INTRODUCTION

In the last comprehensive review of the regulatory construct for natural gas utilities, the Board found that natural gas utilities had a role in acquiring natural gas supply on behalf of customers who chose to be supplied by the system gas[1]. Through this review and the subsequent consultation on long-term natural gas contracting, the Board determined that utilities could enter long-term contracts that provide new supply sources. To facilitate the Pre-approval of the Cost Consequences of Long-term Contracts ("Pre-Approval process")??, through consultation, the Board developed guidelines and filing requirements.

The instant proceeding, Union Gas Ltd. ("Union") and Enbridge Gas Distribution ("Enbridge") have requested pre-approval of the cost consequences of the 15 year transportation contracts with the Nexus pipelines as a means of accessing Marcellus and Utica production ("Appalachian gas"). Union and Enbridge have asserted that this pipeline is necessary to secure gas supply from these productions areas for their respective franchises in Ontario.

In our respectful submission, the issue is whether the applications meet the test of necessity for accessing new supply sources to qualify for pre-approval of the cost consequences. The Federation of Rental-housing Providers of Ontario ("FRPO") believes that the utilities have not established that pre-approval of the cost consequences of their contracts is required to move Appalachian gas to Ontario. We will lay out our line of reasoning by looking at the genesis of the guidelines in context of the gas market and, through a review of the evidence, reason that these applications do not meet the test of necessity, since Appalachian gas will reach Ontario economically without the applied for pre-approval. Recognizing the Board's discretion, we will provide an assessment of the respective utilities approach with respect to key criteria in the guidelines.

[1] EB-2004-0231 Report of the Board: Natural Gas Regulation in Ontario: A Renewed Policy Framework

PRE-APPROVAL OF COST CONSEQUENCES NOT APPROPRIATE

Given the reasons and context for the establishment of the Pre-Approval framework, our proposition that pre-approval of the cost consequences for Nexus is not appropriate is based upon four fundamental reasons:

1) The gas market is a "supply push" not "demand pull" market

2) Natural gas infrastructure is currently in place to get Appalachian gas to Ontario

3) Projects are underway or planned without utility backing that would increase the Appalachian supply

4) The utilities have only speculated that their support is crucial to the development of this project

The genesis of the Pre-Approval Process framework was the Natural Gas Forum initiated by the Board in 2004. The Executive Summary of the Forum Report starts with the following sentences[2]:

> ***"The natural gas market is changing. On the supply side, conventional supply sources are expected to experience flat to declining production. The anticipated increased reliance on non-conventional supply sources has raised questions about the need for infrastructure within Ontario to meet changing flow patterns and about the adequacy of the current regulatory treatment of utilities' acquisition of upstream gas supply and their transportation arrangements."***

The natural gas market context initiating consideration of the public interest benefits of a Pre-Approval Process flowed from a market that was expected that was tight and volatile. The market was expected to be supply short requiring significant infrastructure investments to ensure secure access of natural gas from new and frontier sources. In this proceeding, there was some discussion of whether frontier should be considered in the evaluation of the appropriateness of

[2] Natural Gas Regulation in Ontario: A Renewed Policy Framework. Report on the Ontario Energy Board. Natural Gas Forum. March 30, 2005, page 2.

pre-approval[3]. Although the utilities may argue for its exclusion in this proceeding, in our view, it is undeniable that it was embedded in the Board's considerations in determining that a Pre-Approval Process ought to be considered as stated in the report[4]

> ***"Conventional production from the WCSB has plateaued and begun to decline. The National Energy Board expects total production from the WCSB to decline from about 16 Bcf per day in 2001 to about 14 Bcf per day by 2025.[31] This decline in conventional production will be offset with increased output from non-conventional supply sources such as coal-bed methane production, liquefied natural gas and new frontier supplies, including gas from the Mackenzie Delta and Alaska. Gas flow patterns within North America will change as a consequence."***

The Forum Report's prediction of flow patterns changing was on target. However, the actual new source of supply is not LNG or frontier in the Artic but proximate supply in areas through which transmission infrastructure exists. Respectfully submitted a plain read of this section, in context of the Board's initiative, it is clear that these expected supply sources for which significant infrastructure investments would be required to access were not proximate basins with existing infrastructure.

1) The gas market is a "supply push" not "demand pull" market

As described above, in our view, the public interest benefits may outweigh the transfer of risks of long term contracting if the market needs to pull the gas from new supply sources. In fact, this was the one of the major factors relied upon in the Forum Report's summary of the Ontario Natural Gas Market:[5]

> ***"In summary, the gas market in the past could be characterized as "supply push" – that is, the supply-demand balance was tipped in favour of customers because of the supply "bubble," which in turn encouraged expansion of gas demand. Today, the gas market is increasingly being characterized as "demand pull," because growing demand is***

[3] Transcript, Volume 1, November 13, 2015, pages 10-24
[4] Natural Gas Regulation in Ontario: A Renewed Policy Framework. Report on the Ontario Energy Board. Natural Gas Forum. March 30, 2005, page 84.
[5] Natural Gas Regulation in Ontario: A Renewed Policy Framework. Report on the Ontario Energy Board. Natural Gas Forum. March 30, 2005, page 84-85.

outstripping conventional resources, which will lead to pulling in new, unconventional sources of supply".

Once again, the expectations for the gas market at the time of the report are considerably different from the realities of today. The rapid surge of gas available from the Appalachian area is well documented[6] and uncontested in this proceeding. As described below, infrastructure has been invested in and continues to be invested in by suppliers which would be characterized as a "supply push" market.

2) Natural gas infrastructure is currently in place to get Appalachian gas to Ontario.

The exponential growth of gas supply in the Appalachian has led to the suppliers finding the most timely and cost effective manner of bringing gas to market. Given the growth of supply in a traditional market area, the most expeditious way to effect delivery is through the reversal of pipe flow on an existing path. This influx of Marcellus gas is exactly what occurred with the Niagara export/import point commencing in 2012 as assessed by National Energy Board[7].

Since that initial reversal, capacity from Marcellus through Niagara toward both Union and Enbridge has grown. In that regard, Enbridge is about to take an additional 200,000 GJ/day from Niagara facilitated by TransCanada's Greater Golden Horse project[8]. While the initial source of the gas is difficult to determine, it was conceded by Enbridge that most of the gas originates in the Appalachian supply area.[9]

In addition, as the drilling area expands and moves west toward the Clarington area, other pipelines are reversing and carrying Appalachian gas away from the production area. A notable example of this gas market phenomenon is the reversal of the Rockies Express Pipeline

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[6] EB-2015-0166 Exhibit A, page 9 and EB-2015-0175 Exhibit A, Tab 3, Schedule 2, page 22
[7] Canadian Pipeline Transportation System – Energy Market Assessment, April 2014, Figure A2.14 Niagara Capacity vs. Throughput. https://www.neb-one.gc.ca/nrg/ntgrtd/trnsprttn/2014/index-eng.html#fga214
[8] TCPL's Greater Golden Horseshoe project, approved by the NEB May 8, 2015, increased the capacity from the Niagara and Chippawa by approximately 350,000 GJ in 2015.
https://docs.neb-one.gc.ca/LL-ENG/llisapi.dll?func=ll&objId=2694627&objAction=browse
[9] Transcript Volume 3, November 17, 2015, pages 20-21

discussed with Mr. LeBlanc of Enbridge[10]. This pipeline was built from the Rockies to Clarington to access eastern US markets and went into service in November 2009. As explained by Mr. LeBlanc, the pipeline has already reversed allowing gas to flow from Clarington west and by inter-connects reach Chicago. Both utilities continue to source gas in Chicago, so, as conceded by Mr. LeBlanc, Utica gas specifically and Appalachian gas in general can be accessed by the utilities without additional infrastructure. Most importantly, although the potential physical path from Clarington to Chicago to Dawn, may have additional tolls, the market would find the market value of the service while the utility need not contract on each pipeline[11]. Absent any additional pipe from Clarington to Dawn, utilities could receive Appalachian sourced gas at Dawn at the market established price.

3) <u>Projects are underway or planned without utility backing that would increase the Appalachian supply</u>

In addition to the effect created by suppliers finding market for their gas using existing paths, there are a number of infrastructure projects that are underway or planned that will bring Appalachian gas. A list of these projects was provided by Union in their interrogatory responses[12]. Notwithstanding that some may not proceed to construction[13], it is clear that the supply push is generating infrastructure projects. These projects are being supported by producers[14], not utilities but utility ratepayers can benefit from the additional supply available.

4) <u>The utilities have only speculated that their support is crucial to the development of this project</u>

The utilities have said throughout their pre-filed evidence and testimony that their ability to contract for the capacity is crucial to the development of the project. They go so far as to say that if they do not get pre-approval, they will not sign the agreements and if they do not sign the

[10] Transcript, Volume 3, November 17, 2015, pages 28-30.
[11] The supply push is creating change in how capacity is managed as is evidenced by Union in the re-purposing of ANR capacity. While dismissed as small, the 200 to 300TJ's is significantly greater than Union's Nexus commitment and could be used by a shipper or marketer to get the gas to Dawn as stated by Union in Transcript, Volume 2, November 16, page 5, lines 1-7
[12]Exhibit B.T1.Union.BOMA.7
[13] Transcript, Volume 1, November 13, pages 93-94. Union's focus is on projects to Dawn but other projects that enter Ontario are examples of gas seeking market in Ontario.
[14] Transcript, Volume 1 Technical Conference, September 8, page 71

agreements, other parties contracting on the project may pull out and, as a result, the project would be at risk. This testimony is hearsay and is only speculation in terms of the consequences in a lack of pre-approval. However, under Board examination, Enbridge confirmed that they have no direct evidence that this would occur but did state that the developers were proceeding with FERC filings and not waiting for the Board's decision in this proceeding[15].

In summary, given the context that initiated the Pre-Approval process, for the reasons above, these applications do not qualify for Pre-Approval of Cost Consequences of long term transportation contracting. As articulated in the first application by the utilities to access Appalachian gas[16]:

> ***"As the 2009 Report of the Board and the LTC Filing Guidelines make clear, preapproval is an unusual regulatory instrument reserved for cases where it is genuinely needed in order to enable infrastructure development."***

In our respectful submission, this is not a situation where the Pre-Approval of the Cost Consequences is genuinely needed in order to enable infrastructure development.

APPLICATION OF CRITERIA IN THE GUIDELINES TO EACH UTILITY

Notwithstanding our firmly held views on the appropriateness of approving these applications under the Pre-Approval Process established in EB-2008-0280, we understand that the consultation proceeding developed guidelines. In addition, we respect the Board's discretion under section 36 of the Act. Therefore, to the extent that the Board would consider applying its discretion in making a finding on the public interest components, we provide our submissions on the respective utility applications as compared to the key criteria in the Board's Conclusions extracted from section 4.2 of the Report of the Board[17].

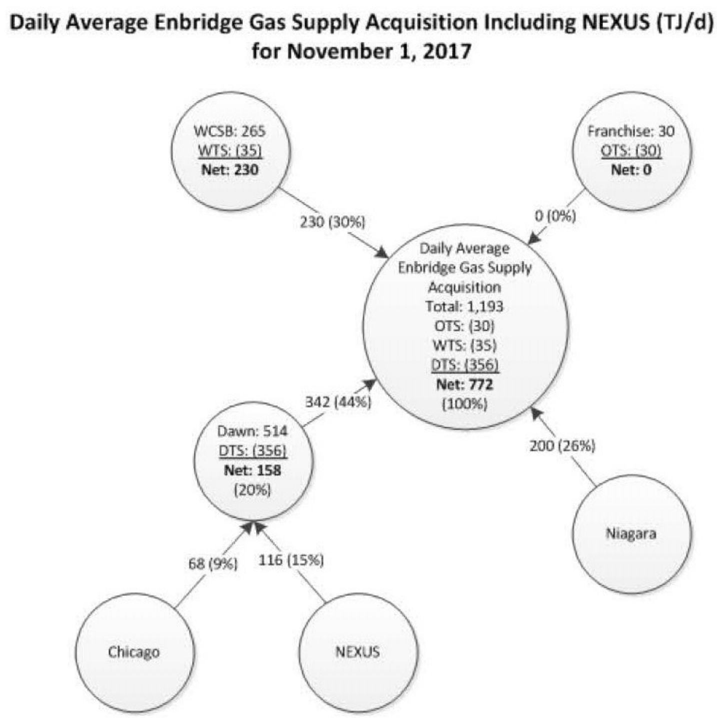
[15] Transcript, Volume 2, pages 118-119
[16] EB-2010-0300/0333 Decision and Order, January 27, 2011, page 7
[17] EB-2008-0280 Report of the Board – Draft LTC Filing Guidelines, February 11, 2009, page 5

Needs, Costs and Benefits

Generally, utilities need to provide prudent, economically sourced supply to their customers. Diversity includes establishing different points of supply to the franchise which also contributes to security of supply and system integrity and reliability.

Enbridge

With the proposed contracting of Nexus capacity, Enbridge presented their current and proposed 2017 supply in a helpful graphic[18] which we cropped to provide visual context for our point.



The efficacy of this view, while not to scale, depicts gas arriving in the Enbridge franchise from the northwest, southwest and southeast. This emphasizes that gas is sourced off different paths with diverse entry points contributing to security of supply and system reliability. In our view, this approach is a good example of portfolio diversity.

[18] Exhibit I.T1,EGDI.STAFF.7

Union

One of our primary concerns with the Union application, and more broadly, the Union approach to gas supply is the systemic bias to Dawn. While we acknowledge the attendant benefits that a liquid hub and storage at Dawn in Ontario provides benefits to the market, channeling almost all gas through Dawn is clearly not diversity. This approach also reduces security of supply and diminishes the facilities benefits associated with eastern deliveries.

Comparing the Union South portfolio[19] with the Enbridge portfolio for 2017 yields the following:

Diversity Comparison Table

Geographic Entry	Enbridge	Union South
	(Portfolio %)	(Portfolio%)*
Southwest	44	90
Southeast	26	6
Northwest	30	3

* 1% of portfolio from Local Production

While Union may argue that including the north in the comparison would reduce the predominance of southwest to closer to 80%, we would point out more than 10% of the combined north and south portfolio is the WDA (Kenora, Dryden, Thunder Bay). The WDA is predominantly a shorter pipe distance away from Empress than Dawn and is served 100% from the Northwest because it is in the Northwest.

Revealing this lack of diversity in a different manner, in 2007, Union received 45% of its system gas at Parkway[20]. Deliveries at Parkway were not only a substantial portion of Union's supply portfolio but also provided the system benefit of reducing Dawn-Parkway facilities. This benefit was so important that Union required Direct Purchase customers to obligate their

[19] EB-2015-0166 Exhibit A, Page 31, Figure 5-2
[20] EB-2015-0166 Exhibit B.T1.Union.FRPO.3

volumes at Parkway and in some years incented those customer deliveries in recognition of the system benefit.

In 2017, Union is projecting to receive 3% of its system gas at Parkway[21]. We recognize that this evolution has been driven, in part, by more economic Appalachian gas and Direct Purchasers' desire to transact at Dawn because of liquidity. However, Union has not attempted to replace this system benefit through any gas supply contracting such as peaking service. Further, and more importantly, it has not increased its deliveries at Niagara from its original 2010 open season bid for 21,000 (6%) of its portfolio. This is in spite of the fact that Union understands delivering system gas from Niagara to Kirkwall would also create a system benefit in reducing Dawn-Parkway facilities[22] in addition to improving security of supply[23].

In our view, based upon the foregoing facts, the substantial additional gas from Nexus arriving at Dawn does not contribute to security supply and reduces diversity of supply. This is interesting in light of Union testimony in response to Board staff examination pertaining to landed costs[24]:

> "***I think one of the things that is most important is we -- this is really not about landed cost. It is really about diversity and security of supply, and not so much landed cost.***"

Cost Effectiveness

In pre-filed evidence, the utilities took very different positions in the area of cost savings of Nexus. Enbridge has referred to the costs of Nexus as competitive[25] while Union has trumpeted over $700 million in savings[26]. These two figures look irreconcilable until you consider that Union has embellished potential savings by comparing Nexus upper-end tolls to transportation that Union was not going to have in its portfolio in 2017. In fact, Union informed Alliance that it

[21] Ibid.
[22] Exhibit JT2.1
[23] Transcript, Volume 2, page 65
[24] Transcript, Volume 1, page 43
[25] EB-2015-0175, Exhibit A, Tab 2, page 4
[26] EB-2015-0166, Exhibit A, page 41

would not be renewing its contract about 5 years ago[27] and none of the capacity will be in its portfolio next month. Later in the proceeding, Union shifted to a lower savings number using a comparison to Dawn[28] but then could not reconcile why Enbridge's landed cost forecast was lower for Dawn than Nexus[29]. In our view, Enbridge's approach of qualifying the path as competitive is more credible.

Cost effectiveness in comparison with other alternatives is a key criteria. The landed cost analyses were brought up regularly during discovery with multiple versions on the record[30]. As questions mounted on cost effectiveness, the informative value of these analyses were minimized as representative[31]. The most disconcerting aspect of these analyses is the difference in relative cost between Dawn landed and Nexus gas landing at Dawn between the Enbridge and Union analyses as examined by Board staff[32]. At the same time, it is undeniable that in each of the respective analyses on the record, the forecasted landed cost sourced from Niagara is the cheapest path.

The reversal of flow on the Kirkwall-Niagara line was implemented by TCPL in 2012. Enbridge had applied for pre-approval of the cost consequences of a proposed contract for 30,000 GJ/day with Union applying for 21,000 GJ/day. The Board did not find that these applications qualified for the pre-approval of cost consequences citing amongst other factors[33]:

> ***"While it is true that Marcellus natural gas is a new source of supply – technological innovation having created access to otherwise non-recoverable natural gas supplies – it is important to note that it is not so new that it is not already being produced and transported – it has been integrated into the market, and is having an effect on the market… the purpose of the pre-approval process is to support the development of new***

[27] EB-2011-0210, Exhibit D1, Tab 1, page 13

[28] Exhibit B.T1.Union.TCPL.2
[29] Transcript, Volume 1, pages 44-46
[30] Updated versions can be found at Exhibit.B.T1.LPMA.7, Exhibit.B.T1.TCPL.2
[31] Transcript, Volume 1, pages 42-43 and Transcript, Volume 2, page 133
[32] Transcript, Volume 1, pages 42-46
[33] EB-2010-0300/0333 Decision and Order, January 27, 2011, pages 8-9

transportation facilities to access new natural gas supply sources. This is clearly not the case."

However, in rendering the decision, the Board also added[34]:

> ***"In so doing, the Board is in no way suggesting that the proposed contracts are not prudent, or that costs recovery should in any degree be limited or precluded".***

Enbridge

With this decision in hand, Enbridge did not commit to the 30,000 GJ/day. However, we trust, they continued to monitor the development of the Niagara receipt point eventually entering into a 15 year contract for 200,000 GJ/day[35] that was scheduled to start Nov. 2015. As outlined above, in our view, this is a prudent approach to portfolio diversification. The interesting aspect is that the cost consequences have yet to be approved as the first incorporation of this service in evidence in front of the Board was the 2016 Rates application[36].

While there has been concern about the range of landed costs as depicted in the various analyses, we believe one of the best tests of the market's perception of forward prices is actual contracts. Enbridge has made a significant commitment and while they did cite challenges with some aspects of sourcing gas at Niagara, they provided that the actual price of their transportation contracts over a 22 month period going forward was Dawn minus 46 cents[37]. Translating that term, quantity and transportation costs results in a savings of over $61 million relative to buying at Dawn over the less than two year period. Given that the actual transportation cost paid at Niagara is tied to the basis at Dawn (the minus 46 cents), Enbridge has crystallized these savings for ratepayers. In our view, this is very cost effective. With the market information coupled

[34] Ibid, page 9
[35] EB-2015-0114 Exhibit D1, Tab 2, Schedule 1, page 5
[36] Ibid
[37] Transcript, Technical Conference, Volume 2, September 9, page 58

with Enbridge's portfolio approach, we would see this gas supply contracting at Niagara as very effective and would never challenge the prudency of this contract.

Enbridge has testified that in building a diversified portfolio that it would not want to add more gas from Niagara[38]. Given our view that Enbridge is building a prudent portfolio as outlined above, we can accept that position. Referring once again to Enbridge's portfolio[39] provided earlier in our submission, balancing gas supply between Chicago sourced and Nexus would be reasonable approach in our submission. As noted in our examination of Mr. Stevens of Sussex, we do believe that there will be an interplay between the prices at Chicago and Dawn as the market develops[40] which he confirmed. Further, Mr. Stevens acknowledged that, with the confluence of pipelines that can flow into Chicago (Joliette), there could be downward pressure on prices in Chicago relative to Henry Hub and that the market will arbitrage out remaining differentials[41].

We do note, however, in referring to Enbridge's depiction of their 2017 portfolio with Nexus[42], that the sum of the capacities of 68TJ from Chicago and 116TJ exceed the net 158TJ at Dawn. We respectfully request that Enbridge address this issue in its reply argument to satisfy the Board that there is no oversupply by way of clarification or eventual reduction of other sources.

Union

In spite of the lack of pre-approval of the cost consequences on the Niagara deliveries in 2012, Union proceeded to contract for the 21,000 GJ/day. Union has stated that they have considered and will consider[43] additional volumes from Niagara. However, since 2012, in spite of

[38] Transcript, Volume 2, page 132
[39] Exhibit I.T1,EGDI.STAFF.7
[40] Transcript, Volume 3, pages 68-70
[41] Ibid.
[42] Exhibit I.T1,EGDI.STAFF.7
[43] Transcript, Volume 1, page 32 and 90

successive open seasons for additional volumes in 2015, 2016 and 2017, Union has not increased capacity from Niagara. Union reasons for not increasing its commitment to Niagara are:

- The lack of liquidity due to fewer suppliers[44]: Lack of liquidity can increase transaction costs and overall costs.
    - In our view, the lack of liquidity would only be an issue if the utility needed to transact often in the market. However, since Union would only be securing the transport portion of the gas cost, like Enbridge, there need not be a frequency of transactions.
    - As far as the impact of this perceived lack of liquidity on the overall cost, we would encourage the Board's considerations of the empirical evidence.
        - Past: Union has been buying gas at Niagara since 2012. The monthly prices for gas acquired at Niagara has been consistently lower cost than Dawn[45]. Over the last 18 months prior to November, that difference has been between 50 cents and 1 dollar.
        - Present to near future: Union has stated that they believe that market changes are occurring narrowing the price differential[46]. However, Enbridge has recently contracted for transport costs 46 cents less than Dawn over the next 22 months[47].
        - Future prices: While there were multiple versions of the landed cost analyses on the record, the only consensus amongst all of the forecasts is that landed costs from Niagara are the lowest.

- No capacity available from Niagara[48]: While Union may state emphatically that there is no capacity left from Niagara to Kirkwall, we, again ask the Board to consider evidence. In EB-2014-0182, when intervenors pressed Union to ask TCPL about available capacity to feed Burlington and Oakville, TCPL confirmed the ability to feed up to 276,000

[44] Transcript, Technical Conference, Volume 1, page 160
[45] Exhibit J2.1
[46] Ibid.
[47] Transcript, Technical Conference, Volume 2, page 58
[48] Transcript, Technical Conference, Volume 2, page 40

GJ/day from Niagara to the communities[49]. In fact, as the letter states, this volume could be available at no additional cost to work that was underway in 2015.

In our view, Union has not demonstrated cost effectiveness by neglecting to enhance its portfolio with other viable, cost effective supply like Niagara.

Our concerns in this area are exacerbated by Union's approach to serving the north. Originally, we asked for a landed cost analysis in our interrogatories[50]. In the technical conference, we pursued how did Union determine the cost effectiveness of serving the north with 50,000 GJ/day from Nexus[51]. Union confirmed that the 50,000 GJ/day was secured to supplement the 100,000 GJ/day for Union South to achieve anchor shipper status[52]. Further, Union stated that it was relying on past economic analysis to support feeding from Dawn so they need only determine how to get the gas to Dawn[53]. Our requests for an economic analysis by way of undertaking to assess the impacts for the NDA and NCDA were denied[54].

Being invited to look at those past analyses, we reviewed Union's last updated submissions of economics in the Brantford-Kirkwall and Parkway projects proceedings[55]. The resulting PI for those projects to feed the north was 1.02. However, in continuing to view the subsequent chronology of this approach, we asked for a comparison of the projected costs in those proceedings relative to Union's current forecasted 2018 in the Dawn Reference Price proceeding[56] which we included in our compendium in this proceeding. While we accept that these costs are not an apples-to applies comparison, we are very concerned that the level of Cost of Gas – Storage Demand in line 5 of page 2 of Union's responses reveals a considerably higher cost than was forecasted. These storage demand costs include incremental Union M12 and TCPL STS costs to facilitate getting gas to the northern areas from Dawn as opposed to the

[49] EB-2014-0182 – Union Gas Limited ("Union") – Burlington Oakville Pipeline Project – Responses to CME and OGVG Questions filed with the Board, June 19, 2015.
[50] Exhibit B.T1.Union.FRPO.9
[51] Transcript, Technical Conference, Volume 1, September 8, 2015, pages 8-14
[52] Ibid, pages 9-10
[53] Ibid, pages 10-11
[54] Ibid, page 12
[55] EB-2012-0451/EB-2012-0433/EB-2013-0074 Union Undertakings filed November 7, 2013
[56] EB-2015-0181 Exhibit B.FRPO.10

historic path from Empress. We are concerned that those costs were not included in the economics.

We attempted to get further understanding of these bill impacts in the oral hearing resulting in Union accepting an undertaking that showed the difference in bill impacts in sourcing the gas from Kirkwall relative to Nexus[57] but frankly, at this conjecture, it is difficult to test and contest the Union's analysis. Our primary concern remains that Union is relying on marginal economics from the 2013 proceedings that may have been under-informed on associated costs of feeding northern communities such as Kapuskasing from Dawn.

We firmly believe that Union should be demonstrating on-going rigour in its analysis of the optimum mix of gas supplies that yield economically sound results for its customers. In our view, Union has not demonstrated that in this proceeding and, as such, has not demonstrated cost effectiveness in assessing alternatives to the proposed project.

Affiliate relationships

As this only applies to Union, we will be brief in our submission. Union is owned by Spectra. Nexus is owned by Spectra. Union acknowledges that Spectra is not indifferent due to its ownership position of the proposed pipeline[58]. However, when we established the value chain transfer of risk to which Union agreed to each component, they stopped short of conceding this risk is eventually borne by the ratepayers[59]. While Union would not accept this proposition, we submit that the logic is clear that the pipeline transfers risks to shippers. With Union as the shipper and not wanting to accept risk, which we understand, the pre-approval process is the transfer of risk to the ratepayers. Further, we respectfully submit that the Board was and is cognizant of this risk.

[57] Exhibit J2.3
[58] Transcript, Volume 2, page 27.
[59] Transcript, Volume 2, pages 19-23.

As discussed above in the sections on Needs, Costs and Benefits and Cost Effectiveness, Union has proposed to move 90% of its south portfolio supply through Dawn in spite of the diversification, cost and system benefits afforded through the Niagara path. In our view, this systemic bias is rooted in the reward system of the utility as agent of the shareholder, acting consistent with its primary obligations to the shareholder.

Other Considerations

One of the predominant themes in the respective contracting processes for the utilities was the pursuit of anchor shipper status for the of Most Favoured Nation benefits. We appreciate that this status affords some level of risk mitigation. Given the diligence Enbridge demonstrated in assessing the Nexus project leading to their initial withdrawal, it is clear the pipeline was willing to renegotiate some aspects to keep utility commitment to the project[60]. As discussed with Mr. Stephens, there are recent precedents of pipelines securing utility commitment to a project by negotiating with the utilities as a group resulting in the utilities receiving "the most favourable terms and conditions"[61]. To the extent that the Board does not grant pre-approval of the cost consequences, the combined negotiation approach could allow Union to lower its capacity commitment and by combining with Enbridge both utilities could achieve the Most Favoured Nation Benefits.

CONCLUSION

As outlined above, FRPO respectfully submits that the respective utility applications do not meet the test of need to enable infrastructure development to qualify for the Pre-Approval of Cost Consequences under the guideline.

[60] Transcript, Volume 2, November 16, 2015, page 118
[61] Transcript, Volume 3, November 17, 2015, page 74-76

We respect the Board's discretion to go beyond the strict application of purpose of the guidelines. If the Board exercises this discretion, given our view of the merits of the respective utilities approaches to risk mitigation through diversification as seen through, we would encourage the Board to consider conditional approval of the utilities to proceed to renegotiation Nexus. In our view, the condition require the utilities to negotiate with Nexus to establish contracts allowing Enbridge to secure its requested 110,000 GJ/day while Union would decrease its commitment but keeping the aggregate capacity at greater than 50,000 GJ/day. In conjunction, Union would commitment to entering into negotiations to secure a level of capacity, comparable to the Nexus capacity, on the Niagara path. If the Board, or ultimately Union perceive this approach is not appropriate, in the alternative, the Board could pre-approve the cost consequences of some or all of the Enbridge contract and direct Union to re-file a more diversified approach to its gas supply portfolio.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF FRPO,

Dwayne Q

Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD.