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Our File No. 147936

October 16, 2015

VIA RESS, EMAIL AND COURIER

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attention: Kirsten Walli
Board Secretary

Dear Ms. Walli:

Re: EB-2014-0182 - BOMA Submission

Please find attached BOMA's Submission.

Yours truly,

FOGLER, RUBINOFF LLP

Tom Brett

Thomas Brett
TB/dd
Encls.
cc: All Parties *(by email)*

EB-2014-0182

Union Gas Limited

Application for leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton and the Town of Oakville and for approval to recover the cost consequences of the development of the proposed Burlington Oakville Project.

SUBMISSION OF

BUILDING OWNERS AND MANAGERS ASSOCIATION, GREATER TORONTO ("BOMA")

October 16, 2015

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Counsel for BOMA

Submission

Introduction

As the Board well knows, the applicant in a leave to construct case must establish a need for the proposed facilities. It is a significant obligation.

Pipelines are expensive, complex undertakings, with a large environmental footprint. They come with risks. They are not benign assets. The need should be clear. It should not be a 51%-49% decision. Part of addressing need is to show that they are materially more cost-effective than the alternative. In BOMA's view, Union has not shown need. They have not shown that a non-facilities solution is not technically doable, and have improperly included the $136 million sixteen year compensation to TCPL for lost revenue, in the no-build case, whereas the Settlement Agreement explicitly confines it to the case when Union builds the Burlington-Oakville line.

While BOMA was not able to participate in the hearing in this case, due to medical appointments, it has been heavily involved in this case from the outset. It submitted interrogatories both in May and August, and participated actively in the Technical Conference on May 21, 2015. It has reviewed the hearing transcripts carefully. We have reread the evidence of Union (prefiled and reply) and Ms. Cheung carefully. Its submissions follow.

Proposed Cost Comparisons

In BOMA's view, the $8.5 million annual amount (equivalent to $136 million over forty years), which Union would pay TCPL, at current tolls, to hold it harmless for lost revenue due to

Union's construction of the Burlington-Oakville line should not be added to the cost of the no-build option. It should be added only to the cost of the build option.

Otherwise, it distorts the cost comparisons of the two options. If that cost is not a burden to the no-build case, then it is likely that the pipeline option becomes more expensive than the "existing facilities" option (see below).

The second reason is that the relevant portion of the Settlement Agreement was silent on the issue.

The relevant part of the Settlement Agreement, Article 8, Section (d)(iii) states:

> "Subject to Union receiving approval to construct its Burlington Oakville pipeline with an anticipated in-service date of November 1, 2016, referred to in subsection 8.1(a)(iii)...(iii) Union shall bid into an existing or new capacity open season and enter into an FT Contract for a minimum term of 16 years for a volume of 135 TJ/day for gas transportation service between TransCanada's Kirkwall Receipt Point and the Amended Union CDA" (our emphasis) (National Energy Board, RH-001-2014, Attachment 1(a), November 28, 2014).

The section speaks for itself, but in essence, it was an arrangement under which TCPL was held harmless from a revenue point of view, for its loss of revenue due to the construction of the Burlington-Oakville line (Tr1, pp 170-1). This represents a major shift from historic practice.

Union has never paid a separate toll for moving gas from Kirkwall, the point at which Union's Dawn-Parkway pipeline intersects with TCPL mainline between Canada and the United States to the Hamilton Gate #3 and Kirkwall/Dominion gate stations.

Picking up on Ms. Long's question (Tr1, p169), the fact that the fate of the existing "operational arrangement" between Union and TCPL at Kirkwall, essentially a gas swap, in the event Union adopted a no-build solution, was not covered in the Agreement, leads BOMA to believe that the intent was that the current arrangement which had been in place for over twenty-five years would carry on. Mr. Isherwood's reply to Mr. Brett at the Technical Conference tends to confirm that.

Mr. Isherwood noted, at p32 of the Technical Conference Transcript:

> "And we used to do the same thing at Parkway before 2011, and there is some evidence in our package around what happened in 2011 when we started bringing more capacity from Parkway into the CDA".

He went on to state:

> "...so to keep TCPL revenue-neutral and to be able to provide transportation commitments between Kirkwall and those two stations, we committed to the 135, but it is linked to Burlington Oakville ".

Then, Mr. Brett asked:

> "MR. BRETT: If [Burlington-Oakville] didn't go ahead you would rely on your current operational --
>
> MR. ISHERWOOD: Right, correct".

There was no talk at that point about having to pay for moving the gas to the Hamilton gate station, nor was there in a subsequent conversation between Messrs. Isherwood and Wolnik (Tr1, pp 72-3).

The analogy that Mr. Isherwood discussed in the above reference and throughout the evidence, namely TCPL's decision in 2011 to charge a toll to Union for moving gas from Parkway to the CDA is not a good one, since it occurred during a period prior to Settlement Agreement between TCPL and the LDCs, and the National Energy Board's approval of that Agreement, and pre-OEB decision in the joint proceeding in which the utilities had agreed to work together. The Board will recall that TCPL and the LDCs were at loggerheads in the 2011-12 period. TCPL was refusing to build new short haul capacity to accommodate LDCs moving from long haul to short haul service, with a significant detrimental effect on TCPL's revenues, and the LDCs were threatening to by-pass TCPL with their own facilities.

However, in Union's Reply Evidence, this narrative suddenly changed.

There, Union said it was very likely that TCPL would begin to charge for the service, in the event the pipeline were not approved (ExC, p21), and so the amount should be included as a cost in the no-build facilities case. However, in replying to a Board Staff interrogatory (ExD, Staff.5), Union admitted that it had not discussed the issue with TCPL; it was merely assuming TCPL would make the change.

Comparison of the Build Option with the Next Best Option

Assuming the $8.5 million per year ($136 million over the term) is included in the project cost (for compensation to TCPL), the project results in a $2 million loss to ratepayers pre-tax (ExA, T3, p4). There appears to be no comparison of the financial impacts on ratepayers' build option, including the payment to TCPL, second best option, using TCPL service from Parkway to Union CDA, excluding the $8.5 million annual payment to TCPL.

For example, Table 7-5 (ExA, T7, p11) shows the NPV of the alternatives, to the Burlington-Oakville build. The "next best alternative" shown as Parkway to Union ECDA for TCPL is $151.3, although no detailed back-up is provided. However, Union has stated that they have included in that number, the $8.5 million/year for sixteen years payment to TCPL to compensate for lost revenue. They do not show a comparable NPV without the $136 million added.

The annual cost savings of $6.5 million cited at ExA, T8, p2 of 5 would become a $2 million extra cost, at least for the first sixteen years. Since they are the first sixteen years, the NPV would be substantially affected.

Demand

While demand is increasing in Burlington-Oakville, on year over year, a percentage basis, the increases are not that large. Additional capacity could come from targeted CDM in the large commercial industrial markets in those municipalities, especially if the Board directs Union to reinstate its very successful industrial program, as BOMA and others have recommended. The evidence is that on completion, the pipeline may be half full (TC, p13) and two-thirds full in 2035. In addition, no analysis appears to have been made of whether modest TCPL capacity enhancements between Parkway and the CDA can provide relief. TCPL has the large diameter pipe in place to serve the area. TCPL may have the right, unless its contract with EGD for 200 TJ/d on the domestic line prevents it, to direct that gas to Bronte or Burlington under peak conditions and provide EGD gas from Parkway.

BOMA suggests that Union has no evidence that points to TCPL is planning to charge for the swap service, which it would implement by displacement, in the event Burlington-Oakville is not approved. Indeed, if Union were to adopt a TCPL solution (see below), it is likely they could negotiate a formal agreement with TCPL to that effect.

TCPL Capacity Offered

One of the reasons discussed by the company, perhaps the main reason for its decision to build a new line to Burlington-Oakville, is that firm short haul service has not been available directly from TCPL, forcing Union to contract in the secondary market for approximately forty percent of the capacity it needs to serve Burlington-Oakville market (ExA, T3, p2). However, at the commencement of the hearing, Union announced that it had contracted with TCPL (apparently on August 28, 2015) (Tr1, p15), for 61,888 GJs from the Parkway Belt to Union CDA.

It replaces Union's reliance on the secondary market. The term is one year, non-renewable. It is not clear whether, had Union asked, the contract could have been for a longer term. So for 2015-2016, approximately seventy-six percent of the capacity to serve Burlington-Oakville will come from TCPL. The increase in TCPL's ability to provide the additional capacity is a result of changes made to its facilities as part of the Park West Project, although Union has made very little information available.

The removal of the need to rely on secondary capacity (i.e. marketers), if extended, would remove a major reason for constructing the pipeline. Union should not be reluctant to rely on TCPL's service, since the implementation of the Settlement Agreement, and the Agreement with respect to Energy East. The landscape has changed.

Additional TCPL Available Capacity

This is a new development, which needs to be carefully assessed by all the parties and the Board.

BOMA has some concerns about the way Union has introduced the new TCPL contract into the proceeding. The acquisition of the TCPL capacity of the amount in question is a material change in Union's evidence. The discovery that TCPL can supply that much new capacity from existing assets (or after some minor reconfiguration of assets at Parkway West) is important. Parties should have had the information earlier so as to be able to digest the information and assess the implications. For example, does TCPL have additional capacity beyond the 61,888 GJs available due to further changes at Parkway; did Union ask TCPL whether it could provide a longer term contract, and could TCPL do so, or did TCPL offer a longer term? Union has not asked TCPL to provide it with its cost for additional facilities to supply further load in Burlington-Oakville. Why not?

Gas Supply Costs

LDCs have not hesitated, when it suited their interests, to use the prospect of lower gas/transportation combined costs as a rationale for their transportation route selections. Think only of EGD's and Union's cases in the recent joint hearing, or of the standard use of comparative landed costs. While Union witnesses did not hesitate to forecast that Niagara prices would surely soon rise, the evidence is that over the last few years, Niagara prices have been consistently below those of Dawn. BOMA, therefore, is of the view that, to the extent that a no-build option using TCPL's facilities would enable an increase in the percentage of Union gas sourced at Niagara, all ratepayers should benefit from lower prices and greater "diversity of supply" in the same manner EGD hopes to do so from its Niagara purchasers.

All of which is respectfully submitted, this 16th day of October, 2015.

Tom Brett,
Counsel for BOMA

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