haul transportation capacity[3]. Ms. Cheung's rationale for not

[1] Exhibit A, Tab T7, page 11, Table 7-5
[2] Evidence of Ms. Cheung on Behalf of Ontario Greenhouse Vegetable Growers (OGVG) and Canadian Manufacturers and Exporters (CME), June 29, 2015, page 7, paragraph 23
[3] As part of the TransCanada Mainline Settlement agreement it was assumed that the Burlington Oakville Project would proceed and Union would also contract for and pay ($8.25 million per year) for 135 TJ/d of

including this cost was an assumption that if the Burlington Oakville Project did not proceed then Union would not be obligated to contract for the 135 TJ/day of Kirkwall/Union Amended CDA capacity. In its reply evidence, Union identified three fundamental issues with the non-build alternative. They included:

- The non-build alternative would disconnect the Burlington Oakville system from Dawn.
- The non-build alternative does not align with Union's Gas Supply Planning Principles as it:
  - Would move up to 77% of Union upstream transportation and supply portfolio away from Dawn.
  - Cannot be operationalized without using additional assets which would make the non- build alternative more expensive.
  - Would decrease the diversity and security of Union's upstream transportation and supply portfolio.
- The non-build alternative omits the $8.25 million annual cost of the 135 TJ/day transportation contract from Kirkwall to Union Amended CDA.

In reviewing Union's concerns with the non-build alternative, OEB staff concludes that most of Union's concerns are valid.

It is however OEB staff's view that Union has overstated the percentage (77%) of upstream transportation that would move away from Dawn if the non-build alternative was accepted. It appears that Union is comparing the design day demand (276 TJ/d) to the total Union South average demand of 360 TJ/day. OEB staff submits that a more appropriate comparison would be to take the average day demand for the Burlington Oakville market (94 TJ/day) and divide it by the average day demand for the total Union South market. This would yield a percentage of 26%.

Ms. Cheung proposal is premised on the following:

- Incremental gas supply would need to be procured from Niagara instead of Dawn
- Diversions would be required to move gas into storage when gas is not needed

TransCanada capacity between Kirkwall and Kirkwall/Dominion Gate Station and the Hamilton Gate #3 Station (Amended Union CDA).

In evidence and at the oral hearing, Union's gas supply witnesses emphasized that Niagara is not a liquid trading point nor is it expected to become one. Union indicated that contracting for the incremental capacity at Niagara would present issues and challenges as corroborated by Enbridge in another proceeding.[4]

It is OEB staff's opinion that the major flaw of the non-build alternative is that it does not appropriately address the daily balancing of supply and demand. As Union puts it, the non-build alternative would need to be operationalized and in doing so would become more expensive than the Union proposal.

Ms. Cheung's evidence indicated that Union could contract for 276 TJ/d from Niagara to Union ECDA instead of building the 20 inch pipeline from Parkway to Bronte. There was no mention in Ms. Cheung's evidence as to how Union would balance supply and demand on a daily basis. In response to an interrogatory from Union, Ms. Cheung identified that on days when supply exceeds demand, Union would move the excess gas on TransCanada to Kirkwall. From there it could be moved back to storage. During the oral hearing, Union's witness panel stated that this service from TransCanada is not a firm service and therefore, the daily balancing of supply and demand would not be guaranteed. OEB staff also notes that no costs for this service were included in Ms. Cheung analysis.

In its reply evidence, Union attempted to "operationalize" the non- build alternative and in doing so demonstrated that it would cost $9.7 million more annually ($35.7 million[5] versus $26.04 million) than the Union proposal. The $35.7 million included the $8.25 million for the 135 TJ/d of Kirkwall/Union Amended CDA capacity. Union asserted that the $8.25 million still needed to be included even if the Burlington Oakville Project didn't proceed since it felt that TransCanada would eventually impose a toll on volumes moving from Kirkwall to the Amended Union CDA. OEB staff agrees that this eventuality is more likely than not.

Regardless of whether the $8.25 million is included or not Union's "operationalized" non-build alternative is still more expensive than Union's proposal.

For the reasons cited above, OEB staff is of the view that the OGVG/CME non-build alternative is not a viable option nor is it cost effective.

[4] Oral Hearing Transcript, Volume 1, September 24, 2015, page 85, lines 4-8
[5] Union's Reply Evidence, Exhibit C, Figure 5-3, page 26.

Economics and Cost - Do the proposed facilities meet the Board's economic tests as outlined in the Filing Guidelines on the Economic Tests for Transmission Pipeline Applications, dated February 21, 2013, as applicable?

Union stated that the *Filing Guidelines on the Economic Tests for Transmission Pipeline Applications, dated February 21, 2013* (Transmission Guidelines) are not applicable because the Burlington Oakville Pipeline is not a transmission facilities. Union noted that the Guidelines define transmission pipelines as pipeline projects that provide transportation services and move gas on behalf of other shippers within Ontario. Union further stated that the EBO 188 *Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario, January 1998* (EBO 188) for economic assessment of distribution system expansion should not apply to the Burlington Oakville Project because it is needed primarily to replace contracted supply services to satisfy an existing demand which does not result in incremental revenues. The appropriate economic assessment, in Union's view, is a comparison of pipeline construction costs against the avoided cost of purchasing the services (build vs. buy analysis). Union's evidence included a NPV analysis of the cost of the Burlington Oakville Project and its alternatives to ratepayers. Union assessed the Burlington Oakville Project as the least cost alternative and showed a NPV economic benefit of $48.7 million compared to the next best commercial alternative available.

OEB staff has no concerns with Union's approach and agree that the evidence presented shows the Burlington Oakville Project as the least cost alternative.

Rate Impacts-What are the potential rate impacts to customers? Are the rate impacts appropriate?

Union calculated the potential rate impacts using the largest annual revenue requirement of $8.5 million (in 2018) and the minimum of projected avoided gas transportation costs of $11.4 million.

According to Union's projections, the bill impacts are as follows: i) a decrease of $6.85 per year for average Rate M1 sales service residential customer, consuming 2,200 m3 per year, in Union South, ii) an increase of $2.43 per year for Rate M1 direct purchase service residential customer, consuming 2,200 m3 per year, in Union South, iii) a decrease of $2.27 per year for Rate 01 direct or sales purchase service residential customer, consuming 2,200 m3 per year, in Union North.

OEB staff notes that overall, the Burlington Oakville Project will result in net annual savings of approximately $2.9 million. As such, OEB staff submits that the estimated rate impacts are appropriate.

Environmental Matters-Do the facilities address the OEB Environmental Guidelines for Hydrocarbon Pipelines as applicable?

In accordance with the *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 6th edition, 2011 (OEB Guidelines)* Union conducted and completed routing, environmental assessment and consultation for the Project. The Environmental Report (ER) was prepared by Stantec Consulting Limited (Stantec). The ER was reviewed by the Ontario Pipeline Coordination Committee , the Region of Halton, Town of Milton, Town of Oakville, Conservation Halton, affected landowners, First Nations and the Métis Nation of Ontario.

Municipalities raised concerns about a portion of the pipeline route along Trafalgar Road. In response to these concerns Union asked Stantec to adjust the proposed preferred pipeline route and completed a revised ER. The revised ER was prepared and reviewed in accordance with the OEB Guidelines.

OEB staff has no concerns regarding environmental matters, subject to Union's implementation of its standard environmental inspection program and to Union's adherence to OEB standard conditions of approval dealing with environmental matters.

Landowner Matters-Are there any outstanding landowner matters for the proposed facilities with respect to routing and construction matters? For greater clarity, landowners include parties from whom permits, crossing agreements and other approvals are required.

Any concerns that may be raised by directly affected landowners during construction will be recorded and addressed by implementation of Union's Landowner Relations Program (CRP) and associated Complaint Resolution System (CRS). OEB staff note that the CRP and CRS have been successfully implemented by Union during construction of pipeline projects. OEB staff notes that Condition 6a) ii-iv and 6b) v. attached to this submission requires post-construction reports that demonstrate and describe how routing and construction matters and issues are addressed, monitored and resolved.

Most of the land rights required for construction of the Project are on Crown Lands or Hydro One Networks administered by Infrastructure Ontario. Some of the land rights are on privately owned lands. At this time Union has not obtained all the necessary permanent or temporary land rights. Union is in the process of negotiations with Infrastructure Ontario and with private landowners and indicated that no objections to granting easement rights have been expressed by the landowners. OEB staff notes that Union intends to acquire the land rights in advance of the start of construction.

Union is committed to obtaining all the necessary crossing permits or agreements with Provincial Ministries, Oakville, Milton, the Regional Municipality of Halton and, the City of Mississauga. OEB staff notes that Condition 6a) v. attached herein requires that in the post construction report Union provide a certification that all the necessary approvals, permits, licences and certificates required to construct, operate and maintain the proposed project are obtained.

As a result, OEB staff has no concerns regarding landowner matters.

Form of Easement Agreements - Is the form of easement agreement offered by Union or that will be offered by Union to each owner of land affected by the approved route or location appropriate?

Pursuant to Section 97 of the Act, leave to construct cannot be granted to Union unless Union has offered or will offer to each owner of land affected by the approved route an agreement in a form approved by the OEB.

OEB staff notes that Union has used the same form of easement agreement approved by the OEB in Union's application in proceeding EB-2014-0333[6]. OEB staff has no concerns with the form of agreement included in Union's evidence.

Technical and Safety Requirements-Are the proposed facilities designed in accordance with current technical and safety requirements?

Union's evidence is that the Project meets current design and safety requirements in accordance with the *Ontario Regulation 210/01, Oil and Gas Pipeline Systems* under the Technical Standards and Safety Act and the Canadian Standards Association Z662-11 Standard in accordance with the Code Adoption document under the Ontario Regulations.

OEB staff has no concerns regarding this issue.

[6] OEB Decision and Order, EB-2014-0333, February 26, 2015.

Consultation-Has there been adequate consultation with other potentially affected parties?

As part of the project planning, environmental assessment and route selection process Union conducted public and agency consultation and consultation with potentially affected Métis and First Nations. The consultation informed the stakeholders about the Project, sought comments so that concerns and issues can be addressed and resolved.

Union confirmed it will continue to consult with the First Nations and the Métis Nation throughout the completion of the Project to ensure that any concerns are addressed and issues resolved. Union agreed that the First nations monitors be present during archeological surveys, upon their request, and will compensate the First Nations monitors for their time. No First Nations or Métis intervened in this proceeding.

Union has executed Capacity Funding Agreements with the First Nations that required the funding to review the documentation for the Project. Union also noted that during construction it will have inspectors on site to deal with any construction issues that landowners may raise.

OEB staff has no concerns regarding Union's consultation with potentially affected parties including First Nations and Metis Nation.

Cost Recovery- Does the project meet the capital pass-through mechanism criteria for pre-approval to recover the cost consequences of the proposed facilities?

Union requested pre-approval of recovery of costs and a variance account to capture the differences between estimated and actual costs of the Project. Union submitted that the Project meets the capital pass- through criteria as determined from Union's 2014-2018 Incentive Regulation Mechanism (IRM) proceeding (EB-2013-0202). OEB staff notes that Union's evidence shows that the Project satisfies all the capital pass-through criteria and qualifies for cost recovery. OEB staff supports Union's request to establish a new variance account to capture the difference between the forecast costs included in rates and the actual annual revenue requirement of the project as it is consistent with previous OEB decisions for projects of that magnitude[7].

Conditions of Approval

In response to OEB staff interrogatory 11, dated March 26, 2015 Union stated that it accepted the draft standard conditions of approval proposed by OEB staff. Recently, the OEB introduced a new set of standard conditions of approval for leave to construct

[7] Union Gas Limited, EB-2014-0261, OEB Decision and Order, 2016 Dawn to Parkway Expansion Project, April 30, 2015.

section 90 of the Act application. A new set of the standard conditions is attached as Schedule A to this submission. While OEB staff notes that Union has accepted these new conditions of approval in other leave to construct proceeding, OEB staff invites Union to comment on acceptability of these conditions.

-All of which respectfully submitted-

Schedule A

to

Board Staff Submission

Draft

Leave to Construct Conditions of Approval

Application under Sections 90 of the OEB Act

Union Gas Limited

EB-2014-0182

1. Union Gas Limited (Union) shall construct the facilities and restore the land in accordance with the Board's Decision and Order in EB-2014-0182 and these Conditions of Approval.

2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.

   (b) Union shall give the Board notice in writing:

   i. of the commencement of construction, at least ten days prior to the date construction commences;
   ii. of the planned in-service date, at least ten days prior to the date the facilities go into service;
   iii. of the date on which construction was completed, no later than 10 days following the completion of construction; and
   iv. of the in-service date, no later than 10 days after the facilities go into service.

3. Union shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.

4. Union shall advise the Board of any proposed change to Board-approved construction or restoration procedures. Except in an emergency, Union shall not make any such change without prior notice to and written approval of the Board. In the event of an emergency, the Board shall be informed immediately after the fact.

5. Union shall file, in the proceeding where the actual capital costs of the project are proposed to be included in rate base, a Post Construction Financial Report, which shall indicate the actual capital costs of the project and shall provide an explanation for any significant variances from the cost estimates filed in this proceeding.

6. Both during and after construction, Union shall monitor the impacts of construction, and shall file with the Board one paper copy and one electronic (searchable PDF) version of each of the following reports:

   a) a post construction report, within three months of the in-service date, which shall:
      i. provide a certification, by a senior executive of the company, of Union's adherence to Condition 1;
      ii. describe any impacts and outstanding concerns identified during construction;
      iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction;
      iv. include a log of all complaints received by Union, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions; and
      v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project.

   b) a final monitoring report, no later than fifteen months after the in- service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:

      i. provide a certification, by a senior executive of the company, of Union's adherence to Condition 3;
      ii. describe the condition of any rehabilitated land;
      iii. describe the effectiveness of any actions taken to

prevent or mitigate any identified impacts of construction;

iv. include the results of analyses and monitoring programs and any recommendations arising therefrom; and

v. include a log of all complaints received by Union, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions.