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BY EMAIL and RESS

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Our File No. 20140182

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2015-0182 – Union Burlington-Oakville LTC – Final Argument

We are counsel for the School Energy Coalition ("SEC"). This is SEC's Final Argument on the application by Union Gas ("Union") for leave to construct a distribution pipeline in the Burlington-Oakville area, and to include the cost consequences in rates.

Overview

While in this proceeding there are a number of issues the Board must determine as set out in the Final Issues List, ultimately what would appear to be the only contentious issue is the issue of need, i.e.: whether the natural gas needs of the Burlington-Oakville area can be more appropriately addressed through means other than construction of the proposed pipeline.[1] Ms. Cheung, an expert presented by the Canadian Manufacturers and Exporters ("CME") and the Ontario Greenhouse Vegetable Growers ("OGVG"), provided evidence that a more appropriate and more cost-effective option is likely to be that of utilizing transportation capacity on the TransCanada Pipeline Limited ("TCPL") system from the Niagara import point to the Burlington-Oakville area ("The Alternative Proposal").

SEC submits it is important to note that the incentives favor Union bringing forward an application to build. The regulatory system produces an incentive for a gas utility to make the decision to invest in capital when an equally viable and cost-effective commercial service is available. This is because it receives a return on its invested capital, while transportation and supply arrangements are pass through costs and do not provide the opportunity for profit. This incentive structure requires close

[1] See Board-Approved Issues 4*: 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?*

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scrutiny from the Board and the parties, where there are no-build alternatives to a proposed project, as is the case in this proceeding. As Union readily admitted, its shareholder will benefit from its proposal, while it would not if the Board accepted Ms. Cheung's alternative proposal.[2]

SEC commends CME/OGVG for presenting Ms. Cheung. She raised some important criticisms of Union's planning processes, and required Union to provide a more fulsome consideration of the alternatives. But after considering the evidence of both Union and Ms. Cheung, SEC is still unable to make a recommendation to the Board on the central question: should the Board approve the proposed Burlington-Oakville pipeline, or is there a feasible and more economic no-build option. This arises because:

- ***Niagara Supply***. Central to the Alternative Proposal is Union's ability to source enough supply in a cost effective manner. It is impossible to forecast the difference in commodity costs between Niagara and Dawn for similar basin sourced gas in the long-term. Union's evidence is that it is likely to be higher. While SEC does not necessarily agree with this assessment, at best it will be an unknown that will create a significant long-term risk in any no-build scenario. Based on the evidence in this proceeding, SEC is unable to determine that level of risk is acceptable to ratepayers.

- ***Cost Comparison***. At a high-level, the evidence does demonstrate that the Alternative Proposal may be more cost-effective than the proposed pipeline, but likely for only part of its life. It is unclear how long that would be. In addition, if the pipeline project is delayed, it is likely that future construction risks will be significantly higher due to the route the proposed pipeline would take.

The evidence does not allow SEC to conclude, one way or another, if the system benefits from building the pipeline, as compared to relying on a no-build option as proposed by Ms. Cheung. There are significant benefits and risks to each proposal, but ones that cannot easily be quantified.

Niagara Supply

The Alternative Proposal requires Union to source its supply for the Burlington-Oakville area at Niagara. If Union cannot source the supply there at a cost that is economical, then even Ms. Cheung recognizes the Alternative Proposal cannot be implemented.[3]

While both Union and Ms. Cheung differ on specifically how much gas would have to be contracted (average daily demand versus potential another amount), at the very least a significant amount would need to be sourced at Niagara. [4] Union's evidence is that this would be unwise, as Niagara is illiquid and moves supply away from Dawn, where it says its customers prefer to have access.

The evidence does not allow SEC to draw the conclusion that Niagara is an illiquid point per se. While Union pointed to the lack of daily transactions[5], it appears this may simply be a question of a

[2] Tr.1, p.134
[3] Tr.2, p.26
[4] Union says Ms. Cheung's proposal would move 77% of its Union South supply away from Dawn. As demonstrated during the oral hearing this is based on two faulty propositions. First, Union would contract for peak day demand as compared to average day (Tr.1, p.140) which would be unlikely. Second, it is based on a non-comparable comparison. Union is measuring peak day demand in 2035 for Burlington-0akville as a proportion of total gas supply being sourced in 2015 (total annual demand/365). A more appropriate comparison would use the 2016 average Burlington-Oakville demand (70.2TJ/d) and comparing that to total supply demand in 2015 (best available year) of 360 TJ/d (Tr.1, p.142). A more accurate depiction of the Alternative Proposal is that it is moving 19% of supply to Niagara. This still is a considerable amount, but not 7%.
[5] C, p.11,Figure 3.1 (K.1.3, p.13)

lack of reporting of those transactions. Union readily admitted that the problem is that many parties do not report their transactions to Platts, which is the source of the data.[6]

In contrast, it does not seem to be disputed that Niagara is significantly less liquid than Dawn.

Union's evidence, similar to that in other proceedings, is that natural gas suppliers do not want to trade at Niagara. They want to bring their supply in at Dawn where it can more easily find a buyer. The concern in relying on a significant portion of Union's supply being sourced at Niagara is that while it may be able to enter into a long-term transportation contract, it cannot contract long term for the commodity. Commodity is usually purchased on a monthly or seasonal basis, and even if contracted for short multi-year periods, prices are not fixed, but will be tied in part to basis differentials at the delivery point.

The average bid spread for supply is 2 to 4 times higher at Niagara than other points where Union purchases.[7] To SEC, this indicates that the commodity price risk level will be very high.

While currently the landed cost of gas at Niagara is less than supply sourced at Dawn (or upstream of Dawn), SEC agrees that the likelihood that this will remain is very uncertain, especially if demand significantly increases, which would be the case under the Alternative Proposal.[8] Union's view is that this will occur as early as winter 2015/2016, due to new capacity to take away gas from Niagara and Chippewa.[9]

SEC does believe that diversity of supply is important to Ontario. The Board has recognized this,[10] and so has Union.[11] Niagara should be part of that diversity. The Alternative Proposal, though, involves a significant increase in supply at Niagara, and that would occur almost immediately. Currently, Union does hold a contract for 21 TJ/d at Niagara, but an increase to 70.2 TJ/d in 2016 alone is a very significant change.

At the same time, SEC notes that Enbridge has entered into a supply agreement at Niagara recently for 200 TJ/d for 22 months at a landed cost significantly less than Dawn.[12] If Enbridge is making such a significant commitment to Niagara, and is able to procure that gas for the next 22 months at such a discount to Dawn, this would indicate that Union's view of the potential of Niagara supply is too pessimistic. In EB-2015-0200 (Dawn-Parkway 2017), ICF stated that by 2018 imports at Niagara will more than double the 2015 amount of 470 TJ/d going up to 1200 TJ/d by 2017.[13]

SEC submits that it would be appropriate for the Board to consider the issue of the potential of Union to increase its supply from Niagara in the context of Union's long-term gas supply planning.[14]

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[6] Tr.1, p.147
[7] J1.3, p.3, Figure 2.
[8] SEC recognizes that in the NEXUS Proceeding (EB-2015-0116), Union's consultant has provided forecasts for landed cost at Niagara and other point for the next fifteen years (see K12, p.32-34). But as Union has pointed out, and provided in response to D. SEC.7, similar forecasts that have been provided for other proceedings showed very different results.
[9] Tr.1, p.152-3
[10] Decision and Order, (EB-2012-0451/433, EB-2013-0074 - Union/Enbridge) dated January 30 2014, p.23-24 : "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 this Board in prior decisions, that supply diversification enhances reliability and brings cost benefits through enhanced competition."
[11] Tr.1, p.144. C., p.15
[12] K1.2, p.34
[13] EB-2015-0200, B.BOMA.40
[14] See the Letter filed on behalf of CCC, CME, BOMA, FRPO, VECC, LPMA and SEC, dated August 5 2015, in Union's 2014 Deferral Account Balances and Earning Sharing Disposition Proceeding (EB-2015-0010).

Ultimately SEC is unable, in the context of this proceeding, to come to a firm conclusion on the economic viability of sourcing Niagara supply to avoid building the proposed pipeline. Neither party has provided a credible third-party risk assessment of the long-term cost of supply at Niagara versus Dawn.[15]

Cost Comparison

Even if the gas can be acquired at Niagara, the Alternative Proposal hinges on the idea that it is a more economical option than Union's proposed pipeline. SEC submits the evidence demonstrates that this is not the case. SEC accepts that Union's operationalized version of the Alternative Proposal is a more accurate understanding of how Ms. Cheung's proposal would need to be structured in practice.[16] The most significant feature is that, instead of contracting for design day, Union contracts for only average day demand, and utilizes injections and withdrawals from storage to manage demand below or above average day. This approach is more consistent with how Union manages the rest of its supply portfolio.

SEC submits there a few issues with Union's numbers that need to be addressed:

> ***Kirkwall to Dawn Costs:*** Union has calculated a cost to ship excess gas that it imports from Niagara when Burlington-Oakville demand is below that of average demand, to its storage facilities at Dawn. As Union itself admitted during cross-examination, there is no toll that it charges, or could pass on to in-franchise customers, to do this at this time.[17] SEC submits that in comparing Union's operationalized version of the Alternative Proposal to its proposed pipeline cost, these amounts should be removed. Ultimately, the amount is not very significant. Union has forecast this cost to be $0.68M in 2017 rising to 0.9M in 2035.[18]
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> ***Kirkwall to Parkway Cost****s:* In Union's operationalized version of the Alternative Proposal, it included costs to bring 276 TJ/d during design days from Kirkwall to Parkway. Ms. Cheung took the view that this cost was inappropriate since, regardless of the path, TCPL has confirmed it will charge the same toll from Niagara to Burlington-Oakville. SEC believes Ms. Cheung has misunderstood Union's costing evidence. The problem is, on any given day, not all gas procured at Niagara will be delivered to the Burlington-Oakville area. Regardless of the route, Union requires capacity to divert some of that amount to storage, and on days when demand is in excess of average day, ship it up to Parkway. It cannot simply rely on procuring more than average day demand and hoping that TCPL will allow it to make a diversion at Kirkwall (or some point west). The evidence was that TCPL will not provide firm diversions on this path.[19] While Ms. Cheung indicated that this is simply a matter of risk,[20] Union is not only a shipper but also a distributor. It would be imprudent for it to rely on non-firm diversions. It requires separate capacity on its own system when demand varies from average day demand of the Burlington-Oakville area.

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[15] SEC notes a similar criticism was made of Gaz Metro by the Régie de l'énergie when it sought approval to shift supply to Dawn (Régie de l'énergie, *Final decision for the supply plan, the multipoint project, and the strategy for transferring the supply structure from Empress to Dawn* (D-2012-0175), December 18 2012): "The Régie is concerned by the fact that the distributor did not consider that procurement from Niagara was a serious alternative to procurement from Dawn nor that risk studies were required for such a transaction" (para 135). It ultimately agreed with Gaz Metro's shift but required annual reporting on the difference between the landed cost of gas at Dawn versus Niagara (para 142).
[16] C, p.26
[17] Tr.1, p.101-102
[18] D.FRPO.10, Attach 3, Line 22
[19] Tr.1, p.69. Tr.2, p.54
[20] Tr.2, p.41

> ***135 TJ/d Kirkwall to CDA Contract.*** Due to some historic oddity, TCPL had not been charging Union for this contract. Pursuant to the Settlement Agreement[21], which assumed the construction of the Burlington-Oakville pipeline, Union will be required to pay $8.25M for this capacity. The Settlement Agreement is silent on what happens if the Burlington-Oakville pipeline is not be constructed. Ms. Cheung's written evidence assumes that Union will not be required to pay for the contract. Union disagrees.[22]
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> SEC agrees Union will have to pay for this capacity, and that the amount is likely to be less than $8.25M but certainly not zero. Ms. Cheung is correct that Union does have some bargaining power to reduce the amount, as it would be providing TCPL with significantly higher revenue by contracting for capacity from Niagara to the Burlington-Oakville on its system.[23]
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> Regardless of the exact amount that TCPL will be paid, Union's inclusion of this amount in the cost comparison is inappropriate. In the proposed option, the building of the pipeline, Union is required under the terms of the Settlement Agreement to pay $8.25M. Yet, this amount is not included in cost of Union's proposal. In the cost comparison table[24] and underlying numbers[25], this has the effect of under forecasting the total costs of the proposed pipeline by $8.25M.

After making the above adjustments, Union's proposal is still likely to be cost-effective over the first 13 years of the project, and much more cost-effective over the subsequent years.

As best demonstrated by Figure 5-5 in Union's Reply evidence (Exhibit C, p.29), under Union's calculations, the operationalized Alternative Proposal (without the Kirkwall contract) is cheaper only until year 13 (2028). With the adjustments discussed above, the number of years it is more cost-effective may increase or decrease, but it would still be cost effective to a point in time, then it would not.

While there is an option of delaying the proposed pipeline, until the cost consequences of building the pipeline become cheaper than not building, Union has provided a reasonable basis why that would not be in ratepayers' best interests. The specifics of this project, in the area it proposes to be built, will likely lead to significantly higher costs to build in the future, due to the significant growth being proposed on the pipeline route.[26] SEC accepts Union's comparison to TCPL's Vaughan Loop pipeline, which also runs through a high growth urban area and has seen significant cost increases as a result.[27]

CME/OGVG Requested Relief

SEC is also not exactly sure what would happen, practically, if the Board rejects Union's application and grants the relief requested by CME/OGVG. As discussed during the oral hearing, Ms. Cheung readily admits that her evidence is only a high cost estimate and that further investigation would be needed. Subsequent to the filing of Ms. Cheung's written evidence, Union provided, in reply evidence and the related interrogatory responses, a very detailed cost analysis on how Ms.

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[21] National Energy Board, TCPL Application for Approval of Mainline 2015-2030 Settlement (RH-001-2014)
[22] C, p.19
[23] Tr.2, p.33-34
[24] D.FRPOM10, Attach 3
[25] D.FRPO.10, Attach 3
[26] Tr.1, p.58, p.172
[27] *Ibid*

Cheung's proposal could be operationalized. Ms. Cheung admitted during the hearing that all that is left is further investigation on the upstream issues, i.e. supply at or upstream of Niagara.[28] Union's view is that they have already provided all the information.[29]

At best, SEC would imagine that if the Board denies approval of the project because of Ms. Cheung's evidence, Union could put out a request for interest of gas producers to deliver at or upstream Niagara, or hire a gas supply consultant to do a feasibility and economic study. The problem that will occur is that it is almost impossible to forecast natural gas cost differentials between various hubs, especially in the time horizon needed to determine if the Alternative Proposal is more cost-effective.

Summary
SEC submits there is insufficient evidence to conclude, one way or another, if the system benefits from building the proposed Burlington to Oakville pipeline, or relying on the proposal provided by Ms. Cheung on behalf of CME/OGVG. It does not appear that this issue can simply be remedied by requiring any reasonable further investigations or analysis as Ms. Cheung believes is needed.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (email)
Interested Parties (email)

[28] Tr.2, p.53-54
[29] Tr.1, p.162